Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

13 November 2018 *

Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Regulation (EC) No 1560/2003 — Determination of the Member State responsible for examining an application for international protection — Criteria and mechanisms for determination — Request to take charge of or take back an asylum seeker — Negative reply from the requested Member State — Re-examination request — Article 5(2) of Regulation No 1560/2003 — Time limit for replying — Expiry — Effects)

In Joined Cases C-47/17 and C-48/17,

REQUESTS for a preliminary ruling under Article 267 TFEU made by the Rechtbank Den Haag (District Court, The Hague, Netherlands), by decisions of 23 January and 26 January 2017, received at the Court on 1 February and 3 February 2017 respectively, in the proceedings

X (C-47/17),

X (C-48/17)

v

Staatssecretaris van Veiligheid en Justitie,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras and F. Biltgen, Presidents of Chambers, E. Juhász, M. Ilešič (Rapporteur), J. Malenovský, E. Levits, L. Bay Larsen and S. Rodin, Judges,

Advocate General: M. Wathelet,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2018,

after considering the observations submitted on behalf of:

– X (C-47/17), by C.C. Westermann-Smit, advocaat,

– X (C-48/17), by D.G.J. Sanderink and A. Khalaf, advocaten,

– the Netherlands Government, by K. Bulterman and L. Noort, acting as Agents,

* Language of the case: Dutch.

– the German Government, by T. Henze and R. Kanitz, acting as Agents,

– the Hungarian Government, by M.M. Tátrai, M.Z. Fehér and G. Koós, acting as Agents,

– the United Kingdom Government, by S. Brandon, R. Fadoju and C. Crane, acting as Agents, and by D. Blundell, Barrister,

– the Swiss Government, by E. Bichet, acting as Agent,

– the European Commission, by G. Wils and M. Condou-Durande, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 March 2018,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 5(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3), as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 (OJ 2014 L 39, p. 1) ('the Implementing Regulation').

2 The requests for a preliminary ruling have been made in disputes between two asylum seekers and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, the Netherlands; 'the State Secretary').

Legal context

EU law

The Eurodac Regulation

3 Article 9 of Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ 2013 L 180, p. 1; 'the Eurodac Regulation') provides:

'1. Each Member State shall promptly take the fingerprints of all fingers of every applicant for international protection of at least 14 years of age and shall, as soon as possible and no later than 72 hours after the lodging of his or her application for international protection, as defined by Article 20(2) of Regulation (EU) No 604/2013, …

…

3. Fingerprint data … transmitted by any Member State … shall be compared automatically with the fingerprint data transmitted by other Member States and already stored in the Central System.

…

5. The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin. …

…'

4 Article 14 of the Eurodac Regulation provides:

'1. Each Member State shall promptly take the fingerprints of all fingers of every third-country national or stateless person of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.

2. The Member State concerned shall, as soon as possible and no later than 72 hours after the date of apprehension, transmit to the Central System the following data in relation to any third-country national or stateless person, as referred to in paragraph 1, who is not turned back:

…'

The Dublin III Regulation

5 Recitals 4, 5, 7 and 12 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 (OJ 2013 L 180, p. 31; 'the Dublin III Regulation'), state:

'(4) The Tampere conclusions [of the European Council at its special meeting at Tampere on 15 and 16 October 1999] also stated that the [Common European Asylum System] should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

…

(7) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 [TFEU] for those granted international protection … Furthermore it emphasised that the Dublin system remains a cornerstone in building the [Common European Asylum System], as it clearly allocates responsibility among Member States for the examination of applications for international protection.

…

(12) 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)] should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Directive.'

6 Under Article 2(d) of the Dublin III Regulation, for the purposes of that regulation an '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 and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation'.

7 Article 3(2) of the Dublin III Regulation provides:

'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.

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.'

8 Article 13(1) of the Dublin III Regulation is worded as follows:

'Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in [the Eurodac Regulation], 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.'

9 Article 17(1) of the Dublin III Regulation states:

'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.

…'

10 Article 18 of that regulation provides:

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

(a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;

(b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who 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(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.

…’

11 Article 20(1) and (5) of that regulation provide:

‘1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State.

…

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24, 25 and 29, by the Member State with which that application for international protection was first lodged, with a view to completing the process of determining the Member State responsible.

…’

12 Article 21 of the Dublin III Regulation states:

‘1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 14 of [the Eurodac Regulation], the request shall be sent within two months of receiving that hit pursuant to Article 15(2) of that Regulation.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. That period shall be at least one week.

3. In the cases referred to in paragraphs 1 and 2, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take charge requests. ...'

13 Article 22 of the Dublin III Regulation provides:

'1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of receipt of the request.

...

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence ...

...

6. Where the requesting Member State has pleaded urgency in accordance with the provisions of Article 21(2), the requested Member State shall make every effort to comply with the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.'

14 Article 23 of the Dublin III Regulation provides:

'1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of [the Eurodac Regulation].

If the take back request is based on evidence other than data obtained from the Eurodac system, it must be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.

4. A take back request shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the statements of the person concerned, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back requests ...'

15 Article 25 of the Dublin III Regulation states:

'1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.'

16 Article 29 of the Dublin III Regulation provides:

'1. The transfer of the applicant … from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge [of] or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect …

…

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge [of] or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

…'

17 According to the correlation table in Annex II to the Dublin III Regulation, Article 18 and Article 20(1)(b) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1; 'the Dublin II Regulation'), which was repealed and replaced by the Dublin III Regulation, correspond to Article 22 and Article 25(1) respectively of the latter regulation.

The Implementing Regulation

18 According to the preamble of the Implementing Regulation, that regulation was enacted 'having regard to [the Dublin II Regulation], and in particular Article 15(5), Article 17(3), Article 18(3), Article 19(3) and (5), Article 20(1), (3) and (4) and Article 22(2) thereof'.

19 Article 5 of the Implementing Regulation states:

'1. Where, after checks are carried out, the requested Member State considers that the evidence submitted does not establish its responsibility, the negative reply it sends to the requesting Member State shall state full and detailed reasons for its refusal.

2. Where the requesting Member State feels that such a refusal is based on a misappraisal, or where it has additional evidence to put forward, it may ask for its request to be re-examined. This option must be exercised within three weeks following receipt of the negative reply. The requested Member State shall endeavour to reply within two weeks. In any event, this additional procedure shall not extend the time limits laid down in Article 18(1) and (6) and Article 20(1)(b) of [the Dublin II Regulation].'

20 Annex X to the Implementing Regulation contains, in Part A thereof, information on the Dublin III Regulation for applicants for international protection. Under the heading 'How long will it take to decide which country will consider my application? How long will it be before my application is examined?', it is stated, notably, that 'The entire duration of the [Dublin III Regulation procedure], until you are transferred to that country may, under normal circumstances, take up to 11 months. Your asylum request will then be examined in the responsible country This time frame could be different if you hide from the authorities, are imprisoned or detained, or if you appeal the transfer decision'. Part B of Annex X, containing information on that procedure for applicants for international protection who are subject to that procedure, sets out in more detail the time limits laid down for the lodging of a take charge or take back request and for the response to such a request and for the transfer of the person concerned.

Netherlands law

The General Law on administrative law

21 Article 4:17(1) of the Algemene wet bestuursrecht (General Law on administrative law) provides that if an administrative authority fails to give a timely decision on an application, it will be obliged to pay a financial penalty to the applicant for each day that it is in default, up to a maximum of 42 days. Article 4:17(2) of that law provides that the penalty is EUR 20 per day for the first fourteen days in default, EUR 30 per day for the next fourteen days and EUR 40 per day for all subsequent days. Article 4:17(3) of that law provides that the first day in respect of which the penalty is payable is the day of expiry of the two week period which starts running on the day on which the time limit for giving the decision expires and the administrative authority receives written notice of default from the applicant. Article 4:17(5) of that law provides that the bringing of an action against the failure to give a timely decision does not suspend the penalty. Under Article 4:17(6)(c) of the General Law on administrative law, the penalty is not payable when the application is manifestly inadmissible or manifestly unfounded.

22 Article 6:2(b) of that law provides:

'For the purposes of the legislative provisions on objections and appeals, the failure to take a timely decision shall be the equivalent of a decision.'

23 Article 6:12(2) of that law provides:

'A notice of appeal may be filed as soon as the administrative authority has failed to take a timely decision and two weeks have passed since the day on which the interested party sent the administrative authority written notice of default.'

24 Article 8:55b(1) of the General Law on administrative law states:

'If an appeal is directed against a failure to take a timely decision, the administrative court shall give judgment in accordance with the provisions of Article 8:54 of [that law] within eight weeks after the notice of appeal is received and the requirements of Article 6:5 of [that law] are satisfied, unless the administrative court considers it necessary to hold a hearing.'

25 Article 8:55c of the General Law on administrative law provides:

'If the appeal is well founded, the administrative court shall also, on request, determine the amount of the penalty payable.'

26 Pursuant to Article 8:55d(1) of that law, if the appeal is well founded and no decision has yet been notified, the administrative court must direct the administrative authority to notify a decision within two weeks after the date on which the judgment is served. Under Article 8:55d(2) of that law, the administrative court must, in its judgment, impose a further penalty for each day that the administrative authority fails to comply with the judgment.

The Law on foreign nationals

27 Article 30(1) of the Vreemdelingenwet 2000 (the 2000 Law on Foreign nationals), in the version applicable at the material time ('the Law on Foreign nationals'), provides that an application for a temporary residence permit for an asylum seeker is not to be examined if it is established, under the Dublin III Regulation, that another Member State is responsible for dealing with the asylum application.

28 Article 42(1) of the Law on Foreign nationals provides a decision must be given on an application for the grant of a temporary (asylum) residence permit within six months after the receipt of the application.

29 Article 42(4) of that law provides that the time limit referred to in Article 42(1) may be extended by a maximum of nine further months if:

'a. complex issues of fact and/or law are involved;

b. a large number of foreign nationals lodge applications simultaneously, making it very difficult in practice to conclude the procedure within the six-month time limit; or

c. the delay in processing the application can be attributed to the foreign national.'

30 Article 42(6) of the Law on Foreign nationals provides that if, within the framework of an application for the grant of a temporary (asylum) residence permit, there is an investigation as to whether, under Article 30 of that law, the application should not be examined, the time limit referred to in the first paragraph starts to run at the moment at which it is determined in accordance with the Dublin Regulation that the Kingdom of the Netherlands is responsible for examining the asylum application.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-47/17

31 On 24 January 2016 the applicant in the main proceedings, a Syrian national, lodged in the Netherlands with the State Secretary an application for the grant of a temporary (asylum) residence permit.

32 On the same date, the State Secretary consulted the Eurodac database and received a 'hit', indicating that the applicant had lodged an application for international protection in Germany on 22 January 2016, though that is denied by the applicant.

33 On 24 March 2016 the State Secretary made a request to the German authorities to take back the applicant in the main proceedings, pursuant to Article 18(1)(b) of the Dublin III Regulation.

34 By letter of 7 April 2016, the German authorities rejected the take back request. In that letter, the German authorities explained that their reply was in the negative for the time being in order to comply with the time limit for replying under Article 25(1) of the Dublin III Regulation, that the reply required further examination in Germany, and that the Netherlands authorities would be kept informed without the need to make a request to that effect.

35 On 14 April 2016 the State Secretary sent to the German authorities a re-examination request, to which no response was made.

36 By letter of 29 August 2016, the applicant in the main proceedings asked the State Secretary to examine his application and to deem the German authorities' rejection of 7 April 2016 to be a definitive rejection. The State Secretary did not respond to the substance of that request.

37 On 17 November 2016 the applicant in the main proceedings brought an action before the referring court, claiming that there had been no timely decision on his application for the grant of a temporary (asylum) residence permit and requesting that court to order the State Secretary to pay a financial penalty, from the moment that he failed to take a decision, and to take a decision within a time limit to be determined by that court, on pain of a further financial penalty of EUR 100 per day in default.

38 On 22 December 2016 the State Secretary notified the referring court that on 14 December 2016 he had withdrawn the take back request lodged with the German authorities and that the asylum application made by the applicant in the main proceedings would henceforth be dealt with under the Nederlandse Algemene Asielprocedure (Netherlands General Asylum Procedure).

39 The parties in the main proceedings are in dispute as to whether the period within which the State Secretary was required to take a decision on the application for a temporary (asylum) residence permit lodged by the applicant in the main proceedings on 24 January 2016 had in the meantime expired.

40 In that regard, the applicant in the main proceedings argues, inter alia, that after the expiry of the time limits laid down in the Dublin III Regulation for the take back procedure, the Member State that is responsible for examination of an application for international protection has to have been determined. If the requested Member State responds, within the period prescribed, in the negative to the take back request, responsibility rests, from that moment, on the requesting Member State. Consequently, the period of six months for taking a decision on the asylum application starts to run from that moment. Since the German authorities rejected the take back request on 7 April 2016, the

Kingdom of the Netherlands was from that date responsible for examining the applicant's asylum application, with the result that the period for a decision in respect of that application expired on 7 October 2016.

41 On the other hand, according to the State Secretary, the period prescribed for a decision in respect of that application started to run only from 14 December 2016, the date on which the Kingdom of the Netherlands declared that it was responsible for examining the application.

42 In those circumstances, the Rechtbank Den Haag (District Court, The Hague, Netherlands) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the requested Member State, having regard to the objective, the content and the scope of [the Dublin III Regulation] and [Directive 2013/32], respond within two weeks to a re-examination request provided for in Article 5(2) of the Implementing Regulation?

(2) If the answer to the first question is in the negative, does the time limit of a maximum of one month as provided for in Article 20(1)(b) of [the Dublin II Regulation] (now Article 25(1) of [the Dublin III Regulation]) apply, having regard to the last sentence of Article 5(2) of the Implementing Regulation?

(3) If the answer to the first and second questions is in the negative, does the requested Member State, due to the use of the word "endeavour" in Article 5(2) of the Implementing Regulation, have a reasonable period of time to respond to the re-examination request?

(4) If there is indeed a reasonable period of time within which the requested Member State should actually respond to a re-examination request under Article 5(2) of the Implementing Regulation, can a period of six months, as in the present case, still be regarded as a "reasonable period of time". If the answer to that question is in the negative, what might be meant by a "reasonable period of time"?

(5) What should be the consequence of the requested Member State not responding within two weeks, one month or a reasonable period of time to a re-examination request? In those circumstances, is it the requesting Member State that is responsible for the substantive examination of the asylum application made by the foreign national, or is it the requested Member State?

(6) If one should proceed on the assumption that the requested Member State becomes responsible for the substantive examination of the asylum application due to the lack of a timely response to the re-examination request as referred to in Article 5(2) of the Implementing Regulation, within what period of time should the requesting Member State, the defendant in the present case, notify the foreign national of that information?'

Case C-48/17

43 On 22 September 2015 the applicant in the main proceedings, an Eritrean national, lodged an application in the Netherlands for the grant of a temporary (asylum) residence permit with the State Secretary. According to the Eurodac database, he had previously lodged an application for international protection in Switzerland on 9 June 2015. It is indicated, in addition, in the file submitted to the Court that the applicant in the main proceedings at the end of May 2015 crossed the Mediterranean into Italy, where however his fingerprints appear not to have been taken and where he apparently did not submit an application for international protection.

44 On 20 November 2015 the State Secretary made a request to the Swiss authorities to take back the applicant in the main proceedings pursuant to Article 18(1)(b) of the Dublin III Regulation.

45 On 25 November 2015 the Swiss authorities rejected that request on the ground that, as part of the procedure for the determination of the Member State responsible for dealing with the application for international protection that the applicant had lodged in Switzerland, those authorities had sent a take charge or take back request to the Italian authorities, from whom there had been no reply, so that as from 1 September 2015 the Italian Republic had become responsible for dealing with that application.

46 On 27 November 2015 the State Secretary made a request to the Italian authorities to take back the applicant in the main proceedings.

47 On 30 November 2015 the Italian authorities rejected that request.

48 On 1 December 2015 the State Secretary made a re-examination request to the Italian authorities, and on 18 January 2016 he sent a reminder letter to those authorities.

49 On 26 January 2016 the Italian authorities accepted that request.

50 By decision of 19 April 2016, the State Secretary refused to examine the application for the grant of a temporary (asylum) residence permit lodged by the applicant in the main proceedings, on the ground that the Italian Republic was responsible for processing the asylum application.

51 The applicant in the main proceedings lodged an appeal against that decision before the referring court. He also requested the court hearing applications for interim measures to issue an injunction, by way of an interim measure, prohibiting the State Secretary from deporting him until four weeks after the referring court had ruled on the appeal. By order of 30 June 2016, the court hearing applications for interim measures granted the interim measure sought.

52 The parties to the main proceedings are in dispute, inter alia, as to whether the State Secretary did or did not become responsible for examining the application for the grant of a temporary (asylum) residence permit lodged by the applicant in the main proceedings because of the fact that the Italian authorities, after initially rejecting the take back request made by the State Secretary, did not reply to the re-examination request within the prescribed period.

53 In those circumstances, the Rechtbank Den Haag (District Court of the Hague) decided to stay the proceedings and to refer to the Court six questions for a preliminary ruling, those questions being, in essence, identical to those referred in Case C-47/17, except that, first, the time limit mentioned in the fourth question was adapted to the situation at issue in Case C-48/17 to refer to a period of 7.5 weeks and, second, the fifth question in the latter case refers only to the situation where a time limit of two weeks or a reasonable time is exceeded.

Procedure before the Court

54 By order of the President of the Court of 13 February 2017, Cases C-47/17 and C-48/17 were joined for the purposes of the written and oral procedure and of the judgment.

55 In its request for a preliminary ruling in Case C-47/17, the referring court requested that the case be determined under the expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice. That request was rejected by order of the President of the Court of 15 March 2017, *X* (C-47/17 and C-48/17, not published, EU:C:2017:224). While, initially, it was nonetheless decided to grant priority treatment to the present cases because of the situation of the applicant in the main proceedings in Case C-47/17, that applicant, however, brought it to the attention of the

Court in his written observations that, after the lodging of the request for a preliminary ruling, the Netherlands authorities had upheld his application for asylum, and consequently the dispute in those proceedings now concerns only the issue of financial compensation for the failure to take a decision within the time limits prescribed. Since priority treatment is no longer justified in such circumstances, it was decided to end the priority treatment and to deal with the case under the ordinary procedure.

Consideration of the questions referred

56 By its questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 5(2) of the Implementing Regulation must be interpreted as meaning that, in the course of the procedure for determining the Member State responsible for dealing with an application for international protection, the Member State which has received a take charge or take back request under Article 21 or Article 23 of the Dublin III Regulation, which has replied in the negative to that request within the time limits laid down in Article 22 or Article 25 of that regulation and which, thereafter, has received a re-examination request under Article 5(2) of the Implementing Regulation, must reply to the latter request within a certain period of time. The referring court seeks to ascertain what that period of time is, according to the circumstances, and what the consequences are if the requested Member State fails to reply, within that period, to the requesting Member State's re-examination request.

57 In that regard, it must be recalled that the take charge and take back procedures must necessarily be conducted in accordance with the rules laid down, inter alia, in Chapter VI of the Dublin III Regulation, and that they must, in particular, be carried out with due regard to a series of mandatory time limits (see, to that effect, judgments of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 49 and 50, and of 25 January 2018, *Hasan*, C-360/16, EU:C:2018:35, paragraph 60).

58 Accordingly, Article 21(1) of the Dublin III Regulation provides that the take charge request must be made as quickly as possible and in any event within three months of the date on which the application for international protection was lodged. Notwithstanding that first time limit, in the case of a Eurodac 'hit' with data registered under Article 14 of the Eurodac Regulation, that request must be made within two months of receipt of that hit.

59 Similarly, Article 23(2) of the Dublin Regulation provides that a take back request must be made as quickly as possible and in any event within two months of receiving the Eurodac 'hit', pursuant to Article 9(5) of the Eurodac Regulation. If that request is based on evidence other than data obtained from the Eurodac system, it must be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2) of the Dublin III Regulation.

60 In that regard, it should be noted that the EU legislature defined the effects of the expiry of those periods by specifying, in the third subparagraph of Article 21(1) of the Dublin III Regulation and in Article 23(3) of that regulation, that if those requests are not made within those periods, responsibility for examining the application for international protection is to lie with the requesting Member State.

61 Further, the EU legislature has also laid down such mandatory time limits and the consequences of their expiry with respect to the reply to a take charge or take back request.

62 First, as regards the reply to a take charge request, Article 22(1) of the Dublin III Regulation provides that the requested Member State is to make the necessary checks and to give a decision on that request within two months of receipt of the request.

63 Under Article 22(6) of the Dublin III Regulation, where the requesting Member State has pleaded urgency in accordance with the provisions of Article 21(2) of that regulation, the requested Member State is to make every effort to comply with the time limit requested, which is at least one week. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

64 Under Article 22(7) of the Dublin III Regulation, the absence of a reply on the expiry of the two-month period mentioned in Article 22(1) or of the one-month period mentioned in Article 22(6) is to be tantamount to accepting the request, and is to entail the obligation to take charge of the person concerned, including the obligation to provide for proper arrangements for his arrival.

65 Second, as regards the reply to a take back request, Article 25(1) of the Dublin III Regulation provides that the requested Member State is to make the necessary checks and give a decision on the request as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit is to be reduced to two weeks.

66 Under Article 25(2) of the Dublin III Regulation, the absence of a reply on the expiry of the one-month or two-month period mentioned in Article 25(1) is to be tantamount to accepting the request, and is to entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for his arrival.

67 As regards the consequences prescribed by Article 22(7) and Article 25(2) of the Dublin III Regulation, if there is no reply, on the expiry of the mandatory time limits laid down in Article 22(1) and (6) and in Article 25(1) of that regulation, to a take charge or take back request, it must be emphasised that those consequences cannot be circumvented by sending a purely formal reply to the requesting Member State. There is no ambiguity in Article 22(1) and Article 25(1): the requested Member State must, in compliance with those mandatory time limits, make all the necessary checks in order to be able to give a decision on the take charge or take back request. Article 5(1) of the Implementing Regulation adds, further, that a negative reply to such a request must state full and detailed reasons for the refusal.

68 However, under Article 29(2) of the Dublin III Regulation, if a transfer does not take place within the six-month time limit, the Member State responsible for the examination of an application for international protection is relieved of its obligation take charge of or take back the person concerned and responsibility is then transferred to the requesting Member State. That time limit may be extended by up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

69 It is apparent from the provisions cited in paragraphs 58 to 68 of the present judgment that the EU legislature thereby provided, as a framework for the take charge and take back procedures, a set of mandatory time limits which make a decisive contribution to achieving the objective of rapidly processing applications for international protection, as referred to in recital 5 of the Dublin III Regulation, by ensuring that those procedures will be implemented without undue delay (see, to that effect, judgments of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraphs 53 and 54; of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 31, and of 25 January 2018, *Hasan*, C-360/16, EU:C:2018:35, paragraph 62).

70 That set of mandatory time limits testifies to the particular importance that the EU legislature has attached to the rapid determination of the Member State responsible for the examination of an application for international protection and to the fact that, having regard to the aim of ensuring effective access to the procedures for granting international protection and of not compromising the objective of rapid processing of applications for international protection, the EU legislature regards it as essential that such applications are, when necessary, examined by a Member State other than that designated as being responsible pursuant to the criteria set out in Chapter III of that regulation.

71 The Court must take the foregoing into consideration when analysing the questions referred for a preliminary ruling, as reformulated in paragraph 56 of the present judgment, in relation to the time limits applicable to the re-examination procedure provided for in Article 5(2) of the Implementing Regulation.

72 Under Article 5(2) of the Implementing Regulation, where the requesting Member State considers that a refusal on the part of the requested Member State to take charge of or take back the applicant is based on a misappraisal, or where it has additional evidence to put forward, it may ask for its take charge or take back request to be re-examined by the latter Member State. That option must be exercised within three weeks following receipt of the negative reply from the requested Member State. The requested Member State is then to endeavour to reply within two weeks. In any event, that additional procedure is not to extend the time limits laid down in Article 18(1) and (6) and Article 20(1)(b) of the Dublin II Regulation, which correspond to the time limits currently provided for in Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation.

73 It is clear that it follows from the very wording of Article 5(2) of the Implementing Regulation that the option available to the requesting Member State, of sending a re-examination request to the requested Member State, after the latter has refused to accept the take charge or take back request, constitutes an 'additional procedure'. Since the aim of the Implementing Regulation, as stated in recital 1 thereof, is to ensure the effective application of the Dublin II Regulation, which was repealed and replaced by the Dublin III regulation, Article 5(2) must be interpreted so as to be compatible with the provisions of the latter regulation and the objectives pursued by that regulation.

74 Article 5(2) of the Implementing Regulation must accordingly be interpreted in such a way that the length of the additional re-examination procedure, which is an optional procedure, is strictly and foreseeably circumscribed, both in the interests of legal certainty for all the parties concerned and to ensure its compatibility with the detailed time frames established by the Dublin III Regulation and not to adversely affect the objective, pursued by that regulation, of rapid processing of applications for international protection. If a re-examination procedure were to be of indefinite duration, with the consequence that the issue of which Member State is responsible for examining an application for international protection were left unresolved, and that the examination of such an application were significantly, and potentially indefinitely, delayed, that outcome would be incompatible with the objective of rapid processing.

75 The abovementioned objective, which also underpins Article 5(2) of the Implementing Regulation, is reflected, according to the very wording of that provision, by strict time frames, through the establishment of a period of three weeks that is granted to the requesting Member State if it is to send a re-examination request to the requested Member State and a period of two weeks for any reply by the latter to that request.

76 Accordingly, first, it is unequivocally clear from the wording of the second sentence of Article 5(2) of the Implementing Regulation that the option offered by Article 5(2) to the requesting Member State, to ask for a re-examination of its take charge or take back request by the requested Member State, must be exercised within the three weeks following receipt of the latter's negative reply. It follows that, on the expiry of that mandatory time limit, the requesting Member State loses that option.

77 Second, as regards the period of time available to the requested Member State to reply to the re-examination request, the third sentence of Article 5(2) of the Implementing Regulation provides that that State is to endeavour to reply within two weeks. The aim of that provision is to encourage the requested Member State to engage in sincere cooperation with the requesting Member State by re-examining, within the time limit laid down by that provision, the latter Member State's request to take charge of or take back the person concerned, but it is not the purpose of that provision to create a legal obligation to reply to a re-examination request, failure to comply with which will mean that responsibility for the examination of application for international protection is transferred.

78 That finding is confirmed by the fact that, unlike Article 22(7) and Article 25(2) of the Dublin III Regulation, Article 5(2) of the Implementing Regulation does not provide that a failure to reply before the expiry of the two week period would be tantamount to accepting the request and would entail the obligation to take charge of or take back the person concerned.

79 Nor can such consequences follow from a failure by the requested Member State to reply to the re-examination request from the requesting Member State within the maximum period of one month laid down in Article 25(1) of the Dublin III Regulation, to which reference is made by the referring court in its second set of questions. Apart from the fact that such an interpretation is contrary to the very wording of Article 5(2) of the Implementing Regulation, the last sentence of that provision expressly states that the additional re-examination procedure is not to extend the time limits available to the requested Member State to reply to the take charge or take back request, under Article 22(1) and (6) and Article 25(1) of the Dublin III Regulation, time limits which, by definition, have been observed in a situation where the requesting Member State asks for a re-examination.

80 It follows therefore from Article 5(2) of the Implementing Regulation that, provided that the requested Member State has, after carrying out the necessary checks, given a negative reply to a take charge or take back request within the time limits prescribed for that purpose by the Dublin III Regulation, the additional re-examination procedure cannot trigger the effects laid down in Article 22(7) and Article 25(2) of that regulation.

81 Third, as regards the question of the legal significance of the time limit of two weeks laid down in the third sentence of Article 5(2) of the Implementing Regulation and the effects of the expiry of that time limit, it should be recalled that that provision must, as stated in paragraph 73 of the present judgment, be interpreted in a way that is compatible with the provisions of the Dublin III Regulation and the objectives pursued by that regulation, in particular the objective of establishing a clear and workable method for rapidly determining the Member State responsible for the examination of an application for international protection, in order to ensure effective access to the procedures for granting such protection and in order not to compromise the objective of rapid processing of applications for international protection, mentioned in recitals 4 and 5 of that regulation.

82 That objective of the Dublin III Regulation would not be respected if Article 5(2) of the Implementing Regulation were to be interpreted as meaning that the time limit of two weeks specified by that provision were purely indicative, so that the extent of the additional re-examination procedure would not be restricted by any time limit for a reply or would be restricted only by a 'reasonable' period of time for reply, the duration of that period not being pre-defined, as mentioned in the third and fourth questions referred, and requiring assessment by the national courts on a case-by-case basis, taking account of all the circumstances of the specific case.

83 If a 'reasonable' period of time for reply were to apply, that would give rise to significant legal uncertainty, since, both for the administrative authorities of the Member States concerned and for the applicants for international protection, it would be impossible to determine in advance the exact duration of that period in a given situation, which might, moreover, induce those applicants to bring

actions before the national courts seeking review of compliance with that time limit and therefore provoke the initiation of court proceedings which would delay, in their turn, the determination of the Member State responsible for the examination of an application for international protection.

84 Accordingly, if Article 5(2) of the Implementing Regulation were to be interpreted as meaning that the extent of the additional re-examination procedure was restricted only by a 'reasonable' period of time for reply, the duration of that period not being pre-defined, that interpretation would be contrary to the objectives of the Dublin III Regulation and would also be incompatible with the general system of the take charge and take back procedures, as designed by that regulation, to which the EU legislature has given a framework of clearly defined, foreseeable and relatively short time limits.

85 It must also be noted, in that regard, that the present cases can be distinguished from those where the Court has applied the concept of a 'reasonable period of time'. Whereas the significant feature of the latter cases is the absence of any provision of EU law stating precisely the time limit at issue (see, inter alia, judgments of 28 February 2013, *Review Arango Jaramillo and Others* v *EIB*, C-334/12 RX-II, EU:C:2013:134, paragraphs 5, 28 and 33; of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraphs 44 and 48; of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 97 and 104; of 14 June 2016, *Marchiani* v *Parliament*, C-566/14 P, EU:C:2016:437, paragraphs 89 and 95 to 97; of 13 September 2017, *Khir Amayry*, C-60/16, EU:C:2017:675, paragraph 41; of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraphs 45 and 61, and of 27 June 2018, *Diallo*, C-246/17, EU:C:2018:499, paragraphs 58 and 69), the Commission did however specify, in Article 5(2) of the Implementing Regulation, a precise time limit, of two weeks, within which the requested Member State is to endeavour to reply to a re-examination request that is sent to it by the requesting Member State.

86 That being the case, the third sentence of Article 5(2) of the Implementing Regulation must be interpreted as meaning that the expiry of the two-week time limit for a reply laid down by that provision definitively brings to an end the additional re-examination procedure, whether the requested Member State has, or has not, replied within that period to the re-examination request made by the requesting Member State.

87 Consequently, the requesting Member State, unless it has available the time needed to be able to lodge, within the mandatory time limits laid down for that purpose in Article 21(1) and Article 23(2) of the Dublin III Regulation, a further take charge or take back request, must be considered to be responsible for the examination of the application for international protection concerned.

88 It must be stated, fourth, that the time limit for reply laid down, respectively, in Article 22(1) and (6) of the Dublin III Regulation or in Article 25(1) of that regulation has no effect on the calculation of the time limits laid down for the additional re-examination procedure. If Article 5(2) of the Implementing Regulation were to be interpreted as meaning that that procedure can be conducted only within the limits set out by those provisions of the Dublin III Regulation, so that that procedure would be possible only where the requested Member State had not exhausted the period laid down for its reply to the take charge or take back request, that would, in practice, significantly impede the application of that procedure and cannot, therefore, be regarded as conducive to the implementation of the Dublin III Regulation.

89 Accordingly, the requesting Member State is entitled to send to the requested Member State a re-examination request within the period, prescribed by the second sentence of Article 5(2) of the Implementing Regulation, of three weeks following receipt of the negative reply from the requested Member State, even if the termination of that additional re-examination procedure, on the expiry of the period of two weeks laid down in the third sentence of Article 5(2) of the Implementing Regulation, were to come about after the expiry of the time limits laid down, respectively, in Article 22(1) and (6) of the Dublin III Regulation or in Article 25(1) of that regulation.

90 In the light of all the foregoing, the answers to the questions referred are as follows:

– Article 5(2) of the Implementing Regulation must be interpreted as meaning that, in the course of the procedure for determining the Member State that is responsible for processing an application for international protection, the Member State which receives a take charge or take back request under Articles 21 and 23 of the Dublin III Regulation, which, after making the necessary checks, has replied in the negative to that request within the time limits laid down in Articles 22 and 25 of that regulation and which, thereafter, receives a re-examination request under Article 5(2), must endeavour, in the spirit of sincere cooperation, to reply to the re-examination request within a period of two weeks, and

– where the requested Member State does not reply within that period of two weeks to the re-examination request, the additional re-examination procedure shall be definitively terminated, with the result that the requesting Member State must, as from the expiry of that period, be considered to be responsible for the examination of the application for international protection, unless it still has available to it the time needed to lodge, within the mandatory time limits laid down for that purpose in Article 21(1) and Article 23(2) of the Dublin III Regulation, a further take charge or take back request.

Costs

91 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 5(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014, must be interpreted as meaning that, in the course of the procedure for determining the Member State that is responsible for processing an application for international protection, the Member State which receives a take charge or take back request under Articles 21 and 23 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, which, after making the necessary checks, has replied in the negative to that request within the time limits laid down in Articles 22 and 25 of Regulation No 604/2013 and which, thereafter, receives a re-examination request under Article 5(2) of Regulation (EC) No 1560/2003, must endeavour, in the spirit of sincere cooperation, to reply to the re-examination request within a period of two weeks.

Where the requested Member State does not reply within that period of two weeks to the re-examination request, the additional re-examination procedure shall be definitively terminated, with the result that the requesting Member State must, as from the expiry of that period, be considered to be responsible for the examination of the application for international protection, unless it still has available to it the time needed to lodge, within the mandatory time limits laid down for that purpose in Article 21(1) and Article 23(2) of Regulation No 604/2013, a further take charge or take back request.

[Signatures]