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ECLI:EU:C:2024:334

JUDGMENT OF THE COURT (Second Chamber)

18 April 2024 (*)

(Reference for a preliminary ruling – Asylum policy – Determining the Member State responsible for examining an application for international protection – Regulation (EU) No 604/2013 – Transfer of the asylum seeker to the Member State responsible for examining the application for international protection – Article 17(1) – Discretionary clause – Article 27(1) and (3) and Article 29(3) – Article 47 of the Charter of Fundamental Rights of the European Union – Remedies – Suspensive effect)

In Case C-359/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 28 April 2022, received at the Court on 3 June 2022, in the proceedings

AHY

v

Minister for Justice,

THE COURT (Second Chamber),

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

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- AHY, by B. Burns, Solicitor, E. Dornan, Barrister-at-Law, and C. Power, Senior Counsel,
- the Minister for Justice and Ireland, by M. Browne, Chief State Solicitor, A. Joyce, M. Tierney and G. Wells, acting as Agents, and by S.-J. Hillery, Barrister-at-Law, and D. Colan Smyth, Senior Counsel,
- the Greek Government, by M. Michelogiannaki, acting as Agent,
- the European Commission, by L. Grønfeldt and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 September 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 17(1) and Article 27(1) and (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 (OJ 2013 L 180, p. 31; ‘the Dublin III Regulation’) as well as of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between AHY, a Somali national, and the Minister for Justice (Ireland; ‘the Minister’) concerning the latter’s decision refusing to exercise the discretion under Article 17(1) of the Dublin III Regulation to examine AHY’s application for international protection and stating that AHY was to be transferred to Sweden.

Legal context

European Union law

3 Under recitals 4, 5, 17 and 19 of the Dublin III Regulation:

‘(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] 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.

...

(17) Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or

with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

...

(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.'

4 Article 3(1) of that regulation provides:

'Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.'

5 Article 17(1) of the Dublin III Regulation, that article being entitled 'Discretionary clauses', forms part of Chapter IV of the regulation and provides:

'By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.'

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform, using the "DubliNet" electronic communication network set up under Article 18 of [Commission] Regulation (EC) No 1560/2003 [of 2 September 2003 laying down detailed rules for the application of Regulation No 343/2003 (OJ 2003 L 222, p. 3)], the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of, or to take back, the applicant.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with Regulation (EU) No 603/2013 [of the European Parliament and of the Council of 26 June 2013 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation No 604/2013 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ 2013 L 180, p. 1)] by adding the date when the decision to examine the application was taken.'

6 Article 27 of that regulation, entitled 'Remedies', is worded as follows:

'1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.'

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

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.

...’

7 Article 29 of the regulation provides:

‘1. 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 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).

...

2. Where the transfer does not take place within the six months’ time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

...’

Irish law

8 Regulation 3 of the European Union (Dublin System) Regulations 2018 (S.I. No 62/2018; ‘the 2018 Regulations’) confers on international protection officers, who form part of the International Protection Office (Ireland; ‘the IPO’), the power to determine the Member State

responsible for examining an application for international protection in accordance with the criteria set out in the provisions in Chapter III of the Dublin III Regulation and to adopt transfer decisions.

9 Regulation 6 of the 2018 Regulations provides that the International Protection Appeals Tribunal (Ireland) has jurisdiction to examine appeals against transfer decisions.

10 Regulation 8.(1) of the 2018 Regulations implements the suspensive effect provided for in Article 27(3)(a) of the Dublin III Regulation, and provides, in essence, that an applicant for international protection who brings an appeal under Regulation 6 of the 2018 Regulations is entitled to remain in Ireland pending the outcome of that appeal.

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

11 The applicant in the main proceedings, AHY, is a Somali national. On 21 January 2020, he applied for international protection in Ireland, stating that he had been subject to a bomb attack in Somalia which destroyed his shop, killed one of his employees and left him with scars on his hands and arm.

12 A Eurodac search showed that AHY had already made two applications for international protection in Sweden, on 5 November 2012 and 2 October 2017, and that those applications were rejected.

13 The Irish authorities therefore made a take back request to the Kingdom of Sweden under Article 18(1)(b) of the Dublin III Regulation. That Member State agreed thereto on 19 February 2020.

14 On 23 July 2020, a notice of decision of transfer to Sweden was issued to AHY. On 5 August 2020, he brought an appeal before the International Protection Appeals Tribunal against that IPO decision, requesting the application of the discretionary clause contained in Article 17(1) of the Dublin III Regulation and claiming, inter alia, that he suffered from depression.

15 The International Protection Appeals Tribunal dismissed that appeal on 5 October 2021 and upheld the transfer decision.

16 Having been informed that he was to report to the Garda National Immigration Bureau (Ireland) on 16 December 2021 to make arrangements for his transfer to Sweden not later than 6 April 2022, AHY made an application to the Minister on 15 November 2021 requesting the exercise of the discretion provided for in Article 17(1) of the Dublin III Regulation. That request was denied on 16 February 2022.

17 AHY challenged that decision of the Minister before the High Court (Ireland), which is the referring court. In support of that challenge AHY claims, inter alia, that, pursuant to Article 27 of the Dublin III Regulation, remedies sought against decisions refusing to exercise the discretion conferred by Article 17(1) of that regulation have automatic suspensive effect.

18 In the first place, the referring court states that, in Ireland, the decision whether or not to proceed to the transfer of an applicant for international protection lies within the remit of the IPO, whereas the decision whether or not to exercise the discretion under Article 17(1) of the Dublin III Regulation is a matter for the Minister. In addition, according to the referring court, remedies against transfer decisions, provided for in Article 27 of that regulation, must be sought before the International Protection Appeals Tribunal, in accordance with Regulation 6 of the 2018

Regulations, whereas decisions of the Minister can be challenged before the High Court exclusively by way of judicial review, which constitutes a specific judicial remedy seeking to review the lawfulness of administrative action.

19 The referring court explains that this system creates numerous issues due to the lack of coordination of procedures and time limits in respect of those decisions and remedies. Thus, an applicant for international protection who is the subject of a transfer decision could, as the applicant in the main proceedings, request the application of the discretionary clause contained in Article 17(1) of the Dublin III Regulation after the International Protection Appeals Tribunal has dismissed his or her appeal against the transfer decision.

20 In the second place, the referring court raises the question of the suspensive effect that a challenge against a decision of the Minister refusing to exercise the discretion conferred by Article 17(1) of the Dublin III Regulation may have on a transfer decision, in particular where the latter has already been the subject of an appeal under Article 27 of that regulation. In that regard, it refers to the judgment of 23 January 2019, *M.A. and Others* (C-661/17, ‘the judgment in *M.A. and Others*’, EU:C:2019:53), and states that, in that judgment, the Court does not seem to have settled the question whether the provisions on suspensive effect laid down in Article 27 of that regulation apply when a decision taken under Article 17 of that regulation is challenged.

21 In those circumstances the High Court decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the right to an effective remedy, in the form of an appeal or review, in fact and in law, against a “transfer decision” pursuant to the provisions of [Article] 27(1) of [the Dublin III Regulation] encompass the right to such an effective remedy against a decision made by the Member State under Article 17(1) of the Dublin III Regulation as to the exercise of its discretion under Article 17(1) as to whether it should examine the international protection application lodged with it by a third-country national or a stateless person even if such examination is not its responsibility under the criteria laid down in the Dublin III Regulation?’

(2) If the answer to question 1 is “yes”:

(a) Does it follow that a requesting Member State is precluded from implementing a transfer decision pending the determination of an applicant’s request for the exercise of discretion under Article 17(1) of the Dublin III Regulation?

(b) Do the provisions of Article 27(3) [of the Dublin III Regulation], which require Member States to provide in their national law for one of three forms of suspensive effect for the purposes of appeals against or reviews of transfer decisions, include a challenge to a decision under Article 17(1) refusing to exercise the option of assuming responsibility for an international protection application ...?

(c) Where no specific national law provides for one of the three forms of suspensive effect in Article 27(3) [of the Dublin III Regulation] in the event of a challenge to [a] refusal decision [under Article 17(1) of that regulation], are the courts on such a challenge obliged to grant suspensive effect in one of those three forms in its national law and, if so, which one?

(d) Must each and all of the suspensive remedies under Article 27(3) [of the Dublin III Regulation] be interpreted to operate as a stay on the time limit for the implementation of a transfer decision under Article 29(1) of the Dublin III Regulation?

(3) If the answer to question 1 is “no”:

(a) Does the right to an effective remedy under Article 47 of the [Charter] preclude a requesting Member State from implementing a transfer decision pending the determination of an applicant’s request for the exercise of discretion under Article 17(1) of the Dublin III Regulation?

(b) Does the right to an effective remedy under Article 47 of the [Charter] preclude a requesting Member State from implementing a transfer decision pending the determination of a challenge by way of judicial review brought under the provisions of national law to [a] refusal decision [under Article 17(1) of the Dublin III Regulation]?

(c) Alternatively, does a challenge by way of judicial review brought under the provisions of national law to [a] refusal decision [under Article 17 of the Dublin III Regulation] operate as a stay on the time limit for the implementation of a transfer decision under Article 29(1) of [that regulation] or otherwise have suspensive effect on the transfer decision?’

Procedure before the Court

22 The referring court requested that the present case be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court.

23 On 21 June 2022, the Second Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided not to grant that request.

Consideration of the questions referred

Question 1

24 By its first question, the referring court asks, in essence, whether Article 27(1) of the Dublin III Regulation must be interpreted as requiring Member States to make available an effective remedy against a decision adopted under the discretionary clause contained in Article 17(1) of that regulation.

25 In that regard, Article 27(1) of the Dublin III Regulation provides that a person who is the subject of a transfer decision is to have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against that decision, before a court or tribunal.

26 The scope of that remedy is stated in recital 19 of the Dublin III Regulation, which states that, in order to ensure compliance with international law, the effective remedy introduced by that regulation in respect of transfer decisions must cover (i) the examination of the application of the regulation and (ii) the examination of the legal and factual situation in the Member State to which the applicant is to be transferred (judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 39 and the case-law cited).

27 Having noted, in paragraph 75 of the judgment in *M.A. and Others*, that Article 27(1) of the Dublin III Regulation does not expressly provide for an appeal against the decision of a Member State to not use the option set out in Article 17(1) of that regulation, the Court held in point 4 of the operative part of that judgment that that first provision must be interpreted as not requiring Member States to make available a remedy against the decision not to use the option set out in Article 17(1)

of that regulation, without prejudice to the possibility of challenging that decision at the time of an appeal against a transfer decision.

28 However, AHY submits in the present case, before the referring court and in his written observations before the Court of Justice, that the right to an effective remedy against the transfer decision, provided for in Article 27(1) of the Dublin III Regulation, must also encompass the right to an effective remedy against a decision adopted under Article 17(1) of that regulation on the ground that the Court has also stated, in paragraph 64 of the judgment in *M.A. and Others*, that the discretion conferred on Member States by that latter provision is an integral part of the mechanisms laid down by that regulation for determining the Member State responsible for an application for international protection.

29 The provisions of the Dublin III Regulation cannot be interpreted in that way.

30 It is true that the Court has already stated that the remedy provided for in Article 27(1) of the Dublin III Regulation cannot be interpreted restrictively (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 53).

31 Thus, the Court has already held that in the light, in particular, of the general thrust of the developments that have taken place, as a result of the adoption of the Dublin III Regulation, in the system for determining the Member State responsible for an application for international protection made in one of the Member States, and of the objectives of that regulation, Article 27(1) thereof must be interpreted as meaning that the remedy for which it provides against a transfer decision must be capable of relating both to observance of the rules attributing responsibility for examining an application for international protection and to the procedural safeguards laid down by that regulation (judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 40 and the case-law cited).

32 However, even if Article 17(1) of the Dublin III Regulation must be regarded as an integral part of the mechanisms laid down by that regulation for determining the Member State responsible for examining an application for international protection, that provision, by its nature, cannot be treated in the same way as the other criteria laid down by that regulation for determining the Member State responsible for an application for international protection.

33 It should be recalled that, in accordance with Article 3(1) of the Dublin III Regulation, an application for international protection lodged by a national of a third country or by a stateless person in the territory of any one of the Member States is, in principle, examined by the single Member State which the criteria set out in Chapter III of that regulation indicate as being responsible.

34 The system established by the EU legislature for determining the Member State responsible, of which that regulation forms part, seeks, as is apparent from recitals 4 and 5 thereof, to make it possible, in particular, 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 processing applications for international protection expeditiously.

35 In that context, a Member State with which an application for international protection has been lodged is required to follow the procedures laid down in Chapter VI of that regulation for the purposes of determining the Member State responsible for examining that application, to call upon that Member State to take charge of the person concerned and, once that request has been accepted, to transfer that person to the Member State.

36 However, by way of derogation from Article 3(1) of the Dublin III Regulation, Article 17(1) of that regulation provides that each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under those criteria.

37 The objective of that provision is to maintain the prerogatives of the Member States in the exercise of the right to grant international protection (judgment of 5 July 2018, X, C-213/17, EU:C:2018:538, paragraph 61 and the case-law cited).

38 In addition, it is clear from the wording of Article 17(1) of the Dublin III Regulation that that provision is optional in so far as it leaves it to the discretion of each Member State to decide to examine an application for international protection lodged with it, even if that examination is not its responsibility under the criteria defined by that regulation for determining the Member State responsible. The exercise of that option is not, moreover, subject to any particular condition. That option is intended to allow each Member State to decide, in its absolute discretion, on the basis of political, humanitarian or practical considerations, to agree to examine an application for international protection even if it is not responsible under the criteria laid down in that regulation (judgment of 30 November 2023, *Ministero dell'Interno and Others (Common leaflet – Indirect refoulement)*, C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, EU:C:2023:934, paragraph 146 and the case-law cited).

39 In the light of the extent of the discretion thus conferred on the Member States, it is for the Member State concerned to determine the circumstances in which it wishes to use the option conferred by the discretionary clause set out in Article 17(1) of the Dublin III Regulation and to agree itself to examine an application for international protection for which it is not responsible under the criteria defined by that regulation (judgment of 30 November 2023, *Ministero dell'Interno and Others (Common leaflet – Indirect refoulement)*, C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, EU:C:2023:934, paragraph 147 and the case-law cited).

40 In that respect, the Court has repeatedly held that no circumstance, even a matter of fundamental rights, could oblige a Member State to make use of that clause and to examine itself an application which is not its responsibility (see, by analogy, judgment of 14 November 2013, *Puid*, C-4/11, EU:C:2013:740, paragraph 37, and judgment of 16 February 2017, *C.K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 97, and the judgment in *M.A. and Others*, paragraphs 61 and 72).

41 It is true, as has been recalled in paragraph 31 above, the Court has held on several occasions that Article 27(1) of the Dublin III Regulation must be interpreted as meaning that the remedy for which it provides against a transfer decision must be capable of relating both to observance of the rules attributing responsibility for examining an application for international protection and to the procedural safeguards laid down by that regulation. However, as the Advocate General pointed out in points 62 and 63 of his Opinion, that case-law, stemming inter alia from the judgments of 7 June 2016, *Ghezlbash* (C-63/15, EU:C:2016:409), of 7 June 2016, *Karim* (C-155/15, EU:C:2016:410), and of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), is based on the premiss that each of the provisions of that regulation at issue in those judgments was covered by the framework within which the process of determining the Member State responsible takes place. Those provisions, such as the second subparagraph of Article 19(2) or Article 21(1) of that regulation, lay down rules which the Member State concerned is to apply in accordance with that regulation and which, therefore, confer on the applicant for international protection a right to have that Member State comply with its obligations to that effect.

42 It is apparent from recital 17 of the Dublin III Regulation that that regulation lays down, in the provisions of Chapter III thereof, the ‘binding criteria’ for the purposes of determining the Member State responsible for examining an application for international protection, while conferring on Member States in Article 17 of that regulation – which comes under Chapter IV thereof – the option of derogating from those responsibility criteria and of examining an application for international protection lodged with it or with another Member State, even if such examination is not their responsibility under those binding criteria. Consequently, the decision of a Member State whether or not to exercise the power provided for in Article 17(1) of the Dublin III Regulation and whether or not to examine an application for international protection is a discretionary decision which is not based on the binding criteria with which that Member State is to comply under that regulation.

43 It follows that a decision adopted under Article 17(1) of the Dublin III Regulation cannot be treated in the same way as a transfer decision, within the meaning of Article 27(1) of that regulation, with the result that that latter provision does not require Member States to make available an effective remedy against that discretionary decision.

44 That interpretation cannot be called into question by the fact that, in the judgment in *M.A. and Others*, the Court held that the fact that Article 27(1) of the regulation does not require Member States to make such a remedy available does not preclude the person concerned from challenging that discretionary decision at the time of an appeal against the transfer decision of which that person is the subject.

45 It is not apparent in any way from that finding that the possibility of challenging such a refusal to make use of the discretionary clause at the time of an appeal against the transfer decision has its basis in EU law.

46 On the contrary, since the Court has held that Article 27(1) of the Dublin III Regulation does not require Member States to make a specific remedy available against the decision refusing to exercise the discretion provided for in Article 17(1) of that regulation, the possibility of challenging that decision at the time of an appeal against the transfer decision can only be based on national law.

47 In the light of all the foregoing considerations, the answer to Question 1 is that Article 27(1) of the Dublin III Regulation must be interpreted as not requiring Member States to make available an effective remedy against a decision adopted under the discretionary clause contained in Article 17(1) of that regulation.

Question 2

48 Question 2 was raised in the event that the answer to Question 1 is ‘yes’. In the light of the answer to Question 1, there is no need to answer Question 2.

Question 3

49 By its third question, the referring court asks, in essence and in the event that the answer to Question 1 is ‘no’, whether Article 47 of the Charter is to be interpreted as precluding a Member State from implementing a transfer decision pending the determination of the request for the Member State in question to exercise its discretion under Article 17(1) of the Dublin III Regulation or of a specific judicial remedy, sought under the provisions of national law, against the outcome of such a request. In the alternative, the referring court asks whether Article 29(1) of that regulation

must be interpreted as meaning that the six-month time limit to proceed to the transfer of the applicant for international protection under that provision starts to run from acceptance of the request by another Member State to take charge or to take back the person concerned or from the final decision on an appeal against or review of a transfer decision where there is a suspensive effect in accordance with Article 27(3) of that regulation, and not from the date of the final decision on an action challenging the decision of the requesting Member State, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Article 17(1) of that regulation to examine the application for international protection.

50 As regards, in the first place, the questions of the referring court relating to Article 47 of the Charter, they seek to determine whether that provision has a suspensive effect on the implementation of the transfer decision where the applicant for international protection has requested the application of the discretionary clause contained in Article 17(1) of the Dublin III Regulation or where the applicant has challenged the outcome of that request.

51 In that regard, it must be held that since, as has been noted in paragraph 32 above, Article 17(1) of the Dublin III Regulation must be regarded as an integral part of the mechanisms laid down by that regulation for determining the Member State responsible for examining an application for international protection, the situation at issue in the main proceedings, in that it concerns the exercise of the discretion conferred by that provision on Member States, entails the ‘implementation of [EU] law’ within the meaning of Article 51(1) of the Charter, with the result that, generally, it applies to that situation (see, to that effect, judgment of 19 November 2019, *TSN and AKT*, C-609/17 and C-610/17, EU:C:2019:981, paragraph 50 and the case-law cited).

52 However, it is important to note that, according to settled case-law, Article 47 of the Charter is intended to be applied only if the person invoking it is relying on rights or freedoms guaranteed by EU law or if that person is the subject of proceedings constituting an implementation of EU law (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 34 and the case-law cited).

53 It follows from the answer to Question 1 that there cannot be any obligation for a Member State to make use of the discretionary clause under Article 17(1) of the Dublin III Regulation.

54 Absent an obligation to do so, an applicant for international protection does not have any right guaranteed by EU law to have a Member State make use of that clause or the discretion conferred on it.

55 Since the situation at issue in the main proceedings is not that in which the person invoking Article 47 of the Charter relies on rights or freedoms guaranteed by EU law and, for that matter, clearly not a situation in which that person is the subject of proceedings constituting an implementation of EU law, it follows from the case-law set out in paragraph 52 above that that Article 47 does not apply to a situation such as that at issue in the main proceedings. Consequently, Article 47 of the Charter does not preclude a Member State from implementing a transfer decision before determining a request introduced in respect of Article 17(1) of the Dublin III Regulation or an action challenging the outcome of that request.

56 As regards, in the second place, the questions raised by the referring court in the alternative, they seek to ascertain whether Article 29(1) of the Dublin III Regulation must be interpreted as meaning that the six-month time limit laid down in that provision starts to run from the date of the final decision on an action challenging the decision of the requesting Member State, taken after the

adoption of the transfer decision, not to make use of the discretionary clause under Article 17(1) of that regulation to examine the application for international protection.

57 The wording of the Article 29(1) is clear and precise in that regard.

58 Indeed, that article provides that the six-month time limit starts to run from acceptance of the request by another Member State to take charge or to take back the person concerned or from the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3) of the Dublin III Regulation.

59 Since that provision does not state that the time limit starts to run from the final decision on an action challenging the decision of the requesting Member State, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Article 17(1) of that regulation to examine the application for international protection, it cannot be found that that action has the effect of suspending the time limit for the implementation of a transfer decision laid down in Article 29(1) of the regulation or has in any other way a suspensive effect on the transfer decision.

60 Accordingly, the six-month time limit to proceed to the transfer of the applicant for international protection starts to run, in a situation such as that at issue in the main proceedings, from date of the rejection of the appeal against the transfer decision in respect of the person concerned, and not from the date of the final decision on an action challenging the decision of the requesting Member State, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Article 17(1) of that regulation to examine the application for international protection.

61 In the light of all of the foregoing, the answer to Question 3 is as follows:

– Article 47 of the Charter must be interpreted as not applying to a situation in which an applicant for international protection who is the subject of a transfer decision has requested the Member State which adopted that decision to exercise its discretion under Article 17(1) of the Dublin III Regulation or has sought a judicial remedy against the outcome of that request, with the result that that provision of the Charter a fortiori does not preclude a Member State from implementing, in those circumstances, a transfer decision before that request or any action challenging the outcome of that request has been determined.

– The first subparagraph of Article 29(1) of the Dublin III Regulation must be interpreted as meaning that the six-month time limit to proceed to the transfer of an applicant for international protection which is laid down in that provision starts to run from acceptance of the request by another Member State to take charge or to take back the person concerned or from the final decision on an appeal against or review of a transfer decision where there is a suspensive effect in accordance with Article 27(3) of that regulation, and not from the date of the final decision on an action challenging the decision of the requesting Member State, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Article 17(1) of that regulation to examine the application for international protection.

Costs

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

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

(1) Article 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

must be interpreted as not requiring Member States to make available an effective remedy against a decision adopted under the discretionary clause contained in Article 17(1) of that regulation.

(2) - Article 47 of the Charter of Fundamental Rights of the European Union

must be interpreted as not applying to a situation in which an applicant for international protection who is the subject of a transfer decision has requested the Member State which adopted that decision to exercise its discretion under Article 17(1) of Regulation No 604/2013 or has sought a judicial remedy against the outcome of that request, with the result that that provision of the Charter of Fundamental Rights a fortiori does not preclude a Member State from implementing, in those circumstances, a transfer decision before that request or any action challenging the outcome of that request has been determined.

– The first subparagraph of Article 29(1) of Regulation No 604/2013

must be interpreted as meaning that the six-month time limit to proceed to the transfer of an applicant for international protection which is laid down in that provision starts to run from acceptance of the request by another Member State to take charge or to take back the person concerned or from the final decision on an appeal against or review of a transfer decision where there is a suspensive effect in accordance with Article 27(3) of that regulation, and not from the date of the final decision on an action challenging the decision of the requesting Member State, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Article 17(1) of that regulation to examine the application for international protection.

Prechal

Biltgen

Wahl

Passer

Arastey Sahún

Delivered in open court in Luxembourg on 18 April 2024.

A. Calot Escobar

A. Prechal

Registrar

President of the Chamber

* Language of the case: English.