

JUDGMENT OF THE COURT (Grand Chamber)

1 August 2022 (\*)

(Reference for a preliminary ruling – Regulation (EU) No 604/2013 – Criteria and mechanisms for determining the Member State responsible for examining an application for international protection – Article 8(2) and Article 27(1) – Unaccompanied minor with a relative legally present in another Member State – Refusal by that Member State of that minor’s take charge request – Right to an effective remedy of that minor or of that relative against the refusal decision – Articles 7, 24 and 47 of the Charter of Fundamental Rights of the European Union – Best interests of the child)

In Case C-19/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Den Haag zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem, Netherlands), made by decision of 12 January 2021, received at the Court on 13 January 2021, in the proceedings

**I,**

**S**

v

**Staatssecretaris van Justitie en Veiligheid,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, K. Jürimäe, C. Lycourgos, I. Jarukaitis and N. Jääskinen, Presidents of Chambers, M. Ilešič, J.-C. Bonichot (Rapporteur), M. Safjan, A. Kumin, M.L. Arastey Sahún, M. Gavalec, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: N. Emiliou,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 January 2022,

after considering the observations submitted on behalf of:

- I and S, by N.C. Blomjous and A. Hoftijzer, advocaten,
- the Netherlands Government, by K. Bulterman, H.S. Gijzen and P. Huurnink, acting as Agents,
- the Belgian Government, by M. Jacobs and M. Van Regemorter, acting as Agents,
- the Greek Government, by M. Michelogiannaki, acting as Agent,
- the French Government, by A.-L. Desjonquères and D. Dubois, acting as Agents,
- the Swiss Government, by S. Lauper, acting as Agent,

– the European Commission, by A. Azema, C. Cattabriga and G. Wils, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 7 April 2022,  
gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31; 'the Dublin III Regulation').

2 The request has been made in proceedings between I and S, Egyptian nationals, and the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) ('the State Secretary') concerning the latter's refusal to grant a request from the Greek authorities to take charge of I.

### Legal context

3 Recitals 4, 5 9, 13, 14, 16, 19 and 39 of the Dublin III Regulation state:

'(4) The ... conclusions [of the special meeting of the European Council in Tampere on 15 and 16 October 1999] also stated that the [Common European Asylum System (CEAS)] should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

...

(9) In the light of the results of the evaluations undertaken on the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying [Council Regulation (EC) No 343/2003 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 (OJ 2003 L 50, p. 1)], while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system. ...

...

(13) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the [Charter], the best interests of the child should be a primary consideration of Member States when applying this Regulation. ...

(14) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the [Charter], respect for family life should be a primary consideration of Member States when applying this Regulation.

...

- (16) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should become a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion.

...

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

...

- (39) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the [Charter]. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the [Charter] as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.'

4 Article 1 of that regulation, entitled 'Subject matter', provides:

'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").'

5 Article 2 of that regulation, entitled 'Definitions', states:

'For the purposes of this Regulation:

...

- (b) "application for international protection" means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)];

...

- (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 [of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection] and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;

...

(g) “family members” means, in so far as the family already existed in the country of origin, the following members of the applicant’s family who are present on the territory of the Member States:

...

- when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

...

(h) “relative” means the applicant’s adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

(i) “minor” means a third-country national or a stateless person below the age of 18 years;

(j) “unaccompanied minor” means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

...’

6 Article 5 of that regulation, entitled ‘Personal interview’, provides:

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

...

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

7 Article 6 of the Dublin III regulation, entitled ‘Guarantees for minors’, provides:

‘(1) The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

...

(3) In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

...

(4) For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

...’

8 Chapter III of that regulation, entitled ‘Criteria for determining the Member State responsible’, comprises Articles 7 to 15 thereof.

9 Article 8 of that regulation, entitled ‘Minors’, provides, in paragraphs 1 to 4:

‘(1) Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

(2) Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

(3) Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

(4) In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.’

10 Article 9 of the regulation, entitled ‘Family members who are beneficiaries for international protection’, states:

‘Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.’

11 Article 10 of the regulation, entitled ‘Family members who are applicants for international protection’, states:

‘If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.’

12 Article 21 of that regulation, entitled ‘Submitting a take charge request’, provides, in paragraph 1:

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

...

Where the request to take charge of an applicant is not made within the periods laid down in the first [subparagraph], responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.’

13 Article 27 of the Dublin III Regulation, entitled ‘Remedies’, provides, in paragraph 1 thereof:

‘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.’

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

14 On 23 December 2019, I, an Egyptian national, submitted an application for international protection in Greece when he was still a minor. When making his application, he indicated that he wished to be united with S, his uncle, also an Egyptian national, who was legally resident in the Netherlands and who had given his consent in that regard.

15 On 10 March 2020, the Greek authorities submitted a request to the Netherlands authorities to take charge of I, pursuant to Article 8(2) of the Dublin III Regulation, in view of the fact that a relative of the person concerned, within the meaning of Article 2(h) of that regulation, was legally present in the Netherlands and was able to care for him.

16 On 8 May 2020, the State Secretary refused that request on the ground that I’s identity and, accordingly, the alleged family relationship with S could not be established.

17 On 28 May 2020, the Greek authorities submitted a request for re-examination pursuant to Article 5(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Regulation No 343/2003 (OJ 2003 L 222, p. 3). That request for re-examination was rejected on 11 June 2020.

18 I and S also submitted an objection to the Secretary of State against the decision refusing the take charge request.

19 On 26 June 2020, the State Secretary rejected that objection as manifestly inadmissible on the ground that the Dublin III Regulation does not provide for the possibility for applicants for international protection to challenge a decision refusing a take charge request.

20 On the same day, I and S brought an action for annulment of that decision before the rechtbank Den Haag zittingsplaats Haarlem (District Court, The Hague, sitting at Haarlem, Netherlands), in which they claimed, in essence, that they each had the right to bring such judicial proceedings under Article 27(1) of the Dublin III Regulation.

21 In those circumstances, the rechtbank Den Haag, zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 27 of the [Dublin III Regulation] be interpreted as requiring the requested Member State, whether or not in conjunction with Article 47 of the Charter, to provide the applicant residing in the requesting Member State and seeking transfer pursuant to Article 8 (or Article 9 or 10) of the [Dublin III Regulation], or the applicant’s family member referred to in Article 8, 9 or 10 of the [Dublin III Regulation], with an effective remedy before a court or tribunal against the refusal of the request to take charge?

(2) If the answer to the first question is in the negative and Article 27 of the [Dublin III Regulation] does not provide a basis for an effective remedy, must Article 47 of the Charter – read in conjunction with the fundamental right to family unity and the best interests of the child (as laid down in Articles 8 to 10 and recital 19 of the [Dublin III Regulation]) – be interpreted as requiring the requested Member State to provide the applicant residing in the requesting Member State and seeking transfer pursuant to [Articles 8 to 10] of the [Dublin III Regulation] or the [relative] of the

applicant referred to in [that provision], with an effective remedy before a court or tribunal against the refusal of the request to take charge?

- (3) If Question [1] or Question [2] (second part) is answered in the affirmative, in what way and by which Member State should the requested Member State's decision to refuse the request and the right to appeal against it be communicated to the applicant or the applicant's [relative]?'

### **Procedure before the Court**

22 The referring court requested that the present case be dealt with under the urgent preliminary ruling procedure pursuant to Article 107 et seq. of the Rules of Procedure of the Court of Justice. On 27 January 2021, the Court decided, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, that there was no need to grant that request on the ground, inter alia, that I, who had reached the age of majority on 5 November 2020, was not deprived of his liberty.

23 However, on 9 September 2021, the President of the Court decided to give this case priority treatment, pursuant to Article 53(3) of the Rules of Procedure.

### **Consideration of the questions referred**

#### *Preliminary observations*

24 In its first and second questions, the referring court refers to an applicant who wishes to be transferred under Article 8 of the Dublin III Regulation or Articles 9 and 10 thereof and to a relative who it considers to be covered by those articles.

25 However, it is clear from the order for reference that the take charge request at issue in the main proceedings concerns an applicant for international protection who is a third-country national who resides in the requesting Member State and who, on the date he submitted his application, was an unaccompanied minor, within the meaning of Article 2(j) of the Dublin III Regulation, that date being decisive for classifying an applicant as a 'minor' for the purposes of the application of that regulation (see, by analogy, judgment of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 64). That applicant wishes to be united with a person who he claims is his uncle and who resides in the requested Member State.

26 In that regard, it should be noted that the uncle of a minor applicant, unless he is responsible for him under the law or practice of the Member State in which that uncle is present, is a relative of that applicant, within the meaning of Article 2(h) of the Dublin III Regulation, and not a family member, within the meaning of Article 2(g) of that regulation.

27 In the context of Article 8 of the Dublin III Regulation, which sets out the criteria for determining the Member State responsible in respect of an applicant for international protection who is an unaccompanied minor, such a situation is governed by paragraph 2 of that article and it is indeed on the basis of that provision that the Greek authorities requested the Netherlands authorities to take charge of I.

28 Furthermore, Articles 9 or 10 of the Dublin III Regulation, which relate, respectively, to the presence in a Member State of family members of an applicant for international protection who are beneficiaries of international protection or family members who are themselves applicants for international protection, do not appear to be relevant for the purposes of the dispute in the main proceedings.

29 In those circumstances, it is necessary to examine the first and second questions by limiting that examination to the situation where the take charge request was based on Article 8(2) of the Dublin III Regulation.

#### *The first and second questions*

- 30 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 27(1) of the Dublin III Regulation, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that it requires the Member State to which a take charge request has been made, based on Article 8(2) of that regulation, to grant a right to a judicial remedy against its refusal decision to the unaccompanied minor, within the meaning of Article 2(j) of that regulation, who applies for international protection, or to a relative of that minor, within the meaning of Article 2(h) of that regulation, or whether, if not, such a right is granted directly by Article 47 of the Charter, read in conjunction with Article 7 and Article 24(2) thereof.
- 31 Article 27(1) of the Dublin III Regulation provides that applicants for international protection 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.
- 32 While it is true that, based on a literal interpretation, that provision appears to grant the applicant for international protection a right to a remedy only for the purpose of challenging a transfer decision, the wording of that provision nevertheless does not exclude the possibility that an unaccompanied minor applicant may also enjoy a right to a remedy for the purpose of challenging a decision to refuse a take charge request based on Article 8(2) of the Dublin III Regulation.
- 33 In addition, it should be recalled that, in accordance with the Court's settled case-law, the rules of EU secondary legislation must be interpreted and applied in compliance with fundamental rights (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 60).
- 34 It should also be noted that recital 39 of the Dublin III Regulation emphasises the importance which the EU legislature attaches to full observance of the fundamental rights recognised, inter alia, in Articles 7, 24 and 47 of the Charter and states that that regulation 'should ... be applied accordingly'.
- 35 In those circumstances, it is necessary to take into account not only the wording of Article 27(1) of the Dublin III Regulation, but also its objectives, its general scheme and its context, and in particular its evolution in connection with the system of which it forms part, in order to determine whether that provision, read in the light of Articles 7, 24 and 47 of the Charter, requires that there be a remedy against such a decision refusing a take charge request.
- 36 In that respect, it should be borne in mind that Article 47 of the Charter states, in the first paragraph thereof, that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy in compliance with the conditions laid down in that article. That right corresponds to the obligation imposed on the Member States, in the second subparagraph of Article 19(1) TEU, to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 47).
- 37 As regards the asylum system, it should be borne in mind that the EU legislature did not confine itself, in the Dublin III Regulation, to introducing rules simply governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum seekers in that process by obliging Member States to inform them of the criteria for determining responsibility and to provide them with an opportunity to submit information relevant to the correct interpretation of those criteria, and by conferring on asylum seekers the right to an effective remedy in respect of any transfer decision that may be taken at the conclusion of that process (see, to that effect, judgment of 7 June 2016, *Ghezlbash*, C-63/15, EU:C:2016:409, paragraph 51).
- 38 The Court specified that, as regards the objectives of the Dublin III Regulation, it is apparent from recital 9 thereof that, while it confirms the principles underlying Regulation No 343/2003, the Dublin III Regulation is intended to make the necessary improvements, in the light of experience, not only to the effectiveness of the Dublin system but also to the protection afforded applicants under that system, to be

achieved, inter alia, by the judicial protection enjoyed by asylum seekers (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 52).

- 39 The Court added that a restrictive interpretation of the scope of the remedy provided in Article 27(1) of the Dublin III Regulation might, inter alia, thwart the attainment of that objective by depriving the other rights conferred on asylum seekers by that regulation of any practical effect. Thus, the requirements laid down in Article 5 of that regulation to give asylum seekers the opportunity to provide information to facilitate the correct application of the criteria for determining responsibility laid down by that regulation and to ensure that such persons are given access to written summaries of interviews prepared for that purpose would be in danger of being deprived of any practical effect if it were not possible for an incorrect application of those criteria – failing, for example, to take account of the information provided by the asylum seeker – to be subject to judicial scrutiny (judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 53).
- 40 The Court thus concluded that Article 27(1) of that regulation, read in the light of recital 19 thereof, must be interpreted as meaning that an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, concerning the criteria for determining the Member State responsible (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 61 and the operative part).
- 41 The judicial protection of an unaccompanied minor applicant cannot vary, as regards compliance with the binding responsibility criterion set out in Article 8(2) of the Dublin III Regulation, depending on whether that applicant is the subject of a transfer decision, taken by the requesting Member State, or of a decision by which the requested Member State refuses the request to take charge of that applicant.
- 42 In the same way as a transfer decision, such a decision refusing to take charge of an unaccompanied minor is liable to undermine the right which the minor derives from Article 8(2) of the Dublin III Regulation to be united with a relative who can take care of him or her, for the purposes of the examination of his or her application for international protection. Accordingly, in both cases, the minor concerned must be allowed to bring proceedings in order to plead the infringement of that right, in accordance with the first paragraph of Article 47 of the Charter and the case-law referred to in paragraph 36 of the present judgment.
- 43 Thus, it is common ground that, in the present case, in accordance with Article 27(1) of the Dublin III Regulation, if I, after arriving in Greece, had travelled to the Netherlands and made his application for international protection there, and not in Greece, and the Greek authorities had agreed to take charge of I as the Member State of first arrival, he would undoubtedly have been entitled to bring legal proceedings against the transfer decision adopted by the Netherlands authorities, on the ground that one of his relatives was resident in the Netherlands.
- 44 In such a scenario, I could then effectively plead the infringement of the right he derives as an unaccompanied minor under Article 8(2) of the Dublin III Regulation whereas, as the Advocate General noted in points 70 and 87 of his Opinion, an applicant who remains in the Member State of entry and makes his or her application for international protection there would be deprived of that possibility since, in that situation, no transfer decision is adopted.
- 45 It follows that, in order to be able to plead an infringement of the right conferred by Article 8(2) of the Dublin III Regulation and thus to benefit from the effective protection of his or her rights which that regulation seeks, in accordance with recital 19 thereof, to establish, an unaccompanied minor applicant must be able to exercise a judicial remedy, pursuant to Article 27(1) of that regulation, not only where the requesting Member State adopts a transfer decision, but also where the requested Member State refuses to take charge of the person concerned.
- 46 That interpretation is all the more compelling since, as the Advocate General noted in points 52 to 56 of his Opinion, Article 8(2) of the Dublin III Regulation is intended to ensure full respect for the fundamental

rights of unaccompanied minors, guaranteed in Articles 7 and 24 of the Charter.

- 47 It is true that EU law, and in particular Article 7 of the Charter, which recognises the right to respect for private or family life, does not generally enshrine a right to unity of the extended family. However, since Article 7 must be read in conjunction with the obligation to have regard to the child's best interests, as a primary consideration in all actions relating to children, recognised in Article 24(2) of the Charter (see, to that effect, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 34) and Article 6(1) of the Dublin III Regulation, the interest which an unaccompanied minor may have in being united with members of his or her extended family for the purposes of the examination of his or her application for international protection must be regarded as being protected by those provisions. In that context, it should also be borne in mind that, as stated in recital 13 of that regulation, unaccompanied minors, because of their particular vulnerability, require specific procedural guarantees. Moreover, although, in accordance with Article 8(2) of that regulation, the designation of the Member State where a relative of the unaccompanied minor is present as the Member State responsible is subject to the condition that it be 'in the best interests of the minor', it follows from that provision, recitals 14 and 16, and Article 6(3)(a) and (4) of that regulation that respect for family life and, more specifically, the possibility for an unaccompanied minor to be united with a relative who can take care of him or her, while his or her application is being processed, is, as a general rule, in the best interests of the child (see, by analogy, judgment of 23 January 2019, *M.A. and Others*, C-661/17, EU:C:2019:53, paragraph 89).
- 48 In addition, Article 24(1) of the Charter, which states that children have the right to such protection and care as is necessary for their well-being, specifies that their views are to be taken into consideration on matters which concern them, in accordance with their age and maturity.
- 49 Accordingly, an unaccompanied minor who applies for international protection must be able to rely in court on the rights conferred on him or her by Article 7 and Article 24(2) of the Charter and Article 8(2) of the Dublin III Regulation for the purpose of challenging, in law and in fact, a decision refusing a take charge request such as that at issue in the main proceedings.
- 50 However, as regards the applicant's relative, within the meaning of Article 2(j) of the Dublin III Regulation, who resides in the requested Member State, it should be noted that Article 27(1) of that regulation does not confer on him any right to a remedy. Furthermore, neither Article 7 and Article 24(2) of the Charter nor Article 8(2) of the Dublin III Regulation confer on him any rights on which he could rely in legal proceedings against such a rejection decision, with the result that that relative also cannot derive a right to a remedy against such a decision on the basis of Article 47 of the Charter alone.
- 51 It is also necessary to reject the French Government's argument that a court seised of an appeal against a decision refusing a take charge request would have only very limited powers because, in almost all cases, it could only find that the time limits laid down in Article 21(1) of the Dublin III Regulation have expired and would be required, under the third subparagraph of Article 21(1), to confirm the automatic transfer of responsibility for examining the asylum application to the Member State in which the application for international protection was lodged.
- 52 First, contrary to what that government submits, that argument finds no support in the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), since in that judgment the Court ruled only on the question whether an applicant for international protection may rely on the infringement of a time limit laid down in Article 21(1) of that regulation.
- 53 Secondly, where the take charge request which gave rise to the refusal was made within the time limits laid down in Article 21(1) of the Dublin III Regulation, the requirement that judicial remedies must be effective prevents all the consequences being drawn from the potentially unlawful nature of the refusal to take charge, inter alia on the ground that the exercise of a remedy against such a refusal would entail exceeding those time limits.

54 Furthermore, although it follows from the Court's case-law that, for unaccompanied minors, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible, which means that, as a rule, they should not be transferred to another Member State (see, to that effect, judgment of 6 June 2013, *MA and Others*, C-648/11, EU:C:2013:367, paragraphs 55 and 61), the fact remains that the Member States are required to comply with the specific criteria for determining the Member State responsible for processing the application for international protection of minors, such as those set out in Article 8(2) of the Dublin III Regulation, which must be applied in the child's best interests and which are specifically intended to ensure that those interests are safeguarded in that procedure. Furthermore, the Court has already held, in the context of that regulation, that the EU legislature did not intend that the judicial protection enjoyed by applicants should be sacrificed to the requirement of expedition in processing applications for international protection (judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 57). That finding applies, in particular, when it is a question of ensuring that the specific procedural safeguards laid down for the protection of unaccompanied minors are respected.

55 In the light of the foregoing considerations, the answer to the first and second questions is that Article 27(1) of the Dublin III Regulation, read in conjunction with Articles 7, 24 and 47 of the Charter, must be interpreted as meaning that it requires a Member State to which a take charge request has been made, based on Article 8(2) of that regulation, to grant a right to a judicial remedy against its refusal decision to the unaccompanied minor, within the meaning of Article 2(j) of that regulation, who applies for international protection, but not to the relative of that minor, within the meaning of Article 2(h) of that regulation.

### *The third question*

56 By its third question, the referring court asks, in essence, in what manner and by which Member State the decision refusing a take charge request made pursuant to Article 8(2) of the Dublin III Regulation and the possibility of bringing an appeal against that decision must be brought to the attention of the unaccompanied minor or his or her relative.

57 In view of the answer given to the first and second questions, there is no need to answer that question as regards the relative of the unaccompanied minor.

58 Furthermore, as regards the unaccompanied minor himself, it is apparent from the order for reference that the decision refusing the take charge request at issue in the main proceedings was brought to his notice and that he challenged that decision before the courts.

59 It follows that the answer to the third question is not necessary for the purposes of the dispute in the main proceedings and that there is therefore no need to answer it.

### **Costs**

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 27(1) 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, read in conjunction with Articles 7, 24 and 47 of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as meaning that:**

**it requires a Member State to which a take charge request has been made, based on Article 8(2) of that regulation, to grant a right to a judicial remedy against its refusal decision to the unaccompanied minor, within the meaning of Article 2(j) of that regulation, who applies for international protection, but not to the relative of that minor, within the meaning of Article 2(h) of that regulation.**

[Signatures]

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\* Language of the case: Dutch.