Debrecen Administrative and Labour Court

9.Kpk. 30.504/2015/4-I.

The ... Administrative and Labour Court, in the non-litigious procedure conducted on the application of ... **applicant**, representing himself, against the **Office of Immigration and Nationality**, hereinafter the **"authority", for judicial review of the joint decision on refugee status in the subject of inadmissibility and expulsion,** has delivered the following

ORDER:

Pursuant to Article 155/A (2) of the Act on Civil Procedure and Article 267 of the TFEU, the court suspended the procedure and initiated a preliminary ruling of the Court of Justice of the European Union in the following questions:

1) How is Article 3 (3) of Regulation (EU) No 604/2013 of the European Parliament and the Council, 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 (the Dublin III Regulation), to be interpreted?

   a) Can member states exercise the right to send an applicant to a safe third country only prior to determining the Member State responsible or also after determining the Member State responsible?

   b) Does the interpretation change if the Member State determines its own responsibility not when the application is initially lodged with such Member State in, accordance with Article 7 (2) and Chapter III of the Dublin III Regulation, but receives the applicant from another Member State upon a request for transfer or take back in accordance with Chapters V-VI of the Dublin III Regulation?

   1) If, in the interpretation of the Court of Justice of the European Union to Question 1), the right of a Member State to send an applicant to a safe third country may also be exercised after taking charge in accordance with the Dublin procedure:

      Can Article 3 (3) of the Dublin III Regulation be interpreted in such a way that Member States may also exercise this right if, in the course of the Dublin procedure, the transferring member state was not informed of the exact national provisions pertaining to the exercise of that right and the national practice followed?

   2) Can Article 18 (2) of the Dublin III Regulation be interpreted in such a way that, in the case of an applicant taken back pursuant to Article 18 clause c), the

procedure is to be continued from the same stage as where it had been interrupted in the previous procedure?

With a view to Article 267 (4) of the TFEU, the court hereby informs the Court of Justice of the European Union that the applicant is in asylum detention, and therefore, pursuant to Article 107 of the Rules of Procedure of the Court of Justice of the European Union, the court submits a separate request for an urgent preliminary ruling procedure.

No appeal can be lodged against this order.

STATEMENT OF REASONS

1. Pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU) and Article 155/A (2) of the Act on Civil Procedure (Civil Procedures Act), simultaneously with suspending the procedure, the court initiated a preliminary ruling procedure from the Court of Justice of the European Union for the following reasons:

I. THE CIRCUMSTANCES IN THE ORIGINAL CASE

2. The applicant for international protection is a male, adult citizen of Pakistan, who first entered Hungary from the direction of Serbia in August 2015. He had no personal identification or travel documents, and did not enter the Serbian-Hungarian border at a designated border crossing point, nor in the permitted manner.

3. He first submitted an application for asylum in Hungary on 7 August 2015.

4. In the procedure launched at that time for granting international protection, it was known to the refugee authority that the applicant had arrived in Hungary from the direction of Serbia. The applicant did not make any declaration or reference to the effect that he had submitted an application for asylum in Serbia. According to his statement, his destination was Austria.

5. The refugee authority did not reject his application for asylum in the initial asylum procedure for reasons of unfounded application or inadmissibility.

6. During the initial procedure for the granting of international protection, the applicant left his designated place of residence, and his place of residence had become unknown to the refugee authority.

7. By way of its decision made on 9 October 2015, the refugee authority terminated the procedure for granting international protection, with a view to the fact that Act LXXX of 2007 on Asylum (the Asylum Act), in harmony with Article 28 (1) clause b) of Directive 2013/32/EU (the Recast Asylum Procedures Directive) provides for the discontinuation of the procedure when the applicant has absconded or left, which is to be assumed as an implicit withdrawal or abandonment of the application.

8. At the court hearing held on 18 December 2015, the applicant stated that his leaving "to an unknown place" actually meant that he intended to go to Austria, but because he boarded the wrong train he ended up in the Czech Republic. There, the Czech authorities ordered him off the train and then initiated the applicant's take back by Hungary, pursuant to the rules of Regulation (EU) No 604/2013 (the Dublin III Regulation).

9. Pursuant to Article 18 (1) c) of the Dublin III Regulation, Hungary accepted its designation as Member State responsible and agreed to take back the applicant.

10. Among the administrative documents available to the court, no documents of a procedure conducted according to the Dublin III Regulation were sent, and therefore, no document can be found either from which it could be determined whether, as part of the response to the request for the take back, the Czech authorities received information on the Hungarian regulation, or practice, according to which Hungary wishes to submit the applicant's application for asylum primarily to an examination of admissibility, and on the basis of this Hungary may, instead of examining the merits of the application for asylum, also send the applicant to Serbia, qualifying as a safe third country on the basis of the "list" approved by Hungary in a government decree.

11. After being taken back, on 2 November 2015, the applicant once again applied for international protection in Hungary.

12. In the course of the asylum procedure launched on the basis of this second application, his asylum detention was ordered, which was subsequently extended by the ... District Court until 1 January 2016.

    The applicant is also in asylum detention at the present time while the preliminary ruling procedure is initiated.

13. In the second procedure for granting international protection, the refugee authority held a hearing of the applicant on 2 November 2015. In the course of this hearing, the applicant was informed that the application for international protection may be declared as inadmissible if the applicant fails to prove that Serbia could not be classified as a safe third country with a view to his individual situation.

    In response to this request for proof, the applicant only replied that he was not safe in Serbia.

14. In its joint decision of 19 November 2015, the refugee authority declared the application of the applicant as inadmissible.

    In the statement of reasons to the decision, the refugee authority referred to Section 51 (1) clause e) of the Asylum Act, namely that the there is a third country qualifying as a safe third country for him. According to the decision of the refugee authority, this third country is Serbia, which was classified by Article 2 of Government Decree 191/2015 (VII. 21.), entering into effect on 22 July 2015, as a safe third country at a national level, due to the fact that it is a candidate country of the European Union.

    Pursuant to the decision of the refugee authority, on the basis of Article 3 (2) of the abovementioned Government Decree, even though the applicant could have proved in

the procedure aimed at granting international protection that in his individual case he did not have an opportunity to enjoy sufficient protection in Serbia, the applicant failed to prove this, which led to his application being admissible.

15. Since, in the opinion of the refugee authority, Serbia qualified as a safe third country with respect to the applicant, according to the statement of reasons given to the authority's decision, the principle of non-refoulement, regulated in Article 45 (1) of the Asylum Act, was not applicable, as the condition that "*there is no safe third country which would receive him/her*" was not satisfied.

With reference to Article 45 (5) of the Asylum Act, the authority also provided in this decision for the revocation of the applicant's residence permit issued for humanitarian purposes and for his expulsion and deportation, and also determined the period of prohibition of entry and residence applicable to him.

16. The applicant lodged a request for legal remedy to the court for the review of this decision, with reference to the fact that he does not want to be returned to Serbia, as he would not be safe there.

The reason he provided at the personal hearing held by the court on 18 December 2015 was that in the camp in Serbia he received no food, and when he asked for some, the police kicked him. As he related, several of his acquaintances, who were staying in this camp one and a half months previously, had similar experiences .

In connection with his stay in Serbia, the applicant also said that after his entry to the country he spent one night, with several others, in a camp where there was no registration and where the authorities did not evaluate applications for asylum or engage in any other administrative activities. The following day he took the train and then crossed the Serbian-Hungarian border.

II. THE LEGAL CONTEXT IN CONNECTION WITH THE QUESTIONS FOR INTERPRETATION

II/A/2.The provisions of Hungarian law – Act LXXX of 2007 on Asylum (hereinafter: The "Asylum Act"):

Article 2

17. For the purposes of this Act

i) a safe third country is any country in connection to which the refugee authority has ascertained that the applicant is treated in line with the following principles:

ia) the applicant's life and liberty are not jeopardised for racial or religious reasons or on account of his/her ethnicity, membership of a social group or political conviction and the applicant is not exposed to the risk of serious harm;

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

ic) the rule of international law, according to which the applicant may not be expelled to the territory of a country where s/he would be exposed to any acts specified by Article XIV (2) of the Constitution, and

id) the option to apply for recognition as a refugee is ensured, and, in the event of recognition as a refugee, protection in conformance with the Geneva Convention is guaranteed;

Article 45

18. (1) The prohibition of non-refoulement prevails if the person seeking recognition has been exposed to the risk of persecution due to reasons of race, religion, ethnicity, membership of a particular social group or political opinion or to an act specified in Article XIV (2) of the Fundamental Law, in his/her country of origin, and there is no safe third country which would receive him/her.

19. (5) In the event of the non-existence of the prohibition under paragraphs (1) and (2), in its decision refusing the application for recognition, the refugee authority shall provide for the revocation of the foreigner's residence permit issued for humanitarian purposes and – if the foreigner has no right to stay in the territory of Hungary on other grounds – shall order his/her expulsion and deportation based on Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, and shall determine the period of prohibition of entry and residence.

Article 51

20. (1) If the conditions for the application of the Dublin Regulations are not met, the refugee authority shall decide on the question of the admissibility of the application for refugee status and on whether the criteria for deciding on the application in an expedited procedure are met.

21. (2) An application is inadmissible where

e) for the applicant, there is a third country qualifying as a safe third country for him/her.

22. (3) In the application of paragraph (2) d), new facts and circumstances are those that the applicant was unable to mention in the previous procedure due to circumstances beyond his/her control.

23. (4) The application may be declared inadmissible under paragraph (2) e) only where the applicant

a) stayed in a safe third country, and s/he would have the opportunity to apply for effective protection, according to Section 2 paragraph i), in that country;

b) travelled through the territory of that third country and s/he would have the opportunity to apply for effective protection, according to Article 2 paragraph i), in that country;

c) has relatives in that country and is entitled to enter the territory of the country; or

d) the safe third country requests the extradition of the person seeking recognition.

Article 53

24. (1) The refugee authority shall reject the application with its order if it establishes the existence of any of the criteria set forth in Section 51 (2).

25. (2) A court review of a decision rejecting the application due to inadmissibility or made in an expedited procedure may be requested. The submission of a request for a review shall have no suspensive effect on the enforcement of the decision, with the exception of decisions made under Sections 51 (2) e) and 51 (7) h).

26. (5) The court may not change the decision of the refugee authority; it shall annul any administrative resolution found to be against the law – with the exception of the breach of a procedural rule not affecting the merits of the case – and it shall order the authority that had adopted the resolution to start a new procedure if necessary. No legal remedy shall lie against the decision of the court closing the procedure.

27. **II/A/b.The Hungarian provisions of law – Government Decree 191/2015 (VII. 21.) on the list of countries of origin declared safe at national level and that of safe third countries**

Article 2

Pursuant to Article 2 i) of the Asylum Act, safe third countries are the **member states and candidate countries of the European Union – with the exception of Turkey** – the member states of the European Economic Area and the member states of the United States of America where the death penalty is not applicable; furthermore:
1. Switzerland,
2. Bosnia and Herzegovina,
3. Kosovo
4. Canada
5 Australia
6 New Zealand

Article 3

28. (2) If the applicant stayed or travelled through prior to his/her arrival in the territory of Hungary, the EU list of safe third countries or in a safe third country as per Article 2, the applicant can prove in the asylum procedure conducted according to the Asylum Act that in his/her case s/he had no opportunity for effective protection in that country according to Article 2 paragraph i) of the Asylum Act.

II/B/a.The law of the European Union – secondary law – Dublin III Regulation: 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.

29. Preamble

(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 of Fundamental Rights of the European Union. 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.

30. Article 1

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

31. Article 2

For the purposes of this Regulation:

(d) 'examination of an application for international protection' means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;

32. (e) 'withdrawal of an application for international protection' means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly;

Article 3

33. 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 is responsible according to the criteria set out in Chapter III.

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

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

Chapter III in order to establish whether another Member State can be designated as responsible.

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

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

Article 17

35. 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 Regulation (EC) No 1560/2003, 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.

Article 18

36. 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.

37. 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 had 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. 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 Directive 2013/32/EU.

Article 27

38. 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.

II/B/b. <u>The law of the European Union – secondary law – Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (hereinafter: Asylum Procedures Directive)</u>

Article 28

39. Procedure in the event of implicit withdrawal or abandonment of the application

1. When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU, to reject the application.

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

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

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

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

Member States may provide for a time limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.

Member States shall ensure that such a person is not removed contrary to the principle of non-refoulement.

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

Article 33

Inadmissible applications

41. 1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU where an application is considered inadmissible pursuant to this Article.

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

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

Article 38

43. The concept of safe third country

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

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

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

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

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

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

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

45. 3. When implementing a decision solely based on this Article, Member States shall:

(a) inform the applicant accordingly; and

(b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

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

III. THE REASONS FOR THE SUBMISSION OF THE QUESTIONS

Concerning question 1/a):

46. First of all it is necessary to emphasise that, in the present procedure, Hungary took back the applicant in accordance with the rules of the Dublin III Regulation; his asylum procedure had been terminated earlier due to the fact that he had left for an unknown location.

47. In connection with the above, the question arises how, also with a view to Article 33 (1) of the Recast Asylum Procedures Directive, Article 3 (3) of the Dublin III Regulation is to be interpreted: can the completion of the procedure for determining jurisdiction and responsibility form any legal obstacle to the right of the Member State to send the applicant to a safe third country; in other words, whether "jurisdiction" becomes fixed upon taking charge.

48. This question arises because Article 33 (1) does not allow an application to be considered inadmissible if it was examined in accordance with the Dublin III Regulation.

The Recast Asylum Procedures Directive, however, does not clarify whether the *examination of an application in accordance with Regulation (EU) No 604/2013* only means the examination according to the procedure aimed at determining the Member State responsible, in accordance with the Dublin III Regulation, or the examination of the application as defined in Article 2 (d) of the Dublin III Regulation.

49. Further, this latter definition in the Dublin III Regulation also does not specify in detail what is meant by the examination of an application by the competent authorities: whether it is restricted to the examination of the merits of the application or also, for example, when authority conducts an "examination" of inadmissibility after which the merits of the application are not even examined.

50. All of the above is rendered more complicated by the fact that the definition in Article 2 (d) partly refers back to the examination according to the Recast Asylum Procedures Directive, the provisions of which, as described in connection with question 1/b) also does not provide a definition of what "*examination*" means exactly.

51. Due to these unclear definitions and references, an interpretation of Article 3 (3) of the Dublin III Regulation has become necessary; this would shed light on whether the right retained by the Member States to send the applicant to a safe third country can only be exercised until the Member State responsible is determined or also after such a time.

This is why question 1/a) was formulated.

Concerning question 1/b):

52. Partly as a continuation of the previous question, it was also the uncertainty of terms according to Article 2 (d) of the Dublin III Regulation that led to the court seeing it as necessary to obtain an interpretation of Article 3 (3) of the Dublin III Regulation through Article 18 (2).

This latter provision imposes an obligation on the Member State responsible for taking charge of the applicant to examine or complete the examination of the application for international protection made by the applicant or, in the event of an earlier rejection of the application at first instance, only to ensure the applicant's right to effective remedy.

53. In the event that the prior procedure was discontinued in accordance with the Recast Asylum Procedures Directive due to the fact that the applicant expressly or implicitly

terminated the procedure by his or her conduct (e.g. a decision on the discontinuation of the examination was made due to the fact that the applicant left to an unknown place), the Member State responsible shall ensure that the applicant is entitled to request that the procedure be completed or to lodge a new application, without the legal consequences related to subsequent applications. "*In such cases, Member States shall ensure that the examination of the application is completed*": the rule completes the list of obligations attached to Article 18 (c).

54. Article 2 of the Dublin III Regulation itself does not provide an exact list of what types of procedures and decisions are meant under those listed in Article 18 (2), and what is the meaning of completion of the examination of the application.

55. However, given the fact that Article 2 (d) refers back to the Recast Asylum Procedures Directive, and Article 33 (1) of the latter provides that Member States are not required to examine the application of those considered inadmissible, the interpretation appears to be more acceptable that, for applicants taken charge of, the responsible Member State that receives them is required to examine the merits of their application. In the event of such an interpretation, the rejection of an application due to inadmissibility, without examining the merits of the application, would not belong here.

56. Possibly contradicting the above, however, is the general phrasing used in Article 31 (1) of the Recast Asylum Procedures Directive, whereby Member States are required to process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II. Article 33 belongs to Chapter II.

57. It is because of these unclear provisions that the court submitted its question seeking an interpretation of Article 3 (3) of the Dublin III Regulation separately with respect to applicants transferred/taken back in the Dublin procedure.

Concerning question 2):

58. Also partly related to Article 3 (3) of the Dublin III Regulation is the second question of the court, this time in addition to Article 18 (2), also seeking an interpretation in conjunction with the right to an effective legal remedy.

59. Articles 33 and 38 of the Recast Asylum Procedures Directive do not prescribe that Member States classify countries as safe third countries or to declare the application for international protection as inadmissible with reference to the existence of a safe third country. This is only an option for the Member States.

60. Therefore, official information on national regulations, that would automatically define as inadmissible applications when an applicant arrived from a country declared as a safe third country under the national rules and the fact that the applicant did not submit an application for asylum there, would not necessarily be available to Member States other than the Member State in question.

61. The Dublin III Regulation contains no provisions concerning sharing or sending such information or on administrative cooperation.

62. Article 27 (1) and paragraph (19) of the Preamble to the Dublin III Regulation, however, provide that the applicant should have an effective remedy in the transferring state against decisions concerning the transfer. Such a remedy 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.

Ensuring the right to an effective remedy may appear to give rise to concerns if the applicant does not, cannot obtain information in the decision on the transfer or in the Dublin procedure that, based on the regulations of the Member State responsible for taking charge, there is a high likelihood that his or her application will be considered inadmissible and the applicant will be sent to a third country outside the European Union.

63. In addition, the lack of information from the Member State responsible to the requesting state also deprives the transferring Member State of the opportunity to consider separately, with respect to the Member State responsible, the application of Article 3 (2), or, with respect to the applicant, the clause on the option of consideration according to Article 17 (1).

This led to the submission of the second question.

Concerning question 3)

64. n the case at hand, in the first asylum procedure the refugee authority did not declare the application inadmissible, but discontinued the examination after several months.

65. According to the last sentence of Article 28 (2) of the Recast Asylum Procedures Act, Member States may allow the determining authorities to resume the examination of the application at the stage where it was discontinued.

66. The national regulations contain no special rule related to this provision.

67. The phrasing of Article 18 (2) of the Dublin III Regulation (especially the expression “shall complete the examination”), in comparison with Article 18 (1), however, suggest that it was the provision of Article 28 (2) of the Recast Asylum Procedures Directive, but in the form of a directly provision directly applicable by all Member States, rather than a rule provided in a directive.

68. The reason that the court requested the interpretation of Article 18 (2) of the Dublin III Regulation by the Court of Justice of the European Union was because it would help decide in the present case the following: if, in the first asylum procedure, the authority did not declare the application inadmissible, but in the examination stage of the application the procedure was discontinued due to the implicit withdrawal of the application, can the authority, after the taking back of the application under the Dublin procedure, in the absence of new circumstances,

- declare the application inadmissible with reference to the existence of a safe third country, and
- exercise the right to send the applicant to that safe third country?

ADDITIONAL COMMENT

69. Finally, the court set forth that the relevant Hungarian provision of law, Article 53 (5) of the Asylum Act, does not provide the applicant and the refugee authority any further legal remedy against its decision completing the procedure, and therefore, on the basis of Article 267 of the TFEU, the submission of the questions above were deemed not only necessary but also indispensable.

70. Since the applicant is in asylum detention, with reference to Article 267 (4) of the TFEU, the court informed the Court of Justice of the European Union of this fact, and in a separate request, it requests an urgent preliminary ruling procedure pursuant to Article 107 of the Rules of Procedure of the Court of Justice of the European Union.

A separate appeal against this order is excluded by Article 155/A (3) of the Act on the Rules of Civil Procedure.

..., 18 December 2015

For
judge