Case C-790/23 [Qassioun] [i]

Request for a preliminary ruling

Date lodged:

21 December 2023

Referring court:

Korkein hallinto-oikeus (Finland)

Date of the decision to refer:

18 December 2023

Applicant:

X

Respondent:

Maahanmuuttovirasto (Finnish Immigration Service)

KORKEIN HALLINTO-OIKEUS
(SUPREME ADMINISTRATIVE COURT)

Interim decision …

18 December 2023 …

…

Subject matter	Request for a preliminary ruling to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU)
Applicant	X, Syria
Respondent	Maahanmuuttovirasto (Finnish Immigration Service)
Contested decision	Helsingin hallinto-oikeus (Administrative

[i] The present case has been given a fictitious name which does not correspond to the real name of any party to the proceedings.

Court, Helsinki)
15 December 2022 …

Subject matter of the proceedings and relevant facts

(1) *X* ('the applicant') is a Syrian national from Damascus. She is an unmarried adult woman, an Arab by ethnic origin and a Sunni Muslim by religion. Her mother and her minor sisters, with whom she travelled from Syria to Denmark and later to Finland, are currently in Finland. According to the information that she has provided, the applicant has no contact with her father. She has been diagnosed, inter alia, with post-traumatic stress disorder and a major depressive disorder without psychotic symptoms.

(2) The applicant first applied for international protection in Denmark on 1 July 2016. On 29 August 2016, Denmark issued her a temporary residence document pursuant to Paragraph 7(3) of the Danish Law on foreign nationals on the basis of the need for protection. The applicant's residence document was valid from 29 August 2016 until 12 November 2020.

(3) By decision of 17 November 2020, the *Danish Immigration Service* decided of its own motion, pursuant to Paragraph 11(2) of the Danish Law on foreign nationals, not to renew the residence document on the ground that the basis for it no longer existed. The *Danish Refugee Appeals Board* [1] did not amend the authority's decision by order of 2 July 2021. The applicant was required by the order of the Appeals Board to leave the country no later than one month after that decision was adopted. According to the decision, the applicant may be returned to Syria if she does not leave the country voluntarily. However, the order states that the Danish Government has decided not to return her to Syria for the time being for foreign policy reasons. The order stipulates that the applicant may be barred from entering all EU Member States (other than Ireland) and all Schengen States if she does not comply with her obligation to leave the country.

(4) The *applicant* applied international protection in Finland on 27 July 2021. As grounds for her application, the applicant cited the threat of forced marriage. In addition, photos were taken of the applicant during a demonstration against the Syrian regime in Denmark and sent to Syria.

(5) On 29 July 2021, the *Finnish Immigration Service* submitted a take-back request to Denmark pursuant the Dublin III Regulation. [2] On 5 August 2021, Denmark granted that request pursuant to Article 18(1)(d) thereof.

1 Flygtningenævnet.

2 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

(6) By decision of 12 November 2021, the Finnish Immigration Service rejected the applicant's application for international protection as inadmissible and did not grant her a residence document. The Finnish Immigration Service decided to remove the applicant to Denmark and banned her from entering Finland for two years.

(7) On 2 February 2022, the Finnish Immigration Service informed Denmark that the transfer period expiring on 5 February 2022 had been extended until 5 February 2023 pursuant Article 29(2) of the Dublin III Regulation after the applicant had absconded. The applicant failed to appear for a coronavirus test booked with a view to her removal and was reported as missing. She subsequently returned to the reception centre on 4 February 2022.

(8) By the contested order, the *Helsingin hallinto-oikeus* (Administrative Court, Helsinki) dismissed the applicant's appeal.

(9) The *applicant* has applied to the *Korkein hallinto-oikeus* for leave to appeal against the decision of the Administrative Court and seeks by her appeal the annulment of the decisions of the Administrative Court and the Finnish Immigration Service. She claims that the case should be referred back to the Finnish Immigration Service, primarily for the purpose of granting international protection or a residence document and, in the alternative, for the purpose of examining the application for international protection. The applicant further requests that the enforcement of the removal be prohibited and that an oral hearing be held.

(10) On 13 January 2023, the *Korkein hallinto-oikeus* issued an interim order … prohibiting the enforcement of the applicant's removal pending its decision on whether or not to allow the appeal or until otherwise ordered.

The main arguments of the parties

(11) The *applicant* claims that the decision of the Finnish Immigration Service to reject her application for international protection as inadmissible infringes EU law, at least with regard to subsidiary protection. Denmark does not apply either the Qualification Directive [3] or the Procedures Directive. [4] Her expulsion to Denmark means that her application for

examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast; known as 'the Dublin III Regulation').

3 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 (recast).

4 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 (recast).

international protection will not be examined at any stage in terms of subsidiary protection. In the light of paragraphs 52 and 55 of the judgment of the Court of Justice in Case C-497/21, that is contrary to EU law.

(12) The applicant also claims that she fears a further expulsion from Denmark to Syria. According to the administrative practice in relation to decisions of the Finnish Immigration Service and the case-law of the European Court of Human Rights, a return to Syria constitutes treatment in breach of Article 3 of the European Convention on Human Rights. In addition, the applicant fears that she will have to live in Denmark for an indefinite period in inhumane conditions in a deportation centre where her personal rights are severely restricted. Those circumstances constitute a systematic flaw in the Danish reception system, at least for Syrians, considering that no one can be returned to Syria. Removal of the applicant to Denmark would breach the *principle of non-refoulement*.

(13) In any event, the transfer period must, however, be deemed to have expired as the applicant did not abscond and the period should therefore not have been extended. Furthermore, the transfer of the applicant was not carried out as soon as it was practically possible.

(14) The *Finnish Immigration Service* contends that Denmark's special status in the EU asylum system does not affect the application of the Dublin III Regulation. In that regard, the Finnish Immigration Service refers to paragraph 49 the judgment of the Court of Justice in Case C-497/21. The Finnish Immigration Service further argues that the Dublin system is based on the principle of mutual trust. The fact that identical decisions are not adopted in the Member States cannot be regarded as a reason to deviate from the principle of mutual trust. Neither the Court of Justice nor the European Court of Human Rights has found that the Danish asylum or reception system has systematic flaws. Furthermore, the Finnish Immigration Service finds that the applicant deliberately avoided the transfer by failing to appear for the coronavirus test. She had been notified of the test date and did not give the authorities a valid reason for her absence. The Finnish Immigration Service had grounds to believe that the applicant had absconded. If the transfer period is still running, responsibility does not pass to the requesting Member State simply because the transfer was not carried out immediately.

Provisions of national Finnish law

(15) Under Paragraph 103(2) of the Ulkomaalaislaki (301/2004) [5] ((Law 301/2004 on foreign nationals), an application for international protection may be rejected as inadmissible if the applicant can be transferred to another State which is responsible for examining the asylum application under the Dublin III Regulation.

5 Finlex: https://www.finlex.fi/fi/laki/ajantasa/2004/20040301.

(16) Paragraph 147 of the Law on foreign nationals provides that no one may be expelled, removed or returned as a result of a refusal of entry to a territory where he or she could be subjected to the death penalty, torture, persecution or other inhuman treatment, or to a territory from which he or she could be taken to such a territory.

(17) Under Paragraph 148(2) of the Law on foreign nationals, a foreign national who has entered Finland without a residence document may also be expelled if a visa or residence document would be required for his or her stay in Finland but he or she has not applied for, or been granted, such visa or permit.

Provisions of national Danish law

(18) Paragraph 7 of the Danish Law on foreign nationals [6] ('Udlændingelov') stipulates:

'(1)| A foreign national shall be issued a residence document for temporary residence upon application if he or she falls under the Refugee Convention of 28 July 1951.

(2) A foreign national shall be issued a residence document for temporary residence upon application if he or she is threatened with the death penalty, torture or inhuman or degrading treatment or punishment upon return to his or her home country. An application pursuant to the first sentence shall also be deemed to be an application for a residence document for temporary residence pursuant to subparagraph 1.

(3) In the cases referred to in subparagraph 2, in which the threat of the death penalty or torture or inhuman or degrading treatment or punishment is based on a particularly serious situation in the home country characterised by arbitrary violence and attacks on the civilian population, a residence document for temporary residence shall be issued upon application. An application pursuant to the first sentence shall also be deemed to be an application for a residence document pursuant to subparagraphs 1 and 2.

(4) Subparagraphs 1 to 3 shall apply *mutatis mutandis* to a foreign national who is serving a custodial sentence or is subject to an order depriving him or her of liberty under the rules laid down pursuant to Paragraph 1a (2) of the Lov om fuldbyrdelse af straf m.v. (Law on the execution of sentences) or who is accommodated under the rules laid down pursuant Paragraph 1a(4) of the Hjemrejselov (Law on repatriation).

[6] Udlændingeloven (LBK nr 1079 af 10/08/2023), https://www.retsinformation.dk/eli/lta/2023/1079.

(5) A residence document under subparagraphs 1 to 3 may be refused if the foreign national has already obtained protection in another country or if he or she has close ties to another country where he or she can be assumed to be able obtain protection. A decision pursuant to first sentence may be made regardless of whether the foreign national falls under subparagraphs 1 to 3.'

(19) Paragraph 11(2) of the Danish Law on foreign nationals provides:

'(2) A temporary residence document issued with the possibility of permanent residence shall be extended upon application unless there are grounds for revoking the residence document pursuant to Paragraph 19. The Udlændingestyrelsen (Immigration Office) shall take a decision of its own motion to extend a residence document issued for temporary residence pursuant to Paragraphs 7 and 8(1) and (2) if the grounds therefor still exist. Paragraph 19(7) and (8) shall apply *mutatis mutandis* to a decision to extend a residence document adopted pursuant to Paragraph 9(1)(1) or Paragraph 9c(1) on the basis of family ties to a foreign national who has been issued a residence document pursuant to Paragraph 7 or Paragraph 8(1) or (2).'

(20) The third sentence of Paragraph 53a(2) of the Danish Law on foreign nationals provides:

'If the Udlændingestyrelsen (Immigration Office) refuses to issue a residence document under Paragraph 7 to a foreign national who is in Denmark or is serving a custodial sentence or is subject to an order depriving him or her of liberty under the rules laid down pursuant to Paragraph 1a(2) of the Lov om fuldbyrdelse af straf m.v. (Law on the execution of sentences) or who is accommodated under the rules laid down pursuant Paragraph 1a(4) of the Hjemrejselov (Law on repatriation), takes a decision to extend or to revoke residence a permit issued pursuant to Paragraphs 7 or 8(1) or (2), or decides pursuant to Paragraph 32b or Paragraph 49a that a removal does not infringe Paragraph 31, the decision shall be deemed to be an appeal to the Flygtningenævnet (Refugee Appeals Board).'

Relevant provisions of European Union law

Denmark's special position

(21) Under Article 1(1) of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), Denmark is not to take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the TFEU. The unanimity of the members of the Council, with the exception of the representative of the Government of Denmark, is to be necessary for the decisions of the Council which must be adopted unanimously.

(22) Under Article 2 of the protocol, none of the provisions of Title V of Part Three of the TFEU, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice of the European Union interpreting any such provision or measure or any measure amended or amendable pursuant to that Title is to be binding upon or applicable in Denmark; and no such provision, measure or decision is in any way to affect the competences, rights and obligations of Denmark; and no such provision, measure or decision is in any way to affect the Community or Union nor form part of Union law as they apply to Denmark. In particular, acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon which are amended are to continue to be binding upon and applicable to Denmark unchanged.

(23) In Articles 2 and 3 of the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention (OJ 2006 L 66, p. 38; 'the Agreement between the EU and Denmark') agreements were reached on the application of the provisions or amendments to the provisions of the Dublin II Regulation in the relationship between the EU and Denmark.

Dublin III Regulation

(24) According to recital 10 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, in order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum, in particular with 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, the scope of that regulation encompasses applicants for subsidiary protection and persons eligible for subsidiary protection.

(25) Article 2(b) of the regulation provides that for the purposes of that regulation 'application for international protection' means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU.

(26) Under Article 3(1) of the regulation, Member States are to 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 is to be examined by a single Member State, which is to be the one which the criteria set out in Chapter III indicate is responsible.

(27) Article 18(1)(d) of the regulation provides that the Member State responsible under that regulation is to be obliged to 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.

(28) Under the first paragraph of Article 29(1) of the regulation, the transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible is to 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).

(29) Under Article 29(2), where the transfer does not take place within the six months' time limit, the Member State responsible is to be relieved of its obligations to take charge or to take back the person concerned and responsibility is then to 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.

Qualification Directive

(30) According to recital 51 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, in accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of that directive and is not bound by it or subject to its application.

(31) Under Article 2(h), for the purposes of that directive 'application for international protection' means a request made by a third-country national or a stateless person for protection from a Member State, who can be

understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of that directive, that can be applied for separately.

Procedures Directive

(32) According to recital 43 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive 2011/95/EU, except where that directive provides otherwise, in particular where it can reasonably be assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an application for international protection where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country.

(33) According to recital 59 of the directive, in accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(34) Article 33(1) of the directive provides that 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 that article.

Case-law of the Court of Justice

(35) On 22 September 2022, the Court of Justice delivered its judgment in Case C-497/21, *SI, TL, ND, VH, YT and HN* (EU:C:2022:721). That case concerned the conditions for inadmissibility of applications for international protection when the applicants' previous applications for international protection in Denmark had been refused. The Court of Justice held that it is true that, under Article 2 of the Agreement between the European Union and Denmark, the Dublin III Regulation is also implemented by the Kingdom of Denmark. Accordingly, in a situation, such as that at issue in the main proceedings, where the persons concerned have made an application for international protection in the Kingdom of Denmark, another Member State to which those persons concerned have made a further application for international protection may, if the conditions referred to in point (c) or (d) of Article 18(1) of that regulation are satisfied, request the Kingdom of

Denmark to take back those persons concerned (see paragraph 49 of that judgment).

(36) According to that judgment, from this it cannot be inferred that, where such taking back is not possible or does not occur, the Member State concerned is entitled to regard the further application for international protection which that person has made to its own bodies as a 'subsequent application' within the meaning of Article 33(2)(d) of Directive 2013/32. Even if applications for refugee status made to the Kingdom of Denmark are examined by the authorities of that Member State on the basis of criteria which are in substance identical to those laid down in Directive 2011/95, that fact cannot justify the rejection, even if limited to the part concerning the grant of refugee status, of an application for international protection made to another Member State by an applicant whose previous application seeking that status was rejected by the Danish authorities (see paragraphs 50 and 52 of that judgment and the case-law cited).

(37) According to that judgment, Article 33(2)(d) of Directive 2013/32, read in conjunction with Article 2(q) thereof and Article 2 of the Protocol on the position of Denmark, must be interpreted as precluding legislation of a Member State other than the Kingdom of Denmark which provides for the possibility of rejecting as inadmissible, in whole or in part, an application for international protection within the meaning of Article 2(b) of that directive, which has been made to that Member State by a national of a third country or a stateless person whose previous application for international protection, made to the Kingdom of Denmark, has been rejected by the latter Member State (see paragraph 55 of that judgment).

(38) In its judgment of 26 July 2017, *Mengesteab*, (C-670/16, (EU:C:2017:587), the Court of Justice examined the term 'application' within the meaning of Article 20(2) of the Dublin III Regulation. In that connection, the Court of Justice held that a written document, prepared by the authorities, cannot be regarded as a form submitted by the applicant. For her part, the advocate general stated in her opinion in that case that the wording of the definition of application for international protection is sufficiently broad to encompass both an informal request for international protection made to a Member State's authorities (such as the police, border guards, immigration authorities or the personnel of a reception centre) and a formal application lodged with the competent authorities designated under Article 35(1) of the Dublin III Regulation (see paragraph 78 of the judgment and paragraph 135 of the opinion).

Need for a preliminary ruling

(39) In the case pending before the Korkein hallinto-oikeus, the issue to be decided is whether the Finnish Immigration Service was permitted to adopt a

decision to transfer the applicant to Denmark under the Dublin III Regulation.

(40) The applicant claims that her transfer to Denmark would constitute a breach of the principle of non-refoulement. In addition, she argues that the Danish asylum procedure and reception conditions display systematic flaws, at least with regard to Syrian applicants. On the basis of the information obtained, the Korkein hallinto-oikeus takes the view that there is no reason to request a preliminary ruling on those points. Instead, in the present case it is necessary to examine, by way of a request for a preliminary ruling, whether the requirements for the application of a take-back procedure laid down in Article 18(1)(d) of the Dublin III Regulation are satisfied.

(41) Under Article 18(1)(d) of the Dublin III Regulation, the Member State responsible for examining an application (in this case Denmark) is to be obliged to 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.

(42) The Korkein hallinto-oikeus notes that, with regard to Title V of Part Three of the TFEU, which covers, inter alia, policy on border controls, asylum and immigration, Denmark has a special status under the Protocol on the position of Denmark, which distinguishes it from the other Member States. Under the agreement between the EU and Denmark, Denmark applies the Dublin III Regulation for its part, but the agreement does not cover the Qualification Directive or the Procedures Directive, and they are not applicable in Denmark. Thus, the national procedures applied in Denmark for examining applications for international protection differ in part from those of the other Member States. It is therefore necessary to examine how the phrase ‘application has been rejected’ in Article 18(1)(d) of the Dublin III Regulation is to be interpreted in the present case.

(43) It is common ground in the present case that the applicant applied for international protection in Denmark in 2016. At that time, she was issued a temporary residence document pursuant to Paragraph 7(3) of the Danish Law on foreign nationals. Under that provision, a temporary residence document is to be issued upon application in cases where the threat of the death penalty, torture or inhuman or degrading treatment or punishment is based on a particularly serious situation in the country of origin characterised by arbitrary violence and attacks on the civilian population. It is also common ground that the Danish Immigration Service decided of its own motion not to renew the applicant’s temporary residence document after it had expired.

(44) With regard to the definition of an application for international protection in Article 2([h]) of the Dublin III Regulation, reference is made to Article 2([b]) of the Qualification Directive. That provision defines an

application for international protection as a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status. The Korkein hallinto-oikeus takes the view that an 'application' basically means a request by a person for international protection which is made to an authority.

(45) In the present case, the applicant submitted her application for international protection to the Danish authorities in 2016. At that time, the applicant was granted an at least partially favourable decision in that she was issued a temporary residence document on the basis of the need for protection. On the other hand, a decision which is unfavourable from the applicant's point of view, that is to say one rejecting her application, was adopted in proceedings initiated of the authority's own motion after the temporary residence document expired and not as a result of a new application by the applicant. The Korkein hallinto-oikeus is uncertain as to whether the present situation constitutes a rejection of an application within the meaning of Article 18(1)(d) [of the Dublin III Regulation].

(46) The applicant claims that, in any event, the transfer period has expired and responsibility for examining the application has passed to Finland. The Korkein hallinto-oikeus takes the view, first, that, in the light of the findings in the case and the judgment of the Court of Justice of 19 March 2019, *Jawo*, (C-163/17, EU:C:2019:218), the view of the Finnish Immigration Service that the applicant had absconded from the authorities within the meaning of Article 29(2) of the Dublin III Regulation was well founded. The Korkein hallinto-oikeus also points out that responsibility for examining the application does not pass to the Member State requesting take-back before the expiry of the transfer period merely because a prior transfer would have been possible in practice. According to the preliminary assessment of the Korkein hallinto-oikeus, if the take-back procedure provided for in the Dublin III Regulation applies in the applicant's case, the transfer period had therefore not yet expired. After the Korkein hallinto-oikeus issued an interim order on 13 January 2023 prohibiting the enforcement of the removal, the transfer period was suspended.

(47) It is apparent from the judgment of the Court of Justice in Case C-497/21 that the Danish derogation from the European asylum system may, in certain circumstances, mean that another Member State cannot reject as inadmissible an application for international protection made by an asylum seeker where a previous application in Denmark has been rejected. At this stage of the proceedings, the Korkein hallinto-oikeus finds provisionally that, if the take-back procedure provided for in the Dublin III Regulation does not apply in the applicant's case, there are no grounds for rejecting as inadmissible the applicant's application for international protection in Finland.

(48) The Korkein hallinto-oikeus has given the applicant and the Finnish Immigration Service the opportunity to comment on the draft order for reference.

(49) In its observations, *Finnish Immigration Service* takes the view that the applicant's application should be deemed to have been rejected by the Danish decision of 29 August 2016 within the meaning of Article 18(1)(d) of the Dublin III Regulation. The residence document issued to the applicant by Denmark on the basis of the need for protection did not constitute international protection as defined by EU law, and therefore the applicant fell within the scope of the take-back procedure under the Dublin III Regulation for the entire period.

(50) In her observations, the *applicant* takes the view that the decision relevant to the dispute is the decision adopted by the Danish authority on 17 November 2020, by which the residence document granted to the applicant was not renewed. In any event, the applicant is of the view that the Danish authorities did not reject the application by the decision of 29 August 2016 within the meaning of Article 18(1)(d) of the Dublin III Regulation since Denmark is bound by the regulation. On account of its special position, Denmark does not de facto apply the Dublin III Regulation in its entirety. Consequently, when Denmark applies the Dublin III Regulation, the term 'application for international protection' must refer to Denmark's national forms of protection and asylum.

Interim order of the Korkein hallinto-oikeus requesting a preliminary ruling from the Court of Justice of the European Union

(51) The Korkein hallinto-oikeus has decided to stay the proceedings and request a preliminary ruling from the Court of Justice pursuant to Article 267 TFEU. The reference for a preliminary ruling is necessary in order to determine the case pending before the Korkein hallinto-oikeus.

Question referred

(52) The Korkein hallinto-oikeus refers the following question to the Court of Justice for a preliminary ruling pursuant to Article 267 TFEU:

Must Article 18(1)(d) 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 be interpreted as meaning that the rejection of an application, within the meaning of that provision, covers a situation in which a temporary residence document based on the need for protection previously granted to the person concerned in Denmark on his or her application was not renewed, where the decision not to renew

was not taken on the application of that person but by the authority concerned of its own motion?

(53) After receiving a preliminary ruling from the Court of Justice on the above question, the Korkein hallinto-oikeus will deliver a final judgement in the case.

… …