Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 8 September 2022 [1]

Case C-323/21

Staatssecretaris van Justitie en Veiligheid
other party:
B.
(Request for a preliminary ruling from the Raad van State (Council of State, Netherlands))
and
Joined Cases C-324/21 and C-325/21
Staatssecretaris van Justitie en Veiligheid (C-324/21)
K. (C-325/21)
other parties:
F.,
Staatssecretaris van Justitie en Veiligheid

(Requests for a preliminary ruling from the Raad van State (Council of State, Netherlands))

(Reference for a preliminary ruling – Asylum policy – Criteria and mechanisms for determining the Member State responsible for examining an application for international protection – Regulation (EU) No 604/2013 – Appeal against a transfer decision – Concept of 'requesting Member State' – Effect of an agreement previously concluded between two other Member States – Scope of the appeal)

I. Introduction

1. These requests for a preliminary ruling provide the Court with the opportunity to clarify the detailed rules that should govern take back procedures initiated successively by two different Member States in respect of the same applicant for international protection, pursuant to 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. [2]

[1] Original language: French.

[2] OJ 2013 L 180, p. 31; 'the Dublin III Regulation'.

2. The requests have been made in proceedings between the Staatssecretaris van Justitie en Veiligheid (State Secretary for Security and Justice, Netherlands) ('the State Secretary') and B., F. and K., all three of whom are third-country nationals and applicants for international protection, concerning the legality of the transfer decisions adopted in relation to them. After lodging their initial application for international protection with one Member State, each of them moved within the territory of the European Union, lodging, at that time and in very short order, new applications for international protection with the Member States to which they travelled.

3. In the absence of clarifications in the Dublin III Regulation and its implementing regulation [3] regarding the relationship between take back procedures conducted successively by different Member States in respect of the same applicant, the Court will have to establish rules that make it possible, on the one hand, to maintain a clear, workable and rapid method for determining the Member State responsible for the examination of an application for international protection [4] and, on the other hand, to prevent abuses arising from multiple applications for international protection submitted simultaneously or successively by the same person in several Member States, with the sole aim of extending his or her stay in the European Union, by benefiting from material reception conditions, or of choosing the Member State responsible for examining his or her application for international protection. [5]

4. In the present Opinion, I will set out the reasons why I am of the view that, in situations such as those at issue in the main proceedings, in which the first take back procedure was properly initiated following consultation between the Member States concerned, events following that consultation, namely the applicant leaving the territory of the requesting Member State before his transfer takes place and the subsequent submission of a second take back request by another Member State on the territory of which the applicant is present, deprives that first procedure of a crucial element for its validity. I will go on to explain why the requested Member State, in so far as it is involved in two take back procedures initiated within a very short timescale in respect of the same person by two different requesting Member States, is in a position to agree with the first requesting Member State that the first of those procedures lapses with effect from the requested Member State's acceptance of the second take back request.

II. Legal context

5. Recitals 4 and 5 of the Dublin III Regulation state as follows:

'(4) The Tampere conclusions … 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.

[3] 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) ('Regulation No 1560/2003').

[4] See, to that effect, judgment of 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218, paragraphs 58 and 59). See also recitals 4 and 5 of the Dublin III Regulation.

[5] See proposal for a Council regulation 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, presented by the European Commission on 26 July 2001 (COM(2001) 447 final, point 2.1).

(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.'

6. In Chapter II, entitled 'General principles and safeguards', the first subparagraph of Article 3(2) of the Dublin III Regulation provides the following:

'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.'

7. Chapter VI of the Dublin III Regulation, entitled 'Procedures for taking charge and taking back', consists of Articles 20 to 33 of that regulation. The first subparagraph of Article 20(5) of the Dublin III Regulation states:

'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.'

8. Article 23(1) to (3) 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 …

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged …

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.'

9. Article 27(1) of the Dublin III Regulation reads as follows:

'The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.'

10. Article 29(1) and (2) 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 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 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.'

III. The facts of the disputes in the main proceedings and the questions referred for a preliminary ruling

A. Case C-323/21

11. On 3 July 2017, B. applied for international protection in Germany. As B. had previously applied for such protection in Italy, the German authorities requested the Italian authorities to take him back. On 4 October 2017, the Italian authorities accepted that take back request. The transfer time limit was subsequently extended until 4 April 2019 because B. absconded.

12. On 17 February 2018, B. lodged an application for international protection in the Netherlands. On 17 March 2018, the State Secretary made a request to the Italian authorities to take back B. On 1 April 2018, the Italian authorities accepted that take back request. By letter of 29 June 2018, the State Secretary informed those authorities that B. had absconded, which resulted in the transfer time limit being extended until 1 October 2019.

13. On 9 July 2018, B. lodged a second application for international protection in Germany. On 14 September 2018, the German authorities adopted a decision under the Dublin III Regulation against which an appeal was not lodged.

14. On 27 December 2018, B. lodged a second application for international protection in the Netherlands. By decision of 8 March 2019, the State Secretary refused to examine that application on the ground that the Italian Republic remained the Member State responsible for examining it.

15. On 29 April 2019, B. was transferred to Italy.

16. B. lodged an appeal against the State Secretary's decision of 8 March 2019 before the court having jurisdiction. By judgment of 12 June 2019, that court allowed that appeal and annulled that decision, on the ground that, on 4 April 2019, the Federal Republic of Germany had become the Member State responsible because the transfer time limit had expired.

17. The State Secretary appealed against that judgment before the referring court. He claimed inter alia, in support of that appeal, first, that the transfer time limit should be calculated having regard to the relationship between the Kingdom of the Netherlands and the Italian Republic and, second, that, under the 'chain rule', a new transfer time limit had started for the Federal Republic of Germany when B. lodged an application for international protection in the Netherlands.

18. The referring court observes that it is established that the Italian Republic was the Member State responsible on the day on which B.'s last application for international protection was lodged. However, the parties to the main proceedings disagree as to the possible expiry of the transfer time limit prior to B.'s transfer, once 18 months had passed since the Italian Republic accepted the first take back request.

19. In the referring court's view, in the present case, two 'valid agreements' to take back B. existed at the same time, with two different transfer time limits, thus necessitating clarification of the relationship between those time limits. To that end, it is necessary to determine whether the first Member State which made a take back request must still be regarded as being the 'requesting Member State', within the meaning of Article 29(2) of the Dublin III Regulation, or whether that status must be reserved for the last Member State that made such a request.

20. If the second interpretation were to be accepted, the referring court asks whether that last Member State is bound, in any way whatsoever, by the transfer time limit applicable to the first Member State. By contrast, if the first interpretation were to be favoured, it would be necessary to determine whether B. can rely on the expiry of the transfer time limit agreed between the Federal Republic of Germany and the Italian Republic before the Netherlands courts, a situation that would promote forum shopping.

21. In those circumstances, the Raad van State (Council of State, Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Must the term "requesting Member State" within the meaning of Article 29(2) of [the Dublin III Regulation] be interpreted as referring to the Member State (in this case, the third Member State, namely the Netherlands) which was the last to submit a take back or take charge request to another Member State?

(b) If the answer is in the negative: does the fact that a claim agreement has previously been concluded between two Member States (in this case, Germany and Italy) still have consequences for the legal obligations of the third Member State (in this case, the Netherlands) under the Dublin [III] Regulation towards the foreign national or the Member States concerned by that earlier claim agreement, and if so, what are those consequences?

(2) If [the first question] must be answered in the affirmative, must Article 27(1) of [the Dublin III Regulation], read in the light of recital 19 of that regulation, be interpreted as precluding an applicant for international protection from successfully arguing, in the context of an appeal against a transfer decision, that that transfer cannot proceed because the time limit for a previously agreed transfer between two Member States (in this case, Germany and Italy) has expired?'

B. Joined Cases C-324/21 and C-325/21

1. Case C-324/21

22. On 24 November 2017, F. applied for international protection in the Netherlands. As F. had previously applied for such protection in Italy, the State Secretary requested the Italian authorities to take him back. On 19 December 2017, the Italian authorities accepted that take back request. By letter of 12 April 2018, the State Secretary informed those authorities that F. had absconded, which resulted in the transfer time limit being extended until 19 June 2019.

23. On 29 March 2018, F. applied for international protection in Germany. The referring court is unaware of any action that may have been taken further to that application.

24. On 30 September 2018, F. lodged a second application for international protection in the Netherlands. By decision of 31 January 2019, the State Secretary refused to examine that application on the ground that the Italian Republic remained the Member State responsible for examining it.

25. After leaving the asylum seeker centre in which he was lodging, F. was arrested, and then placed in detention, by a decision of the State Secretary of 1 July 2019, with a view to his transfer to Italy.

26. F. lodged an appeal against that decision before the court having jurisdiction. By judgment of 16 July 2019, that court upheld that appeal and annulled that decision, on the ground that, on 19 June 2019, the Kingdom of the Netherlands had become the Member State responsible because the transfer time limit had expired.

27. The State Secretary appealed against that judgment before the referring court. He claimed inter alia, in support of that appeal, that, under the 'chain rule', a new transfer time limit had started for the Kingdom of the Netherlands when F. lodged an application for international protection in Germany.

28. The referring court observes that it is established that the Italian Republic was to be regarded as being the Member State responsible, at the very least until 19 June 2019.

29. However, that court asks about the potential relevance of the fact that, before the transfer time limit expired, the person concerned lodged a new application for international protection in another Member State.

30. In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 29 of [the Dublin III Regulation] be interpreted as meaning that a current transfer time limit, as referred to in Article 29(1) and (2), restarts at the point at which the foreign national, having obstructed the transfer by a Member State by absconding, lodges a fresh application for international protection in another (in this case, a third) Member State?'

2. Case C-325/21

31. On 6 September 2018, K. applied for international protection in France. As K. had previously applied for such protection in Austria, the French authorities requested the Austrian authorities to take him back. On 4 October 2018, the Austrian authorities accepted that take back request.

32. On 27 March 2019, K. applied for international protection in the Netherlands. On 3 May 2019, the State Secretary requested the Austrian authorities to take back K. On 10 May 2019, those authorities refused that take back request, on the ground that, since 4 April 2019, the French Republic had been the Member State responsible for examining K's application.

33. On 20 May 2019, the State Secretary requested the French authorities to take back K. Those authorities refused that take back request on the ground that the transfer time limit had not yet expired on the day on which K. lodged an application for international protection in the Netherlands.

34. On 31 May 2019, the State Secretary requested both the Austrian authorities and the French authorities to reconsider the take back request. In the request made to that effect to the Austrian authorities, it was argued that a new transfer time limit between the French Republic and the Republic of Austria had started from K.'s lodging of an application for international protection in the Netherlands. On 3 June 2019, the Austrian authorities agreed to take back K.

35. By decision of 24 July 2019, the State Secretary refused to examine the application for international protection lodged by K.

36. K. lodged an appeal against that decision before the court having jurisdiction. By judgment of 17 October 2019, that court dismissed that appeal, on the ground that the State Secretary was right to consider that the Republic of Austria was the Member State responsible for examining K.'s application for international protection.

37. K. appealed against that judgment before the referring court. He claimed, in support of that appeal, that lodging an application for international protection in a third Member State cannot obstruct the expiry of the time limit governing a planned transfer between two other Member States.

38. The referring court observes that it is established that the Republic of Austria was to be regarded as being the Member State responsible, at the very least until 4 April 2009, since that Member State had not been informed by the French authorities that K. had absconded.

39. It is in those circumstances that the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 29 of [the Dublin III Regulation] be interpreted as meaning that a current transfer time limit, as referred to in Article 29(1) and (2), restarts at the point at which the foreign national, after having obstructed the transfer by a Member State by absconding, lodges a fresh application for international protection in another (in this case, a third) Member State?

(2) If [the first question] must be answered in the negative, must Article 27(1) of [the Dublin III Regulation], read in the light of recital 19 of that regulation, be interpreted as precluding an applicant for international protection from successfully arguing, in the context of an appeal against a transfer decision, that that transfer cannot proceed because the time limit for a previously agreed transfer between two Member States (in this case, France and Austria) has expired, with the result that the time limit within which the Netherlands can effect the transfer has expired?'

C. Procedure before the Court

40. Cases C-324/21 and C-325/21 were joined at this stage of the procedure. Case C-323/21 was not, however, joined to the two other cases. Nevertheless, given the link between those three cases, a joint hearing was held, on 5 May 2022, in the course of which the parties were heard and, inter alia, asked to respond to questions for an oral answer put by the Court.

IV. Analysis

A. The first question referred to the Court for a preliminary ruling in Case C-323/21, the sole question referred in Case C-324/21 and the first question referred to the Court for a preliminary ruling in Case C-325/21

41. I will examine the first question submitted in Case C-323/21, the sole question referred in Case C-324/21 and the first question addressed to the Court in Case C-325/21 jointly.

42. Although those questions are worded differently, they seek, in essence, an interpretation of the provisions on the calculation of transfer time limits set out in Article 29(1) and (2) of the Dublin III Regulation, in the situation in which the Member State in which an application for international protection was first lodged is requested by two different Member States to take back the same applicant, and the first requesting Member State is unable to effect the transfer of that applicant in accordance with the modalities and time limits laid down in that article because the applicant has left the national territory to travel to the territory of the second requesting Member State. [6]

43. In each of these three cases, the referring court's questions are focused on the interpretation of the wording of Article 29 of the Dublin III Regulation.

44. I note that that article sets out the detailed rules and the time limits subject to which the requesting Member State is required, in order to take charge of or to take back an applicant, to carry out the transfer of that applicant to the Member State responsible.

[6] In addition, the first question referred for a preliminary ruling in Case C-323/21 differs in its wording from the sole question put in Case C-324/21 and the first question submitted to the Court in Case C-325/21, since the referring court focuses on the interpretation of the concept of the 'requesting Member State', as used in Article 29(2) of the Dublin III Regulation. Specifically, it asks whether, in the situation in which the requesting Member State cannot execute the transfer of the applicant because that applicant has left the national territory to travel to another Member State with which he or she has lodged a new application for international protection and on the territory of which he or she is present, the concept of the 'requesting Member State' (used in Article 29(2) of that regulation) refers to the last Member State with which the new application for international protection has been lodged and, as a result of which, a new request to take back the applicant has been made.

45. The first subparagraph of Article 29(1) of that regulation provides that the transfer is to 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 the requested 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 suspensive effect.

46. Article 29(2) of the Dublin III Regulation states, however, that that time limit may be extended, exceptionally, in order to take account of the fact that it is not practically possible for the requesting Member State to carry out the transfer of the person concerned because he or she has been imprisoned or has absconded. That time limit is then extended up to a maximum of one year if the transfer could not be carried out due to the imprisonment of that person, a concept defined in the judgment of 31 March 2022, *Bundesamt für Fremdenwesen und Asyl and Others (Committal of an asylum seeker to a psychiatric hospital)*,[7] or up to a maximum of 18 months if the person concerned absconds, the concept of 'absconding' having been clarified in the judgment in *Jawo* of 19 March 2019.[8]

47. In addition, Article 29(2) of that regulation provides that, on expiry of those time limits, the Member State responsible is to be relieved of its obligations to take charge of or to take back the person concerned and that responsibility is then to be transferred to the requesting Member State. In accordance with the Court's case-law, the requesting Member State can then no longer carry out the transfer and is, on the contrary, required to take, on its own initiative, the measures necessary to initiate without delay the examination of the application for international protection.[9]

48. The context behind the wording of that provision is that of a standard take back procedure between two Member States: on the one hand, the requested Member State and, on the other hand, the requesting Member State, with which the applicant has lodged a new application for international protection.

49. However, the questions referred for a preliminary ruling by the national court arise in a different context, since they concern the rules subject to which a transfer is to be carried out in the case of an applicant who, because of the multiple applications for international protection made by him or her, is the subject of take back procedures conducted successively by different Member States.

50. No provision in the Dublin III Regulation or in Regulation No 1560/2003 lays down specific rules governing that situation, a situation which is emblematic of the phenomenon of 'secondary movements', which sees a good many applicants for international protection move from the Member State responsible for processing their application to other Member States where they wish to apply for international protection and settle.

51. In that context, the provisions laid down in Article 29 of the Dublin III Regulation on the course of the transfer procedure appear to me far too limited to provide a useful answer to the referring court and, inter alia, to establish detailed rules that make it possible, on the one hand,

7 C-231/21, EU:C:2022:237 (paragraphs 55 and 58).

8 C-163/17, EU:C:2019:218 (paragraphs 56 and 57).

9 See, in that regard, judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805, paragraph 43).

to maintain a clear, workable and rapid method for determining the Member State responsible for the examination of an application for international protection and, on the other hand, to prevent abuses arising from the movement of certain applicants within the European Union.

52. To that end, it seems to me crucial to analyse the terms in which the Member States concerned conclude a take back procedure – terms laid down inter alia in Article 20(5) and Article 23(1) of the Dublin III Regulation – and to consider the objective pursued by the EU legislature in those circumstances.

1. The terms in which the take back procedure is defined in Article 20(5) of the Dublin III Regulation

53. It is clear from the account of the facts in the cases in the main proceedings that each of the applicants first lodged an application for international protection in one Member State, namely Italy in Cases C-323/21 and C-324/21 and Austria in Case C-325/21, before moving within the European Union and travelling to the territory of other Member States, with which they successively lodged further applications for international protection.

54. This means that the applicants fall within the scope of Article 18(1)(b) to (d) of the Dublin III Regulation. That article refers to a person who, first, has lodged an application for international protection which is under examination (point (b)), has withdrawn such an application while it was under examination (point (c)) or whose application has been rejected (point (d)) and who, second, has either made an application in another Member State or is on the territory of another Member State without a residence document. [10]

55. In addition, this means that the first Member State in which the application for international protection was lodged, namely Italy in Cases C-323/21 and C-324/21 and Austria in Case C-325/21, is obliged to take back the applicant, in accordance with Article 20(5) of the Dublin III Regulation.

56. I would point out that, in accordance with Article 3(1) of the Dublin III Regulation, an application for international protection lodged by a third-country national in the territory of any one of the Member States is, in principle, examined by the single Member State which the criteria set out in Chapter III of that regulation indicate as being responsible. [11] However, in addition to the criteria set out in Chapter III of the Dublin III Regulation, Chapter VI of that regulation establishes take charge and take back procedures by another Member State which 'also contribute, in the same way as the criteria set out in Chapter III of the regulation, to determining the Member State responsible'. [12]

57. The same is true of the provisions set out in Article 20(5) of the Dublin III Regulation.

58. Article 20 thereof concerns, as its heading indicates, the start of the take charge and take back procedures.

[10] See, inter alia, judgment of 2 April 2019, *H. and R.* (C-582/17 and C-583/17, EU:C:2019:280, paragraph 51 and the case-law cited; 'the judgment in *H. and R.*').

[11] See judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 56).

[12] Judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805, paragraph 39). In the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), the Court held that, 'while the provisions of Article 21(1) of [the Dublin III Regulation on submitting a take charge request] are intended to provide a framework for the take charge procedure, they also contribute, in the same way as the criteria set out in Chapter III of that regulation, to determining the responsible Member State, within the meaning of that regulation' (paragraph 53).

59. Article 20(5) provides that the Member State with which the application for international protection was first lodged is obliged to take back an applicant who, before the process of determining the Member State responsible is completed, has left the national territory and lodged an application for international protection in another Member State. [13] The purpose of the taking back of the applicant is to enable the Member State with which the application was first lodged 'to complete the process of determining the Member State responsible for the examination of the application' and not to carry out the examination of the application for international protection. [14]

60. According to the Court's case-law, that provision is also applicable in the situation in which an applicant implicitly withdrew his or her application by leaving the territory of the Member State with which the application for international protection was first lodged without informing the competent national authority of his wish to abandon that application and in which, consequently, the process of determining the Member State responsible is still ongoing. [15]

61. In addition, Article 20(5) of the Dublin III Regulation provides that the procedure to take back the applicant must be conducted under the conditions laid down in Articles 23, 24, 25 and 29 thereof.

62. Pursuant to Article 23(1) of that regulation, the requesting Member State may submit a take back request only if the requested Member State satisfies the conditions laid down in Article 20(5) or Article 18(1)(b) to (d) thereof. [16] Accordingly, for the take back procedure to be conducted, two cumulative conditions laid down by the EU legislature in Article 20(5) of the Dublin III Regulation must be met: in the first place, the applicant must have lodged his or her first application for international protection with the requested Member State and, in the second place, that applicant must be present on the territory of the requesting Member State without a residence document or must have lodged a new application for international protection with the national authorities of the requesting Member State.

63. The EU legislature does not provide for the situation in which the conditions laid down for the conduct of that procedure are no longer satisfied on account of circumstances occurring after it was initiated.

64. It follows from the wording of Article 29 of the Dublin III Regulation simply that the take back procedure ends in one of three ways: either the transfer is carried out in accordance with the modalities and within the time limits set out in that article (paragraph 1), or the transfer could not take place within the applicable time limits, for example because of the imprisonment or the absconding of the person concerned (paragraph 2) or the transfer decision has been overturned further to an appeal or application for review lodged by the applicant pursuant to Article 27(1) of that regulation (paragraph 3).

65. However, there is, in my view, nothing to preclude the 'consultation' conducted between the Member States concerned with a view determining the transfer arrangements, as provided for in the first subparagraph of Article 29(1) of the Dublin III Regulation, from ultimately leading to the

[13] In addition, it follows from Article 3(2) of the Dublin III Regulation that, where no Member State responsible can be designated on the basis of the criteria listed in that regulation, the first Member State in which the application for international protection was lodged is to be responsible for examining it.

[14] See the judgment in *H. and R.* (paragraphs 59 to 64).

[15] See the judgment in *H. and R.* (paragraphs 47 to 50).

[16] See the judgment in *H. and R.* (paragraphs 59 to 61).

finding that the take back procedure previously initiated is now without purpose and lapses with effect from the acceptance by the requested Member State of a new request to take back the applicant. In situations such as those at issue in the main proceedings, whilst the first take back procedure was properly initiated after consultation between the Member States concerned, events following that consultation, namely the departure of the applicant from the territory of the requesting Member State and his stay on the territory of another Member State with which he has lodged a new application for international protection, deprive that first procedure of a crucial element for its validity. Indeed, contrary to the conditions laid down in Article 20(5) of the Dublin III Regulation, the applicant is no longer present on the territory of the requesting Member State and, precisely because of his departure, the application for international protection lodged by him must be deemed to have been withdrawn. I recall that the Court has held that the applicant's departure from the territory of a Member State in which he or she lodged an application for international protection should be treated in the same way, for the purposes of applying Article 20(5) of that regulation, as an implicit withdrawal of that application.[17] That finding must hold true, in my view, a fortiori in situations such as those at issue in the main proceedings, where the applicant not only left the territory of the requesting Member State but also travelled to the territory of another Member State with which he lodged a new application for international protection.

66. It follows from the foregoing that the conditions laid down in Article 20(5) of the Dublin III Regulation for the applicant to be taken back are no longer met.

67. In that regard, I am of the view that the requested Member State, in so far as it is involved in two take back procedures, initiated within a very short timescale and in respect of the same person by two different Member States, is in a position to agree with the first requesting Member State that the first take back procedure agreed upon has lapsed.

68. After all, the requested Member State is informed that it is impossible for the first requesting Member State to carry out the transfer of the applicant within the time limits and subject to the modalities that they had agreed together because the applicant has absconded, while, at the same time, it is asked to decide on the second take back request made by the second Member State on the territory of which the applicant is present.

69. In view of the nature of the information that the requested Member State is thus asked to note, specifically as regards the applicant's location and the status of procedures initiated in his regard, I take the view that that Member State cannot validly give a commitment to the second requesting Member State to take back the applicant and thus agree the arrangements for his or her transfer, without acknowledging together with the first requesting Member State that its commitments previously given in the context of the first take back procedure have lapsed. As I have previously stated, an interpretation to that effect does not appear to run counter to the wording of Article 29 of the Dublin III Regulation.

[17] See the judgment in *H. and R.* (paragraph 50). I also note that, under the second subparagraph of Article 28(1) of 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; 'the Procedure Directive'), entitled 'Procedure in the event of implicit withdrawal or abandonment of the application', Member States 'may assume that the applicant has implicitly withdrawn or abandoned his or her application for international protection in particular where it is ascertained that … 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, or he or she has not within a reasonable time complied with the reporting duties or other obligations to communicate, unless the applicant demonstrates that this was due to circumstances beyond his or her control' (point (b)).

70. In addition, I consider that the information communicated as part of the second take back procedure concerning the applicant's location and the status of procedures initiated in his regard, fall within the scope of the information that the requested Member State can share with the Member States concerned pursuant to Article 34(1) of the Dublin III Regulation. That article, which appears in Chapter VII of that regulation, entitled 'Administrative cooperation', provides in points (d), (f) and (g) of paragraph 2 thereof that that information can concern the applicant's places of residence and the routes travelled by him or her, as well as the date on which any previous application for international protection was lodged, the date on which the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

71. The lapsing of the first take back procedure would also contribute to achieving the objectives pursued by the EU legislature within the framework of the Dublin III Regulation.

2. The purpose of the Dublin III Regulation

72. As is clear from recitals 4 and 5 of the Dublin III Regulation, the purpose of that regulation is to establish a 'clear and workable' method for determining the Member State responsible for the examination of an application for international protection; that method must be based on 'objective, fair criteria both for the Member States and for the persons concerned'. That method must, above all, 'make it possible to determine rapidly the Member State responsible, so as … not to compromise the objective of the rapid processing of applications for international protection'. The EU legislature thus seeks to rationalise the treatment of such applications, by ensuring applicants that the merits of their application will be examined by a single, clearly determined Member State. By establishing uniform mechanisms and criteria for determining the Member State responsible, that legislature also seeks to prevent secondary movements of third-country nationals who have lodged an application for international protection in one Member State to other Member States. [18]

73. It is self-evident that two take back procedures cannot be validly conducted at the same time by different Member States with respect to the same person without undermining the purpose of the Dublin III Regulation.

74. In the first place, completing the first take back procedure after the departure of the person concerned from the territory of the requesting Member State, and the transfer of responsibility that that procedure may entail, would in no way guarantee the speed of that procedure. On the contrary, completing that first procedure could, first, significantly restrict the effectiveness sought by the EU legislature and, second, would risk encouraging the persons concerned to leave the territory of the requesting Member State with the aim either of preventing their transfer to the Member State responsible or of extending their stay in the European Union, by benefiting from material reception conditions.

75. The transfer of responsibility required under the first sentence of Article 29(2) of the Dublin III Regulation amounts to determining the Member State responsible for the examination of the application by way of a 'penalty' imposed on the requesting Member State, if that State has failed to carry out that transfer that it itself requested. From the moment when the requesting Member State fails to comply with the time limits laid down in that provision, the transfer of responsibility is automatic and occurs regardless of the circumstances of the individual case.

[18] See judgment of 10 December 2013, *Abdullahi* (C-394/12, EU:C:2013:813, paragraph 53 and the case-law cited). See also the judgment in *H. and R.* (paragraph 77 and the case-law cited).

76. However, in situations such as those at issue in the main proceedings, the automatic nature of that mechanism does not allow account to be taken of the fact that the applicant has left the territory of the first requesting Member State in breach of the duties of cooperation incumbent on him. The competent authorities of that State are therefore neither in a position to transfer him, subject to the modalities and within the time limits set out in Article 29(1) and (2) of the Dublin III Regulation, nor in a position to conduct the examination of his application for international protection if responsibility is devolved, unlike the competent authorities of the second requesting Member State.

77. I would point out that both the transfer procedure and the procedure for examination of the application for international protection require that the applicant be at the disposal of the competent national authorities.

78. In addition, while those authorities are able to locate the applicant on account of the procedural requirements that the applicant had to complete in order to lodge his or her application for international protection in another Member State (in particular, through registration in the Eurodac system), [19] they do not, however, have any powers to proceed with the execution of the transfer of that person, in accordance with Article 29 of the Dublin III Regulation, since that person is outside the national territory and the procedure established by that regulation is not criminal in nature.

79. In the same way, the procedure for examination of an application for international protection requires that the applicant adhere to the obligations imposed on him or her by both the Procedure Directive and Directive 2013/33/EU, [20] with a view to the rapid processing and effective follow-up of his or her application for international protection. Those obligations include residing in the place stated and regularly reporting to the competent national authorities.

80. In such circumstances, I see no reason that can justify continuing that procedure and, in particular, extending the transfer time limit, since that transfer is doomed to fail.

81. In the second place, continuing the first take back procedure does not contribute to maintaining the clear, workable method that the EU legislature is keen to establish within the framework of the Dublin III Regulation.

82. First, the automatic nature of the transfer of responsibility means that account cannot be taken of the fact that that transfer concerns the examination of an application for international protection that is likely identical to that previously submitted in the first Member State and to that later lodged with another Member State.

[19] With a view, inter alia, to ensuring the effective application of those provisions, Article 9(1) 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) provides that the fingerprints of every applicant for asylum must, in principle, be transmitted to the Eurodac system no later than 72 hours after the lodging of the application for international protection, as defined by Article 20(2) of the Dublin III Regulation. See also Article 6(4) of the Procedure Directive.

[20] Directive of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

83. Second, the successive conduct of those two procedures gives rise, by virtue of the devolved responsibility rule set out inter alia in the first sentence of Article 29(2) of the Dublin III Regulation, to difficulties liable to hamper the effective functioning of the 'Dublin system'. [21]

84. Thus, the second take back procedure is initiated whilst the first take back procedure is ongoing, and may result, should the time limits set out in Article 29(2) of the Dublin III Regulation expire, in responsibility being transferred to the first requesting State. Accordingly, in view of the two-month period within which the second requesting Member State is obliged to submit its take back request, that request will be submitted and, as the case may be, accepted by the requested Member State, even though the responsibility of the latter State is not definitively established since it may be transferred to the first requesting Member State by effect of the devolution of responsibility. Such a mechanism leaves the competent national authorities of each of the Member States concerned open to uncertainties vis-à-vis their responsibilities, especially since there is no means by which the Eurodac system can be kept informed of the course of take charge or take back procedures conducted in the other Member States. As the present cases make clear, the competent authority of the second requesting Member State is thus open to the transfer decision that it has notified to the applicant being the subject of an appeal pursuant to Article 27(1) of the Dublin III Regulation and, as the case may be, the transfer that it has conducted being overturned, with that State then being obliged, under Article 29(3) of that regulation, promptly to accept the person concerned back.

85. Such a mechanism is capable, in my view, of culminating in the paralysis of the Dublin system, paradoxically encouraging the movement of applicants for international protection within the European Union.

86. In such circumstances, it therefore seems to me essential to safeguard the effectiveness of Article 20(5) of the Dublin III Regulation, by preserving the 'special status' and the 'specific role' granted by the EU legislature to the Member State with which the application for international protection was first lodged. [22] With that in mind, situations such as those at issue in the main proceedings, which are characterised by the lodging of multiple applications for international protection with different Member States, make it necessary to establish an orderly and monitored mechanism, so as to prevent the role and the duties of each State from being continually called into question as a result of the applicant's movements.

87. In the third place, I consider it important to emphasise the legal arsenal available to the second requesting Member State in order to guarantee a much swifter and much more effective take back procedure than that that the first requesting Member State is able to conduct, given the presence of the person concerned on the territory of the second requesting Member State. Quite clearly, as is confirmed by the rule on the assignment of powers laid down in Article 20(4) of the Dublin III Regulation, the presence of the person concerned on the territory of the Member State is a crucial factor for the purposes of carrying out the take back process. [23]

[21] The 'Dublin system' comprises the Dublin III Regulation, Regulation No 603/2013 and Regulation No 1560/2003.

[22] See judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587, paragraph 93), and the judgment in *H. and R.* (paragraph 64).

[23] Moreover, the EU legislature made this a decisive criterion in Article 20(4) of the Dublin III Regulation. That article provides that, where an application for international protection is lodged in a Member State other than the Member State in which the applicant is present, the determination of the Member State responsible is a matter for that latter State, with that State then regarded, for the purposes of that regulation, as the Member State with which the application for international protection was lodged. In that situation, the applicant must be informed in writing of that change and of the date on which it took place; that requirement incorporates the provisions laid down in Article 4(1)(a) and (2) of the Dublin III Regulation.

88. Accordingly, I note that lodging a new application for international protection requires, within the context of the Common European Asylum System, the establishment of a binding legislative framework, under which the Member State concerned is made subject to legal obligations established in the Dublin III Regulation, the Procedure Directive and Directive 2013/33.

89. That Member State is first of all obliged, pursuant to Article 4(1)(a) of the Dublin III Regulation and as soon as an application for international protection is lodged, within the meaning of Article 20(2) of that regulation, to inform the applicant, in writing and in a language that he or she understands, of the consequences associated with lodging his or her new application for international protection as well as the consequences of moving from one Member State to another during the phases in which the Member State responsible is being determined and the application for international protection is being examined. In that context, I take the view that the competent national authorities can inform that applicant of the course of the procedures initiated in his or her regard and of the consequences associated with lodging multiple applications for international protection in the European Union.

90. Next, the requesting Member State is obliged, under Article 23(1) of the Dublin III Regulation, to request the Member State responsible, pursuant to Article 20(5) and Article 18(1) of that regulation, to take back the applicant within the time limits and subject to the conditions set out in that regulation. In order to guarantee the effectiveness of the take back procedure, the requesting Member State can decide, in accordance with Article 7(2) of Directive 2013/33, on the place where the applicant must reside, and require the applicant, pursuant to Article 13(2)(a) of the Procedure Directive, to make himself or herself known to the competent authorities or to present himself or herself in person, either immediately or on a specific date.

91. Lastly, the same Member State may decide, in the light of the significant risk of the applicant absconding, and subject to respect for the rights and safeguards afforded to the applicant, to use coercive measures with a view to ensuring the efficiency of the transfer procedure, such as the applicant's detention, under the conditions set out in Article 8(3)(f) of Directive 2013/33 and Article 28(2) of the Dublin III Regulation.

92. In the light of all of the foregoing and, in particular, of the conditions laid down in Article 20(5) of the Dublin III Regulation for the purpose of conducting a take back procedure, as well as the objectives pursued by the EU legislature, I consider that it is therefore essential that, in situations such as those at issue in the main proceedings, the first take back procedure be declared to have lapsed.

93. In the light of those considerations, I propose that the Court rule that Article 29(1) and (2) of the Dublin III Regulation is to be interpreted as meaning that, in a situation in which one Member State, on the territory of which an application for international protection was first lodged, is requested, on the basis of Article 23(1) of that regulation, in respect of two take back procedures initiated successively by two different Member States in respect of the same applicant, the requested Member State and the first requesting Member State are required, if the latter cannot carry out the transfer of the applicant in accordance with the modalities and within the time limits set out in Article 29 of that regulation because that person has left the territory of the first requesting Member State, to find that that first take back procedure lapses with effect from the acceptance by the requested Member State of the second take back request made by the second requesting Member State.

B. The second question referred for a preliminary ruling in Cases C-323/21 and C-325/21

94. By its second question referred for a preliminary ruling, in Cases C-323/21 and C-325/21, the referring court asks the Court, in essence, whether Article 27(1) of the Dublin III Regulation must be interpreted as meaning that, in the situation in which a second take back procedure is initiated in respect of the same person in a Member State other than the Member State which conducted the first take back procedure, the applicant may, in the context of the appeal brought by him or her against the transfer decision adopted by the second requesting Member State, rely on the expiry of the time limits set out in Article 29(1) and (2) of that regulation and on the transfer of responsibility that followed from their expiry.

95. In view of the answer that I propose be given to the first question referred for a preliminary ruling, it is my view that that second question referred for a preliminary ruling need not be answered.

V. Conclusion

96. In the light of all the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Raad van State (Council of State, Netherlands) in Cases C-323/21, C-324/21 and C-325/21 as follows:

Article 29(1) and (2) 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

must be interpreted as meaning that, in a situation in which one Member State, on the territory of which an application for international protection was first lodged, is requested, on the basis of Article 23(1) of that regulation, in respect of two take back procedures initiated successively by two different Member States in respect of the same applicant, the requested Member State and the first requesting Member State are required, if the latter cannot carry out the transfer of the applicant in accordance with the modalities and within the time limits set out in Article 29 of that regulation because that person has left the territory of the first requesting Member State, to find that that first take back procedure lapses with effect from the acceptance by the requested Member State of the second take back request made by the second requesting Member State.