

OPINION OF ADVOCATE GENERAL
BOT
delivered on 1 March 2017 (1)

Case C-60/16

Mohammad Khir Amayry

v

Migrationsverket

(Request for a preliminary ruling from the Kammarrätten i Stockholm –Migrationsöverdomstolen
(Administrative Court of Appeal for Immigration Matters, Stockholm, Sweden))

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national — Article 28 of the regulation — Detention of the person concerned for the purpose of his transfer to the Member State responsible — Period within which the transfer must be carried out — Calculation of the period — National legislation authorising the person’s detention and the extension of that detention for a period longer than two months — Lawfulness)

I. Introduction

1. In this case, the Court is requested to interpret Article 28(3) of Regulation (EU) No 604/2013 (2) in order to determine the periods applying to the procedure for transferring an applicant for international protection who has been detained pending his transfer to the Member State responsible for considering his application.

2. To ensure that this transfer is implemented, the European Union legislature allows Member States to detain the person concerned, where it is apparent, on the basis of an individual assessment, that the person concerned might evade the transfer procedure, only if the detention is proportionate and other less coercive measures cannot be applied.

3. To ensure that detention is for as short a period as possible, the legislature established the time limits applicable to the procedure for determining the Member State responsible and for actually

carrying out the transfer procedure in Article 28(3) of the Dublin III Regulation — the interpretation of which is requested here — having regard to the principles of necessity and proportionality.

4. In its request for a preliminary ruling the referring court raises questions concerning the arrangements for calculating those time limits in a situation not envisaged by the EU legislature.

5. The applicant was not, in fact, detained at an early stage of the procedure, as expressly provided for in Article 28(3) of the regulation — that is to say, before the requesting Member State submitted its request to the Member State it considered to be responsible to take charge of or take back the applicant —, but at a later stage, when the Member State responsible had accepted that request and only the practical arrangements for carrying out the transfer therefore remained to be determined.

6. Although the answer to the questions raised by the referring court is not apparent from the language of Article 28(3) of the regulation, it can nonetheless be inferred, primarily, from the broad scheme of the article and, in particular, from the principles of proportionality and necessity on which the time limits applying to the procedure for transferring an applicant held in detention are based, then from the objectives pursued by the EU legislature in this context and, finally, from the case-law of the Court.

7. At the end of my analysis, I shall be proposing that the Court should rule that, in a situation such as that at issue, the Member States concerned have a period of six weeks, commencing on the applicant's detention, within which to carry out his transfer.

8. I shall also be explaining that, where the applicant has appealed against the transfer decision or requested a review of that decision, that period starts running again from the moment that appeal or review no longer has a suspensive effect, whether the suspension is automatic, has been decided by the competent national court or tribunal or whether it has been requested by the individual concerned, in accordance with Article 27(3) of the Dublin III Regulation.

9. Lastly, I shall explain the reasons for my view that, in the light of that interpretation, Article 28(3) of the regulation precludes a national law such as that at issue under which an applicant may be kept in detention pending his transfer for a period longer than six weeks, which may be extended up to a maximum of twelve months, on grounds that do not satisfy the requirements of clarity and predictability which are essential to the adoption of measures involving a restriction of liberty.

II. Legal context

A. European Union law

1. Directive 2013/33/EU

10. Article 8(3)(f) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (3) states:

‘An applicant may be detained only:

...

(f) in accordance with Article 28 of [the Dublin III Regulation] ...’

11. Under the heading ‘Guarantees for detained applicants’, Article 9(1) of the directive provides:

‘An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.’

2. *The Dublin III Regulation*

12. Recital 20 of this regulation is worded as follows:

‘The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention[, of 28 July 1951, relating to the status of refugees]. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. ...’

13. Article 27 of that regulation, under the heading ‘Remedies’, provides:

‘1. The applicant ... 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.

...

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

- (a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or
- (b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or
- (c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.’

14. Article 28 of the Dublin III Regulation, which comes under Section V thereof under the heading ‘Detention for the purpose of transfer’ is worded as follows:

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. When there is a significant risk of absconding, [(4)] Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.’

15. Article 29(1) of the Dublin III Regulation, which is included in Section VI under the heading ‘Transfers’, provides:

‘The transfer of the applicant ... from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

...’

B. Swedish law

16. In Chapter 1, Paragraph 8, the Utlänningslagen (Law on Aliens) of 29 September 2005 (5) provides that the law is to be applied in such a way that the freedom of the person concerned is not

restricted more than is necessary in each individual case.

17. It provides, in Chapter 1, Paragraph 9, that the provisions on deportation also apply *mutatis mutandis* to decisions on transfer under the Dublin III Regulation.

18. The rules on detention and monitoring of aliens are found in Chapter 10 of that law.

19. Under Paragraph 1, second subparagraph (3) of that chapter, aliens aged 18 years or over may be detained with a view to preparing or implementing the execution of a decision on deportation.

20. Under Chapter 10, Paragraph 1, third subparagraph of the law, a decision on detention may be granted only where there is otherwise a risk that the person concerned will undertake criminal activity in Sweden, abscond, evade the authorities or otherwise prevent execution of the transfer decision.

21. Under Chapter 10, Paragraph 4, second subparagraph of the Law on Aliens, an alien may not be detained pending transfer for a period longer than two months if there are no serious reasons for a longer period in detention. If there are such reasons, an alien may not be detained for a period longer than three months. Where it is probable that implementation of a transfer decision will take longer due to a lack of cooperation from the alien or it takes time to obtain the necessary documents, detention may not be for a period longer than twelve months.

22. Chapter 12, Paragraph 13, of this law states that the Migrationsverket (Immigration Board, Sweden) may take a decision to suspend the procedure for implementing the deportation decisions if there are specific reasons for doing so.

III. Facts and questions submitted for a preliminary ruling

23. Mohammad Khir Amayry submitted an application for international protection in Sweden on 19 December 2014. Checks in the Eurodac system, however, brought to light that he had travelled to Italy a few days earlier, on 6 December 2014, and that he had also applied on 17 December 2014 for international protection from the Danish authorities. In accordance with Article 13(1) of the Dublin III Regulation, the Immigration Board consequently requested on 15 January 2015 that the Italian authorities take back the applicant.

24. The Italian authorities accepted that request on 18 March 2015.

25. On 2 April 2015, the Immigration Board therefore dismissed as inadmissible the applicant's application for a residence permit, including his application for international protection, and decided to transfer him to Italy. As it considered that there was a significant risk of his absconding, the Immigration Board also decided to detain him.

26. Mr Khir Amayry then appealed against those decisions to the Förvaltningsrätten i Stockholm (Administrative Court, Stockholm, Sweden). Following the lodging of that appeal, the Immigration Board decided to suspend execution of the transfer decision in accordance with Chapter 12, Paragraph 13, of the Law on Aliens and Article 27(3)(c) of the Dublin III Regulation. The appeal was dismissed on 29 April 2015, the Förvaltningsrätten i Stockholm (Administrative Court, Stockholm) in particular considering there to be a risk that, if he were removed from detention, Mr Khir Amayry would abscond, evade the authorities or otherwise prevent the execution of the transfer decision. He appealed against this judgment to the referring court.

27. On 8 May 2015, the transfer decision was implemented. Subsequently, Mr Khir Amayry returned to Sweden where, on 1 June 2015, he made a fresh application for international protection.

28. On 30 July 2015 the referring court decided not to grant leave to appeal regarding the question of transfer but granted leave to appeal regarding detention.

29. In those circumstances, the Kammarrätten i Stockholm — Migrationsöverdomstolen (Administrative Court of Appeal for Immigration Matters, Stockholm) (Sweden) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) If an [applicant for international protection] is not in detention at the time when the Member State responsible agrees to take charge of him but is detained at a later date — on the ground that only then is the assessment made that there is a significant risk that the person will abscond — may the time limit of six weeks in Article 28(3) of the [Dublin III] Regulation ... be calculated in such a situation from the day on which the person is detained or is it to be calculated from another time and, if so, when?’

(2) Does Article 28 of the [Dublin III] Regulation preclude, in a situation where an [applicant for international protection] is not in detention at the time when the Member State responsible agrees to take charge of him, the application of national rules which, in Sweden, mean that an alien may not be kept in detention pending [transfer] for longer than two months, if there are no serious reasons for detaining him for a longer period, and if there are such serious reasons, the alien may be kept in detention for a maximum of three months or, if it is probable that [the transfer] will take longer due to a lack of cooperation from the alien or it takes time to obtain the necessary documents, a maximum of twelve months?’

(3) If [a transfer] procedure is recommenced when an appeal or a review no longer has suspensive effect (c.f. Article 27(3) [of the Dublin III Regulation]), does a new time limit of six weeks for implementation of the transfer start to run or is there a deduction to be made, for example, of the number of days the person has already spent in detention after the Member State responsible agreed to take charge of him or take him back?’

(4) Is it of any importance whether the [applicant for international protection] who appealed against a transfer decision has not himself applied for the implementation of the transfer decision to be suspended pending the result of the appeal (c.f. Article 27(3)(c) and (4) [of the Dublin III Regulation])?’

IV. My analysis

30. I shall be addressing the first, third and fourth questions referred in turn, each of which relates to the interpretation of Article 28(3) of the Dublin III Regulation, before finally turning to the second question and addressing the scope of that interpretation in the light of the provisions of the national law at issue.

A. The first question referred

31. By its first question, the referring court is asking the Court, in essence, whether, in a situation such as that at issue, in which the requesting Member State has detained the applicant following acceptance by the Member State responsible of the request that it take charge of or take back that

applicant, Article 28(3) of the regulation must be interpreted as meaning that the period of six weeks granted to those States for carrying out the transfer starts to run from the day on which the applicant is detained. If that is not the case, the referring court then asks the Court to state the time from which the six-week period starts to run.

32. In other words, the referring court is asking the Court to provide clarification on the legal rules to which the person concerned is subject and, in particular, to identify the time limits for implementing the transfer procedure that is to apply to him.

33. The answer to this question cannot be found in the language of Article 28(3) of the regulation, in so far as the legislature did not provide expressly for a situation such as that at issue here.

34. However, the answer can be inferred, on the one hand, from the broad scheme of that provision and, in particular, from the principle laid down by the legislature in the first subparagraph and its application in the third subparagraph and, on the other hand, from the objectives pursued by the Dublin III Regulation.

35. In the first subparagraph of Article 28(3) of the regulation the legislature establishes the principle that detention is to be ‘for as short a period as possible and [is to] be for no longer than *the time reasonably necessary to fulfil the required administrative procedures* with due diligence until the transfer ... is carried out’. (6)

36. The legislature has thus transposed the principle set out in recital 20 of the regulation, that the period during which the applicant is detained must be subject to the principles of necessity and proportionality.

37. Observance of those principles means that restrictions on the applicant’s right to liberty will be imposed within the confines of what is strictly necessary and that the authorities of the Member States concerned will be afforded the material conditions to facilitate their proper implementation of the transfer.

38. The legislature relies on those two principles as it goes on to define, in the second and third subparagraphs of Article 28(3) of the Dublin III Regulation, the time limits it considers reasonable to enable the Member States to complete all the measures necessary, first, for determining the Member State responsible, and secondly, for transferring the applicant where he is already detained.

39. The second subparagraph of Article 28(3) of the regulation applies to the early stage of the procedure prior to the requested Member State’s acceptance of the take charge request. The legislature accordingly determines the time that the requesting Member State has to submit its take charge or take back request to the Member State it deems responsible as well as the time that the latter Member State has to reply to that request.

40. Under that subparagraph, the requesting Member State has a maximum period of one month from the lodging of the application for international protection within which to submit its take charge or take back request to the Member State it deems responsible. The latter Member State then has a two-week period within which to reply. Failure to reply within that period means that responsibility is transferred to the requested Member State.

41. The third subparagraph of Article 28(3) of the regulation, for its part, applies to the later stage of the procedure after the requested Member State’s acceptance of the request to take charge of or take

back the applicant and the adoption of the transfer decision. The legislature expressly addresses the time limit for transferring the applicant from the requesting Member State to ‘the Member State responsible’, which suggests that the latter Member State has indeed been established and has agreed either implicitly or explicitly to take charge of or take back the applicant. The legislature indicates further that the transfer is to be carried out ‘as soon as *practically* possible’, (7) which implies that a prior decision established that the applicant would, in principle, be transferred from the requesting Member State to the Member State responsible.

42. By that provision, the legislature thus determines the time that the requesting Member State has to make the practical arrangements and to implement the transfer for the purpose of which the applicant has been detained.

43. The legislature therefore considers that the period reasonably necessary for carrying out the transfer is no longer than six weeks from the implicit or explicit acceptance of the take charge or take back request or from the moment when the appeal or review no longer has a suspensive effect. In that situation the legislature calculates the six-week period from the time the future implementation of the transfer is agreed upon and certain, and only the practical details of the transfer therefore remain to be determined.

44. Lastly, the fourth subparagraph of Article 28(3) of the Dublin III Regulation establishes the consequences relating to a failure to comply with the time limits mentioned previously. Those time limits impose a strict time-frame for implementation of the transfer procedure for the purpose of which the applicant is detained, since the requesting Member State will be obliged to cease his detention if it does not manage to submit its request or transfer the applicant within the period prescribed, regardless of any grounds that the requesting Member State might cite.

45. What conclusions can be drawn from the broad scheme of these provisions?

46. I note that the time limits laid down in the second and third subparagraphs of Article 28(3) of the regulation are part of a procedure in which the applicant has been detained at a very early stage, that is to say, before the requesting Member State has submitted a request to take charge of or take back the applicant.

47. This is apparent not only from the wording of the second subparagraph of that provision, inasmuch as the legislature determines the period allowed for submitting the request, but also from the wording of the third subparagraph of that provision, inasmuch as the six-week period established by the legislature is to start to run from acceptance of that request. The period accordingly prescribed by the legislature in the third subparagraph of Article 28(3) of that regulation is part of the logical progression of the provisions set out in the preceding subparagraph and is based on the fact that the applicant is already in detention when the take charge or take back request is submitted by the requesting Member State.

48. Consequently, the time limits laid down in the second and third subparagraphs of Article 28(3) of the Dublin III Regulation are not intended to apply in a procedure such as that at issue in which the applicant has been detained after the requested Member State agreed to take charge of him or take him back but before the practical details of his transfer have been arranged.

49. There are, therefore, no specific provisions covering the situation where, because of his detention, the applicant shifts from falling within the scope of Article 29(1) of the regulation — which

provides for a broad scheme and a maximum six-month period within which to transfer an applicant who has not been detained — to being caught by the provisions of Article 28 of the regulation — which establishes specific provisions and special arrangements governing the procedure for transferring detained persons.

50. However, I do not consider that we face a legal vacuum.

51. As I have mentioned, (8) the answer to the question referred by the national court can be found, first, in the general principle that the EU legislature sets out in the first subparagraph of Article 28(3) of the Dublin III Regulation. Accordingly, detention is to be for as short a period as possible and, under the principles of necessity and proportionality, is to be for no longer than the time reasonably necessary to accomplish the measures required for carrying out the transfer.

52. It is then essential to refer to the manner in which the EU legislature actually applied that principle in the third subparagraph of Article 28(3) of that regulation.

53. The legal position of the person concerned here can relatively easily be seen to be comparable to that described in the context of that provision as, in both instances, the individual is detained once the transfer has been agreed between the Member States concerned and the practical arrangements for the transfer may, therefore, be initiated.

54. In the circumstances of this case, I can therefore see no reason to deviate from that six-week period laid down by the legislature in that provision since, as I have stated, (9) the legislature considered this period to be reasonably necessary for the Member States concerned to make the practical arrangements for the transfer, from the time the future implementation of the transfer is agreed upon and certain (either owing to acceptance of the request or because the appeal or review no longer has a suspensive effect), and only the practical details of the transfer therefore remain to be determined. In the circumstances of this case, the requested Member State, namely the Italian Republic, has indeed agreed to take back the applicant.

55. That period must accordingly allow the two Member States concerned to collaborate with a view to carrying out the transfer and, in particular, the requesting Member State to determine the practical details for implementing the transfer, which is carried out in accordance with that State's legislation. It is a period that both Member States are deemed to require in full in order to determine the practical details for carrying out the transfer. (10)

56. By imposing a six-week limit on implementing the transfer, as from the time the future implementation of the transfer is, in principle, agreed upon and certain, the EU legislature therefore weighed the requirements relating to implementation of such a procedure, which may be fraught with practical and organisational difficulties, against the seriousness of the interference, in the form of detention, with the applicant's right to liberty enshrined in Article 6 of the Charter of Fundamental Rights of the European Union.

57. The time from which the six-week period starts to run can only be the date on which the applicant was actually detained. After all, it is clear that, in a situation such as that at issue here, the six-week period cited in the third subparagraph of Article 28(3) of the Dublin III Regulation cannot start to run from acceptance of the take charge or take back request. In such circumstances, the applicant's detention might occur some weeks, or even months, after the acceptance and this time clearly cannot be deducted from the six-week period granted to the Member States concerned for carrying out the transfer.

This period might be reduced to nothing and, in any event, be reduced so that the requesting Member State would not only be unable to implement this transfer but would also be forced to end the detention, thus depriving the procedure established in that provision of its effectiveness.

58. In the light of all those factors, I consequently take the view that the first subparagraph of Article 28(3) of this regulation should be interpreted as meaning that, in a situation such as that at issue where the requesting Member State has detained the applicant for international protection after the requested Member State agreed to take him back, those Member States have six weeks, as from the moment the applicant is detained, within which to implement his transfer.

B. The third and fourth questions referred

59. By its third and fourth questions, which should be examined jointly, the Court is called upon to indicate the manner in which the six-week period granted to Member States for transferring the detained applicant should be calculated where the applicant himself has brought an action against the transfer decision or has requested a review of that decision.

60. In particular, the referring court seeks to ascertain whether Article 28(3) of the Dublin III Regulation must be interpreted as meaning that Member States have a further time limit of six weeks for implementing the applicant's transfer commencing when the appeal or review no longer has suspensive effect or whether there is a deduction to be made of the number of days that the applicant has already spent in detention after the Member State responsible agreed to the request to take charge of or take back the applicant.

61. Moreover, the referring court is uncertain whether, for the purposes of this assessment, the fact that the person concerned has not requested that the competent national court suspend implementation of the transfer decision should be taken into account.

62. First, I take the view that the interpretation requested here of Article 28(3) of the regulation can be taken from the Court's case-law and, specifically, from the considerations it set forth in the judgment of 29 January 2009 in *Petrosian and Others*. ([11](#))

63. In that case, the Court was called upon to interpret the provisions of Article 20(1)(d) of Regulation EC No 343/2003, ([12](#)) under which the transfer of an asylum seeker to the Member State responsible was to be carried out as soon as practically possible, and at the latest within six months of acceptance of the take charge or take back request or of the decision on an appeal or review where there was a suspensive effect.

64. The Court had been asked whether the period for implementation of the transfer mentioned in that provision began to run as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, or only as from the time of the judicial decision ruling on the merits of the procedure.

65. To answer that question, the Court primarily adopted a teleological approach to the provision at issue, focusing on the objective pursued in setting a period within which Member States were to carry out the transfer.

66. The Court pointed out in that regard that the purpose of the six-month period cited in Article 20(1)(d) of Regulation No 343/2003, in view of the practical complexities and organisational difficulties associated with implementing the transfer, was to allow the two Member States concerned to

collaborate with a view to carrying out the transfer and, in particular, the requesting Member State to determine the practical details for implementing the transfer. (13) It consequently considered, in the light of that objective, that the start of the period for implementing the transfer was to be determined in such a manner as to allow the Member States a six-month period to determine the practical details for carrying out the transfer. In those circumstances, that period could begin to run only as from the time the future implementation of the transfer was agreed upon and certain, and only the practical details of the transfer remained to be determined, which meant, therefore, that it began to run only as from the time of the judicial decision ruling on the merits of the procedure.

67. To my mind, that analysis can be applied *mutatis mutandis* to this case.

68. While Article 28(3) of the Dublin III Regulation determines the period for implementing the transfer of a detained person, the objective pursued by the legislature in this context is the same as that mentioned in connection with Article 20(1)(d) of Regulation No 343/2003. As I have already shown, this six-week period granted to the Member States, as from the time of acceptance of the take charge or take back request or as from the moment the appeal against the transfer decision or the review no longer has a suspensive effect, must allow those Member States to determine the practical details for carrying out the transfer of a detained person.

69. There is no question, therefore, of reducing this — already short — period during which the applicant for international protection has been detained.

70. It must be borne in mind that the applicant's detention pending implementation of his transfer must be distinguished from the penalty of imprisonment. This situation is not connected with penalties, where the number of days already served are to be deducted; it concerns an administrative detention measure whose duration, which must be as short as possible, must allow the authorities to carry out the person's transfer.

71. Moreover, the concern is to ensure the effectiveness of Article 28(3) of the regulation. The period for implementing the transfer cannot, therefore, be reduced by the number of days that the applicant was detained after the Member State responsible agreed to take charge of him or take him back. After all, if that were the case, we might see a situation where the period that Member States have for transferring the applicant would be reduced by the amount of time necessary for the national courts to rule on the merits of the transfer decision. In such circumstances, that period might be reduced in such a manner that the Member States concerned might not be able to organise the applicant's transfer within that extremely brief period and would in that case be required, in accordance with the fourth subparagraph of Article 28(3) of the regulation, to end the person's detention.

72. Consequently, the time from which that period begins to run must be determined in such a way that the Member States in effect have six weeks within which to determine the practical details for this transfer; to my mind, it starts to run as from the time when the appeal against the transfer decision or the review of that decision ceases to have suspensive effect, as provided for in the third subparagraph of Article 28(3) of the Dublin III Regulation.

73. Secondly, this reading of the law cannot, in my view, vary depending on whether the transfer decision is automatically suspended, whether it is suspended by the competent national court or tribunal or upon a request from the person concerned.

74. I would point out that, under Article 27(3) of that regulation and for the purposes of guaranteeing

a right to an effective remedy for the applicant against the transfer decision, Member States are to provide in their national law that the appeal or review confers upon the person concerned the right to remain in the requesting Member State pending the outcome of the appeal or review (under (a) of this provision), ‘or’ that the transfer is automatically suspended, a court or tribunal in that case examining within a certain reasonable period of time whether to grant suspensive effect to the appeal or review (under (b)), ‘or’ that the person concerned has the opportunity to request that the implementation of the transfer decision be suspended pending the outcome of the appeal or his request for a review (under (c)).

75. As is apparent from the wording used by the EU legislature in Article 27(3) of the regulation and, in particular, from the coordinating conjunction ‘or’ that the legislature used in subparagraphs (a) and (b) of this provision, these are alternative measures.

76. First, I should point out that, in the third subparagraph of Article 28(3) of the Dublin III Regulation, the legislature sets the six-week period as beginning to run from the moment when the appeal or review no longer has a suspensive effect ‘in accordance with Article 27(3)’ of the regulation. The legislature therefore calculates that period in the same manner, whether the suspension of the transfer decision is automatic, for the purposes of Article 27(3)(a) of the regulation, whether it has been decided by the competent national court or tribunal, in accordance with Article 27(3)(b) of the Dublin III Regulation, or requested by the individual concerned by virtue of the opportunity afforded to him by Article 27(3)(c) of the regulation.

77. Secondly, it is my view that, in the light of the discretion enjoyed by the Member States under Article 27(3) of the regulation, regarding the procedure and the practical details involved in the suspension of the transfer decision, the six-week period mentioned in Article 28(3) of the Dublin III Regulation can therefore only be an objective period which starts to run from the moment the suspensive effect of the appeal against the transfer decision or the review ends, irrespective of the legislative choice made by the Member States.

78. In this case, it is clear from the facts as described by the referring court in its request that a suspension of this kind was decided on by the Immigration Board under Chapter 12, Paragraph 13, of the Law on Aliens.

79. In the light of those considerations, I therefore propose that the Court should rule that the third subparagraph of Article 28(3) of the Dublin III Regulation must be interpreted as meaning that, where the applicant has appealed against a transfer decision or has requested a review of that decision, the Member States concerned have six weeks within which to transfer him, once the appeal against the transfer decision or the review of that decision no longer has a suspensive effect, whether the suspension is automatic, for the purposes of Article 27(3)(a) of the regulation, whether it has been decided by the competent national court or tribunal in accordance with Article 27(3)(b) of the regulation or requested by the individual concerned under Article 27(3)(c) of the regulation.

C. The second question referred for a preliminary ruling

80. By its second question, the referring court is asking the Court of Justice, in essence, whether Article 28 of the Dublin III Regulation must be interpreted as precluding a national law such as that at issue, under which, for the purpose of transferring an applicant for international protection from the requesting Member State to the Member State responsible, a person may be kept in detention for a maximum period of two months where there are no serious reasons for detaining him for a longer period, for a maximum period of three months where there are such reasons and, lastly, for a maximum

period of twelve months where it is probable that implementation of the transfer will take longer in the absence of cooperation from the applicant or the documents necessary for implementing the procedure.

81. The answer to this question can be derived, primarily, from the interpretation of the wording of Article 28(3) of the regulation that I adopted in the course of examining the first question referred.

82. For the reasons set out above, I take the view that Article 28(3) of the regulation must, in a situation such as that at issue, be interpreted as meaning that the Member States have a maximum period of six weeks, starting from the applicant's detention, within which to transfer him to the Member State responsible.

83. A national law such as that at issue, under which an applicant for international protection may be detained for longer than six weeks and up to a maximum period of twelve months, appears, to my mind, to be entirely at odds with the interpretation that should be adopted of a provision that is both mandatory and directly applicable, such as Article 28(3) of the Dublin III Regulation, and therefore has the binding force associated with EU regulations.

84. Secondly, by allowing detention to be extended on vague grounds for up to a maximum of twelve months 'where it is *probable* that implementation will take longer due to a lack of cooperation from the alien or it takes time to obtain the necessary documents', (14) the provisions of this national law are, in my view, not only contrary to the principles of necessity and proportionality on which the detention of the applicant for international protection must be based but also fail to meet the requirements of clarity and foreseeability essential to the adoption of measures restricting liberty.

85. I would point out that, in Article 28 of the regulation, the EU legislature seeks to ensure that the restrictions imposed on the exercise of the applicant's right to liberty will apply within the limits of what is strictly necessary to enable the Member States concerned to implement his transfer.

86. Under Article 28(2) of the regulation, the detention of an applicant for international protection is authorised on one ground only, relating to the applicant's conduct, the authorities being required to show that he presents a significant risk of absconding.

87. Moreover, the detention may not be extended beyond the periods expressly laid down by the second and third subparagraphs of Article 28(3) of the Dublin III Regulation. Those periods set a strict limit on the implementation of the procedure. The EU legislature provides no reason capable of justifying an extension of those periods and the requesting Member State will ultimately have no other choice than to end the applicant's detention if it cannot, in the period prescribed, submit its take charge or take back request or transfer the applicant.

88. The national legislation clearly deviates from those principles.

89. First, the legislation allows the detention to be extended.

90. Secondly, the legislation bases the extension of that measure involving deprivation of liberty on the existence of a risk or chance ('where it is *probable* that' (15)), which is clearly contrary to the requirement of foreseeability and does not guarantee the necessary legal certainty for the individual detained.

91. Thirdly, the legislation allows the detention of the applicant for international protection to be extended for 'serious reasons' which are not specified or on other grounds that I do not find convincing.

92. By allowing the detention to be extended up to a maximum period of twelve months, where it is ‘*probable* that the implementation of a transfer decision will take longer due to a lack of cooperation from the alien or it takes time to obtain the necessary documents’, (16) the legislation is in conflict with the grounds on which the detention may be ordered pursuant to Article 28(2) of the Dublin III Regulation.

93. I observe that the objective of detaining the applicant for international protection is to facilitate the administrative and practical measures for his transfer, by guaranteeing, in particular, that he will remain at the disposal of the competent authorities and will not jeopardise the implementation of the transfer procedure. Therefore, from the moment the applicant is detained for the purpose of ensuring the proper implementation of the transfer, any claim that the applicant is failing to cooperate, even though he is deprived of his liberty, cannot, in my mind, serve to justify extending the detention.

94. Furthermore, as regards the ground that the documents necessary for carrying out the transfer are not available, it should be noted that the EU legislature expressly stated in Article 9(1) of Directive 2013/33 that ‘[d]elays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention’.

95. In view of these considerations, I suggest therefore that the Court should rule that Article 28(3) of the Dublin III Regulation must be interpreted as precluding a national law such as that at issue under which, for the purpose of transferring an applicant for international protection from the requesting Member State to the Member State responsible, a person may be kept in detention for a maximum period of two months where there are no serious reasons for detaining him for a longer period, three months where there are such reasons and, lastly, twelve months where it is probable that implementation of the transfer will take longer in the absence of cooperation from the applicant or the documents necessary for implementing the procedure.

V. Conclusion

96. In the light of the foregoing considerations, I propose that the Court should answer as follows the questions referred by the Kammarrätten i Stockholm — Migrationsöverdomstolen (Administrative Court of Appeal for Immigration Matters, Stockholm) (Sweden):

- (1) The first subparagraph of Article 28(3) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that, in a situation such as that at issue where the requesting Member State has detained the applicant for international protection after the requested Member State agreed to take him back, those Member States have six weeks, as from the moment the applicant is detained, within which to implement his transfer.
- (2) The third subparagraph of Article 28(3) of Regulation No 604/2013 must be interpreted as meaning that, where the applicant has appealed against a transfer decision or has requested a review of that decision, the Member States concerned have six weeks within which to transfer the applicant for international protection, once the appeal against the transfer decision or the review of that decision no longer has a suspensive effect, whether the suspension is automatic, for the purposes of Article 27(3)(a) of the regulation, whether it has been decided by the competent

national court or tribunal in accordance with Article 27(3)(b) of the regulation or requested by the individual concerned under Article 27(3)(c) of that regulation.

- (3) Article 28(3) of Regulation No 604/2013 must be interpreted as precluding a national law such as that at issue under which, for the purpose of transferring an applicant for international protection from the requesting Member State to the Member State responsible, a person may be kept in detention for a maximum period of two months where there are no serious reasons for detaining him for a longer period, three months where there are such reasons and, lastly, twelve months where it is probable that implementation of the transfer will take longer in the absence of cooperation from the applicant or the documents necessary for implementing the procedure.

1 Original language: French.

2 Regulation 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’.

3 OJ 2013 L 180, p. 96.

4 Article 2(n) of the regulation defines the ‘risk of absconding’ as meaning ‘the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond’.

5 SFS 2005, No 716, the ‘Law on Aliens’.

6 Emphasis added.

7 Emphasis added.

8 See point 34 of this Opinion.

9 See point 43 of this Opinion.

10 See judgment of 29 January 2009, *Petrosian and Others* (C-19/08, EU:C:2009:41, paragraphs 40 and 44).

11 C-19/08, EU:C:2009:41.

12 Council Regulation of 18 February 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, which was repealed by the Dublin III Regulation.

[13](#) See judgment of 29 January 2009, *Petrosian and Others* (C-19/08, EU:C:2009:41, paragraph 40).

[14](#) See Chapter 10, Paragraph 4, second subparagraph, of the Law on Aliens. Emphasis added.

[15](#) See Chapter 10, Paragraph 4, second subparagraph, of the Law on Aliens. Emphasis added.

[16](#) See Chapter 10, Paragraph 4, second subparagraph, of the Law on Aliens. Emphasis added.