Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

30 January 2024 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Right to family reunification – Directive 2003/86/EC – Article 10(3)(a) – Family reunification of an unaccompanied minor refugee with his or her first-degree relatives in the direct ascending line – Article 2(f) – Concept of ‘unaccompanied minor’ – Minor sponsor at the time of submission of the application but who attained majority during the family reunification procedure – Relevant date for assessing minor status – Period for submitting an application for family reunification – Adult sister of the sponsor requiring the permanent assistance of her parents on account of a serious illness – Effectiveness of the right to family reunification of an unaccompanied minor refugee – Article 7(1) – Article 12(1), first and third subparagraphs – Possibility of making family reunification subject to additional conditions)

In Case C560/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), made by decision of 25 September 2020, received at the Court on 26 October 2020, in the proceedings

CR,

GF,

TY

v

Landeshauptmann von Wien,

JUDGMENT OF THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan, T. von Danwitz and O. Spineanu-Matei, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, L.S. Rossi (Rapporteur), I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl and M. Gavalec, Judges,

Advocate General: A.M. Collins,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 14 February 2023,

after considering the observations submitted on behalf of:

– CR, GF and TY, by J. Ecker, Rechtsanwältin, and D. Bernhart, Head of Unit for Family Reunification at the General Secretariat of the Austrian Red Cross,

– the Austrian Government, by A. Posch, J. Schmoll, C. Schweda and V.S. Strasser, acting as Agents,

– the Netherlands Government, by M.K. Bulterman, M.H.S. Gijzen and C.S. Schillemans, acting as Agents,

– the European Commission, by C. Cattabriga, J. Hottiaux and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(f), Article 7(1), Article 10(3)(a) and Article 12(1) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

2 The request has been made in proceedings between CR and GF and their daughter TY, who are Syrian nationals, and the Landeshauptmann von Wien (Governor of the Province of Vienna, Austria), concerning his rejection of the applications submitted by CR, GF and TY for the issue of a national visa with a view to family reunification with RI, who has refugee status in Austria and is the son of CR and GF and brother of TY.

Legal context

European Union law

3 Recitals 2, 4 and 6 to 10 of Directive 2003/86 state:

‘(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the [Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (“the ECHR”),] and in the Charter of Fundamental Rights of the European Union [(“the Charter”)].

…

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

…

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

(7) Member States should be able to apply this Directive also when the family enters together.

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases

covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.'

4 Article 1 of Directive 2003/86 provides:

'The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.'

5 Under Article 2 of that directive:

'For the purposes of this Directive:

…

(c) "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

…

(f) "unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.'

6 Article 4 of the said directive provides:

'1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

…

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

…

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

…'

7 Article 5 of the same directive provides:

'1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

…

5. When examining an application, the Member States shall have due regard to the best interests of minor children.'

8 Under Article 7(1) of Directive 2003/86:

'When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.'

9 Article 10(2) and (3)(a) of that directive states:

'2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

…'

10 Under Article 12(1) of the said directive:

'By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.'

Austrian law

11 The Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz) – NAG) (Federal Law on establishment and residence in Austria (Law on establishment and residence – NAG)), of 16 August 2005 (BGBl. I, 100/2005), in the version applicable to the dispute in the main proceedings ('the NAG'), provides, in Paragraph 11 thereof, entitled 'General conditions for obtaining a residence permit':

'…

(2) A residence permit may be issued to a foreign national only if

…

2. he or she provides proof of an entitlement to accommodation regarded as normal for a family of comparable size;

3. he or she has sickness insurance covering all risks, including in Austria;

4. his or her residence is not liable to entail a financial burden for a local authority;

…

(3) Even where there is a ground for refusal under subparagraph 1(3), (5) or (6), or where a condition referred to in subparagraph 2(1) to (7) is not satisfied, a residence permit may be granted if this is necessary in order to maintain private and family life within the meaning of Article 8 [ECHR] …'

12 Paragraph 46 of that law, entitled 'Provisions relating to family reunification', states:

'(1) A residence permit shall be granted in the form of a "*Rot-Weiss-Rot – Karte plus*" ("Red-White-Red – Card plus") to the family members of third-country nationals, if they fulfil the conditions laid down in Part 1, and if

…

2. there are still quotas available and the sponsor:

…

(c) has refugee status and Paragraph 34(2) [of the Bundesgesetz über die Gewährung von Asyl (Federal Law on the grant of asylum), of 16 August 2005 (BGBl. I, No 100/2005), in the version applicable to the dispute in the main proceedings ("the AsylG")], does not apply …'.

13 Paragraph 34 of the AsylG, entitled ‘Family procedure in Austria’, provides, in subparagraphs 2 and 4 thereof:

‘(2) At the request of a family member of a foreign national who has been granted refugee status, the authority must grant him or her refugee status by decision where:

1. that foreign national has not committed a criminal offence and

…

3. no procedure for the withdrawal of refugee status is pending against the foreign national who has been granted refugee status (Paragraph 7).

…

(4) The authority must examine separately the applications of the family members of an asylum seeker; the procedures are joined; under the conditions laid down in subparagraphs 2 and 3, all family members shall enjoy the same protection. …’

14 Paragraph 35 of that law, entitled ‘Applications for entry lodged with representative authorities’, is worded as follows:

‘(1) The family member within the meaning of subparagraph 5 of a foreign national who has been granted refugee status and who is abroad may, with a view to lodging an application for international protection in accordance with Paragraph 34(1)(1), read in conjunction with Paragraph 2(1)(13), of this Law, lodge an application for an entry permit with an Austrian authority responsible for consular missions abroad (representative authority). If the application for an entry permit is lodged more than three months after the final grant of refugee status, the conditions laid down in Paragraph 60(2)(1) to (3) must be met.

…

(2a) If the applicant is one of the parents of an unaccompanied minor who has been granted refugee status or subsidiary protection, the conditions laid down in Paragraph 60(2)(1) to (3) are deemed to be met.

…

(5) Under [Paragraph 17(1) and (2) of the AsylG], family member is defined as the person who has the status of parent of a minor child, spouse or unmarried minor child of a foreign national at the time of submission of that application who has been granted refugee status or subsidiary protection status, provided, in the case of spouses, that they were already married before the said foreign national entered the country; this shall apply also to registered partners if the partnership was already registered before the foreign national entered the country.’

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

15 RI, who was born on 1 September 1999, arrived in Austria on 31 December 2015 as an unaccompanied minor and lodged an application for international protection there under the AsylG on 8 January 2016. By decision of the Bundesamt für Fremdenwesen und Asyl (Federal Office for

Immigration and Asylum, Austria), notified to RI on 5 January 2017, he was granted refugee status. That decision became final on 2 February 2017.

16 On 6 April 2017, that is three months and one day after notification of the said decision, CR and GF, RI's parents, and TY, his adult sister, lodged with the Embassy of the Republic of Austria in Syria applications for entry and residence in Austria for the purposes of family reunification with RI, pursuant to Paragraph 35 of the AsylG ('the first applications for entry and residence'). RI was still a minor on the date of submission of those applications. However, those applications were rejected by that embassy, by decision notified on 29 May 2018, on the ground that RI had become an adult during the family reunification procedure. That decision, which was not appealed, became final on 26 June 2018.

17 On 11 July 2018, CR, GF and TY submitted to the Governor of the Province of Vienna applications for the grant of residence permits for the purposes of family reunification with RI pursuant to Paragraph 46(1)(2) of the NAG ('the second applications for entry and residence'). To that end, CR and GF invoked their rights under Directive 2003/86, whereas TY based her application on Article 8 ECHR. On 20 April 2020, the Governor of the Province of Vienna rejected those applications on the ground that they had not been lodged within three months of the date on which RI's refugee status had been recognised.

18 CR, GF and TY have challenged those decisions before the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), which is the referring court.

19 In the first place, the referring court has doubts as to the rights that CR, GF and TY may derive from Article 10(3)(a) of Directive 2003/86 when RI reached majority during the family reunification procedure. In that regard, it is of the view that the interpretation adopted by the Court in the judgment of 12 April 2018, *A and S* (C550/16, EU:C:2018:248, paragraph 64), in relation to a situation in which an unaccompanied minor attains his or her majority in the course of the asylum procedure and thus even before the application for family reunification is submitted, should be transposable to a situation, such as that at issue in the main proceedings, where the sponsor is still a minor at the time of the submission of that application, such that, also in the second situation, the right to family reunification may be based on that provision.

20 Assuming that that conclusion is confirmed, the referring court asks, in the second place, whether the clarification made by the Court in paragraph 61 of that judgment, according to which the application for family reunification made on the basis of Article 10(3)(a) of Directive 2003/86 by a sponsor who has attained his or her majority in the course of the asylum procedure must, in principle, be submitted within a period of three months of the date on which he or she was declared to have refugee status, must also be transposed to the situation of a sponsor who has reached majority during the family reunification procedure. It is conceivable that, in such a situation, such a period should not begin to run before the refugee reaches majority. Therefore, that period would necessarily be complied with where, as in this case, the sponsor was still a minor at the time when the application for family reunification was submitted.

21 By contrast, assuming that such a period must apply also to that situation and run from the day on which the minor concerned was granted refugee status, the referring court asks, in the third place, whether that period must be regarded as having been complied with where, as in the present case, three months and one day have elapsed between the notification of the decision by which the sponsor was recognised as having that status and the first applications for entry and residence, in relation to which, according to that court, compliance with the said period should be assessed. In

that context, it questions, inter alia, which criteria should be applied in order to assess whether an application for family reunification has been submitted on time.

22 In the fourth place, the referring court asks whether compliance with the conditions set out in Article 7 of Directive 2003/86, namely that the sponsor have (i) accommodation regarded as normal for him or herself and his or her family, (ii) sickness insurance in respect of all risks for him or herself and the members of his or her family, and (iii) stable and regular resources which are sufficient to maintain him or herself and the members of his or her family, without recourse to the social assistance system of the Member State concerned, may also be required in the event of family reunification under Article 10(3)(a) of that directive. In that regard, it also asks whether the possibility of requiring compliance with the said conditions depends on whether the application for family reunification was submitted after the expiry of the three-month period referred to in the third subparagraph of Article 12(1) of the said directive.

23 In the fifth place, the referring court notes that, under the applicable Austrian law, TY, as the sister of the sponsor RI, is not one of the 'family members' in respect of whom a right to family reunification is provided for. However, that court emphasises that TY, who lives with her parents in Syria, suffers from cerebral palsy and is in permanent need of a wheelchair and daily personal care, including assistance with eating. That care is provided to her essentially by her mother, CR, as TY cannot avail herself of any social assistance network in her current place of residence in order to obtain the said care. In those circumstances, TY's parents cannot leave her alone in Syria, where no other family members reside.

24 The referring court states that, in view of the particular situation in which RI's sister finds herself on account of her illness, RI's parents would be forced, de facto, to waive their right to family reunification under Article 10(3)(a) of Directive 2003/86 if a residence permit were not granted also to TY.

25 Last, the said court notes that, under Austrian law, a residence permit could possibly be granted to the sponsor's adult sister, even though the legal conditions are not met, for compelling reasons relating to private and family life, within the meaning of Article 8 ECHR. That being said, in so far as the right to the grant of a residence permit deriving directly from EU law is liable to go beyond the protection conferred by Article 8 ECHR, it is necessary to determine whether TY may rely on such a right.

26 In those circumstances, the Verwaltungsgericht Wien (Administrative Court, Vienna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can the third-country national parents of a refugee who has applied for asylum as an unaccompanied minor and has been granted asylum as a minor continue to rely on Article 2(f) in conjunction with Article 10(3)(a) of [Directive 2003/86] if the refugee reached the age of majority after being granted asylum but during the procedure for granting a residence permit to his [or her] parents?

(2) If Question I is to be answered in the affirmative: In such a case, is it necessary that the parents of the third-country national comply with the period for submitting an application for family reunification referred to in the judgment [of 12 April 2018, … *A and S* (C550/16, EU:C:2018:248, paragraph 61)], namely "in principle, … within a period of three months of the date on which the 'minor' concerned was declared to have refugee status"?

(3) If Question I is to be answered in the affirmative: Must the adult third-country national sister of a recognised refugee be granted a residence permit directly on the basis of EU law if, in the event that the adult sister of the refugee were to be refused a residence permit, the parents of the refugee would be de facto compelled to waive their right to family reunification under Article 10(3)(a) of Directive [2003/86] because that adult sister of the refugee is in urgent need of the permanent care of her parents on account of her state of health and therefore cannot remain in the country of origin alone?

(4) If Question II is to be answered in the affirmative: What criteria are to be applied when assessing whether such an application for family reunification was submitted "in principle" within a period of three months within the meaning of the statements made in the judgment [of 12 April 2018, … *A and S* (C550/16, EU:C:2018:248, paragraph 61)]?

(5) If Question II is to be answered in the affirmative: Can the refugee's parents continue to rely on their right to family reunification under Article 10(3)(a) of Directive [2003/86] if three months and one day have elapsed between the date on which the minor was declared to have refugee status and the date on which they applied for family reunification?

(6) Can a Member State require the refugee's parents, in principle, to meet the conditions of Article 7(1) of Directive [2003/86] in a family reunification procedure under Article 10(3)(a) of [that directive]?

(7) Is the requirement to meet the conditions referred to in Article 7(1) of Directive [2003/86] in the context of family reunification under Article 10(3)(a) of [that directive] dependent on whether the application for family reunification was submitted within a period of three months after the granting of the refugee status within the meaning of the third subparagraph of Article 12(1) of [the said directive]?'

Procedure before the Court

27 By decision of 9 July 2021, the President of the Court stayed the present proceedings pending final judgment in Joined Cases C273/20 and C355/20 and in Case C279/20.

28 By decision of 8 August 2022, the President of the Court notified to the referring court the judgments of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)* (C273/20 and C355/20, EU:C:2022:617), and of 1 August 2022, *Bundesrepublik Deutschland (Family reunification of a child who has reached the age of majority)* (C279/20, EU:C:2022:618), asking it to indicate whether, in the light of those judgments, it wished to maintain its request for a preliminary ruling, in whole or in part.

29 By letter of 30 August 2022, lodged at the Court Registry on 6 September 2022, that court stated that it was maintaining its request for a preliminary ruling, but that it was no longer seeking an answer to the first question, on the ground that, in the light of the said judgments, that question had to be answered in the affirmative. In that regard, it stated that, in so far as it therefore considered that the condition under which it had asked the second and third questions had been met, those questions should be answered.

Consideration of the questions referred

The second question

30 By its second question, the referring court asks, in essence, whether Article 10(3)(a) of Directive 2003/86 must be interpreted as meaning that, in order to be able to base a right to family reunification on that provision and thereby benefit from the more favourable conditions laid down therein, that provision requires the first-degree relatives in the direct ascending line ('the parents') of an unaccompanied minor refugee to submit the application for entry and residence for the purposes of family reunification with that refugee within a specified period, where that refugee is still a minor on the date on which that application is submitted and reaches majority during the family reunification procedure.

31 It must be recalled that the purpose of Directive 2003/86 is, according to Article 1 thereof, to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

32 In that regard, it is apparent from recital 8 of that directive that, in relation to refugees, that directive lays down more favourable conditions for exercising that right to family reunification, since special attention must be paid to their situation on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there.

33 One of those more favourable conditions concerns family reunification with first-degree relatives in the direct ascending line of a refugee. As the Court has held, whereas, under Article 4(2)(a) of Directive 2003/86, the possibility of such reunification is, in principle, left to the discretion of each Member State and subject, in particular, to the condition that first-degree relatives in the direct ascending line are dependent upon the sponsor and do not enjoy proper family support in the country of origin, Article 10(3)(a) of that directive lays down an exception to that principle pursuant to which refugees who are unaccompanied minors have a right to such reunification which is not subject to a margin of discretion on the part of the Member States nor to conditions laid down in that Article 4(2)(a). The said Article 10(3)(a) thus seeks specifically to guarantee an additional protection for those refugees who are unaccompanied minors (judgment of 12 April 2018, *A and S*, C550/16, EU:C:2018:248, paragraphs 33, 34 and 44).

34 In its judgment of 12 April 2018, *A and S* (C550/16, EU:C:2018:248, paragraph 64), the Court ruled that Article 2(f) of Directive 2003/86, which defines the concept of 'unaccompanied minor', read in conjunction with Article 10(3)(a) thereof, must be interpreted as meaning that a third-country national or stateless person who is below the age of 18 at the moment of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a 'minor' for the purposes of that provision.

35 To make the right to family reunification under Article 10(3)(a) of Directive 2003/86 depend upon the moment at which the competent national authority formally adopts the decision recognising the refugee status of the person concerned and, therefore, on how quickly or slowly the application for international protection is processed by that authority would call into question the effectiveness of that provision and would go against not only the aim of that directive, which is to promote family reunification and to grant in that regard a specific protection to refugees, in particular unaccompanied minors, but also the principles of equal treatment and legal certainty (judgment of 12 April 2018, *A and S*, C550/16, EU:C:2018:248, paragraph 55).

36 In addition, it should be noted that those same considerations apply, a fortiori, to a situation in which the unaccompanied minor reaches majority during not the asylum procedure, but the family reunification procedure. Thus, such a minor refugee may rely on Article 10(3)(a) of Directive 2003/86 in order to benefit from the right to family reunification with his or her parents on the basis

of the more favourable conditions laid down by that provision, without the Member State concerned being able to reject the application for family reunification on the ground that the refugee concerned is no longer a minor on the date of the decision on that application (see, to that effect, judgment of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)*, C273/20 and C355/20, EU:C:2022:617, paragraph 52).

37 That being so, in the judgment of 12 April 2018, *A and S* (C550/16, EU:C:2018:248, paragraph 61), the Court also held that, since it would be incompatible with the aim of Article 10(3)(a) of Directive 2003/86 for a refugee who had the status of an unaccompanied minor at the time of his or her asylum application but who attained his or her majority during the procedure relating to that application to be able to rely on the entitlement under that provision 'without any time limit' in order to obtain a family reunification, the application for family reunification had to be made within a reasonable time. In that regard, the Court noted that, for the purposes of determining such reasonable time, the answer given by the EU legislature in the similar context of the third subparagraph of Article 12(1) of that directive has indicative worth, such that it had to be held that the application for family reunification made on the basis of Article 10(3)(a) of that directive must, in principle, in such a situation be submitted within a period of three months of the date on which the 'minor' concerned was declared to have refugee status.

38 The referring court's doubts, however, concern, in essence, the question whether such a period must be complied with also in circumstances such as those at issue in the case in the main proceedings, namely in a situation in which the refugee concerned was still a minor on the date on which the application for family reunification was submitted and came of age during the procedure pertaining to that application.

39 In that regard, it should be noted that it follows from the case-law cited in paragraph 37 of the present judgment that the requirement to comply with such a period is intended to avoid the risk that the right to family reunification may be relied on without any time limit in the situation where the refugee has reached majority already during the asylum procedure and thus even before the application for family reunification has been submitted.

40 However, as the European Commission has emphasised, there is no such risk where the refugee concerned reaches majority during the family reunification procedure. Moreover, in the light of the objective of Article 10(3)(a) of Directive 2003/86, which is specifically to promote the reunification of unaccompanied minor refugees with their parents, in order to guarantee them an additional protection on account of their particular vulnerability, an application for family reunification under that provision cannot be regarded as being out of time if it was submitted when the refugee concerned was still a minor. Thus, in the light of that objective, a period for the submission of such an application cannot begin to run before the refugee concerned has reached the age of majority.

41 Consequently, as long as the refugee is a minor, his or her parents may submit an application for entry and residence for the purposes of family reunification with that refugee, on the basis of Article 10(3)(a) of Directive 2003/86, without being required to comply with a time limit in order to be able to benefit from the more favourable conditions laid down by that provision.

42 It follows that, in the case at hand, the fact that the first applications for entry and residence for the purposes of family reunification were submitted by the applicants in the main proceedings more than three months after notification of the decision by which the sponsor was granted refugee status is irrelevant since that sponsor was a minor on the date on which those applications were submitted. Thus, subject to verification by the referring court, the decision referred to in

paragraph 16 of the present judgment by which those applications were rejected does not appear to be in conformity with the provisions of Directive 2003/86.

43 In the light of the foregoing, the answer to the second question is that Article 10(3)(a) of Directive 2003/86 must be interpreted as meaning that, in order to be able to base a right to family reunification on that provision and thereby benefit from the more favourable conditions laid down therein, that provision does not require the parents of an unaccompanied minor refugee to submit the application for entry and residence for the purposes of family reunification with him or her within a given period, where that refugee is still a minor on the date on which that application is submitted and reaches majority during the family reunification procedure.

The fourth and fifth questions

44 By its fourth and fifth questions, the referring court asks, in essence, on the basis of which criteria it should be assessed whether an application for family reunification under Article 10(3)(a) of Directive 2003/86 has been submitted on time.

45 As the referring court states, those questions are asked in the event that the second question is answered in the affirmative. In view of the answer given to the second question, there is no need to answer the fourth and fifth questions.

The third question

46 By its third question, the referring court asks, in essence, whether Article 10(3)(a) of Directive 2003/86 must be interpreted as requiring a residence permit to be granted to the adult sister of an unaccompanied minor refugee, who is a third-country national and who, on account of a serious illness, is totally and permanently dependent on the assistance of her parents, where a refusal to grant that residence permit would result in that refugee's being deprived of his or her right to family reunification with his or her parents, conferred by that provision.

47 In that regard, it should be noted that, under Article 51(1) of the Charter, when they are implementing EU law, Member States must respect the rights and observe the principles established by the Charter and promote the application thereof, in accordance with their respective powers and respecting the limits of the powers of the European Union as conferred on it in the Treaties.

48 Thus, in accordance with settled case-law, the Member States, in particular their courts, must not only interpret their national law in a manner consistent with EU law but also make sure they do not rely on an interpretation of an instrument of secondary legislation which would be in conflict with the fundamental rights protected by the legal order of the European Union (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C133/19, C136/19 and C137/19, EU:C:2020:577, paragraph 33 and the case-law cited).

49 In particular, Article 7 of the Charter recognises the right to respect for private and family life. In accordance with settled case-law, that provision of the Charter must also be read in conjunction with the obligation to have regard to the child's best interests, recognised in Article 24(2) of the Charter, and with account being taken of the need, expressed in Article 24(3) thereof, for a child to maintain on a regular basis a personal relationship with both his or her parents (judgment of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)*, C273/20 and C355/20, EU:C:2022:617, paragraph 38 and the case-law cited).

50 It follows that the provisions of Directive 2003/86 must be interpreted and applied in the light of Article 7 and Article 24(2) and (3) of the Charter, as is moreover apparent from recital 2 and Article 5(5) of that directive, which require the Member States to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life (judgment of 1 August 2022, *Bundesrepublik Deutschland (Family reunification with a minor refugee)*, C273/20 and C355/20, EU:C:2022:617, paragraph 39 and the case-law cited).

51 That is true, in particular, of Article 10(3)(a) of Directive 2003/86, which aims, as has been noted in paragraph 40 of the present judgment, specifically to promote the reunification of unaccompanied minor refugees with their parents, in order to guarantee those minors an additional protection on account of their particular vulnerability, and which is therefore of particular importance for the effective respect for the fundamental rights enshrined in Article 7 and Article 24(2) and (3) of the Charter.

52 Furthermore, as the Court has had occasion to find, Article 10(3)(a) of Directive 2003/86 imposes on the Member States a precise positive obligation, to which a clearly defined right corresponds. It requires them, on the hypothesis set out in that provision, to authorise the family reunification of first-degree relatives in the direct ascending line of the sponsor, without any margin of discretion being available (judgment of 12 April 2018, *A and S*, C550/16, EU:C:2018:248, paragraph 43).

53 Accordingly, under Article 10(3)(a) of Directive 2003/86, an unaccompanied minor refugee, such as RI, enjoys a right to family reunification with his or her two parents.

54 In the case at hand, it follows from the order for reference that the applications for entry and residence in Austria for the purposes of family reunification with RI were submitted by his two parents and by TY, his sister. TY, although an adult, is totally and permanently dependent on the material assistance of her parents on account of a serious illness. In particular, she suffers from cerebral palsy and is in permanent need of a wheelchair and daily personal care, including assistance with eating. That care is provided essentially by her mother, CR, as TY cannot avail herself of any social assistance network in her current place of residence in order to obtain the said care. Consequently, TY's parents are the only persons who are able to look after her, meaning that they cannot leave her alone in her country of origin.

55 As the referring court has found, in view of that exceptional situation and of the particular seriousness of TY's illness, it is impossible for her two parents to join their son, an unaccompanied minor refugee, in Austria without taking their daughter with them. Granting an entry and residence permit to his sister is therefore the only means of enabling RI to exercise his right to family reunification with his parents.

56 In those circumstances, if TY were not approved for family reunification with RI, at the same time as her parents, RI would, de facto, be deprived of his right to family reunification with his parents, stemming from Article 10(3)(a) of Directive 2003/86.

57 Such an outcome would be incompatible with the unconditional nature of that right and would undermine its effectiveness, which would disregard both the objective of Article 10(3)(a) of Directive 2003/86, recalled in paragraph 51 of the present judgment, and the requirements arising from Article 7 and Article 24(2) and (3) of the Charter, mentioned in paragraph 49 of the present judgment, with which that directive must ensure compliance.

58 It follows that, in the light of the exceptional circumstances of the case in the main proceedings, it is for the referring court to ensure the effectiveness of RI's right to family reunification with his parents, stemming from Article 10(3)(a) of Directive 2003/86, as well as respect for the fundamental rights enshrined in Article 7 and Article 24(2) and (3) of the Charter, by granting also his sister an entry and residence permit in Austria.

59 Moreover, that conclusion is not called into question by the judgment of 12 December 2019, *Bevándorlási és Menekültügyi Hivatal (Family reunification – Sister of a refugee)* (C519/18, EU:C:2019:1070), in which the Court ruled that Article 10(2) of Directive 2003/86 had to be interpreted as not precluding a Member State from authorising the family reunification of a refugee's sister only if she is, on account of her state of health, unable to provide for her own needs, provided that certain conditions are met.

60 In that regard, it should be pointed out that facts such as those at issue in the case in the main proceedings and the questions of law raised by the referring court differ significantly from those which gave rise to the said judgment. Indeed, the latter judgment involved determining under which conditions Article 10(2) of Directive 2003/86, which is optional in nature, allows, where applicable, refugees, including those who are not unaccompanied minors, to apply independently for family reunification with their brothers and sisters. In the case at hand, by contrast, the Court is being called upon to rule on the scope of the right of an unaccompanied minor refugee to family reunification with his parents, under Article 10(3) of the said directive, in the specific situation where that right cannot be exercised without the grant of an entry and residence permit to his adult sister, who is seriously ill and, therefore, in a situation of total and permanent dependence on those parents.

61 In the light of the foregoing, the answer to the third question is that Article 10(3)(a) of Directive 2003/86 must be interpreted as requiring a residence permit to be granted to the adult sister of an unaccompanied minor refugee, who is a third-country national and who, on account of a serious illness, is totally and permanently dependent on the assistance of her parents, where a refusal to grant that residence permit would result in that refugee's being deprived of his or her right to family reunification with his or her parents, conferred by that provision.

The sixth and seventh questions

62 By its sixth and seventh questions, the referring court asks, in essence, whether Article 10(3)(a) of Directive 2003/86 must be interpreted as meaning that a Member State may require that, in order to be able to benefit from the right to family reunification with his or her parents under that provision, an unaccompanied minor refugee or his or her parents meet the conditions laid down in Article 7(1) of that directive and whether, depending on the case, the possibility of requiring compliance with those conditions depends on whether the application for family reunification has been submitted within the period laid down in the third subparagraph of Article 12(1) of the said directive.

63 In order to answer those questions, it should be recalled that Article 7(1) of Directive 2003/86, which forms part of Chapter IV thereof, entitled 'Requirements for the exercise of the right to family reunification', provides for the possibility for Member States to require evidence that the sponsor has accommodation regarded as normal for a comparable family in the Member State concerned, sickness insurance for him or herself and the members of his or her family, and stable and regular resources which are sufficient to maintain him or herself and the members of his or her family without recourse to the social assistance system of the Member State concerned.

64 The first subparagraph of Article 12(1) of Directive 2003/86, which, like Article 10 thereof, is contained in Chapter V of that directive, entitled ‘Family reunification of refugees’, provides that, by way of derogation from Article 7 thereof, the Member States are not to require the refugee or his or her family members to provide, in respect of applications concerning those family members referred to in Article 4(1) of that directive, the evidence that the sponsor fulfils the requirements set out in Article 7 thereof.

65 In accordance with paragraph 1 of the said Article 4, which is the sole article in Chapter II of Directive 2003/86, entitled ‘Family members’, the Member States are to authorise the entry and residence, pursuant to that directive and subject to compliance with the conditions laid down in Chapter IV thereof, as well as in Article 16 thereof, of the family members listed therein, including, in particular, the sponsor’s spouse and minor children.

66 It thus follows from a combined reading of the first subparagraph of Article 12(1), Article 4(1) and Article 7(1) of Directive 2003/86 that that first provision establishes more favourable conditions for the family reunification of a refugee with members of the nuclear family, by excluding the possibility for Member States to require evidence that the refugee has accommodation regarded as normal for a comparable family, sickness insurance for him or herself and the members of his or her family, and stable and regular resources which are sufficient to maintain him or herself and the members of his or her family.

67 However, the third subparagraph of Article 12(1) of Directive 2003/86 specifies that Member States may require the refugee to meet the conditions referred to in Article 7(1) thereof if the application for family reunification is not submitted within a period of three months after the grant of refugee status.

68 It thus follows from the third subparagraph of Article 12(1) of Directive 2003/86 that, in the cases referred to in the first subparagraph of that provision, the EU legislature has allowed the Member States to apply, as regards the conditions referred to in Article 7(1) of Directive 2003/86, the general rules in place of the preferential rules ordinarily applicable to refugees where an application for family reunification is lodged after a certain time limit has elapsed from the grant of refugee status (see, to that effect, judgment of 7 November 2018, *K and B*, C380/17, EU:C:2018:877, paragraph 46).

69 In the case at hand, it is apparent from the order for reference that the Republic of Austria has made use both of the possibility provided for in Article 7(1) of Directive 2003/86, by requiring sponsors to meet the conditions laid down in that provision, and of the possibility provided for in the third subparagraph of Article 12(1) of that directive, by providing that those conditions must also be met by sponsors who have refugee status if the application for entry and residence for the purposes of family reunification is submitted more than three months after the definitive grant of that status.

70 The referring court is uncertain, however, whether the latter possibility extends also to the family reunification of unaccompanied minor refugees with their parents, referred to in Article 10(3)(a) of Directive 2003/86, and therefore whether it is open to the Member States to require, for such reunification, the minor refugee or his or her parents to meet the conditions laid down in Article 7(1) of that directive, unless the application for family reunification with his or her parents has been submitted within three months of the grant of refugee status to that minor.

71 In view of the wording, scheme and purpose of Directive 2003/86 and the requirements arising from Article 7 and Article 24(2) and (3) of the Charter, however, that question must be answered in the negative.

72 Article 10(3)(a) of Directive 2003/86 grants unaccompanied minors preferential treatment by ensuring family reunification with their first-degree relatives in the direct ascending line 'without applying the conditions laid down in Article 4(2)(a)' of that directive.

73 As the Advocate General observed, in essence, in point 26 of his Opinion, Article 4(2)(a) explicitly refers to the conditions laid down in Chapter IV, of which Article 7 forms part. It thus follows from the wording of Article 10(3)(a) of Directive 2003/86, read in conjunction with Article 4(2)(a) thereof, that Member States cannot require an unaccompanied minor refugee or his or her parents to meet the conditions laid down in Article 7(1) of that directive when the latter submit an application for entry and residence for the purposes of family reunification with the minor refugee, based on Article 10(3)(a) thereof.

74 That reading of Article 10(3)(a) of Directive 2003/86 is supported both by the purpose of that provision – which is, as has been recalled in paragraphs 40 and 51 of the present judgment, specifically to promote the reunification of unaccompanied minor refugees with their parents, in order to guarantee those minors an increased protection on account of their particular vulnerability – and by the scheme of that directive and, in particular, by Article 12(1) thereof.

75 The latter provision explicitly refers only to 'applications concerning those family members referred to in Article 4(1) [thereof]', namely, in particular, the sponsor's spouse and minor children. It thus follows from the scheme of that directive that the EU legislature established, first by Article 12(1) of that directive and second by Article 10(3)(a) thereof, two separate regimes, the first of which applies to the family reunification of any refugee with the members of his or her nuclear family and provides for the possibility for the Member States to require the sponsor to meet the conditions laid down in Article 7(1) of the said directive if the application for family reunification is not submitted within three months of the grant of refugee status, whereas the second applies specifically to the family reunification of unaccompanied minor refugees with their parents and does not provide for such a possibility.

76 Moreover, by excluding, in the context of applications for family reunification of unaccompanied minor refugees with their parents, based on Article 10(3)(a) of Directive 2003/86, the possibility for the Member States to require that the conditions laid down in Article 7(1) of that directive be met, the EU legislature complied with the requirements arising from Article 7 of the Charter, concerning respect for family life, and from Article 24(2) and (3) of the Charter, implying that, in all actions relating to children, the child's best interests are a primary consideration and that account is taken of the need for a child to maintain a personal relationship with his or her parents on a regular basis.

77 As the Commission has asserted, it is practically impossible for an unaccompanied minor refugee to have, for him or herself and the members of his or her family, accommodation, sickness insurance and sufficient resources and thus to meet the conditions defined in Article 7(1) of Directive 2003/86. Likewise, it is extremely difficult for the parents of such a minor to meet those conditions before even having joined their child in the Member State concerned. Thus, to make the possibility of family reunification of unaccompanied minor refugees with their parents dependent on compliance with the said conditions would, in reality, be tantamount to depriving those minors of their right to such reunification, in breach of the requirements arising from Article 7 and Article 24(2) and (3) of the Charter.

78 It follows that, where the parents of an unaccompanied minor refugee submit an application for entry and residence for the purposes of family reunification with him or her, pursuant to Article 10(3)(a) of Directive 2003/86, Member States cannot require either that minor or his or her parents to meet the conditions set out in Article 7(1) of that directive, namely that they have accommodation regarded as sufficient for all family members in the Member State concerned, sickness insurance for all the members of that family and stable and regular resources which are sufficient to maintain that family, without recourse to the social assistance system of the Member State concerned.

79 Similarly, in so far as, in the light of the exceptional circumstances of the case in the main proceedings and as has been found in paragraph 58 of the present judgment, it is necessary, in order to ensure the effectiveness of RI's right to family reunification with his two parents, arising from Article 10(3)(a) of Directive 2003/86, for an entry and residence permit to be granted also to his adult sister, given that those parents are unable to join their son, an unaccompanied minor refugee, in Austria without taking their daughter with them, on account of the fact that she suffers from a serious illness which makes her totally and permanently dependent on the material assistance of her parents, the Member State concerned also cannot require RI or his parents to meet the conditions laid down in Article 7(1) of that directive with regard to the minor refugee's sister.

80 In the light of the foregoing, the answer to the sixth and seventh questions is that Article 10(3)(a) of Directive 2003/86 must be interpreted as meaning that a Member State may not require that, in order to be able to benefit from the right to family reunification with his or her parents under that provision, an unaccompanied minor refugee or his or her parents meet the conditions laid down in Article 7(1) of that directive, irrespective of whether the application for family reunification has been submitted within the period laid down in the third subparagraph of Article 12(1) of the said directive.

Costs

81 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:

1. **Article 10(3)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that, in order to be able to base a right to family reunification on that provision and thereby benefit from the more favourable conditions laid down therein, that provision does not require the first-degree relatives in the direct ascending line of an unaccompanied minor refugee to submit the application for entry and residence for the purposes of family reunification with him or her within a given period, where that refugee is still a minor on the date on which that application is submitted and reaches majority during the family reunification procedure.**

2. **Article 10(3)(a) of Directive 2003/86 must be interpreted as requiring a residence permit to be granted to the adult sister of an unaccompanied minor refugee, who is a third-country national and who, on account of a serious illness, is totally and permanently dependent on the assistance of her parents, where a refusal to grant that residence permit would result in that refugee's being deprived of his or her right to family reunification with his or her first-degree relatives in the direct ascending line, conferred by that provision.**

3. **Article 10(3)(a) of Directive 2003/86 must be interpreted as meaning that a Member State may not require that, in order to be able to benefit from the right to family reunification with his or her first-degree relatives in the direct ascending line under that provision, an unaccompanied minor refugee or his or her first-degree relatives in the direct ascending line meet the conditions laid down in Article 7(1) of that directive, irrespective of whether the application for family reunification has been submitted within the period laid down in the third subparagraph of Article 12(1) of the said directive.**

[Signatures]

* Language of the case: German.