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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

30 November 2023 (*)

(Reference for a preliminary ruling – Asylum policy – Regulation (EU) No 604/2013 – Articles 3 to 5, 17 and 27 – Regulation (EU) No 603/2013 – Article 29 – Regulation (EU) No 1560/2003 – Annex X – Right to information of the applicant for international protection – Common leaflet – Personal interview – Application for international protection previously lodged in a first Member State – New application lodged in a second Member State – Illegal stay in the second Member State – Take back procedure – Infringement of the right to information – No personal interview – Protection against the risk of indirect refoulement – Mutual trust – Judicial review of the transfer decision – Scope – Finding of the existence, in the requested Member State, of systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection – Discretionary clauses – Risk of infringement of the principle of non-refoulement in the requested Member State)

In Joined Cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21,

FIVE REQUESTS for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 29 March 2021, received at the Court on 8 April 2021 (C-228/21), from the Tribunale di Roma (District Court, Rome, Italy), made by decision of 12 April 2021, received at the Court on 22 April 2021 (C-254/21), from the Tribunale di Firenze (District Court, Florence, Italy), made by decision of 29 April 2021, received at the Court on 10 May 2021 (C-297/21), from the Tribunale di Milano (District Court, Milan, Italy), made by decision of 14 April 2021, received at the Court on 17 May 2021 (C-315/21), and from the Tribunale di Trieste (District Court, Trieste, Italy), made by decision of 2 April 2021, received at the Court on 26 May 2021 (C-328/21), in the proceedings

Ministero dell’Interno, Dipartimento per le libertà civili e l’immigrazione – Unità Dublino (C-228/21),

DG (C-254/21),

XXX.XX (C-297/21),

PP (C-315/21),

GE (C-328/21)

v

CZA (C-228/21),

Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino
(C-254/21, C-297/21, C-315/21 and C-328/21),

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl, J. Passer (Rapporteur) and M.L. Arastey Sahún, Judges,

Advocate General: J. Kokott,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 8 June 2022,

after considering the observations submitted on behalf of:

– XXX.XX, by C. Favilli and L. Scattoni, avvocate,

– GE, by C. Bove, avvocata,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. D'Ascia and D.G. Pintus, avvocati dello Stato,

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

– the French Government, by A.-L. Desjonquères and J. Illouz, acting as Agents,

– the Netherlands Government, by M.K. Bulterman, M. de Ree and A. Hanje, acting as Agents,

– the European Commission, by A. Azéma and C. Cattabriga, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 April 2023,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 3(2), Articles 4 and 5, Article 17(1), Article 18(1), Article 20(5) and Article 27 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'), Article 29 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

No 604/2013 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ 2013 L 180, p. 1; 'the Eurodac Regulation'), and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in five sets of proceedings between, first (Case C-228/21), the Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino (Ministry of the Interior, Department of Civil Liberties and Immigration – Dublin Unit, Italy) ('the Ministry of the Interior') and CZA, concerning the decision of the Ministry of the Interior to transfer him to Slovenia following the application for international protection which he lodged in Italy, and the other four (Cases C-254/21, C-297/21, C-315/21 and C-328/21) between DG, XXX.XX, PP and GE respectively – the first three having also lodged such an application in Italy and GE illegally staying there – and the Ministry of the Interior, concerning the latter's decision to transfer them, in the case of DG, to Sweden, in the case of XXX.XX and PP, to Germany and, in the case of GE, to Finland.

Legal context

The 'Qualification' Directive

3 Chapter II, entitled 'Assessment of applications for international protection', 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; 'the "Qualification" Directive'), includes, inter alia, Article 8 of that directive, that article being entitled 'Internal protection'. That article provides:

'1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:

(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or

(b) has access to protection against persecution or serious harm as defined in Article 7;

and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

2. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.'

4 Article 15 of the ‘Qualification’ Directive, entitled ‘Serious harm’ and contained in Chapter V, that chapter being entitled ‘Qualification for subsidiary protection’, provides:

‘Serious harm consists of:

…

(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.’

The Dublin III Regulation

5 Recitals 18 and 19 of the Dublin III Regulation state:

‘(18) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection. As soon as the application for international protection is lodged, the applicant should be informed of the application of this Regulation and of the possibility, during the interview, of providing information regarding the presence of family members, relatives or any other family relations in the Member States, in order to facilitate the procedure for determining the Member State responsible.

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the [Charter]. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.’

6 Article 3 of that regulation, entitled ‘Access to the procedure for examining an application for international protection’ and contained in Chapter II, that chapter being entitled ‘General principles and safeguards’, provides in paragraphs 1 and 2:

‘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], 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.'

7 Article 4 of that regulation, entitled 'Right to information', is worded as follows:

'1. As soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular of:

(a) the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of moving from one Member State to another during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined;

(b) the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;

(c) the personal interview pursuant to Article 5 and the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;

(d) the possibility to challenge a transfer decision and, where applicable, to apply for a suspension of the transfer;

(e) the fact that the competent authorities of Member States can exchange data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

(f) the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 35 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article 5.

3. The [European] Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article. This common leaflet shall also include information regarding the application of [the Eurodac Regulation] and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2) of this Regulation.'

8 Under Article 5 of that regulation, entitled ‘Personal interview’:

‘1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 4.

2. The personal interview may be omitted if:

(a) the applicant has absconded; or

(b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

4. The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.’

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

‘In view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance.’

10 Article 17 of that regulation, entitled ‘Discretionary clauses’, provides, in paragraph 1:

‘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. Where applicable, it shall inform, using the "DubliNet" electronic communication network set up under Article 18 of [Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3)], the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of, or to take back, the applicant.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with [the Eurodac Regulation] by adding the date when the decision to examine the application was taken.'

11 Article 18 of the regulation, entitled 'Obligations of the Member State responsible', provides:

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

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

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

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

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 [the "Procedures" Directive].'

12 Article 19 of the regulation, entitled 'Cessation of responsibilities', provides:

'1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State.

2. The obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

3. The obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application lodged after an effective removal has taken place shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.'

13 Article 20 of the Dublin III Regulation, entitled 'Start of the procedure' and contained in Section I, which is entitled 'Start of the procedure', of Chapter VI, that chapter being entitled 'Procedures for taking charge and taking back', provides:

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

2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

…

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

…’

14 Article 21 of that regulation, entitled ‘Submitting a take charge request’, provides, in the first subparagraph of paragraph 1:

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

15 Article 23 of the regulation, entitled ‘Submitting a take back request when a new application has been lodged in the requesting Member State’, 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.

…

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.

…’

16 Article 24 of that regulation, entitled ‘Submitting a take back request when no new application has been lodged in the requesting Member State’, provides, in paragraph 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.’

17 Article 26 of the Dublin III Regulation, entitled ‘Notification of a transfer decision’ and contained in Section IV, that section being entitled ‘Procedural safeguards’, of Chapter VI thereof, is worded as follows:

‘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.

2. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary,

contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.'

18 Article 27 of that regulation, entitled 'Remedies', also in Section IV, 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.'

19 Article 29 of the regulation, entitled 'Modalities and time limits' and contained in Section VI, that section being entitled 'Transfers', of Chapter VI thereof, provides in paragraph 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.'

The 'Procedures' Directive

20 Chapter II, entitled 'Basic principles and guarantees' of the 'Procedures' Directive, contains, inter alia, Article 9. That article, entitled 'Right to remain in the Member State pending the examination of the application', provides, in paragraph 3:

'A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect refoulement in violation of the international and [EU] obligations of that Member State.'

21 Article 14 of the 'Procedures' Directive, entitled 'Personal interview', is worded as follows:

'1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).

Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the

personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training …

…

2. The personal interview on the substance of the application may be omitted where:

(a) the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available; or

(b) the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

Where a personal interview is not conducted pursuant to point (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

3. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for international protection.

4. The absence of a personal interview pursuant to paragraph 2(b) shall not adversely affect the decision of the determining authority.

5. Irrespective of Article 28(1), Member States, when deciding on an application for international protection, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.'

22 Article 15 of that directive, entitled 'Requirements for a personal interview', provides:

'1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

2. A personal interview shall take place under conditions which ensure appropriate confidentiality.

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

(a) ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;

(b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;

(c) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;

(d) ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform;

(e) ensure that interviews with minors are conducted in a child-appropriate manner.

4. Member States may provide for rules concerning the presence of third parties at a personal interview.'

23 Chapter III of the directive, entitled 'Procedures at first instance', contains Articles 31 to 43.

24 Article 33 of the directive, entitled 'Inadmissible applications', provides in paragraph 2:

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

(a) another Member State has granted international protection;

…'

25 Article 34 of the 'Procedures' Directive, entitled 'Special rules on an admissibility interview', provides, in the first subparagraph of paragraph 1:

'Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 33 in their particular circumstances before the determining authority decides on the admissibility of an application for international protection. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 42 in the case of a subsequent application.'

The Eurodac Regulation

26 Article 2(1) of the Eurodac Directive is worded as follows:

'For the purposes of this Regulation:

…

(b) "Member State of origin" means:

…

(iii) in relation to a person covered by Article 17(1), the Member State which transmits the personal data to the Central System and receives the results of the comparison;

…'

27 Article 3(1) of that regulation provides:

‘Eurodac shall consist of:

(a) a computerised central fingerprint database (“Central System”) …

…’

28 Article 17(1) of the regulation provides:

‘With a view to checking whether a third-country national or a stateless person found illegally staying within its territory has previously lodged an application for international protection in another Member State, a Member State may transmit to the Central System any fingerprint data relating to fingerprints which it may have taken of any such third-country national or stateless person of at least 14 years of age together with the reference number used by that Member State.

As a general rule there are grounds for checking whether the third-country national or stateless person has previously lodged an application for international protection in another Member State where:

(a) the third-country national or stateless person declares that he or she has lodged an application for international protection but without indicating the Member State in which he or she lodged the application;

(b) the third-country national or stateless person does not request international protection but objects to being returned to his or her country of origin by claiming that he or she would be in danger, or

(c) the third-country national or stateless person otherwise seeks to prevent his or her removal by refusing to cooperate in establishing his or her identity, in particular by showing no, or false, identity papers.’

29 Article 29 of that regulation, entitled ‘Rights of data subject’, provides:

‘1. A person covered by … Article 17(1) shall be informed by the Member State of origin in writing, and where necessary, orally, in a language that he or she understands or is reasonably supposed to understand, of the following:

…

(b) the purpose for which his or her data will be processed in Eurodac, including a description of the aims of [the Dublin III Regulation], in accordance with Article 4 thereof and an explanation in intelligible form, using clear and plain language, of the fact that Eurodac may be accessed by the Member States and Europol for law enforcement purposes;

…

2. …

In relation to a person covered by Article 17(1), the information referred to in paragraph 1 of this Article shall be provided no later than at the time when the data relating to that person are

transmitted to the Central System. That obligation shall not apply where the provision of such information proves impossible or would involve a disproportionate effort.

…

3. A common leaflet, containing at least the information referred to in paragraph 1 of this Article and the information referred to in Article 4(1) of [the Dublin III Regulation] shall be drawn up in accordance with the procedure referred to in Article 44(2) of that Regulation.

The leaflet shall be clear and simple, drafted in a language that the person concerned understands or is reasonably supposed to understand.

The leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. This Member State-specific information shall include at least the rights of the data subject, the possibility of assistance by the national supervisory authorities, as well as the contact details of the office of the controller and the national supervisory authorities.

…'

30 Article 37 of the Eurodac Directive, entitled 'Liability', provides:

'1. Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with this Regulation shall be entitled to receive compensation from the Member State responsible for the damage suffered. That State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.

…

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the defendant Member State.'

Regulation No 1560/2003

31 Article 16a of Regulation No 1560/2003, as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 (OJ 2014 L 39, p. 1) ('Regulation No 1560/2003'), entitled 'Information leaflets for applicants for international protection', provides:

'1. A common leaflet informing all applicants for international protection of the provisions of [the Dublin III Regulation] and on the application of [the Eurodac Regulation] is set out in Annex X.

…

4. Information for third-country nationals or stateless persons found illegally staying in a Member State, are set out in Annex XIII.'

32 As provided in Article 16a(1), Annex X to Regulation No 1560/2003 contains the model common leaflet referred to in Article 4(2) and (3) of the Dublin III Regulation and Article 29(3) of the Eurodac Regulation ('the common leaflet'). Part A of that annex, entitled 'Information about the

Dublin Regulation for applicants for international protection pursuant to Article 4 of [the Dublin III Regulation]', contains a number of explanations relating to the procedure for determining the Member State responsible and its practical application, as well as to the application of the Eurodac Regulation, information on the rights of the person concerned and various recommendations and requests directed at that person for the proper conduct of the procedure. In the final section of Part A there is a box and a related footnote, worded as follows:

> 'If we consider that another [Member State] could be responsible for examining your application, you will receive more detailed information about that procedure and how it affects you and your rights. ([1])

…

([1]) The information provided is that foreseen under Part B of the present Annex.'

33 Part B of that annex, entitled 'The Dublin procedure – Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of [the Dublin III Regulation]', contains a model common leaflet which is given to the person concerned when the competent national authorities have reason to believe that another Member State could be responsible for examining the application for international protection. It provides more specific explanations relating to the procedure applicable in this case and, there again, information on the rights of the data subject and various recommendations and requests aimed at that person for the proper conduct of the procedure. The body of Part B contains the following statement, together with a note:

' – your fingerprints were taken in another Dublin [Member State] (and stored in a European database called Eurodac ([1]));

…

([1]) More information on Eurodac is given in Part A, in section "Why am I being asked to have my fingerprints taken?"'

34 Annex XIII to Regulation No 1560/2003 contains the model 'Information for third country nationals or stateless persons found illegally staying in a Member State, pursuant to Article 29(3) of [the Eurodac Regulation]'. That annex includes, inter alia, the following information and note:

'If you are found illegally staying in a [Member State], … authorities may take your fingerprints and transmit them to a fingerprint database called "Eurodac". This is only for the purpose of seeing if you have previously applied for asylum. Your fingerprint data will not be stored in the Eurodac database, but if you have previously applied for asylum in another [Member State], you may be sent back to that country.

…

> If our authorities consider that you might have applied for international protection in another [Member State] which could be responsible for examining that application, you will receive more detailed information

about the procedure that will follow and how it affects you and your rights. ([2])

…

([2]) The information provided is that foreseen under Part B of Annex X.'

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

Case C-228/21

35 CZA lodged an application for international protection in Italy. Following checks, the Italian Republic requested the Republic of Slovenia, the Member State in which CZA had previously lodged a first application for international protection, to take back CZA pursuant to Article 18(1)(b) of the Dublin III Regulation, which was accepted on 16 April 2018.

36 CZA contested the decision to transfer him before the Tribunale di Catanzaro (District Court, Catanzaro, Italy), which annulled that decision due to failure to fulfil the obligation to provide information laid down in Article 4 of the Dublin III Regulation.

37 The Ministry of the Interior brought an appeal against that decision before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which is the referring court in Case C-228/21, alleging incorrect application of Article 4 of the Dublin III Regulation.

38 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should Article 4 of [the Dublin III Regulation] be interpreted as meaning that an action may be brought under Article 27 of [that regulation] against a transfer decision adopted by a Member State, using the mechanism provided for in Article 26 of [that regulation] and on the basis of the obligation to take back laid down in Article 18(1)(b) thereof, solely because of a failure to deliver the [common] leaflet required under Article 4(2) of [the Dublin III Regulation] by the Member State which adopted the transfer decision?

(2) Should Article 27 of [the Dublin III Regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court adopt a decision annulling the transfer decision?

(3) If the answer to Question 2 above is in the negative, should Article 27 of [the Dublin III Regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court verify the significance of that failure to fulfil obligations in the light of the circumstances alleged by the applicant and permits confirmation of the transfer decision in all cases where there are no grounds for adopting a transfer decision with different content?'

Case C-254/21

39 DG, who claims to be an Afghan national, lodged an application for international protection in Sweden which was finally rejected.

40 In the meantime, DG travelled to Italy, where he lodged a second application for international protection. The Italian Republic, after a check in the Eurodac database, requested the Kingdom of Sweden to take back DG pursuant to Article 18(d) of the Dublin III Regulation, which the latter Member State accepted, leading to the adoption, by the Italian Republic, of a transfer decision.

41 DG contested that transfer decision before the Tribunale di Roma (District Court, Rome, Italy), which is the referring court in Case C-254/21, on the ground that it infringed Article 4 of the Charter and Article 17(1) of the Dublin III Regulation.

42 According to DG, the Kingdom of Sweden rejected his application for international protection without any consideration of the general situation of indiscriminate violence in Afghanistan. DG argues that the Italian Republic's transfer decision infringed Article 4 of the Charter because of the risk of 'indirect refoulement' to which that decision exposes DG, in that it would lead to his refoulement by the Kingdom of Sweden to Afghanistan, a third country in which he would be at risk of inhuman and degrading treatment. Consequently, DG claims that the referring court should declare that the Italian Republic is responsible for examining his application for international protection pursuant to Article 17(1) of the Dublin III Regulation.

43 The Ministry of the Interior disputes the merits of that claim. It contends that the request for international protection is to be examined only by one Member State, here the Kingdom of Sweden. Article 17(1) of the Dublin III Regulation is limited in scope to cases of family reunification or when justified on particular humanitarian and compassionate grounds.

44 In those circumstances the Tribunale di Roma (District Court, Rome) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the right to an effective remedy under Article 47 of the [Charter] require that Articles 4 and 19 of [the Charter], in the circumstances referred to in the main proceedings, also provide protection against the risk of indirect refoulement following a transfer to a Member State of the European Union which has no systemic flaws within the meaning of Article 3(2) of the [Dublin III Regulation] (in the absence of other Member States responsible on the basis of the criteria set out in Chapters III and IV) and which has already examined and rejected the first application for international protection?

(2) Should the court of the Member State where the second application for international protection was lodged, hearing an appeal pursuant to Article 27 of the [Dublin III Regulation] – and thus having jurisdiction to assess the transfer within the European Union but not to adjudicate on the application for protection – conclude that there is a risk of indirect refoulement to a third country, where the concept of "internal protection" within the meaning of Article 8 of [Directive 2011/95] has been assessed differently by the Member State where the first application for international protection was lodged?

(3) Is the assessment of the [risk of] indirect refoulement, following the different interpretation by two Member States of the need for "internal protection", compatible with … Article 3(1) of the [Dublin III Regulation] and with the general principle that third-country nationals may not decide in which Member State of the European Union the application for international protection is to be lodged?

(4) In the event that the previous questions are answered in the affirmative:

(a) Does the assessment of the existence of the [risk of] indirect refoulement, made by the court of the Member State in which the applicant lodged the second application for international protection following the rejection of the first application, require the application of the clause provided for in Article 17(1), defined by the [Dublin III Regulation] as a "discretionary clause"?

(b) Which criteria must the court seised [pursuant to] Article 27 of the [Dublin III Regulation] apply in order to assess the risk of indirect refoulement, other than those identified in Chapters III and IV, given that that risk has already been ruled out by the country that examined the first application for international protection?'

Case C-297/21

45 XXX.XX, who claims to be an Afghan national, lodged an application for international protection in Germany which was finally rejected and followed by an expulsion order that became final.

46 In the meantime, XXX.XX travelled to Italy, where he lodged a second application for international protection. The Italian Republic, after a check in the Eurodac database, requested the Federal Republic of Germany to take back XXX.XX pursuant to Article 18(d) of the Dublin III Regulation, which the latter Member State accepted, leading to the adoption by the Italian Republic of a transfer decision.

47 XXX.XX contested that transfer decision before the Tribunale di Firenze (District Court, Florence, Italy), which is the referring court in Case C-297/21, on the ground that it infringed Article 4 of the Charter as well as Article 3(2) and Article 17(1) of the Dublin III Regulation.

48 According to XXX.XX, the Italian Republic rejected his request without any consideration of the general situation of indiscriminate violence in Afghanistan. He argues that the transfer decision infringes Article 4 of the Charter because of the risk of 'indirect refoulement' to which that decision exposes XXX.XX, in that it could lead to his refoulement by the Federal Republic of Germany to Afghanistan. Consequently, XXX.XX claims that the referring court should annul the transfer decision to which he is subject and apply Article 17(1) of the Dublin III Regulation in his favour.

49 The Ministry of the Interior disputes the merits of that claim. It contends that the request for international protection can be examined only by one Member State, here the Federal Republic of Germany. The objective of the proceedings initiated by an appeal against a transfer decision adopted under Article 18 of the Dublin III Regulation is not to reassess the risk associated with a potential 'refoulement' to the country of origin, but to assess the lawfulness of the decision to transfer him to Germany, bearing in mind that that Member State is required to comply with the absolute prohibition on returning XXX.XX to a third country where he could be subjected to inhuman or degrading treatment.

50 In those circumstances, the Tribunale di Firenze (District Court, Florence) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 17(1) of [the Dublin III Regulation] be interpreted, in accordance with Articles 19 and 47 of the [Charter] and Article 27 of [that regulation], as meaning that the court of the Member State, hearing an appeal against the decision of the [Ministry of the Interior], may establish the responsibility of the Member State which would have to carry out the transfer under

Article 18(1)(d) [of that regulation], if it determines the existence, in the Member State responsible, of a risk of infringement of the principle of non-refoulement by returning the applicant to his country of origin, where the applicant's life would be in danger and where he would be at risk of inhuman and degrading treatment?

(2) In the alternative, must Article 3(2) of [the Dublin III Regulation] be interpreted in accordance with Articles 19 and 47 of the [Charter] and Article 27 of [that regulation], as meaning that the court may establish the responsibility of the Member State required to carry out the transfer under Article 18(1)(d) of that regulation, where it is established that:

(a) there is a risk in the Member State responsible of infringing the principle of non-refoulement by returning the applicant to his country of origin, where his life would be in danger and where he would be at risk of inhuman or degrading treatment?

(b) it is impossible to carry out the transfer to another Member State designated on the basis of the criteria set out in Chapter III of [the Dublin III Regulation]?'

Case C-315/21

51 PP, born in Pakistan, lodged an application for international protection in Germany.

52 PP travelled to Italy, where he lodged a second application for international protection. The Italian Republic, after a check in the Eurodac database, requested the Federal Republic of Germany to take back PP pursuant to Article 18(b) of the Dublin III Regulation, which the latter Member State accepted under Article 18(1)(d) of that regulation, leading to the adoption, by the Italian Republic, of a transfer decision.

53 PP sought the annulment of that transfer decision before the Tribunale di Milano (District Court, Milan, Italy), which is the referring court in Case C-315/21, first, for infringement of his right to information laid down in Article 4 of the Dublin III Regulation, and, second, on the ground that that decision unlawfully places him at risk of 'indirect refoulement' by the Federal Republic of Germany to Pakistan.

54 The Ministry of the Interior disputes the merits of those claims. First, it contends that it adduced evidence that a personal interview as referred to in Article 5 of the Dublin III Regulation has taken place and, second, it claims that it follows from the case-law of the Corte suprema di cassazione (Supreme Court of Cassation) that the referring court in that case does not have jurisdiction to find formal irregularities relating to non-compliance with the Dublin III Regulation or to enter into the merits of PP's situation, since that is a matter for the Member State already deemed to be responsible, namely the Federal Republic of Germany. In addition, the failure to comply with Article 4 of the Dublin III Regulation is not sufficient to render invalid the transfer decision to which PP is subject, in the absence of any specific infringement of the latter's rights.

55 As regards the risk of 'indirect refoulement', the Ministry of the Interior submits that the final subparagraph of Article 18(2) of the Dublin III Regulation, according to which the Member State responsible must ensure that the person concerned has or has had the opportunity to seek an effective remedy, must be deemed to have been complied with in all Member States, in so far as that obligation arises from an EU regulation, which is directly applicable. According to the Ministry of the Interior, similarly, the general principle of non-refoulement enshrined in the Convention relating to the Status of Refugees signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), which entered into force on 22 April 1954 and was ratified by

all the Member States, is guaranteed. On account of the mutual trust which must exist between Member States, the courts of a Member State cannot therefore verify whether the opportunity of bringing an appeal against the rejection of an application for international protection is guaranteed in another Member State which has been designated as the Member State responsible.

56 In those circumstances, the Tribunale di Milano (District Court, Milan) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Articles 4 and 5 of [the Dublin III Regulation] be interpreted as meaning that infringement thereof in itself renders unlawful a decision challenged under Article 27 of [that regulation], irrespective of the specific consequences of that infringement for the content of the decision and the identification of the Member State responsible?

(2) Must Article 27 of [the Dublin III Regulation], read in conjunction with Article 18(1)(a) or with Articles 18([1])(b) [to] (d) and with Article 20(5) of [that regulation], be interpreted as identifying different subjects of appeal, different complaints to be raised in judicial proceedings and different aspects of infringement of the obligations to provide information and conduct a personal interview under Articles 4 and 5 of [that regulation]?

(3) If the answer to Question 2 is in the affirmative, must Articles 4 and 5 of [the Dublin III Regulation] be interpreted as meaning that the guarantees relating to information, provided for therein, are enjoyed only in the scenario set out in Article 18(1)(a) and not also in the take back procedure, or must they be interpreted as meaning that in that procedure the obligations to provide information are enjoyed at least in relation to the cessation of responsibilities referred to in Article 19 [of that regulation] or the systemic flaws in the asylum procedure and in the reception conditions for applicants which result in a risk of inhuman or degrading treatment within the meaning of Article 4 of the [Charter] referred to in Article 3(2) [of the Dublin III Regulation]?

(4) Must Article 3(2) [of the Dublin III Regulation] be interpreted as meaning that “systemic flaws in the asylum procedure” includes any consequences of final decisions rejecting an application for international protection already adopted by the court of the Member State effecting the take back, where the court seised pursuant to Article 27 of [that regulation] considers that there is a real risk that the applicant could suffer inhuman and degrading treatment if he or she is returned to his or her country of origin by the Member State, also having regard to the presumed existence of a general armed conflict within the meaning of Article 15(c) of [Directive 2011/95]?’

Case C-328/21

57 GE, originally from Iraq, lodged an application for international protection in Finland.

58 GE then travelled to Italy, where he was reported for illegally staying there. The Italian Republic, after a check in the Eurodac database, requested the Republic of Finland to take back GE pursuant to Article 18(1)(b) of the Dublin III Regulation, which the latter Member State accepted under Article 18(1)(d) of that regulation, leading to the adoption, by the Italian Republic, of a transfer decision.

59 GE contested that transfer decision before the Tribunale di Trieste (District Court, Trieste, Italy), which is the referring court in Case C-328/21. In support of his action, he claims that that transfer decision infringes Article 3(2) of the Dublin III Regulation, the principle of non-refoulement, Article 17 of the Eurodac Regulation, Article 20 of the Dublin III Regulation and the

obligations to provide information under Article 29 of the Eurodac Regulation and Article 4 of the Dublin III Regulation.

60 The Ministry of the Interior disputes the merits of those claims.

61 In those circumstances, the Tribunale di Trieste (District Court, Trieste) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) [What are] the legal consequences imposed by EU law in relation to take back transfer decisions under [the provisions of] Chapter VI, Section III[,] of [the Dublin III Regulation], where the [Member] State has failed to provide the information required under Article 4 of [that regulation] and Article 29 of [the Eurodac Regulation]?

(2) In particular, if a full and effective remedy has been implemented against the transfer decision …:

(a) Must Article 27 of [the Dublin III Regulation] be interpreted:

– as meaning that a failure to provide the [common] leaflet required under Article 4(2) and (3) of [that regulation] to a person who meets the conditions described in Article 23(1) [thereof] in itself renders the transfer decision irremediably invalid (and potentially also establishes the responsibility of the Member State to which the person has submitted the new application to take a decision on the application for international protection);

– or as meaning that it is for the [applicant] to prove in court that the procedure would have had a different outcome if the [common] leaflet had been provided to him or her?

(b) Must Article 27 of [the Dublin III Regulation] be interpreted:

– as meaning that a failure to provide the [common] leaflet required under Article 29 of [the Eurodac Regulation] to a person who meets the conditions described in Article 24(1) of [the Dublin III Regulation] in itself renders the transfer decision irremediably invalid (and potentially also results in the need to provide a possibility to submit a new application for international protection);

– or as meaning that it is for the [applicant] to prove in court that the procedure would have had a different outcome if the [common] leaflet had been provided to him or her?’

Procedure before the Court

62 The referring courts in Cases C-254/21, C-297/21, C-315/21 and C-328/21 requested that the expedited procedure or priority treatment provided for in Article 105 and Article 53(3), respectively, of the Rules of Procedure of the Court of Justice be applied.

63 In support of those requests, those referring courts rely, in essence, on the desire to remove the uncertainty in which the persons concerned find themselves, the need arising both under EU law and under national law for the decisions in the main proceedings to be adopted expeditiously, especially in view of the large number of pending proceedings relating to similar issues, and the urgency of putting an end to the divergences in the national case-law on the matter.

64 By decisions of the President of the Court of 14 June and 6 July 2021, the referring courts were informed that the requests for an expedited procedure had been rejected. Those decisions are

based, in essence, on the following grounds. First, the effects of the transfer decisions at issue in those cases were suspended pending the Court's reply. Second, the arguments put forward by those courts were not capable of demonstrating the need to give judgment under the expedited procedure in accordance with Article 105 of the Rules of Procedure.

65 In that regard, it should be borne in mind that, according to settled case-law, neither an individual's simple interest – regardless of how important and legitimate that interest might be – in having the scope of his or her rights under EU law determined as quickly as possible, nor the large number of persons or legal situations which may be affected by the decision that a referring court must give after making a reference to the Court for a preliminary ruling (order of the President of the Court of 22 November 2018, *Globalcaja*, C-617/18, EU:C:2018:953, paragraphs 13 and 14 and the case-law cited), nor the argument that every request for a preliminary ruling concerning the Dublin III Regulation requires an expeditious answer (order of the President of the Court of 20 December 2017, *M.A. and Others*, C-661/17, EU:C:2017:1024, paragraph 17 and the case-law cited), nor the fact that the request for a preliminary ruling was made in the context of proceedings that are, in the national system, urgent and the referring court is required to do everything possible to ensure that the case in the main proceedings is resolved swiftly (order of the President of the Court of 25 January 2017, *Hassan*, C-647/16, EU:C:2017:67, paragraph 12 and the case-law cited), nor, finally, the need to unify divergent national case-law (order of the President of the Court of 30 April 2018, *Oro Efectivo*, C-185/18, EU:C:2018:298, paragraph 17) is in itself sufficient to justify the use of the expedited procedure.

66 As regards the requests for priority treatment, the referring courts in Cases C-315/21 and C-328/21 were informed that there was no need for those cases to be given priority under Article 53(3) of the Rules of Procedure, and the decision of the President of the Court does not amount to a rejection of their requests, seeing as the Rules of Procedure make no provision for referring courts to be able to ask for a request for a preliminary ruling to be given priority pursuant to that article.

67 By decision of 6 July 2021, Cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred for a preliminary ruling

68 The requests for a preliminary ruling have been made in the context of disputes relating to the lawfulness of transfer decisions taken by the Ministry of the Interior pursuant to the national provisions implementing Article 26(1) of the Dublin III Regulation.

69 In all the cases in the main proceedings, the transfer decisions were adopted in respect of the persons concerned not for the requested Member State to take charge of them pursuant to Article 18(1)(a) of the Dublin III Regulation, but for that Member State to take back those persons pursuant to Article 18(1)(b) or (d) of that regulation, as appropriate.

70 Depending on the main proceedings, either one or the other or both of the following issues are raised.

71 The first issue, in Cases C-228/21, C-315/21 and C-328/21, concerns the right to information, under Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation, and the conduct of the personal interview referred to in Article 5 of the Dublin III Regulation. Specifically, it concerns the consequences to be drawn, as regards the lawfulness of the transfer decision, from the failure to provide the common leaflet referred to in Article 4(2) of the Dublin III Regulation and

Article 29(3) of the Eurodac Regulation, and from the failure to conduct the personal interview provided for in Article 5 of the Dublin III Regulation.

72 The second issue, in Cases C-254/21, C-297/21 and C-315/21, concerns the taking into consideration, by the court responsible for examining the lawfulness of the transfer decision, of the risk associated with any 'indirect refoulement' of the person concerned and, accordingly, with the risk of infringement of the principle of non-refoulement by the Member State responsible.

The questions in Cases C-228/21 and C-328/21 and the first two questions in Case C-315/21

73 By those questions, which it is appropriate to examine together, the referring courts in Cases C-228/21, C-315/21 and C-328/21 ask, in essence, whether the Dublin III Regulation, in particular Articles 4, 5 and 27, and the Eurodac Regulation, in particular Article 29, must be interpreted as meaning that the failure to provide the common leaflet and/or the failure to conduct a personal interview under those provisions render invalid the transfer decision adopted in the context of a procedure to take back a person under Article 23(1) or Article 24(1) of the Dublin III Regulation, irrespective of the actual consequences of the abovementioned failures on the content of that transfer decision and on the determination of the Member State responsible.

74 It is against this background that we must examine the respective scope of the right to information and the right to a personal interview, and then the consequences ensuing from an infringement thereof.

The right to information (Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation)

75 It should be noted at the outset that the cases in the main proceedings concern transfer decisions adopted in the context not of take charge procedures under Article 21 of the Dublin III Regulation, but of take back procedures for persons referred to in Articles 23 and 24 of that regulation. Specifically, in Case C-228/21, the take back concerns a person who had previously lodged an application for international protection in another Member State, where it is under examination, which is the scenario referred to in Article 18(1)(b) of that regulation. Moreover, in Cases C-315/21 and C-328/21, the take back concerns persons who had each previously lodged an application for international protection in another Member State, where it has been rejected, which corresponds to the scenario referred to in Article 18(1)(d) of that regulation.

76 In addition, in Cases C-228/21 and C-315/21, the persons concerned each subsequently applied for asylum in Italy, while, in Case C-328/21, it is apparent from the request for a preliminary ruling that GE did not lodge an application for international protection in Italy but was illegally staying there. However, it is apparent from the file before the Court in that case that GE claims to have been treated as such only because the Ministry of the Interior did not take due account of his application for international protection, which will be a matter for the referring court to ascertain.

77 It is in that context of subsequent applications for international protection (Cases C-228/21 and C-315/21) and – subject to verification by the referring court – of an illegal stay subsequent to an application for international protection lodged in another Member State (Case C-328/21) that the Court is asked whether and to what extent the obligation to provide information laid down in Article 4 of the Dublin III Regulation and that laid down in Article 29(1) of the Eurodac Regulation are binding on the Member State.

78 When interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (see, to that effect, judgment of 7 November 2019, *UNESA and Others*, C-105/18 to C-113/18, EU:C:2019:935, paragraph 31 and the case-law cited).

79 First of all, as regards the wording of the provisions at issue and, in the first place, that of Article 4 of the Dublin III Regulation, it should be noted, first, that, according to Article 4(2), 'the information referred to in paragraph 1 shall be provided in writing' and that 'Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose'. Second, neither Article 4(1) nor its reference to Article 20(2) of that regulation makes a distinction according to whether the application for international protection to which those provisions relate is a first or subsequent application. In particular, the latter provision describes in general terms the moment when an application for international protection is deemed to have been lodged. It cannot therefore be understood as relating solely to a first application. Moreover, and as the Advocate General stated in point 75 of her Opinion, that interpretation may also be inferred from the final part of the second subparagraph of Article 23(2) of the Dublin III Regulation, which refers to Article 20(2) of that regulation as regards an application for international protection subsequent to a first application.

80 It follows from the foregoing that, according to the literal interpretation thereof, Article 4 of the Dublin III Regulation requires the common leaflet to be provided as soon as an application for international protection is lodged, regardless of whether or not it is a first application.

81 As regards, in the second place, Article 29 of the Eurodac Regulation, to which Question 2(b) in Case C-328/21 refers, it should be noted, first, that paragraph 1(b) of that article provides that 'a person covered by … Article 17(1)', that is to say, a third-country national or a stateless person found illegally staying within the territory of a Member State, 'shall be informed by the Member State of origin in writing … of … the purpose for which his or her data will be processed by Eurodac, including a description of the aims of [the Dublin III Regulation], in accordance with Article 4 thereof'.

82 Second, the second subparagraph of Article 29(2) of the Eurodac Regulation states that, 'in relation to a person covered by Article 17(1), the information referred to in paragraph 1 of this Article shall be provided no later than at the time when the data relating to that person are transmitted to the Central System'.

83 Third, Article 29(3) of the Eurodac Regulation provides that 'a common leaflet, containing at least the information referred to in paragraph 1 of this Article and the information referred to in Article 4(1) of [the Dublin III Regulation] shall be drawn up in accordance with the procedure referred to in Article 44(2) of that Regulation'.

84 It follows that, according to the literal interpretation thereof, Article 29 of the Eurodac Regulation requires the common leaflet to be provided to any third-country national or stateless person found illegally staying in the territory of a Member State whose fingerprints are taken and transmitted to the central system, and this must take place no later than the time of transmission, irrespective of whether or not that person has previously lodged an application for international protection in another Member State.

85 Next, the literal interpretations of Article 4 of the Dublin III Regulation and of Article 29 of the Eurodac Regulation are borne out by the legislative context of those provisions.

86 As regards, in the first place, Article 4 of the Dublin III Regulation, that article appears in Chapter II, entitled ‘General principles and safeguards’, of that regulation. As the Advocate General observed in point 76 of her Opinion, the provisions of that chapter are intended to apply to all situations falling within the scope of the Dublin III Regulation, and therefore not solely to a specific situation, such as the lodging of an application for international protection for the first time.

87 It is apparent, moreover, from Article 16a(1) of Regulation No 1560/2003 that the common leaflet in Annex X to that regulation is intended to inform ‘all’ applicants for international protection of the provisions of the Dublin III Regulation and the Eurodac Regulation. That Annex X is divided into two parts, namely Part A and Part B. Part A of the annex contains the model common leaflet intended for all applicants for international protection, regardless of their situation. Part B of that annex contains the model common leaflet which is intended, moreover, to be given to the person concerned in all cases where the Member State considers that another Member State could be responsible for examining the asylum application, including, in the light of the general nature of the terms contained in the box and the related footnote in Part A, referred to in paragraph 32 above, where it is upon lodging a subsequent application for international protection that the Member State called upon to deal with that application considers that another Member State could be responsible for examining that application.

88 As regards, in the second place, Article 29 of the Eurodac Regulation, regard must be had to the fact that Article 1 of that regulation provides that the purpose of the Eurodac system is ‘to assist in determining which Member State is to be responsible pursuant to [the Dublin III Regulation] for examining an application for international protection lodged in a Member State by a third-country national or a stateless person, and otherwise to facilitate the application of [the Dublin III Regulation] under the conditions set out in this Regulation’.

89 In that regard, the purpose of Annex XIII to Regulation No 1560/2003, entitled ‘Information for third country nationals or stateless persons found illegally staying in a Member State, pursuant to Article 29(3) of [the Eurodac Regulation]’, is to inform the person concerned that the competent authorities of the Member State in which that person is found illegally staying may take his or her fingerprints, in accordance with the power conferred upon them under Article 17 of the Eurodac Regulation, which they must exercise when they consider it necessary to check whether that person has previously lodged an application for international protection in another Member State. Annex XIII contains a box and a related footnote, referred to in paragraph 34 above, in which it is stated, for the attention of the person found illegally staying, that, if the competent authorities consider that that person might have lodged such an application in another Member State which could be responsible for examining it, that person will receive more detailed information about the procedure that will follow and how it affects that person and his or her rights, that information being that foreseen under Part B of Annex X to Regulation No 1560/2003.

90 That normative context confirms that a third-country national or a stateless person found illegally staying in the territory of a Member State and whose fingerprints are taken and transmitted to the Central System by the competent authority of that Member State, pursuant to Article 17 of the Eurodac Regulation, with a view to checking whether an application for international protection has already been lodged in another Member State, must receive the common leaflet from the competent national authorities. It should be added that this must include both Part B of Annex X to Regulation No 1560/2003, relating to the situation where the competent authorities have reasons to believe that another Member State could be responsible for examining the application for international protection, and Part A of that annex, which sets out the bulk of the information relating to Eurodac, as is moreover reflected in the footnote in Part B of that annex, referred to in paragraph 33 above.

91 Finally, as regards the purpose of the obligation to provide information, the Italian Government and the Commission submit, in their observations, on the basis of the judgment of 2 April 2019, *H. and R.* (C-582/17 and C-583/17, EU:C:2019:280), that it falls within the context of determining the Member State responsible.

92 According to those interested parties, in the case of take back procedures under Articles 23 or 24 of the Dublin III Regulation – procedures which are applicable to the persons covered by Article 20(5) or Article 18(1)(b), (c) or (d) of that regulation – the procedure for determining the Member State responsible, in the situations covered by the latter provision, has already been concluded in a Member State or, in the situation covered by Article 20(5), has been discontinued or is still ongoing in a Member State which is required to complete that procedure. Thus, it is not for the requesting Member State, in the context of the take back procedure, to make a determination – namely that of the Member State responsible – which would fall to another Member State, regardless of whether or not it has been completed.

93 Accordingly, the Italian Government and the Commission take the view that the provision of the common leaflet, pursuant to the obligations to provide information laid down in Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation, does not serve any useful purpose in the context of a take back procedure, so far as concerns, at the very least, the question of determining the Member State responsible.

94 In that regard, however, it should be noted that the question of the determination of the Member State responsible is not necessarily definitively settled at the stage of the take back procedure.

95 It is true that the Court held, in essence, in paragraphs 67 to 80 of the judgment of 2 April 2019, *H. and R.* (C-582/17 and C-583/17, EU:C:2019:280), that, since responsibility for examining the application for international protection has already been established, it is no longer necessary to re-apply the rules governing the process for determining that responsibility, foremost among which are the criteria set out in Chapter III of the Dublin III Regulation.

96 However, the fact that it is not necessary to proceed to a fresh determination of the Member State responsible does not mean, as the Advocate General also noted, in essence, in point 81 of her Opinion, that the Member State which intends to lodge or has lodged a take back request may ignore information which an applicant would provide to it and which would be such as to prevent such a take back request and the subsequent transfer of that person to the requested Member State.

97 Indeed, evidence relating to the cessation of the responsibilities of the requested Member State pursuant to the provisions of Article 19 of the Dublin III Regulation (see, to that effect, judgment of 7 June 2016, *Karim*, C-155/15, EU:C:2016:410, paragraph 27), the failure to comply with the time limit for making a take back request under Article 23(3) of that regulation (see, by analogy, judgment of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 55), the failure by the requesting Member State to comply with the time limit for transfer under Article 29(2) of that regulation (see, to that effect, judgment of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 46), the existence of systemic flaws in the requested Member State referred to in the second subparagraph of Article 3(2) of that regulation (see, to that effect, judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, paragraphs 85 and 86), or even the existence, given the state of health of the person concerned, of a real and proven risk of inhuman or degrading treatment in the event of transfer to the requested Member State (see, to that effect, judgment of 16 February 2017, *C.K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 96) may ultimately alter the determination of the Member State responsible.

98 Moreover, the Court has found that a Member State cannot, in accordance with the principle of sincere cooperation, properly make a take back request, in a situation covered by Article 20(5) of the Dublin III Regulation, when the person concerned has provided it with information clearly establishing that that Member State must be regarded as the Member State responsible for examining the application for international protection pursuant to the criteria for determining responsibility set out in Articles 8 to 10 of that regulation. In such a situation, it is, on the contrary, for that Member State to accept its own responsibility (judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 83).

99 Last, Article 7(3) of the Dublin III Regulation expressly provides that 'in view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance'.

100 It follows from paragraphs 96 to 99 above that, contrary to the submissions of the Italian Government and the Commission, the person concerned may put forward a number of considerations liable, in the situations covered by Article 18(1)(b), (c) or (d) of the Dublin III Regulation, to alter the determination of the Member State responsible previously made in another Member State or, in a situation covered by Article 20(5) of that regulation, to affect such a determination.

101 Consequently, the purpose of the provision of the common leaflet, the aim of which is to provide the person concerned with information relating to the application of the Dublin III Regulation and his or her rights in the context of the determination of the Member State responsible, supports, in turn, the interpretations of Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation derived from the wording of those provisions and set out in paragraphs 80 and 84 above.

102 It follows from all the foregoing considerations that Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation must be interpreted as meaning that the obligation to provide the information referred to therein, in particular the common leaflet, applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation.

The personal interview (Article 5 of the Dublin III Regulation)

103 It follows from Article 5(1) of the Dublin III Regulation that, in order to facilitate the process of determining the Member State responsible, the determining Member State is to conduct a personal interview with the applicant and that that interview is also to allow the proper understanding of the information supplied to the applicant in accordance with Article 4 of that regulation.

104 In those circumstances, the considerations relating to the obligation to provide information, set out in paragraphs 96 to 100 above, are also relevant as regards the personal interview under Article 5 of the Dublin III Regulation.

105 While the purpose of the common leaflet is to provide information to the person concerned about the application of the Dublin III Regulation, the personal interview serves to verify that that person understands the information provided to him or her in that leaflet and it represents a privileged opportunity, or even a guarantee, for that person to disclose to the competent authority information which could lead the Member State concerned to refrain from submitting a take back request to another Member State or even, as the case may be, to prevent that person's transfer.

106 It follows that, contrary to the submissions of the Italian Government and the Commission, Article 5 of the Dublin III Regulation must be interpreted as meaning that the obligation to hold the personal interview referred to therein applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation.

The consequences of the infringement of the right to information and of the right to a personal interview

107 As the Court has already held, the drafting of Article 27(1) of the Dublin III Regulation, which provides that a person who is the subject of a transfer decision has the right to an effective remedy against such a decision, makes no reference to any limitation of the arguments that may be raised when an applicant avails himself or herself of that remedy. The same applies to the drafting of Article 4(1)(d) of that regulation, concerning the information that must be provided to the applicant by the competent authorities as to the possibility of challenging a transfer decision (judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 36).

108 The scope of that remedy is made clear in recital 19 of the Dublin III Regulation, which states that, in order to ensure that international law is respected, the effective remedy introduced by that regulation in respect of transfer decisions must cover (i) the examination of the application of the regulation and (ii) the examination of the legal and factual situation in the Member State to which the applicant is to be transferred (judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 33 and the case-law cited).

109 In addition, it follows from the Court's case-law that in the light, in particular, of the general thrust of the developments that have taken place, as a result of the adoption of the Dublin III Regulation, in the system for determining the Member State responsible for examining an application for international protection made in one of the Member States, and of the objectives of that regulation, Article 27(1) of the regulation must be interpreted as meaning that the remedy which it provides against a transfer decision must be capable of relating both to observance of the rules attributing responsibility for examining an application for international protection and to the procedural safeguards laid down by that regulation (judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 34 and the case-law cited).

110 The obligations to provide information laid down in Article 4 of the Dublin III Regulation and Article 29(1)(b) and (3) of the Eurodac Regulation as well as the personal interview under

Article 5 of the Dublin III Regulation are procedural safeguards which must be afforded to the person concerned or who may be concerned, inter alia, by a take back procedure pursuant to Article 23(1) or Article 24(1) of the latter regulation. It follows that the remedy provided for in Article 27(1) of the Dublin III Regulation against a transfer decision must, in principle, be capable of relating to the infringement of the obligations contained in those provisions and, in particular, the failure to provide the common leaflet and the failure to conduct the personal interview.

111 As regards the consequences that may ensue from the infringement of one or other of those obligations, it should be noted that the Dublin III Regulation does not provide any details in that respect.

112 As for the Eurodac Regulation, although it determines, in Article 37, the liability of the Member States towards any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with that regulation, it does not provide any details as to the consequences which may ensue, for a transfer decision, from failure to comply with the obligation to provide information laid down in Article 29(1)(b) and (3) of that regulation and recalled in the box and the related footnote which are set out in Annex XIII to Regulation No 1560/2003, as has already been pointed out in paragraph 89 above.

113 In accordance with the Court's settled case-law, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 42 and the case-law cited). The same applies inter alia to the legal consequences, with regard to a transfer decision, of the failure to comply with the obligation to provide information and/or the obligation to hold a personal interview (see, to that effect, judgment of 16 July 2020, *Addis*, C-517/17, EU:C:2020:579, paragraphs 56 and 57 and the case-law cited).

114 In the present case, however, it appears to follow from the orders for reference and from the wording of the questions referred to the Court for a preliminary ruling that the law of the Member State to which the referring courts belong does not, in itself, enable those legal consequences to be determined with certainty and that, by those questions, those courts are seeking specifically to ascertain how they are to penalise such infringements.

115 In those circumstances, it is necessary for the Court to determine what consequences ensue, in that respect, from the principle of effectiveness.

116 As regards, in the first place, the legal consequences that may ensue, with regard to that principle, from the absence of the personal interview provided for in Article 5 of the Dublin III Regulation, it is important, at the outset, to refer to the judgment of 16 July 2020, *Addis* (C-517/17, EU:C:2020:579), delivered in respect of a situation in which a third-country national, already a beneficiary of refugee status in one Member State, complained that the competent authority of another Member State in which he had lodged another application for international protection had failed to hear him before rejecting his asylum application as inadmissible under Article 33(2)(a) of the 'Procedures' Directive. By that judgment, the Court held that in the light of the principle of effectiveness Articles 14 and 34 of that directive must be interpreted as precluding national legislation under which failure to comply with the obligation to give an applicant for international protection the opportunity of a personal interview before the adoption of such a decision declaring

the application to be inadmissible does not lead to that decision being annulled and the case being remitted to the determining authority, unless that legislation allows the applicant, in the appeal procedure against that decision, to set out in person all of his or her arguments against the decision in a hearing which complies with the applicable conditions and fundamental guarantees set out in Article 15 of that directive, and those arguments are not capable of altering that decision.

117 In that regard, the Court stressed, inter alia, in paragraph 70 of that judgment, that Articles 14, 15 and 34 of the 'Procedures' Directive, first, set out, in binding terms, the obligation on the Member States to give the applicant the opportunity of a personal interview as well as specific, detailed rules on how that interview is to be conducted and, second, seek to ensure that the applicant has been invited to provide, in cooperation with the authority responsible for that interview, all information that is relevant to the assessment of the admissibility and, as the case may be, the substance of the application for international protection, which gives that interview paramount importance in the procedure for examination of that application.

118 The Court added that, if there is no personal interview before the competent authority, it is only if such an interview is conducted before the court or tribunal hearing the appeal against the decision adopted by that authority declaring the application inadmissible and that interview is conducted in accordance with all of the conditions prescribed by the 'Procedures' Directive that it is possible to guarantee the effectiveness of the right to be heard at that subsequent stage of the procedure (judgment of 16 July 2020, *Addis*, C-517/17, EU:C:2020:579, paragraph 71).

119 It should be noted that the consequences ensuing from the application of Article 33(2)(a) of the 'Procedures' Directive, namely the inadmissibility of the application for international protection lodged in a Member State by a person who is already a beneficiary of international protection granted by a first Member State and his or her return to the first Member State, are no more serious than those ensuing from the application of Article 23(1) and Article 24(1) of the Dublin III Regulation, which expose persons without international protection to take back.

120 More specifically, the situation referred to in Article 33(2)(a) of the 'Procedures' Directive is even, a priori, less serious in terms of its consequences for the person concerned than the situation, referred to in Article 18(1)(d) of the Dublin III Regulation, in which the take back request concerns a person whose application for international protection has been rejected by the requested Member State. In the latter case, the person concerned by the take back does not, like the person whose asylum application is inadmissible, face being sent back to a Member State in which that person is already a beneficiary of international protection, but faces removal by the requested Member State to his or her country of origin.

121 In addition, and as the Advocate General noted, in essence, in points 134 to 136 of her Opinion, both the decision declaring the application for international protection to be inadmissible, taken on the basis of Article 33(2)(a) of the 'Procedures' Directive, and the transfer decision implementing the take back, referred to in Articles 23 and 24 of the Dublin III Regulation, require that the person concerned should not run the risk of Article 4 of the Charter being infringed, which, in both cases, can be checked in the personal interview. The personal interview also allows the presence of family members, relatives or any other family relations of the applicant on the territory of the requesting Member State to be noted. Moreover, it makes it possible to ensure that a third-country national or a stateless person is not deemed to be illegally staying while he or she was intending to lodge an application for international protection.

122 Lastly, it should be noted that, like the interview under Article 14 of the 'Procedures' Directive, the obligation to conduct the personal interview under Article 5 of the Dublin III

Regulation may be derogated from only in limited circumstances. In that respect, just as the personal interview on the substance of the asylum application may be omitted, as follows from Article 14(2)(a) of the 'Procedures' Directive, where the authority responsible is able to take a positive decision with regard to refugee status on the basis of evidence available, so the combined provisions of Article 5(2)(b) and (3) of the Dublin III Regulation require, in the interests of the person concerned by a possible take back, that the personal interview under Article 5 of that regulation be held in all cases where the competent authority might adopt a transfer decision contrary to the wishes of the person concerned.

123 In those circumstances, the case-law arising from the judgment of 16 July 2020, *Addis* (C-517/17, EU:C:2020:579), as regards the consequences which ensue when the obligation to conduct a personal interview is infringed in the context of a decision rejecting an application for international protection on the basis of Article 33(2)(a) of the 'Procedures' Directive, can be applied in the context of the take back procedures implemented pursuant to Article 23(1) and Article 24(1) of the Dublin III Regulation.

124 It follows that, without prejudice to Article 5(2) of the Dublin III Regulation, the transfer decision must, following an appeal brought against that decision under Article 27 of that regulation calling into question the absence of a personal interview provided for in that Article 5, be annulled unless the national legislation allows the person concerned, in the context of that appeal, to set out in person all of his or her arguments against that decision in a hearing which complies with the conditions and safeguards laid down in Article 5, and those arguments are not capable of altering that decision.

125 In the second place, where the personal interview under Article 5 of the Dublin III Regulation, whose paramount importance and associated procedural safeguards have previously been pointed out, has indeed taken place but the common leaflet to be provided pursuant to the obligation to provide information under Article 4 of that regulation or Article 29(1)(b) of the Eurodac Regulation was not provided before that interview took place, it is necessary, in order to satisfy the requirements arising from the principle of effectiveness, to ascertain whether, had it not been for such an irregularity, the outcome of the procedure might have been different (see, to that effect, judgment of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 38 and the case-law cited).

126 The role of the national court in the context of an infringement of the obligation to provide information must therefore consist in ascertaining, in the light of the factual and legal circumstances of the case, whether the infringement, notwithstanding the fact that the personal interview has taken place, actually deprived the party relying thereon of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different (see, to that effect, judgment of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 44).

127 In the light of the foregoing, it must be held, as regards the obligation to provide information, that EU law, in particular Articles 4 and 27 of the Dublin III Regulation and Article 29(1)(b) of the Eurodac Regulation, must be interpreted as meaning that, where the personal interview under Article 5 of the Dublin III Regulation has taken place but the common leaflet which must be provided to the person concerned pursuant to the obligation to provide information laid down in Article 4 of the Dublin III Regulation or in Article 29(1)(b) of the Eurodac Regulation has not been provided, the national court responsible for assessing the lawfulness of the transfer decision may order that that decision be annulled only if it considers, in the light of the factual and legal circumstances of the case, that the failure to provide the common leaflet, notwithstanding the fact

that the personal interview has taken place, actually deprived that person of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different.

128 Consequently, the answer to the questions referred in Cases C-228/21 and C-328/21 and to the first two questions referred in Case C-315/21 is that:

– Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation must be interpreted as meaning that the obligation to provide the information referred to therein, in particular the common leaflet – a model of which is set out in Annex X to Regulation No 1560/2003 – applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation;

– Article 5 of the Dublin III Regulation must be interpreted as meaning that the obligation to hold the personal interview referred to therein applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation;

– EU law, in particular Articles 5 and 27 of the Dublin III Regulation, must be interpreted as meaning that, without prejudice to Article 5(2) of that regulation, the transfer decision must, following an appeal brought against that decision under Article 27 of that regulation calling into question the absence of the personal interview provided for in that Article 5, be annulled unless the national legislation allows the person concerned, in the context of that appeal, to set out in person all of his or her arguments against that decision in a hearing which complies with the conditions and safeguards laid down in that article, and those arguments are not capable of altering that decision;

– EU law, in particular Articles 4 and 27 of the Dublin III Regulation and Article 29(1)(b) of the Eurodac Regulation, must be interpreted as meaning that, where the personal interview under Article 5 of the Dublin III Regulation has taken place but the common leaflet which must be provided to the person concerned pursuant to the obligation to provide information laid down in Article 4 of the Dublin III Regulation or in Article 29(1)(b) of the Eurodac Regulation has not been provided, the national court responsible for assessing the lawfulness of the transfer decision may order that that decision be annulled only if it considers, in the light of the factual and legal circumstances of the case, that the failure to provide the common leaflet, notwithstanding the fact that the personal interview has taken place, actually deprived that person of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different.

Questions 1 to 3 in Case C-254/21, Question 2 in Case C-297/21 and Question 3 in Case C-315/21

129 By those questions, which it is appropriate to examine together, the referring courts in Cases C-254/21, C-297/21 and C-315/21 ask, in essence, whether Article 3(1) and the second subparagraph of Article 3(2) of the Dublin III Regulation, read in conjunction with Article 27 of that regulation and with Articles 4, 19 and 47 of the Charter, allow the national court to examine

whether there is a risk of indirect refoulement to which the applicant for international protection would be exposed following his or her transfer to the requested Member State, in so far as the latter has already rejected an application for international protection concerning that applicant, even where the latter Member State has no 'systemic flaws in the asylum procedure and in the reception conditions for applicants' within the meaning of the second subparagraph of Article 3(2) of the Dublin III Regulation. In particular, the referring courts in Cases C-254/21 and C-315/21 ask whether that possibility exists where the national court interprets the concept of 'internal protection', within the meaning of Article 8 of the 'Qualification' Directive, differently from the authorities of the requested Member State or takes the view, contrary to those authorities, that there is an armed conflict, within the meaning of Article 15(c) of that directive, in the country of origin.

130 In that regard, it must be recalled that EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the EU law that implements them will be respected, and that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised by the Charter, including Articles 1 and 4 of the Charter, which enshrine one of the fundamental values of the European Union and its Member States (judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 83 and the case-law cited), namely human dignity, which includes, inter alia, the prohibition of inhuman or degrading treatment.

131 The principle of mutual trust between the Member States is, in EU law, of fundamental importance as regards, in particular, the area of freedom, security and justice which the European Union constitutes and under which the European Union, in accordance with Article 67(2) TFEU, is to ensure the absence of internal border controls for persons and frame a common policy on asylum, immigration and external border control based on solidarity between Member States which is fair towards third-country nationals. In that context, the principle of mutual trust requires each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 84 and the case-law cited).

132 Accordingly, in the context of the Common European Asylum System, it must be presumed that the treatment of applicants for international protection in all Member States complies with the requirements of the Charter, the Convention relating to the Status of Refugees signed in Geneva on 28 July 1951 and the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (see, to that effect, judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, paragraph 82 and the case-law cited) and that the prohibition of direct and indirect refoulement, as expressly laid down in Article 9 of the 'Procedures' Directive, is complied with in each one of those States.

133 It is not however inconceivable that that system may, in practice, experience major operational problems in a given Member State, so that there would be a substantial risk that asylum seekers may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights (judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 86 and the case-law cited).

134 Thus, the Court has previously held that, pursuant to Article 4 of the Charter, the Member States, including the national courts, may not transfer an asylum seeker to the Member State

responsible, as determined in accordance with the Dublin III Regulation, where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions for asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment, within the meaning of that provision (see, to that effect, judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, paragraph 85 and the case-law cited).

135 The Court has clarified that such transfer is ruled out where that risk stems from systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in the Member State during his or her transfer or thereafter. Accordingly, it is immaterial, for the purposes of applying Article 4 of the Charter, whether it is at the very moment of the transfer, during the asylum procedure or following it that the person concerned would be exposed, because of his or her transfer to the Member State that is responsible within the meaning of the Dublin III Regulation, to a substantial risk of suffering inhuman or degrading treatment (judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, paragraphs 87 and 88).

136 In that regard, where the court or tribunal hearing an action challenging a transfer decision has available to it evidence provided by the person concerned for the purposes of establishing the existence of such a risk, that court or tribunal is obliged to assess, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, whether there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people (judgment of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, paragraph 90).

137 In the present case, subject to the verifications to be carried out by the referring courts in Cases C-254/21, C-297/21 and C-315/21, it does not appear that the existence of such flaws was relied on by DG, XXX.XX or PP in relation to the Member States which would come to be determined as responsible for examining their application for international protection in those three cases.

138 Furthermore, in the judgment of 16 February 2017, *C.K. and Others* (C-578/16 PPU, EU:C:2017:127), the Court held, in essence, that Article 4 of the Charter must be interpreted as meaning that, even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, that provision may be relied on where the possibility cannot be excluded that, in a particular case, the transfer of an asylum seeker within the framework of the Dublin III Regulation might entail a real and proven risk that that person will, as a result, be subjected to inhuman or degrading treatment within the meaning of that article.

139 However, regard must be had to the fact that, as is apparent from paragraph 96 of that judgment, in the case which gave rise to it, the real and proven risk that the transfer of the person concerned would expose him to inhuman and degrading treatment was linked to the risk of a significant and permanent deterioration in the state of health of that person, in so far as he had a particularly serious underlying mental and physical condition. Subject to verification by the referring courts in Cases C-254/21, C-297/21 and C-315/21, none of the applicants in those cases is in a comparable personal situation.

140 By contrast, the difference in the assessment by the requesting Member State, on the one hand, and the Member State responsible, on the other, of the level of protection which the applicant may enjoy in his or her country of origin under Article 8 of the ‘Qualification’ Directive or the existence of a serious and individual threat to a civilian’s life or person by reason of indiscriminate

violence in situations of international or internal armed conflict, under Article 15(c) of that directive, is not, in principle, relevant for the purposes of reviewing the validity of the transfer decision.

141 That interpretation is the only one compatible with the aims of the Dublin III Regulation, which seeks, inter alia, to establish a clear and effective method for determining the Member State responsible and to prevent secondary movements of asylum seekers between Member States (see, to that effect, judgments of 21 December 2011, *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraph 84, and of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 77). Those objectives preclude the court examining the transfer decision from carrying out a substantive assessment of the risk of refoulement in the event of return. That court must in fact regard as established the fact that the competent asylum authority of the Member State responsible will correctly assess and determine the risk of refoulement, in accordance with Article 19 of the Charter, and that the third-country national will have, in accordance with the requirements stemming from Article 47 of the Charter, effective remedies for challenging, where appropriate, the decision of that authority in that regard.

142 In the light of all the foregoing, the answer to the first to third questions in Case C-254/21, the second question in Case C-297/21 and the third question in Case C-315/21 is that Article 3(1) and the second subparagraph of Article 3(2) of the Dublin III Regulation, read in conjunction with Article 27 of that regulation and with Articles 4, 19 and 47 of the Charter, must be interpreted as meaning that the court or tribunal of the requesting Member State, hearing an action challenging a transfer decision, cannot examine whether there is, in the requested Member State, a risk of infringement of the principle of non-refoulement to which the applicant for international protection would be exposed during his or her transfer to that Member State or thereafter where that court or tribunal does not find that there are, in the requested Member State, systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection. Differences of opinion between the authorities and courts in the requesting Member State, on the one hand, and those of the requested Member State, on the other hand, as regards the interpretation of the material conditions for international protection do not establish the existence of systemic deficiencies.

Question 4(a) in Case C-411/21 and Question 1 in Case C-297/21

143 By those questions, which it is appropriate to examine together, the referring courts in Cases C-254/21 and C-297/21 ask, in essence, whether Article 17(1) of the Dublin III Regulation, read in conjunction with Article 27 of that regulation and with Articles 4, 19 and 47 of the Charter, must be interpreted as meaning that the court or tribunal of the Member State which adopted the transfer decision, hearing an action challenging that decision, may, or indeed must, declare that Member State responsible where it disagrees with the requested Member State's assessment as to whether the person concerned is to be returned.

144 In that respect, it should be borne in mind that, under Article 3(1) of the Dublin III Regulation, an application for international protection is to be examined by a single Member State, which is to be the one which the criteria set out in Chapter III of that regulation indicate is responsible.

145 By way of derogation from Article 3(1) of that regulation, Article 17(1) thereof provides that 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 those criteria.

146 It is clear from the wording of Article 17(1) of the Dublin III Regulation that that provision is optional in so far as it leaves it to the discretion of each Member State to decide to examine an application for international protection lodged with it, even if that examination is not its responsibility under the criteria defined by that regulation for determining the Member State responsible. The exercise of that option is not, moreover, subject to any particular condition. That option is intended to allow each Member State to decide, in its absolute discretion, on the basis of political, humanitarian or practical considerations, to agree to examine an asylum application even if it is not responsible under the criteria laid down in that regulation (judgment of 23 January 2019, *M.A. and Others*, C-661/17, EU:C:2019:53, paragraph 58).

147 In the light of the extent of the discretion thus conferred on the Member States, it is for the Member State concerned to determine the circumstances in which it wishes to use the option conferred by the discretionary clause set out in Article 17(1) of the Dublin III Regulation and to agree itself to examine an application for international protection for which it is not responsible under the criteria defined by that regulation (judgment of 23 January 2019, *M.A. and Others*, C-661/17, EU:C:2019:53, paragraph 59).

148 In that regard, it should be noted, first, that it follows from the purely optional nature of the provisions of Article 17(1) of the Dublin III Regulation and from the discretionary nature of the power which those provisions confer on the requesting Member State, that those provisions, read in conjunction with Article 27 of that regulation and Articles 4, 19 and 47 of the Charter, cannot be interpreted as requiring the court or tribunal of that Member State to declare the latter responsible, on the ground that it disagrees with the assessment of the requested Member State as to the risk of refoulement of the person concerned.

149 Second, it is apparent from paragraph 142 above that the court or tribunal of the requesting Member State, hearing an action challenging a transfer decision, cannot examine the risk of an infringement of the principle of non-refoulement by the requested Member State to which the applicant for international protection would be exposed during his or her transfer to that Member State or thereafter where there are, in that Member State, no systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection.

150 Nor can the court or tribunal of the requesting Member State, consequently, compel the latter to apply the discretionary clause laid down in Article 17(1) of the Dublin III Regulation on the ground that there is, in the requested Member State, a risk of infringement of the principle of non-refoulement.

151 Third, if systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in the requested Member State during the transfer or thereafter were to be established, the responsibility of the requesting Member State would be based on Article 3(2) of the Dublin III Regulation, with the result that there would be no need for the requesting Member State to have recourse to Article 17(1) of that regulation in such a situation.

152 In the light of all those factors, the answer to Question 4(a) in Case C-254/21 and Question 1 in Case C-297/21 is that Article 17(1) of the Dublin III Regulation, read in conjunction with Article 27 of that regulation and with Articles 4, 19 and 47 of the Charter, must be interpreted as not requiring the court or tribunal of the requesting Member State to declare that Member State responsible where it disagrees with the assessment of the requested Member State as to the risk of refoulement of the person concerned. If there are no systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in the requested Member State during the transfer or thereafter, nor can the court or tribunal of the requesting Member State

compel the latter to examine itself an application for international protection on the basis of Article 17(1) of the Dublin III Regulation on the ground that there is, according to that court or tribunal, a risk of infringement of the principle of non-refoulement in the requested Member State.

Question 4(b) in Case C-254/21

153 In view of the answer given to Question 4(a) in Case C-254/21 and Question 1 in Case C-297/21, there is no need to answer Question 4(b) in Case C-254/21.

Costs

154 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 (Second Chamber) hereby rules:

(1) – Article 4 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 and

Article 29 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 No 604/2013 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

must be interpreted as meaning that the obligation to provide the information referred to therein, in particular the common leaflet – a model of which is set out in Annex X 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 – applies both in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of Regulation No 604/2013 respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of Regulation No 603/2013, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of Regulation No 604/2013.

– Article 5 of Regulation No 604/2013

must be interpreted as meaning that the obligation to hold the personal interview referred to therein applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of that regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of Regulation No 603/2013, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of Regulation No 604/2013.

– EU law, in particular Articles 5 and 27 of Regulation No 604/2013,

must be interpreted as meaning that without prejudice to Article 5(2) of that regulation, the transfer decision must, following an appeal brought against that decision under Article 27 of that regulation calling into question the absence of the personal interview provided for in that Article 5, be annulled unless the national legislation allows the person concerned, in the context of that appeal, to set out in person all his or her arguments against that decision at a hearing which complies with the conditions and safeguards laid down in the latter article, and those arguments are not capable of altering that decision.

– EU law, in particular Articles 4 and 27 of Regulation No 604/2013 and Article 29(1)(b) of Regulation No 603/2013,

must be interpreted as meaning that, where the personal interview under Article 5 of Regulation No 604/2013 has taken place but the common leaflet which must be provided to the person concerned pursuant to the obligation to provide information laid down in Article 4 of that regulation or in Article 29(1)(b) of Regulation No 603/2013 has not been provided, the national court responsible for assessing the lawfulness of the transfer decision may order that that decision be annulled only if it considers, in the light of the factual and legal circumstances of the case, that the failure to provide the common leaflet, notwithstanding the fact that the personal interview has taken place, actually deprived that person of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different.

(2) Article 3(1) and the second subparagraph of Article 3(2) of Regulation No 604/2013, read in conjunction with Article 27 of that regulation and with Articles 4, 19 and 47 of the Charter of Fundamental Rights,

must be interpreted as meaning that the court or tribunal of the requesting Member State, hearing an action challenging a transfer decision, cannot examine whether there is, in the requested Member State, a risk of infringement of the principle of non-refoulement to which the applicant for international protection would be exposed during his or her transfer to that Member State or thereafter where that court or tribunal does not find that there are, in the requested Member State, systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection. Differences of opinion between the authorities and courts in the requesting Member State, on the one hand, and those of the requested Member State, on the other hand, as regards the interpretation of the material conditions for international protection do not establish the existence of systemic deficiencies.

(3) Article 17(1) of Regulation No 604/2013, read in conjunction with Article 27 thereof and with Articles 4, 19 and 47 of the Charter of Fundamental Rights,

must be interpreted as not requiring the court or tribunal of the requesting Member State to declare that Member State responsible where it disagrees with the assessment of the requested Member State as to the risk of refoulement of the person concerned. If there are no systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in the requested Member State during the transfer or thereafter, nor can the court or tribunal of the requesting Member State compel the latter to examine itself an application for international protection on the basis of Article 17(1) of Regulation No 604/2013 on the ground that there is, according to that court or tribunal, a risk of infringement of the principle of non-refoulement in the requested Member State.

[Signatures]

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* Language of the case: Italian.