Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 8 March 2016[1]

Case C-695/15 PPU

Shiraz Baig Mirza
v
Bevándorlási és Állampolgársági Hivatal
(Request for a preliminary ruling

from the Közigazgatási és Munkaügyi Bíróság (Hungary))

(Area of freedom, security and justice — Borders, asylum and immigration — Regulation No 604/2013 (Dublin III) — Examination of an application for international protection — Conditions for the exercise of the Member States' right to send an applicant to a safe third country — Obligations of the Member State responsible for examining the application in the event that the applicant is taken back)

I – **Introduction**

1. The present case has arisen in the context of the mass influx into the European Union of third-country nationals wishing to cross Hungary in order to enter another Member State, in this instance Austria.

2. In the case at issue, the national concerned, a Pakistani national, entered Hungary from Serbia. He first lodged an application for international protection with the Hungarian authorities, then left without authorisation for the Czech Republic, before eventually being taken back by the Hungarian authorities. Since the application for international protection was rejected as inadmissible, the Hungarian authorities propose to send the Pakistani national to Serbia, which they consider to be a safe third country.

3. Hearing the action brought by the applicant against the measures taken by the Hungarian authorities, the referring court asks the Court about the conditions in which a Member State may propose to send an applicant for international protection 'to a safe third country' pursuant to Article 3(3) of Regulation (EU) No 604/2013[2] ('the Dublin III Regulation') without examining the substance of his application.

4. I would point out from the outset that the option of removal does not appear to raise any fundamental issue. On the contrary, it is provided for in the legislation. It follows that a genuine applicant who does not leave the Member State in which he submitted his application runs the risk of being sent to a safe third country without his application being examined on the substance.

1 — Original language: French.

2 — Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ 2013 L 180, p. 31).

5. What about an applicant who leaves the Member State in which he submitted his application to travel illegally to another Member State? What procedure should be followed where the person concerned is then taken back by the first Member State? Does Article 18(2) of the Dublin III Regulation, under which 'the examination of his or her application [must] be completed', then preclude the rejection of the application for international protection as inadmissible and the applicant's immediate removal to a safe third country?

6. These are the fundamental questions that lie at the heart of the proceedings in this case. It is being dealt with under the urgent preliminary ruling procedure because the applicant for international protection is in detention in Hungary.

II – **Legislative framework**

A – *EU law*

1. The Dublin III Regulation

7. Under Article 2(d) of the Dublin III Regulation, '"examination of an application for international protection" means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU[3] and Directive 2011/95/EU[4], except for procedures for determining the Member State responsible in accordance with this Regulation'.

8. Under Article 2(e) of that regulation, '"withdrawal of an application for international protection" means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly'.

9. Article 3 of the Dublin III Regulation, entitled 'Access to the procedure for examining an application for international protection', reads as follows:

'1. Member States shall examine any application for international protection by a third-country national … The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

3 — Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

4 — Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.

3. Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.'

10. Under Article 7(2) of that regulation, '[t]he Member State responsible in accordance with the criteria set out in this Chapter[5]shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State'.

11. Under Article 13(1) of the Dublin III Regulation, '[w]here it is established, on the basis of proof or circumstantial evidence … that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place.'

12. Article 17(1) of the Dublin III Regulation, entitled 'Discretionary clauses', provides:

'By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. …'

13. Under Article 18 of that regulation, entitled 'Obligations of the Member State responsible':

'1. The Member State responsible under this Regulation shall be obliged to:

…

(c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;

…

2. …

In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU. In such cases, Member States shall ensure that the examination of the application is completed.

…'

5 — Chapter III, entitled 'Criteria for determining the Member State responsible'.

2. Directive 2013/32

14. Article 28 of Directive 2013/32, entitled ‘Procedure in the event of implicit withdrawal or abandonment of the application’, provides:

‘1. …Member States may assume that the applicant has implicitly withdrawn or abandoned his or her application for international protection in particular when it is ascertained that:

…

(b) he or she has absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time …

…

2. Member States shall ensure that an applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken is entitled to request that his or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.

…

Member States shall ensure that such a person is not removed contrary to the principle of non-refoulement.

Member States may allow the determining authority to resume the examination at the stage where it was discontinued.

3. This Article shall be without prejudice to [the Dublin III Regulation].’

15. Article 33 of Directive 2013/32, entitled ‘Inadmissible applications’, provides in Section II of Chapter III:

‘1. In addition to cases in which an application is not examined in accordance with [the Dublin III Regulation], Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

…

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;

…’

16. Under Article 38 of Directive 2013/32, entitled ‘The concept of safe third country’:

‘1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

(c) the principle of non-refoulement in accordance with the Geneva Convention is respected;

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national law, including:

(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

3. When implementing a decision solely based on this Article, Member States shall:

(a) inform the applicant accordingly; and

(b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

…

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.’

17. Article 39 of the directive, entitled ‘The concept of European safe third country’, provides:

‘1. Member States may provide that no, or no full, examination of the application for international protection and of the safety of the applicant in his or her particular circumstances as described in Chapter II shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;

(b) it has in place an asylum procedure prescribed by law; and

(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies.

3. The applicant shall be allowed to challenge the application of the concept of European safe third country on the grounds that the third country concerned is not safe in his or her particular circumstances.

4. The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

…’

B – *National legislation*

1. The Hungarian Law on asylum

18. Under Article 51(2)(e) of Law No LXXX of 2007 on asylum (a menedékjogról szóló 2007. évi LXXX. törvény, ‘the Law on asylum’), ‘[the asylum] application shall be inadmissible if there is, in respect of the applicant, a third country which may be considered to be a safe third country for him’.

19. Under paragraph 4 of that article, ‘[t]he application may be declared inadmissible pursuant to subparagraph 2(e) above only if the applicant

(a) has resided in a safe third country and was able, in that country, to claim effective protection …;

(b) has transited through the territory of such a country and was able, in the country in question, to claim effective protection …’

20. Under Article 53 of that Law, ‘[t]he competent asylum authority shall reject the application by an order if it finds that one of the conditions laid down in Paragraph 51(2) is met’.

2. The Government Decree of 21 July 2015

21. Under Article 2 of Government Decree 191/2015 (VII.21.) on the determination, at national level, of countries of origin classified as safe and of safe third countries (191/2015. (VII.21.) Kormányrendelet a nemzeti szinten biztonságosnak nyilvánított származási országok és biztonságos harmadik országok meghatározásáról, 'the Government Decree of 21 July 2015'):

'The Member States of the European Union and candidate States for accession to the European Union — except for Turkey –, the Member States of the European Economic Area, the states of the United States of America which do not apply the death penalty, and:

1. Switzerland,

2. Bosnia and Herzegovina,

3. Kosovo,

4. Canada,

5. Australia,

6. New Zealand,

shall be considered to be safe third countries …'

22. It should be borne in mind in this regard that on 19 December 2009 the Republic of Serbia formally applied for membership of the European Union. The Commission delivered a positive opinion on 12 October 2011 and recommended that Serbia be granted the status of candidate country. The Council was then asked to take a decision in February 2012 on granting Serbia candidate status, which was confirmed by the European Council in March 2012. [6]

23. Article 3(2) of the Government Decree of 21 July 2015 provides:

'If an asylum applicant has resided in one of the third countries classified as safe according to the European Union list of safe third countries or Paragraph 2 of the present Law or if he has transited through the territory of one of those countries, he may demonstrate, in the asylum procedure laid down in the Law on asylum, that, in his particular case, he was not able, in that country, to access effective protection within the meaning of Paragraph 2(i) of the Law on asylum.'

III – **The dispute in the main proceedings and the questions referred for a preliminary ruling**

24. The applicant in the main proceedings, a Pakistani national, lodged an application for international protection in Hungary on 7 August 2015 after illegally entering Hungary from Serbia in August 2015.

25. During the national procedure he left for an unknown destination. The national authority dealing with his case then discontinued the examination of the application by decision of 9 October 2015, without having first rejected his application as inadmissible.

26. Subsequently, the applicant in the main proceedings returned to the Czech Republic when he was travelling to Austria. The Czech authorities requested that Hungary take back the applicant, a request to which Hungary acceded pursuant to Article 18(1)(c) of the Dublin III Regulation.

6 — See in this regard the conclusions of the European Council of 1 and 2 March 2012, EUCO 4/3/12, point 39.

27. According to the referring court, it is not evident from the procedural documents that the Czech authorities had been informed that in Hungary the examination of the application for international protection could, having regard to the list of safe third countries adopted by decree, result in the applicant being sent to Serbia without an examination of his application on the substance.

28. After he was taken back by Hungary, the applicant in the main proceedings submitted a second application for international protection in Hungary on 2 November 2015. That application was dealt with in a second procedure during which the applicant was placed in detention.

29. The applicant in the main proceedings was heard in that second procedure on 2 November 2015. In the course of the interview, he was informed that his application for international protection could be rejected as inadmissible unless he proves that, in the light of his particular circumstances, Serbia does not constitute a safe third country for him. Although the applicant stated in his response that he was not safe in Serbia, because the Hungarian authorities were not convinced by the evidence provided in this regard they rejected his application as inadmissible. In their decision they also ordered his return and removal.

30. The applicant in the main proceedings brought an action against that decision at the referring court, claiming that he did not wish to be returned to Serbia because he would not be safe there.

31. In these circumstances, the referring court decided to request the application of the urgent preliminary ruling procedure and to refer the following questions to the Court for a preliminary ruling:

‘(1) Should Article 3(3) of [the Dublin III Regulation] be interpreted as meaning that

(a) Member States may exercise the right to send an applicant to a safe third country only before determining the Member State responsible or that they may also exercise that right after making that determination?

(b) Is the answer to the preceding question different if the Member State establishes that it is the State responsible not at the time when the application is first lodged with its authorities in accordance with Article 7(2) of the Dublin III Regulation and Chapter III of that regulation but when it receives the applicant from another Member State following a transfer or take back request pursuant to Chapters V and VI of the Dublin III Regulation?

(2) If, on the basis of the interpretation given by the Court in response to the first question, the right to send an applicant to a safe third country may also be exercised after a transfer carried out pursuant to the Dublin procedure:

Can Article 3(3) of the Dublin III Regulation be interpreted as meaning that Member States may also exercise that right if, in the course of the Dublin procedure, the Member State carrying out the transfer has not been informed of the precise national rules governing the exercise of that right or of the practice applied by the national authorities?

(3) Can Article 18(2) of the Dublin III Regulation be interpreted as meaning that, in the case of an applicant who has been taken back pursuant to Article 18[(1)](c) of that regulation, the procedure must be continued at the stage where it was discontinued during the preceding procedure?’

32. As regards urgency, the referring court notes that in the light of the usual duration of an ordinary preliminary ruling procedure there is a real risk, in the case of such a procedure, that it could not conclude the national proceedings in so far as, once released, the applicant in the main proceedings would be likely to leave again for an unknown destination.

33. Following the administrative meeting on 11 January 2016, the Fourth Chamber of the Court of Justice decided that the present case should be dealt with under the urgent preliminary ruling procedure referred to in Article 107 of the Rules of Procedure.

IV – **Assessment of the questions referred**

A – *The first question*

34. The first question referred for a preliminary ruling concerns the interpretation of Article 3(3) of the Dublin III Regulation.

35. The referring court essentially asks whether the fact that a Member State has been designated as responsible for examining an application for international protection (sub-question (a)) or has even recognised its responsibility in accordance with Article 18 and taken back the applicant (sub-question (b)) prevents that Member State then sending the applicant to a safe third country pursuant to Article 3(3) of the Dublin III Regulation.

36. It should be stated as a preliminary remark that Hungary's responsibility vis-à-vis the applicant stems from recognition of responsibility when he was taken back, but that that responsibility could have been accepted, even in the absence of express recognition, either under Article 13 of the Dublin III Regulation, as the applicant irregularly crossed the Hungarian border from Serbia, or in accordance with Article 3(2) of that regulation, as Hungary was the first Member State in which the application for international protection was lodged.

37. Having made that preliminary remark, the answer to the first part of the question asked follows from the very wording of Article 3(3) of the Dublin III Regulation. Under that provision, '[a]ny Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU'.

38. As the German Government rightly stated at the hearing, that provision establishes the principle of the retention of the right of removal without stipulating any limit in time. There is therefore no suggestion that the right to remove the person concerned should cease to apply following the determination of the Member State responsible.

39. Moreover, if 'any Member State', including a State which is not considered to be the Member State responsible for the purposes of the Dublin III Regulation,[7] is granted the right 'to send an applicant to a safe third country', it would be strange, to say the least, to take away that option from the Member State which is actually responsible for examining the case.

40. Article 33(1) of Directive 2013/32 likewise does not preclude this reading of Article 3(3) of the Dublin III Regulation. It should be pointed out in this regard that Article 33 of Directive 2013/32 does not provide for a limitation of the scope of the rights stemming from the Dublin III Regulation.

7 — In paragraphs 24 to 26 of its written observations, the Commission even appears to assert that the application of Article 3(3) by a Member State presupposes that it has recognised that it is the State responsible for examining the application. See also paragraph 52 of the written observations of the applicant in the main proceedings.

41. At most, it could be asked whether a Member State could be deprived of the option under Article 3(3) of the Dublin III Regulation if, rather than availing itself of it from the time of the submission of the initial application for international protection, it proceeded to examine the substance of the application and did not invoke the possibility of removal until a later stage of the procedure. Some authors seem to envisage the loss of the option under Article 3 in such circumstances by reason of the applicant's legitimate expectations following the examination of his application on the substance. [8]

42. In the present case, however, in view of the specific circumstances of the applicant in the main proceedings, such considerations do not apply. First, the applicant himself has not shown good faith by leaving Hungary before the end of his procedure. His actions cannot really be reconciled with the concept of legitimate expectations. Second, as early departure to another Member State is regarded as withdrawal of the application under Article 28 of Directive 2013/32, a provision with which national law is consistent, and the Hungarian authorities subsequently closed the applicant's case, his second application for international protection, submitted after he returned to Hungary, gave rise to a separate case, the examination of which is not affected at all by the earlier procedure.

43. In the light of the above considerations, the fact that a Member State has been determined as the State 'responsible' for examining an application for international protection cannot prevent that Member State from then sending the applicant to a safe third country pursuant to Article 3(3) of the Dublin III Regulation.

44. This finding holds at least for a genuine applicant who has never left the territory of the first Member State in which he lodged his application.

45. The situation could look very different, however, if the applicant for international protection, like the applicant in the main proceedings, is taken back by the first Member State pursuant to Article 18(1) of the Dublin III Regulation after leaving without authorisation. That State is then required, under Article 18(2) of that regulation, to complete the examination of his case. This is the situation referred to in the second part of the first question.

46. The referring court seems to consider that Article 18 might impose an obligation on the Member State responsible to examine the case of the applicant who is taken back *on the substance*. Such an obligation would preclude the rejection of his application as inadmissible and any removal of the applicant without an examination of his application on the substance in accordance with Article 3(3) of the Dublin III Regulation.

47. This combined reading of Articles 3 and 18 of the Dublin III Regulation is not appropriate, however.

48. The second subparagraph of Article 18(2) of that regulation does not make any statement about the right to send an applicant to a third country. That provision merely affirms the principle that the examination of a procedure initiated in the first Member State [9] must be 'completed', but does preclude the deportation of the person concerned to a third country or require an examination of the substance of his application for international protection. On the contrary, it would seem reasonable to regard the examination of an inadmissible application as fully 'completed' within the meaning of Article 18 of the Dublin III Regulation once such an application is rejected as inadmissible, without embarking on an examination on the substance.

8 — Filzwieser, C./Sprung, A., Dublin III-Verordnung, Vienna/Graz, 2014, p. 103, K 24.

9 — Under that provision, the Member State concerned may either continue the examination of the initial application that was discontinued following the departure of the applicant, which is regarded as implicit withdrawal in accordance with Article 28 of Directive 2013/32, or permit him to lodge a new application.

49. Moreover, the conditions in which an application may be rejected *as inadmissible* are laid down not in Article 18 of the Dublin III Regulation but in Article 33(2) of Directive 2013/32. Under subparagraph (c) of that provision, an application may be rejected as inadmissible if 'a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38'. Similarly, Article 39 of that directive permits the Member State responsible not to conduct a 'full examination' of the application for international protection if it is established that 'the applicant … has entered illegally into its territory from a [European] safe third country'.

50. Accordingly, an examination of the application on the substance is not required if the conditions laid down in Article 33 of the directive or the conditions laid down in Article 39 of that directive are met.

51. The following remarks should be made in respect of those two provisions.

52. First, it is neither in the light of national law nor in the light of Article 18 of the Dublin III Regulation that it is to be assessed whether the Member State responsible is required to conduct a full examination of the application for international protection lodged with it, but having regard to Directive 2013/32.

53. Second, with regard to Article 33(2)(c) of Directive 2013/32, it should be noted that that provision can be relevant and permit Hungary to reject the application as inadmissible only if Serbia can be considered as a 'safe third country' for the purposes of Article 38 of that directive. It must be stated, for all intents and purposes, that classification of Serbia as a safe third country under national law cannot relieve the court dealing with the case of the task of conducting its own examination in order to be 'satisfied that a person seeking international protection will be treated in accordance with the … principles [set out in Article 38 of the directive] in the third country concerned', in this case Serbia.

54. Lastly, with regard to Article 39 of Directive 2013/32, it should be noted that that provision establishes a less stringent regime for rejecting applications from applicants from *European* safe third countries if those applicants, like the applicant in the main proceedings, have entered illegally into the territory of a Member State.

55. However, that provision lays down three conditions which must be met cumulatively for Serbia to be able to fall within the category of European safe third countries: (i) it must have ratified and must observe the provisions of the Geneva Convention without any geographical limitations; (ii) it must have in place an asylum procedure prescribed by law; and (iii) it must have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and must observe its provisions, including the standards relating to effective remedies.

56. It is only if those cumulative conditions are met that Hungary may rely on Article 39 of the directive to refrain from conducting a full examination of the application and propose to send the applicant to Serbia in accordance with Article 3(3) of the Dublin III Regulation. In so far as Article 2 of the Government Decree does not contain any relevant information in this regard, the court hearing the case will have to ascertain at the outset whether those three conditions are met in the case of Serbia.

57. If the conditions laid down in either Article 33 or Article 39 of Directive 2013/32 are met, Article 18(2) of the Dublin III Regulation does not preclude the rejection of the application and the deportation of the applicant to a safe third country in accordance with the directive.

58. Any other reading of the abovementioned provisions, in particular one which elevates Article 18(2) of the Dublin III Regulation into an absolute principle governing the examination of the substance of the application, will merely unduly accord favourable treatment to the case of the applicant, who absconded and falls under Article 18 of the Dublin III Regulation, compared with a genuine applicant to whom Article 18 is not applicable.

59. Worse still, if Article 18 did effectively guarantee favourable treatment to an applicant who has been taken back, that provision would encourage any applicant to abscond to another Member State merely in order to avoid the rejection of his application as inadmissible and to evade an immediate removal order.

60. The answer to the first question must therefore be that the fact that a Member State has been determined as the State 'responsible' for examining an application for international protection, even if it has recognised its responsibility in accordance with Article 18 of the Dublin III Regulation and even if it has taken back the applicant, cannot prevent that Member State then sending the applicant to a safe third country pursuant to Article 3(3) of the Dublin III Regulation if the conditions laid down in Directive 2013/32 are met.

B – *The second question*

61. If a Member State remains free, in principle, to exercise the right to send an applicant to a safe third country after that applicant has been taken back from another Member State, the referring court asks, in essence, whether, having regard to Article 18(2) of the Dublin III Regulation and the applicant's right to an effective legal remedy, it is possible to send the applicant to a safe third country even though the Member State carrying out the transfer has not been informed, in the course of the take back procedure, of the national rules applicable to the sending of applicants to safe third countries or the practice applied by the competent authorities.

62. Three remarks must be made on this question.

63. First, the absence of information in the requesting Member State, which is the State to which the applicant absconded, on the subsequent practices of the requested State, in this case Hungary, cannot have a bearing on the lawfulness of the procedures to be implemented in the requested State.

64. The transfer procedure (from the requesting State) and the procedure relating to the examination of the application (in the requested State) are two distinct procedures, each subject to its own rules. While they must guarantee an effective legal remedy *for the person concerned*, the safeguards to be applied to the applicant in connection with his transfer are described in Article 26 et seq. of the Dublin III Regulation and do not include specific safeguards in relation to the practices of the requested State.

65. Second, although Article 38(5) of Directive 2013/32 requires that 'Member States shall inform the Commission periodically of the [safe third] countries to which this concept is applied', no such obligation is laid down for the benefit of Member States. [10]

10 — See to that effect paragraph 27 of Hungary's written observations.

66. Lastly, the end of the second subparagraph of Article 18(2) of the Dublin III Regulation provides that the examination of the application must be completed in the requested State. Whilst that principle precludes any disadvantage detrimental to the applicant from occurring, the applicant cannot, however, claim a more favourable status than he enjoyed before he absconded. In other words, the applicant cannot rely on insufficient information for the authorities of the requesting State, to which he travelled illegally, in order to circumvent the application of practices generally accepted in the requested State, which is the State responsible in accordance with the Dublin III Regulation.

67. In the light of the foregoing considerations, it is possible to send the applicant to a safe third country even though the Member State carrying out the transfer has not been informed, in the course of the take back procedure, of the national rules applicable to the sending of applicants to safe third countries or the practice applied by the competent authorities.

C – *The third question*

68. If the Member State responsible remains free to exercise the right to send an applicant to a safe third country after the applicant is taken back, the question arises whether Article 18(2) of the Dublin III Regulation can be interpreted as meaning that the procedure must be continued at the stage where it was discontinued during the examination of the first application for international protection lodged in the Member State responsible.

69. It is sufficient to state in this regard that the second subparagraph of Article 18(2) of the Dublin III Regulation does not require Member States to continue the examination of the application at the stage where it was discontinued. Under that article, the competent authorities may either continue the examination of the initial application, which is deemed to have been withdrawn, or to permit the applicant to lodge a new application.

70. It should be noted, on the other hand, that the fourth subparagraph of Article 28(2) of Directive 2013/32 expressly provides that the 'Member States *may* allow the determining authority to resume the examination at the stage where it was discontinued', thus leaving them entirely free either to provide for the examination to be continued at the stage in question or to restart the procedure from the beginning.

71. The answer to the third question must therefore be that the second subparagraph of Article 18(2) of the Dublin III Regulation does not require Member States to continue the examination of the application for international protection at the stage where it was discontinued.

V – **Conclusions**

72. In the light of the above considerations, I propose that the Court answer the questions referred for a preliminary ruling as follows:

The fact that a Member State has been determined as the State 'responsible' for examining an application for international protection, even if it has recognised its responsibility in accordance with Article 18 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Dublin III Regulation') and taken back the applicant, cannot prevent that Member State then sending the applicant to a safe third country pursuant to Article 3(3) of the Dublin III Regulation if the conditions laid down in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection are met.

It is possible to send the applicant to a safe third country even though the Member State carrying out the transfer has not been informed, in the course of the take back procedure, of the national rules applicable to the sending of applicants to safe third countries or the practice applied by the competent authorities.

The second subparagraph of Article 18(2) of the Dublin III Regulation does not require Member States to continue the examination of the application for international protection at the stage where it was discontinued.