Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 March 2016*

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Regulation (EU) No 604/2013 — Criteria and mechanisms for determining the Member State responsible for examining an application for international protection — Article 3(3) — Right of Member States to send an applicant to a safe third country — Article 18 — Obligations of the Member State responsible for examining the application in the event that the applicant is taken back — Directive 2013/32/EU — Common procedures for granting and withdrawing international protection — Examination of an application for international protection)

In Case C-695/15 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Debreceni közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Debrecen, Hungary), made by decision of 18 December 2015, received at the Court on 23 December 2015, in the proceedings

Shiraz Baig Mirza

v

Bevándorlási és Állampolgársági Hivatal

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Lycourgos, E. Juhász, C. Vajda (Rapporteur) and K. Jürimäe, Judges,

Advocate General: J. Kokott,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 22 February 2016,

after considering the observations submitted on behalf of:

— Mr Mirza, by R. Miskolczi, B. Pohárnok, T. Fazekas and G. Győző, ügyvédek,

— the Bevándorlási és Állampolgársági Hivatal, by Á. Szép, acting as Agent,

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

— the German Government, by J. Möller and T. Henze, acting as Agents,

* Language of the case: Hungarian.

— the Netherlands Government, by M. de Ree, acting as Agent,

— the European Commission, by M. Condou-Durande and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 March 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 3(3) and 18(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 (OJ 2013 L 180, p. 31) ('the Dublin III Regulation').

2 The request has been made in proceedings between Mr Mirza and the Bevándorlási és Állampolgársági Hivatal (Office for Immigration and Citizenship; 'the Office') concerning the latter's decision (i) to reject as inadmissible the application for international protection made by Mr Mirza and (ii) to remove Mr Mirza from Hungary.

Legal context

EU law

The Dublin III Regulation

3 Recital 12 of the Dublin III Regulation states:

'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.'

4 Article 1 of that regulation sets out the subject matter of the regulation in the following terms:

'This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ("the Member State responsible").'

5 Article 3 of that regulation, entitled 'Access to the procedure for examining an application for international protection', provides:

'1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

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

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

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

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

6 Article 7 of the Dublin III Regulation, entitled 'Hierarchy of criteria', provides in paragraph 2:

'The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.'

7 Article 18 of that regulation, entitled 'Obligations of the Member State responsible', reads as follows:

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

...

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

...

2. ...

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

...'

8 Article 26 of the Dublin III Regulation, entitled 'Notification of a transfer decision', provides in paragraph 1:

'Where the requested Member State accepts to take charge of or to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. If a legal advisor or

other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.'

9 Article 27 of that regulation, under the heading 'Remedies', provides in paragraph 1:

'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.'

Directive 2013/32

10 Article 28 of Directive 2013/32, entitled 'Procedure in the event of implicit withdrawal or abandonment of the application', provides, in paragraphs 1 and 2:

'1. When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)], to reject the application.

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

...

(b) he or she has absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time, or he or she has not within a reasonable time complied with reporting duties or other obligations to communicate, unless the applicant demonstrates that this was due to circumstances beyond his or her control.

For the purposes of implementing these provisions, Member States may lay down time limits or guidelines.

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

...

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

11 Article 33 of Directive 2013/32, headed ‘Inadmissible applications’, provides:

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

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

...

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

…’

12 Article 38 of that directive, entitled ‘The concept of safe third country’, states, in paragraphs 2 and 5:

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

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

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

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

...

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

13 Article 39 of that directive, entitled ‘The concept of European safe third country’, states, in paragraphs 1 to 3 and 7:

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

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

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

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

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

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

...

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

14 Article 46 of Directive 2013/32, entitled 'The right to an effective remedy', provides in paragraphs 1 and 3:

'1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

...

(ii) considering an application to be inadmissible pursuant to Article 33(2);

...

(iv) not to conduct an examination pursuant to Article 39;

...

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95], at least in appeals procedures before a court or tribunal of first instance.'

Hungarian law

The Law on asylum

15 Paragraph 2 of Law No LXXX of 2007 on asylum (menedékjogról szóló 2007. évi LXXX. törvény, *Magyar Közlöny* 2007/83; 'the Law on asylum') is worded as follows:

'For the purposes of the present Law:

...

(i) “safe third country” means a country with regard to which the competent asylum authority is satisfied that a person seeking international protection will be treated in accordance with the following principles in that country:

(ia) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion and there is no risk of serious harm;

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

(ic) the prohibition, laid down in international law, of removal to a country where the applicant could suffer the treatment mentioned in Article XIV(2) of the Basic Law [(Alaptörvény)] is recognised and applied; and

(id) there is the possibility of requesting refugee status and, if found to be a refugee, of receiving protection in accordance with the Geneva Convention;

…’

16 According to Paragraph 45(5) of the Law on asylum:

‘Where the principle of non-refoulement referred to in subparagraphs 1 and 2 above is not applicable, the competent asylum authority shall, in its decision to reject the asylum application, order the withdrawal of the residence permit issued on humanitarian grounds and the return and removal of the foreign national — if that national is not authorised to reside in Hungary for some other reason — pursuant to Law No II of 2007 on entry and residence of third-country nationals [(2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról)] and fix the length of the ban on entry and residence.’

17 Paragraph 51(1), (2) and (4) of the Law on asylum provides:

‘(1) If the conditions governing the application of the Dublin regulations are not met, the competent asylum authority shall decide on the admissibility of the application and on whether the conditions for deciding on the subject of the application in an accelerated procedure are met.

(2) The application shall be inadmissible if

...

(e) there is, in respect of the applicant, a third country which may be considered to be a safe third country for him.

...

(4) The application may be declared inadmissible pursuant to subparagraph 2(e) above only if the applicant

(a) has resided in a safe third country and was able, in that country, to claim effective protection in accordance with the provisions of Paragraph 2(i);

(b) has transited through the territory of such a country and was able, in the country in question, to claim effective protection in accordance with the provisions of Paragraph 2(i);

(c) is related to persons who are in such a country and may enter its territory; or if

(d) a safe third country requests the extradition of the applicant.'

18 Paragraph 53 of the Law on asylum reads as follows:

'(1) The competent asylum authority shall reject the application by an order if it finds that one of the conditions laid down in Paragraph 51(2) is met.

(2) Decisions to reject applications given by reason of the inadmissibility of the application or following an accelerated procedure shall be subject to judicial review. The application for review shall not — except in the case of decisions given on the basis of Paragraph 51(2)(e) and Paragraph 51(7)(h) — have suspensive effect in respect of implementation of the decision.

...

(5) The court hearing such an application may not reverse the decision of the competent asylum authority; it shall annul an administrative decision which has been given in breach of rules of law — except for procedural rules the infringement of which has no bearing on the merits of the case — and, as necessary, require the competent asylum authority to conduct a new procedure. The court decision terminating the procedure shall not be subject to appeal.'

The Government Decree of 21 July 2015

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

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

1. Switzerland,

2. Bosnia and Herzegovina,

3. Kosovo,

4. Canada,

5. Australia,

6. New Zealand,

shall be considered to be safe third countries within the meaning of Paragraph 2(i) of the Law on asylum.'

20 Paragraph 3(2) of the Government Decree of 21 July 2015 provides:

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

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

21 Mr Mirza, a Pakistani national, illegally entered Hungary from Serbia in August 2015. On 7 August 2015, he lodged a first application for international protection in Hungary. During the procedure opened following his application, Mr Mirza left the place of residence which had been assigned to him. By decision of 9 October 2015, the Office discontinued the examination of that application, which it considered, in accordance with Article 28(1)(b) of Directive 2013/32, to have been implicitly withdrawn.

22 Subsequently, Mr Mirza was taken in for questioning in the Czech Republic when attempting to reach Austria. The Czech authorities requested Hungary to take him back, a request to which Hungary acceded pursuant to Article 18(1)(c) of the Dublin III Regulation.

23 According to the referring court, it is not evident from the procedural documents which were submitted to it that, in the course of the take-back procedure, the Czech authorities had been informed of the Hungarian legislation or of the practice of the Hungarian authorities under which Mr Mirza's application for international protection had to be subject to a prior examination of admissibility which could result, owing to the fact that the Republic of Serbia, as a State which is a candidate for accession to the European Union, was included in the list of safe third countries determined by the Hungarian legislation, in the applicant being sent to Serbia without an examination of his application on the substance.

24 After he was taken back by Hungary, Mr Mirza submitted a second application for international protection in Hungary on 2 November 2015.

25 Following that application, a second procedure for granting international protection was opened during which the applicant was held in detention.

26 Mr Mirza was heard in the context of that second procedure on 2 November 2015. In the course of that interview, the Office drew his attention to the fact that his application for international protection could be rejected as inadmissible unless he could prove that, in the light of his particular circumstances, the Republic of Serbia did not constitute a safe third country for him. Mr Mirza stated in his response that he was not safe in that State.

27 In its decision of 19 November 2015, the Office dismissed Mr Mirza's application as inadmissible on the ground that, with regard to Mr Mirza, a safe third country existed, namely Serbia, which was classified as a safe third country by Paragraph 2 of the Government Decree of 21 July 2015. As set out in the decision of the Office, Mr Mirza could have established that, in his particular case, Serbia did not constitute a safe third country, but he failed to do so. In that decision, the Office ordered his return and removal.

28 Mr Mirza brought an action against that decision before the referring court, claiming that he did not wish to be returned to Serbia because he would not be safe there.

29 In those circumstances, the Debreceni közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Debrecen) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

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

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

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

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

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

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

The urgent procedure

30 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Court's Rules of Procedure.

31 As a ground for that request, that court indicated, inter alia, that Mr Mirza was the subject, until 1 January 2016, of a detention order within the context of the application procedure for international protection at issue in the main proceedings, an order which may be renewed by the competent national court.

32 In addition, on 6 January 2016, in response to a request from the Court, the referring court informed the Court of the renewal of that measure until the date of the final decision on Mr Mirza's application for international protection or, in the absence of any such decision on 1 March 2016, until the latter date. Moreover, it is apparent from the information communicated to the Court by the referring court that, after 1 March 2016, the detention order could be extended once again for a duration of 60 days, up to a total detention period of six months.

33 It should be observed, in the first place, that the present reference for a preliminary ruling concerns the interpretation of the Dublin III Regulation, which comes within the sectors covered by Title V of Part Three of the TFEU on the area of freedom, security and justice. It is therefore amenable to being dealt with under the urgent preliminary ruling procedure.

34 In the second place, as regards the criterion of urgency, according to the case-law of the Court, it is appropriate to take into account the fact that the person concerned in the main proceedings is currently deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings (see, to that effect, judgment in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 24). Moreover, the situation of the person concerned must be assessed as it stood at the time when consideration was given to whether the reference should be dealt with under the urgent procedure (see, to that effect, judgment in *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 40).

35 In the present case, first, it is common ground that, on that date, Mr Mirza was deprived of his liberty. It should be observed, secondly, that his continued detention depends on the outcome of the case in the main proceedings, which concerns the lawfulness of the rejection of Mr Mirza's application for international protection. It is clear from the explanations provided by the referring court that the detention measure to which Mr Mirza is subject was ordered in the course of the procedure for examining that application.

36 In those circumstances, on 11 January 2016, the Fourth Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

The first question

37 By its first question, the referring court asks, in essence, whether Article 3(3) of the Dublin III Regulation must be interpreted as meaning that the right to send an applicant for international protection to a safe third country may also be exercised by a Member State after that Member State has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that Member State before a decision on the substance of his first application for international protection had been taken.

38 In the first place, it should be observed that, pursuant to Article 1 of the Dublin III Regulation, that regulation aims to lay down 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.

39 The Dublin III Regulation does not contain any rule precluding the sending of an applicant to a safe third country both before and after the determination of the Member State responsible, since that regulation merely lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

40 As the German Government stated at the hearing, Article 3(3) of that regulation, which does not contain any limitation in time, provides that any Member State is to 'retain' the right to send an applicant for international protection to a safe third country. In the words of that provision, that right belongs to 'any Member State' and must be exercised 'subject to the rules and safeguards laid down in Directive [2013/32]'.

41 Moreover, it is apparent from recital 12 of the Dublin III Regulation that Directive 2013/32 should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under that regulation, subject to the limitations in the application of that directive.

42 Thus, in the common European asylum system of which the Dublin III Regulation and Directive 2013/32 form an integral part, the concept of a safe third country may be applied by all the Member States, whether it be the Member State which is responsible for examining the application for international protection pursuant to the criteria set out in chapter III of the Dublin III Regulation or any other Member State, on the basis of Article 3(3) of that regulation.

43 In the second place, concerning, more particularly, Article 33 of Directive 2013/32, in the light of which the referring court questions the right of a Member State to send an applicant for international protection to a safe third country after the responsibility of that Member State for examining that application has been established in accordance with the Dublin III Regulation, it must be held that that article, which seeks to relax the obligation of the Member State responsible for examining an application for international protection by defining the cases in which such an application is considered to be inadmissible, does not in any way restrict the scope of the right referred to in Article 3(3) of that regulation to send such an applicant to a safe third country.

44 The use of the words '[i]n addition to cases in which an application is not examined in accordance with [the Dublin III] Regulation' in Article 33(1) of Directive 2013/32 does not lead to any other conclusion.

45 Those words refer to cases which are added to those provided for by the Dublin III Regulation, such as the case of the transfer of an applicant for international protection to the Member State responsible provided for in Article 26(1) of that regulation, in which applications for international protection are not examined. Thus, those words of Directive 2013/32 do not limit the scope of Article 3(3) of the Dublin III Regulation.

46 Consequently, the fact that a Member State has accepted that it is responsible for examining an application for international protection pursuant to the Dublin III Regulation does not prevent that Member State from subsequently sending the applicant to a safe third country.

47 That conclusion cannot be called into question by the obligation stemming from the second subparagraph of Article 18(2) of that regulation, according to which 'Member States shall ensure that the examination of the application is completed'.

48 It should be observed in this regard that that provision merely defines certain obligations of the Member State responsible, in particular the obligation that it is for that Member State to ensure that the examination of the application for international protection is completed, and does not relate to the right to send an applicant to a safe third country.

49 Therefore, Article 18 of the Dublin III Regulation does not restrict the scope of Article 3(3) of that regulation, in particular with regard to a Member State which, in the course of a take-back procedure, accepts that it is responsible for examining the application for international protection submitted by an applicant who left that Member State before a decision on the substance had been taken at first instance.

50 Any other reading of Article 18(2) of the Dublin III Regulation would introduce an exception to Article 3(3) of that regulation by depriving Member States taking an applicant back, pursuant to Article 18(1)(c) of that regulation, of the right to send that applicant to a safe third country. However, no reference to such an exception is made in Article 3(3) of the regulation and that exception cannot be justified by any of the objectives pursued by the Dublin III Regulation.

51 Preventing a Member State from exercising the right laid down in Article 3(3) of the Dublin III Regulation in circumstances such as those at issue in the main proceedings would have the consequence that an applicant who fled, without waiting for a final decision on his application, to a Member State other than that in which he had submitted that application would, in the event of his being taken back by the Member State responsible, be in a more favourable position than an applicant who waited until the end of the examination of his application in the Member State responsible.

52 Such an interpretation would risk encouraging nationals of third countries and stateless persons who submitted an application for international protection in a Member State to travel to other Member States, thereby causing secondary movements which the Dublin III Regulation precisely seeks to prevent by establishing uniform mechanisms and criteria for determining the Member State responsible.

53 In view of the foregoing considerations, the answer to the first question is that Article 3(3) of the Dublin III Regulation must be interpreted as meaning that the right to send an applicant for international protection to a safe third country may also be exercised by a Member State after that Member State has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that Member State before a decision on the substance of his first application for international protection has been taken.

The second question

54 By its second question, the referring court asks, in essence, whether Article 3(3) of the Dublin III Regulation must be interpreted as precluding the sending of an applicant for international protection to a safe third country when the Member State carrying out the transfer of that applicant to the Member State responsible has not been informed, during the take-back procedure, of the rules of the latter Member State relating to the sending of applicants to safe third countries or of the relevant practice of its competent authorities.

55 In the present case, the referring court states that the Hungarian legislation establishes a presumption of inadmissibility of applications for international protection submitted by applicants who have arrived in Hungary from Serbia, which is considered to be a safe third country by that legislation, and who have not submitted an application for international protection in that third country.

56 In that context, it should be observed, first of all, that, within the context of the take-back procedure, the Dublin III Regulation does not subject the Member State responsible to an obligation to inform the Member State carrying out the transfer of the wording of its national legislation concerning the sending of applicants to safe third countries or of its relevant administrative practice.

57 In that regard, it must be held that the national rules and practice concerning the concept of a safe third country do not affect the determination of the Member State responsible and the transfer of the applicant concerned to that Member State.

58 Next, it should be noted that, although Directive 2013/32 requires, pursuant to Article 38(5) thereof, Member States to inform the Commission periodically of the countries to which the safe third country concept is applied, it does not in any way require the Member State responsible, when it takes an applicant back, to inform the Member State carrying out the transfer of its legislation relating to safe third countries or of the practice of its authorities competent in that area.

59 Lastly, it must be held that the fact that the Member State responsible does not communicate to the Member State carrying out the transfer information concerning its legislation relating to safe third countries and its relevant administrative practice does not impair the applicant's right to an effective remedy against the transfer decision and against the decision on the application for international protection.

60 As regards the transfer decision, it is apparent from Article 27 of the Dublin III Regulation that the applicant has 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.

61 However, within the context of the procedure for taking back an applicant, since the Member State responsible is not obliged to inform the Member State carrying out the transfer of its legislation in force providing for a presumption of inadmissibility of the application for international protection submitted by an applicant having arrived in its territory from a safe third country, defined as such by that legislation, the lack of such communication cannot impair the applicant's rights.

62 In addition, so far as concerns the decision relating to the application for international protection, the applicant has, in the Member State responsible, the right to an effective remedy, pursuant to Article 46 of Directive 2013/32, before a court or tribunal of that Member State enabling him to contest the decision based on the rules of national law relating to safe third countries on the basis, depending on his individual situation, of Article 38 or Article 39 of that directive.

63 In the light of the foregoing considerations, the answer to the second question is that Article 3(3) of the Dublin III Regulation must be interpreted as not precluding the sending of an applicant for international protection to a safe third country when the Member State carrying out the transfer of that applicant to the Member State responsible has not been informed, during the take-back procedure, either of the rules of the latter Member State relating to the sending of applicants to safe third countries or of the relevant practice of its competent authorities.

The third question

64 By its third question, the referring court asks, in essence, whether Article 18(2) of the Dublin III Regulation must be interpreted as meaning that, in the event of the taking back of an applicant for international protection, the procedure for examining that applicant's application must be resumed at the stage at which it was discontinued by the competent authorities of the Member State responsible.

65 In that regard, it should be noted, first, that the second subparagraph of Article 18(2) of that regulation requires the Member State responsible to ensure that the examination of the application for international protection is 'completed'. By contrast, it does not require such a Member State to resume the examination of the application for international protection at a specific procedural stage.

66 In so far as it requires the applicant to be entitled to request that a final decision on his application for international protection be taken, whether it be in connection with the procedure which was discontinued or in connection with a new procedure which is not to be treated as a subsequent application, the second subparagraph of Article 18(2) of the Dublin III Regulation seeks to guarantee for the applicant an examination of his application which satisfies the requirements laid down by Directive 2013/32 for first-time applications at first instance. However, that provision does not seek either to prescribe the manner in which the procedure must be resumed in such a situation or to deprive the Member State responsible of the possibility of declaring the application inadmissible.

67 Secondly, the last subparagraph of Article 28(2) of Directive 2013/32 expressly provides that Member States may allow the authority responsible for examining, at first instance, applications for international protection to resume the examination of an application at the stage at which it was discontinued, without, however, requiring them to do so.

68 In the light of the foregoing considerations, the answer to the third question is that Article 18(2) of the Dublin III Regulation must be interpreted as not requiring that, in the event that an applicant for international protection is taken back, the procedure for examining that applicant's application be resumed at the stage at which it was discontinued.

Costs

69 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 (Fourth Chamber) hereby rules:

1. **Article 3(3) 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 the right to send an applicant for international protection to a safe third country may also be exercised by a Member State after that Member State has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that Member State before a decision on the substance of his first application for international protection had been taken.**

2. **Article 3(3) of Regulation No 604/2013 must be interpreted as not precluding the sending of an applicant for international protection to a safe third country when the Member State carrying out the transfer of that applicant to the Member State responsible has not been informed, during the take-back procedure, either of the rules of the latter Member State relating to the sending of applicants to safe third countries or of the relevant practice of its competent authorities.**

3. **Article 18(2) of Regulation No 604/2013 must be interpreted as not requiring that, in the event that an applicant for international protection is taken back, the procedure for examining that applicant's application be resumed at the stage at which it was discontinued.**

[Signatures]