

JUDGMENT OF THE COURT (Third Chamber)

5 July 2018 (\*)

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determining the Member State responsible for examining an application for international protection made in one of the Member States by a third-country national — Articles 17, 18, 23 and 24 — Prior international protection procedure ongoing in one Member State — New application in another Member State — Take back request not made within the prescribed periods — Surrender of the person concerned for criminal prosecution)

In Case C-213/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, the Netherlands), made by decision of 20 April 2017, received at the Court on 25 April 2017, in the proceedings

**X**

v

**Staatssecretaris van Veiligheid en Justitie,**

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, J. Malenovský, M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 February 2018,

after considering the observations submitted on behalf of:

- X, by I.J.M. Oomen and F.L.M. van Haren, advocaten,
- the Netherlands Government, by M.K. Bulterman, M.A.M. de Ree, M.L. Noort and J. Langer, acting as Agents,
- the German Government, by T. Henze and R. Kanitz, acting as Agents,

- the Hungarian Government, by M.Z. Fehér, G. Koós and G. Tornyai, acting as Agents,
- the European Commission, by M. Condou-Durande and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 June 2018,

gives the following

## **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 17(1), Article 18(2), Article 23(3) and Article 24 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 X, a Pakistani national, and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, the Netherlands) (‘the State Secretary’), concerning the latter’s decisions ordering that X be transferred to Italy, ordering him to leave the Netherlands immediately, and rejecting the application for a temporary residence permit submitted by X on grounds of asylum.

## **Legal context**

### ***Regulation No 1560/2003***

- 3 Annex II to 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’), comprises lists of the means of proof and circumstantial evidence that are relevant for the purposes of applying the Dublin III Regulation.
- 4 Annex III to Regulation No 1560/2003 contains a ‘standard form for request[s] for taking back’.

### *The Dublin III Regulation*

5 Recitals 4 and 5 of the Dublin III Regulation are worded 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.

(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 Article 17(1) of that regulation states:

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

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

...’

7 Article 18 of that regulation is worded as follows:

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

...

(b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;

(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;

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

2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.

...

In the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 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)].’

8 Under Article 23(1), (2) and (3) of that regulation:

‘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 within the meaning of Article 20(2).

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

9 Article 24 of the Dublin III Regulation states:

‘1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged

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.

...

5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, establish and review periodically two lists indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in Article 22(3)(a) and (b), and shall adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).'

10 Article 25(1) of that regulation provides:

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

### ***Directive 2013/32***

11 Article 46(1) of Directive 2013/32 provides:

'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 ...'

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

12 X lodged an initial application for international protection in the Netherlands on 23 March 2011. The State Secretary rejected that application by decision of 5 September 2011. The appeals brought against that decision were definitively dismissed by the courts having jurisdiction.

- 13 On 4 June 2014 X lodged a second application for international protection in the Netherlands. The State Secretary rejected that application by decision of 11 June 2014. An appeal brought against that decision was dismissed on 7 July 2014 by the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam, the Netherlands). X brought an appeal against that judgment before the Raad van State (Council of State, the Netherlands).
- 14 On 28 September 2014 X left the Netherlands, where he had been charged with a sexual offence.
- 15 On 23 October 2014 he lodged an application for international protection in Italy.
- 16 On 30 January 2015 the Italian authorities surrendered X to the Netherlands authorities under a European arrest warrant, with a view to criminal prosecution.
- 17 A search in the Eurodac system having revealed that the person concerned had lodged an application for international protection in Italy, on 5 March 2015 the State Secretary requested the Italian authorities to take back X pursuant to Article 18(1)(b) and Article 23(2) of the Dublin III Regulation.
- 18 As the Italian authorities did not respond to that take back request, the State Secretary, by decision of 24 March 2015, ordered that X be transferred to Italy and ordered him to leave the Netherlands immediately.
- 19 On 30 March 2015 the Italian authorities agreed to the request to take back X.
- 20 On 1 April 2015 X brought an appeal against the decision of 24 March 2015 ordering his transfer and asked the judge hearing applications for interim relief of the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam) to adopt an interim measure. By decision of 21 April 2015, that request for an interim measure was granted and the State Secretary was prohibited from transferring X to Italy until a period of four weeks had elapsed from the date of the prospective decision on the appeal brought by him.
- 21 On 19 May 2015 X lodged a new application for international protection in the Netherlands. By decision of 21 May 2015, the State Secretary rejected that application, considering that it had already been established that the Italian Republic was responsible for examining the application for international protection lodged by X. An appeal was then brought by X against that decision before the referring court.

- 22 On 7 August 2015 the Raad van State (Council of State) dismissed the appeal brought by X against the judgment of the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam) of 7 July 2014 rejecting the second application for international protection lodged by X.
- 23 On 30 November 2015 X was informed that the criminal proceedings against him had been discontinued.
- 24 In those circumstances, the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, The Hague, sitting in Amsterdam) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 23(3) of [the Dublin III Regulation] be interpreted as meaning that Italy has become responsible for examining the application for international protection lodged by the applicant in that country on 23 October 2014, despite the fact that the Netherlands were the Member State primarily responsible on the basis of the applications for international protection ... previously lodged in that country, the last of which was still under examination in the Netherlands at that time, because the [Raad van State (Council of State)] had not yet delivered judgment in the appeal brought by the applicant against the ruling of [the referring court] of 7 July 2014 ...?’
- (2) Does it follow from Article 18(2) of [the Dublin III Regulation] that [examination of] the application for international protection which was still [ongoing] in the Netherlands when the [take back] request of 5 March 2015 was submitted should have been suspended by the Netherlands authorities immediately after that [take back] request had been submitted and should have been halted following the expiry of the period specified in Article 24 [of that regulation] through revocation or amendment of the earlier decision of 11 June 2014 rejecting the asylum application of 4 June 2014?
- (3) If the answer to Question 2 is in the affirmative, has the responsibility for examining the applicant’s application for international protection not been transferred to Italy but remained with the Netherlands authorities, because the defendant has not revoked or amended the decision of 11 June 2014?
- (4) Did the Netherlands authorities, by not mentioning the appeal in the second asylum procedure pending before the [Raad van State (Council of State)] in the Netherlands, fall short of the responsibility resting on them pursuant to Article 24(5) of [the Dublin III Regulation] to supply the Italian authorities with such information as would enable those

authorities to check whether Italy [was] the Member State responsible on the basis of the criteria laid down in that Regulation?

- (5) If the answer to Question 4 is in the affirmative, does that shortcoming lead to the conclusion that the responsibility for examining the applicant's application for international protection has thereby not been transferred to Italy, but has remained with the Netherlands authorities?
- (6) If the responsibility has not remained with the Netherlands, ought the Netherlands authorities then, with regard to the surrender of the applicant by Italy to the Netherlands in the context of the criminal proceedings against him, pursuant to Article 17(1) of [the Dublin III Regulation], in derogation from Article 3(1) [thereof], to have examined the application for international protection lodged by the applicant in Italy, and, by extension, ought those authorities, in all reasonableness, not to have made use of the power laid down in Article 24(1) of [the Dublin III Regulation] to request the Italian authorities to take back the applicant?'

## **Consideration of the questions referred**

### ***The first question***

- 25 By its first question, the referring court asks, in essence, whether Article 23(3) of the Dublin III Regulation is to be interpreted as meaning that the Member State in which a new application for international protection has been lodged is responsible for examining that application when no take back request has been made by that Member State within the periods laid down in Article 23(2) of that regulation, even though another Member State was responsible for examining applications for international protection lodged previously and the appeal against the rejection of one of those applications was pending before a court of that other Member State when those periods expired.
- 26 In order to answer that question, it is necessary to take into account not only the wording of the provision concerned, but also its context and the general scheme of the rules of which it forms part and the objectives pursued thereby.
- 27 The scope of the take-back procedure is defined in Articles 23 and 24 of the Dublin III Regulation. It is apparent from Article 23(1) of that regulation that that procedure is applicable to, inter alia, the persons referred to in Article 18(1)(d) thereof (see, to that effect, order of 5 April 2017, *Ahmed*, C-36/17, EU:C:2017:273, paragraphs 26 and 27, and judgment of 25 January 2018, *Hasan*, C-360/16, EU:C:2018:35, paragraphs 42 and 43).

- 28 The latter provision refers, inter alia, to a third-country national or a stateless person whose application for international protection has been rejected and who has made a new application in another Member State.
- 29 It is apparent from Article 18(2) of the Dublin III Regulation that Article 18(1)(d) of that regulation covers, in particular, cases where ‘the application has been rejected at first instance only’.
- 30 The EU legislature has specifically stated that, in such cases, the Member State responsible is to ensure that the person concerned has or has had the opportunity to seek an effective remedy against that decision pursuant to Article 46 of Directive 2013/32.
- 31 Given that Article 46 of that directive provides for the right to bring an appeal against a decision of the competent authority, it must be held that Article 18(1)(d) of the Dublin III Regulation covers, inter alia, cases in which an application for international protection has been rejected by a decision of that authority which has not yet become final.
- 32 Therefore, the take-back procedure laid down in Article 23 of the Dublin III Regulation is applicable to a third-country national who has lodged a new application for international protection in one Member State although an application for international protection lodged previously in another Member State had been rejected by a decision of the competent authority, even if that decision has not yet become final owing to the bringing of an appeal which is pending before a court of that other Member State.
- 33 Accordingly, in a situation such as that at issue in the main proceedings, the authorities of the Member State in which that new application was lodged had the power, pursuant to Article 23(1) of that regulation, to make a take back request in respect of the person concerned.
- 34 However, it was for those authorities, in accordance with Article 23(2) of that regulation, to make that request as quickly as possible and in any event within the periods laid down in that provision, as such a request could not validly be made after expiry of those periods (see, by analogy, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 67).
- 35 It follows from both the wording of Article 23(3) of the Dublin III Regulation and the general scheme and objectives of that regulation that, in the case of the expiry of those periods, responsibility is to be transferred in full to the Member State in which a new application for international protection has been lodged (see, by analogy, judgments of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 61, and of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 30).

- 36 That transfer of responsibility cannot be prevented by the fact that another Member State was responsible for examining applications for international protection lodged previously or the fact that the appeal brought against the rejection of one of those applications was pending before a court of that Member State when those periods expired.
- 37 In that regard, it should be emphasised that, in precisely defining the effects of the expiry of the periods set out in Article 23(2) of the Dublin III Regulation, the EU legislature unequivocally provided that delays attributable to the Member State in which a new application for international protection has been lodged should entail a transfer of responsibility, without limiting the application of that rule to certain specific take-back procedures and, in particular, without making that transfer of responsibility subject to the procedural arrangements relating to applications for international protection lodged previously in another Member State.
- 38 It is true that that solution is likely to result in the Member State in which a new application for international protection has been lodged examining that application, even if an examination of an application for international protection lodged by the same person is ongoing or has already been completed in another Member State.
- 39 However, this is a result of the choices made by the EU legislature, in so far as that legislature has provided, generally, for such a transfer of responsibility in the situations covered by take-back procedures, while the scope of those procedures, as can be seen from Article 18(1)(b), (c) and (d) of that regulation, extends, in particular, to situations in which administrative or judicial proceedings are ongoing or have been completed in another Member State.
- 40 Accordingly, the answer to the first question is that Article 23(3) of the Dublin III Regulation must be interpreted as meaning that the Member State in which a new application for international protection has been lodged is responsible for examining that application when no take back request has been made by that Member State within the periods laid down in Article 23(2) of that regulation, even though another Member State was responsible for examining applications for international protection lodged previously and the appeal brought against the rejection of one of those applications was pending before a court of that other Member State when those periods expired.

### *The second question*

- 41 By its second question, the referring court asks, in essence, whether Article 18(2) of the Dublin III Regulation is to be interpreted as meaning that

the making by a Member State of a take back request in respect of a third-country national who is staying on its territory without a residence document requires that Member State to suspend its examination of an appeal brought against the rejection of an application for international protection lodged previously, and subsequently to terminate that examination in the event that the requested Member State agrees to that request.

42 Although Article 18(2) of the Dublin III Regulation sets out various obligations concerning the necessary follow-up to an application for international protection depending on the stage of the international protection procedure concerned, those obligations are all intended to ensure the continuation of the international protection procedure and do not require the suspension or interruption of that procedure in any Member State.

43 In addition, there is nothing in that provision to indicate that the obligations introduced thereby are addressed to the requesting Member State. On the contrary, the general scheme of Article 18 implies that those obligations are intended to specify the treatment which the person concerned must be guaranteed following his transfer to another Member State.

44 Having regard to the foregoing, Article 18(2) of the Dublin III Regulation must be interpreted as meaning that the making by a Member State of a take back request in respect of a third-country national who is staying on its territory without a residence document does not require that Member State to suspend its examination of an appeal brought against the rejection of an application for international protection lodged previously, and subsequently to terminate that examination in the event that the requested Member State agrees to that request.

### *The third question*

45 In view of the answer to the second question, there is no need to answer the third question.

### *The fourth question*

46 By its fourth question, the referring court asks, in essence, whether Article 24(5) of the Dublin III Regulation is to be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a Member State making a take back request on the basis of Article 24 of that regulation, following the expiry, in the requested Member State, of the periods laid down in Article 23(2) thereof, is required to inform the authorities of that requested Member State that an appeal brought against the rejection of an application for international protection lodged previously is pending before a court of the requesting Member State.

- 47 Article 24(5) of the Dublin III Regulation provides that the take back request is to be made using a standard form and is to include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of that regulation or relevant elements from the statements of the person concerned, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in that regulation.
- 48 It thus follows from the very wording of Article 24(5) of that regulation that the requesting Member State's obligation to provide information is limited to the evidence enabling the requested Member State to assess whether it is responsible.
- 49 That interpretation is borne out by the general scheme of the Dublin III Regulation, given that making a take back request contributes to determining the Member State responsible and must enable the requested Member State to make, pursuant to Article 25(1) of that regulation, the necessary checks to assess whether it is responsible.
- 50 However, it follows from the answers to the first and second questions that, in a situation such as that at issue in the main proceedings, in which the responsibility of the requested Member State is based on the expiry of the periods laid down in Article 23(2) of that regulation, the fact that an appeal brought against the rejection of an application for international protection lodged previously is pending before a court of the requesting Member State is irrelevant for the purposes of determining the Member State responsible.
- 51 Accordingly, the information relating to such an appeal cannot be regarded as useful for enabling the requested Member State to assess whether it is responsible, and therefore such information does not have to be provided pursuant to Article 24(5) of that regulation.
- 52 That conclusion is confirmed by the lists referred to in that provision and set out in Annex II to Regulation No 1560/2003, and by the standard form for requests for taking back which constitutes Annex III thereto. Neither those lists nor that form make any reference whatsoever to appeal proceedings against rejections of applications for international protection lodged previously.
- 53 Consequently, Article 24(5) of the Dublin III Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a Member State making a take back request on the basis of Article 24 of that regulation, following the expiry, in the requested Member State, of the periods laid down in Article 23(2) thereof, is not required to inform the authorities of that requested Member State that an appeal brought against the

rejection of an application for international protection lodged previously is pending before a court of the requesting Member State.

***The fifth question***

- 54 In view of the answer to the fourth question, there is no need to answer the fifth question.

***The sixth question***

- 55 By its sixth question, the referring court asks, in essence, whether Article 17(1) and Article 24 of the Dublin III Regulation are to be interpreted as meaning that, in a situation such as that at issue in the main proceedings at the time the transfer decision was made, in which an applicant for international protection has been surrendered by one Member State to another Member State under a European arrest warrant and is staying on the territory of that second Member State without having lodged a new application for international protection there, that second Member State may not reasonably request that first Member State to take back that applicant and should instead decide to examine the application lodged by that applicant.
- 56 Article 24(1) of the Dublin III Regulation provides that a Member State may, in particular, request another Member State to take back a person referred to in Article 18(1)(d) of that regulation who is staying on its territory without a residence document and without having lodged a new application for international protection there, if it considers that that other Member State is responsible in accordance with that provision.
- 57 In so far as that provision does not contain any requirement concerning the arrangements for the entry of the person concerned into the territory of the requesting Member State, it must be found that the EU legislature has not made the power to make a take back request subject to any conditions in that regard.
- 58 Against that background, and having regard to the autonomy of the procedures laid down by the Dublin III Regulation and by Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), which pursue separate objectives and cannot replace one another, the fact that a person's entry into the territory of the requesting Member State is the result of the surrender of that person under a European arrest warrant cannot, as such, preclude a take back request from being made.
- 59 Indeed, the opposite approach could deter Member States from requesting the surrender of an applicant for international protection for criminal prosecution, in order to avoid having the responsibility for examining that

person's application at the end of the criminal proceedings transferred to them, which could promote impunity and undermine the effectiveness of criminal law enforcement in the Member State concerned.

60 Moreover, it is apparent from the very wording of Article 17(1) of the Dublin III Regulation that that provision gives each Member State permission to decide to examine 'an application for international protection lodged with it', which means that that provision is not intended to, and does not, give a Member State permission to decide to examine an application for international protection that has not been made in that Member State.

61 That interpretation is consistent with the objective of that provision, namely to maintain the prerogatives of the Member States in the exercise of the right to grant international protection (see, to that effect, judgments of 10 December 2013, *Abdullahi*, C-394/12, EU:C:2013:813, paragraph 57, and of 16 February 2017, *C.K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 53).

62 Accordingly, that provision cannot, in any event, prevent a take back request from being made in a situation such as that at issue in the main proceedings, in which the person concerned had not lodged a new application for international protection in the requesting Member State.

63 Having regard to the foregoing, the answer to the sixth question is that Article 17(1) and Article 24 of the Dublin III Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings at the time the transfer decision was made, in which an applicant for international protection has been surrendered by one Member State to another Member State under a European arrest warrant and is staying on the territory of that second Member State without having lodged a new application for international protection there, that second Member State may request that first Member State to take back that applicant and is not required to decide to examine the application lodged by that applicant.

### **Costs**

64 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 (Third Chamber) hereby rules:

- 1. Article 23(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 Member State in which a new application for international protection has been lodged is responsible for examining that application when no take back request has been made by that Member State within the periods laid down in Article 23(2) of that regulation, even though another Member State was responsible for examining applications for international protection lodged previously and the appeal brought against the rejection of one of those applications was pending before a court of that other Member State when those periods expired.**
- 2. Article 18(2) of Regulation No 604/2013 must be interpreted as meaning that the making by a Member State of a take back request in respect of a third-country national who is staying on its territory without a residence document does not require that Member State to suspend its examination of an appeal brought against the rejection of an application for international protection lodged previously, and subsequently to terminate that examination in the event that the requested Member State agrees to that request.**
- 3. Article 24(5) of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a Member State making a take back request on the basis of Article 24 of that regulation, following the expiry, in the requested Member State, of the periods laid down in Article 23(2) thereof, is not required to inform the authorities of that requested Member State that an appeal brought against the rejection of an application for international protection lodged previously is pending before a court of the requesting Member State.**
- 4. Article 17(1) and Article 24 of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings at the time the transfer decision was made, in which an applicant for international protection has been surrendered by one Member State to another Member State under a European arrest warrant and is staying on the territory of that second Member State without having lodged a new application for international protection there, that second Member State may request that first Member State to take back that applicant and is**

**not required to decide to examine the application lodged by that applicant.**

[Signatures]

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\* Language of the case: Dutch.