Lingua del documento :

ECLI:EU:C:2024:487

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

11 June 2024 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Common asylum policy – Directive 2011/95/EU – Qualification for refugee status – Article 2(d) and (e) – Reasons for persecution – Article 10(1)(d) and (2) – 'Membership of a particular social group' – Article 4 – Individual assessment of the facts and circumstances – Directive 2013/32/EU – Article 10(3) – Requirements for the examination of applications for international protection – Article 24(2) of the Charter of Fundamental Rights of the European Union – Best interests of the child – Determination – Third-country nationals who are minors and who identify with the fundamental value of equality between women and men by reason of their stay in a Member State)

In Case C-646/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting at 's-Hertogenbosch, Netherlands), made by decision of 22 October 2021, received at the Court on 25 October 2021, in the proceedings

K,

L

v

Staatssecretaris van Justitie en Veiligheid,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, C. Lycourgos, E. Regan, F. Biltgen and N. Piçarra (Rapporteur), Presidents of Chambers, P.G. Xuereb, L.S. Rossi, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, I. Ziemele and J. Passer, Judges,

Advocate General: A.M. Collins,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 18 April 2023,

after considering the observations submitted on behalf of:

– K and L, by B.W.M. Toemen and Y.E. Verkouter, advocaten, and by S. Rafi, experte,

– the Netherlands Government, by M.K. Bulterman, A. Hanje and A.M. de Ree, acting as Agents,

– the Czech Government, by L. Halajová, M. Smolek and J. Vláčil, acting as Agents,

– the Greek Government, by M. Michelogiannaki and T. Papadopoulou, acting as Agents,

– the Spanish Government, by A. Gavela Llopis and A. Pérez-Zurita Gutiérrez, acting as Agents,

– the French Government, by A.-L. Desjonquères and J. Illouz, acting as Agents,

– the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,

– the European Commission, by A. Azéma and F. Wilman, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 24(2) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 10(1)(d) and (2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

2 The request has been made in proceedings between, on the one hand, K and L and, on the other, the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) concerning the rejection by the latter of K and L's subsequent applications for international protection.

Legal context

International law

The Geneva Convention

3 Article 1(A)(2) of the Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951 (United Nations, *Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954 and was supplemented by the Protocol relating to the Status of Refugees, which was concluded in New York on 31 January 1967 and entered into force on 4 October 1967 ('the Geneva Convention'), provides that 'for the purposes of the present Convention, the term "refugee" shall apply to any person who … owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; …'.

The CEDAW

4 Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women ('the CEDAW'), which was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981 (United Nations, *Treaty Series*, Vol. 1249, No 1-20378, p. 13) and to which all Member States are party, provides that 'for the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex

which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'.

5 Article 3 of that convention provides that States Parties are to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.

6 Under Article 5 of that convention, States Parties are to take all appropriate measures to, inter alia, modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

7 Under Articles 7, 10 and 16 of the same convention, States Parties are to take all appropriate measures to eliminate discrimination against women in the political and public life of the country, in the field of education and in all matters relating to marriage and family relations.

The Istanbul Convention

8 In accordance with Article 1 thereof, the purpose of the Council of Europe Convention on preventing and combating violence against women and domestic violence, which was concluded in Istanbul on 11 May 2011, signed by the European Union on 13 June 2017 and approved on behalf of the European Union by Council Decision (EU) 2023/1076 of 1 June 2023 (OJ 2023 L 143 I, p. 4) ('the Istanbul Convention'), and which entered into force, so far as the European Union is concerned, on 1 October 2023, is to, inter alia, protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence, and contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women.

9 Article 3 of that convention states that, for the purpose of applying the Convention, "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

10 Article 4(2) of that convention provides:

'Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:

– embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;

– prohibiting discrimination against women, including through the use of sanctions, where appropriate;

– abolishing laws and practices which discriminate against women.'

11 Article 60 of the Istanbul Convention is worded as follows:

'1 Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of [Article 1(A)(2)] of the [Geneva Convention] and as a form of serious harm giving rise to complementary/subsidiary protection.

2 Parties shall ensure that a gender-sensitive interpretation is given to each of the [Geneva Convention] grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.

…'

European Union law

Directive 2011/95

12 As set out in recitals 4, 16, 18 and 30 of Directive 2011/95:

'(4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

…

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the [Charter]. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

…

(18) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

…

(30) It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group". For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution.'

13 Article 2 of that directive, headed 'Definitions', is worded as follows:

'For the purposes of this Directive the following definitions shall apply:

(a) "international protection" means refugee status and subsidiary protection status as defined in points (e) and (g);

…

(d) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(e) “refugee status” means the recognition by a Member State of a third-country national or a stateless person as a refugee;

…

(i) “applicant” means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…

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

…

(n) “country of origin” means the country or countries of nationality or, for stateless persons, of former habitual residence.’

14 Article 4 of that directive, headed ‘Assessment of facts and circumstances’, which is contained in Chapter II of that directive, relating to the ‘assessment of applications for international protection’, provides:

‘1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in paragraph 1 consist of the applicant’s statements and all the documentation at the applicant’s disposal regarding the applicant’s age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

…

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

…

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

…

(c) the applicant’s statements are found to be coherent and plausible …

…

(e) the general credibility of the applicant has been established.'

15 Article 9 of that directive, headed 'Acts of persecution', provides in paragraphs 1 and 2:

'1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms [, signed in Rome on 4 November 1950]; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

…

(f) acts of a gender-specific or child-specific nature.'

16 Article 10 of Directive 2011/95, headed 'Reasons for persecution', provides:

'1. Member States shall take the following elements into account when assessing the reasons for persecution:

…

(d) a group shall be considered to form a particular social group where in particular:

– members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

– that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

… Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

…

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the … social … characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.'

17 Article 20 of that directive, which is contained in Chapter VII of the directive, relating to the 'content of international protection', provides, in paragraphs 3 and 5:

'3. When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors …, single parents with minor children …

…

5. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.'

Directive 2013/32/EU

18 Article 2(q) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60) defines 'subsequent application' as 'a further application for international protection made after a final decision has been taken on a previous application …'.

19 Article 10 of that directive, headed 'Requirements for the examination of applications', provides in paragraph 3:

'Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

(a) applications are examined and decisions are taken individually, objectively and impartially;

(b) precise and up-to-date information is obtained from various sources, such as [the European Asylum Support Office (EASO)] and [the United Nations High Commissioner for Refugees (UNHCR)] and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants … and that such information is made available to the personnel responsible for examining applications and taking decisions;

…

(d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.'

20 As set out in the fourth subparagraph of Article 14(1) of that directive, 'Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview'.

21 Article 15(3) of the same directive provides:

'Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

…

(e) ensure that interviews with minors are conducted in a child-appropriate manner.'

22 Article 40 of Directive 2013/32, headed 'Subsequent application', provides in paragraph 2:

'For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive [2011/95].'

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

23 K and L, the applicants in the main proceedings, are two sisters of Iraqi nationality, born in 2003 and 2005, respectively. They arrived in the Netherlands in 2015, together with their parents and aunt. They have stayed there continuously ever since. On 7 November 2015, their parents lodged applications for asylum in their own names and on behalf of K and L, which were rejected on 17 February 2017. Those rejection decisions became final in 2018.

24 On 4 April 2019, K and L lodged subsequent applications, within the meaning of Article 2(q) of Directive 2013/32, which were rejected as manifestly unfounded by decisions of the State Secretary for Justice and Security of 21 December 2020. In challenging those rejection decisions, K and L argued before the rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting at 's-Hertogenbosch, Netherlands), the referring court, that, due to their long stay in the Netherlands, they have adopted the norms, values and conduct of young people of their age and have thus become 'westernised'. Consequently, as young women, they consider themselves able to make their own choices about their lives and their future, in particular as regards their relationships with men, marriage, their studies, their work and the formation and expression of their political and religious views. They fear persecution if they were to return to Iraq because of the identity they have formed in the Netherlands, characterised by the adoption of norms, values and conduct that are different from those of their country of origin, which have become so fundamental to their identity and conscience that they cannot renounce them. They submit that they are therefore members of a 'particular social group', within the meaning of Article 10(1)(d) of Directive 2011/95.

25 K and L also argue that, due to their long stay in the Netherlands, they are now firmly rooted in that country and would suffer developmental harm if they had to leave. That harm would be in addition to that suffered as a result of the long period of uncertainty as to whether or not they would obtain a residence permit in the Netherlands.

26 In those circumstances, the referring court seeks to ascertain, in the first place, how the concept of 'membership of a particular social group', within the meaning of Article 10(1)(d) of Directive 2011/95, is to be interpreted. It considers that the concept of 'westernisation' refers to equality between women and men and, in particular, to the right of women to be protected against all gender-based violence, the right not to be forced into marriage, the right to subscribe or not to a belief, and the right to have their own political opinions and be able to express them.

27 The referring court points out that, in accordance with the case-law of the Raad van State (Council of State, Netherlands), 'westernised women' constitute too diverse a group to be regarded as members of a 'particular social group', within the meaning of Article 10(1)(d) of Directive 2011/95, and that, according to national legal practice, any 'westernisation' is to be examined as a reason for persecution based on either religion or political opinion.

28 In the second place, the referring court is uncertain as to the manner in which the best interests of the child, guaranteed in Article 24(2) of the Charter, are to be taken into account in the procedure for examining applications for international protection. It finds no indication in EU law as to how those interests are to be determined.

29 In that regard, while recalling that, according to the judgment of 14 January 2021, *Staatssecretaris van Justitie en Veiligheid (Return of an unaccompanied minor)* (C-441/19, EU:C:2021:9, paragraph 45), in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration, in accordance with Article 24(2) of the Charter, the referring court raises the question of the compatibility with EU law of a national legal practice according to which, in the first instance, the competent authority decides upon the application for international protection by weighing up, in general terms, the child's best interests, with the applicant being able to challenge the decision thus adopted only at a second stage, by specifically establishing that those interests require a different decision.

30 In the third place, observing that the harm allegedly suffered by K and L, arising from the uncertainty resulting from their situation in the Netherlands, is not linked to the reasons for persecution in their country of origin, the referring court asks whether, in the context of examining an application for international

protection, the child's best interests nevertheless require consideration to be given to such harm and, if so, according to what criteria.

31 In the fourth place and lastly, the referring court asks whether the national legal practice according to which the authority deciding upon a 'subsequent application', within the meaning of Article 2(q) of Directive 2013/32, is not required to examine of its own motion the applicant's right to stay on 'ordinary grounds' is compatible with EU law.

32 In those circumstances, the rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting at 's-Hertogenbosch) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 10(1)(d) of [Directive 2011/95] be interpreted as meaning that western norms, values and actual conduct which third-country nationals adopt while staying in the territory of the Member State and participating fully in society for a significant part of the phase of their lives in which they form their identity are to be regarded as a common background that cannot be changed or characteristics that are so fundamental to identity that a person should not be forced to renounce them?

(2) If the answer to the first question is in the affirmative, are third-country nationals who, irrespective of the reasons, have adopted comparable western norms and values through actual residence in the Member State during the phase of their lives in which they form their identity to be regarded as "members of a particular social group" within the meaning of Article 10(1)(d) of [Directive 2011/95]? Is the question of whether there is a "particular social group that has a distinct identity in the relevant country" to be assessed from the perspective of the Member State or must this, read in conjunction with Article 10(2) of [Directive 2011/95], be interpreted as meaning that decisive weight is given to the ability of the foreign national to demonstrate that he or she is regarded in the country of origin as belonging to a particular social group or, at any rate, that this is attributed to him or her? Is the requirement that [westernisation] can lead to refugee status only if it stems from religious or political motives compatible with Article 10 of [Directive 2011/95], read in conjunction with the prohibition on refoulement and the right to asylum?

(3) Is a national legal practice whereby a decision-maker, when assessing an application for international protection, weighs up the best interests of the child without first concretely determining (in each procedure) the best interests of the child compatible with EU law and, in particular, with Article 24(2) of the [Charter], read in conjunction with Article 51(1) of the Charter? Is the answer to this question different if the Member State has to assess a request for the grant of residence on ordinary grounds and the best interests of the child must be taken into account in deciding on that request?

(4) Having regard to Article 24(2) of the Charter, in which manner and at what stage of the assessment of an application for international protection must the best interests of the child, and, more specifically, the harm suffered by a minor as a result of his or her long residence in a Member State, be taken into account and weighed up? Is it relevant in that regard whether that actual residence was lawful? Is it relevant, when weighing up the best interests of the child in the above assessment, whether the Member State took a decision on the application for international protection within the time limits laid down in EU law, whether a previously imposed obligation to return was not complied with and whether the Member State did not effect removal after a return decision had been issued, as a result of which the minor's actual residence in the Member State was able to continue?

(5) Is a national legal practice whereby a distinction is made between initial and subsequent applications for international protection, in the sense that ordinary grounds are disregarded in the case of subsequent applications for international protection, compatible with EU law, having regard to Article 7 of the Charter, read in conjunction with Article 24(2) thereof?'

Consideration of the questions referred

The first and second questions

33 As a preliminary point, it should be noted that, while the national court refers, in particular in its first question, to the 'western norms, values and actual conduct which third-country nationals adopt while staying in the territory of the Member State and participating fully in society for a significant part of the phase of their lives in which they form their identity', it is clear from the order for reference that that court is referring, in essence, to the fact that those women genuinely come to identify with the fundamental value of equality between women and men and wish to continue to benefit from that equality in their daily lives.

34 In those circumstances, it must be considered that, by its first two questions referred for a preliminary ruling, which can be examined together, that court is asking, in essence, whether Article 10(1)(d) and (2) of Directive 2011/95 must be interpreted as meaning that, depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men, enshrined in particular in Article 2 TEU, during their stay in a Member State, may be regarded as belonging to 'a particular social group', constituting a 'reason for persecution' capable of leading to the recognition of refugee status.

35 In the first place, Article 2(d) of Directive 2011/95 defines 'refugee' as a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. That definition reproduces the definition contained in Article 1(A)(2) of the Geneva Convention which, as stated in recital 4 of that directive, constitutes 'the cornerstone of the international legal regime for the protection of refugees'.

36 Directive 2011/95 must, for that reason, be interpreted not only in the light of its general scheme and purpose, but also in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. Those treaties include, inter alia, the Istanbul Convention and the CEDAW (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraphs 37 and 44 to 47).

37 As confirmed by Articles 1 and 3 and Article 4(2) of the Istanbul Convention, equality between women and men entails, inter alia, the right of every woman to be protected against all gender-based violence, the right not to be forced into marriage, the right to subscribe or not to a belief, the right to have her own political opinions and to express them and the right to make her own life choices freely in relation to, inter alia, education, career or activities in the public sphere. The same is confirmed by Articles 3, 5, 7, 10 and 16 of the CEDAW.

38 Furthermore, the provisions of Directive 2011/95 must also be interpreted, as stated in recital 16 thereof, in a manner consistent with the rights recognised by the Charter, the application of which that directive seeks to promote, and Article 21(1) of which prohibits any discrimination based on, inter alia, sex (see, to that effect, judgments of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 39, and of 9 November 2023, *Staatssecretaris van Justitie en Veiligheid (Concept of serious harm)*, C-125/22, EU:C:2023:843, paragraph 60).

39 In the second place, Article 10(1) of Directive 2011/95 lists, for each of the five reasons for persecution capable of leading to the recognition of refugee status, in accordance with Article 2(d) of that directive, elements which Member States are to take into account.

40 As regards, in particular, the reason relating to ‘membership of a particular social group’, it is apparent from the first subparagraph of Article 10(1)(d) that a group is to be considered a ‘particular social group’ where two cumulative conditions are satisfied. First, the persons who may belong to it must share at least one of three identifying features, namely an ‘innate characteristic’, a ‘common background that cannot be changed’ or a ‘characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it’. Second, that group must have a ‘distinct identity’ in the country of origin ‘because it is perceived as being different by the surrounding society’ (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 40).

41 In addition, the second subparagraph of Article 10(1)(d) states, inter alia, that ‘gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group’. That provision is to be read in the light of recital 30 of Directive 2011/95, according to which gender identity may be related to certain legal traditions and customs (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 41).

42 As regards the first condition for identifying a ‘particular social group’, within the meaning of the first indent of the first subparagraph of Article 10(1)(d) of Directive 2011/95, namely sharing at least one of the three identifying features referred to in that provision, the Court has previously held that the fact of being female constitutes an innate characteristic and therefore suffices to satisfy that condition (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 49).

43 Furthermore, women who share an additional common feature such as, for example, another innate characteristic, or a common background that cannot be changed, such as a particular family situation, or a characteristic or belief that is so fundamental to identity or conscience that those women should not be forced to renounce it, may therefore also satisfy that condition (see, to that effect, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 50).

44 In that regard, first, as the Advocate General points out in point 34 of his Opinion, the fact that a woman genuinely identifies with the fundamental value of equality between women and men, in so far as it presupposes a desire to benefit from that equality in her daily life, entails being free to make her own life choices, particularly in relation to her education and career, the extent and nature of her activities in the public sphere, the possibility of achieving economic independence by working outside the home, her decision on whether to live alone or with a family, and the free choice of a partner, choices which are fundamental to her identity. In those circumstances, the fact that a woman who is a third-country national genuinely comes to identify with the fundamental value of equality between women and men may be considered ‘a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it’. In that regard, the fact that that national does not consider that she forms a group with other third-country nationals or all women who identify with that fundamental value is irrelevant.

45 Second, the fact that young women who are third-country nationals have stayed in a host Member State during a phase of their lives in which a person’s identity is formed, and that, during that stay, they have genuinely come to identify with the fundamental value of equality between women and men, is capable of constituting ‘a common background that cannot be changed’, within the meaning of the first indent of the first subparagraph of Article 10(1)(d) of Directive 2011/95.

46 Accordingly, it must be held that those women, including minors, satisfy the first condition for identifying a 'particular social group', within the meaning of the first indent of the first subparagraph of Article 10(1)(d) of Directive 2011/95.

47 Under Article 10(2) of that directive, the competent national authority is to ensure that the characteristic related to membership of a particular social group is attributed to the person concerned in his or her country of origin, within the meaning of Article 2(n) of that directive, even if that person does not actually possess that characteristic.

48 As regards the second condition for identifying 'a particular social group', laid down in the second indent of the first subparagraph of Article 10(1)(d) of the same directive and relating to the 'distinct identity' of the group in the country of origin, it is clear that women may be perceived as being different by the surrounding society and recognised as having their own identity in that society, in particular because of social, moral or legal norms in their country of origin (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 52).

49 That second condition will also be satisfied by women who share an additional common characteristic, such as the fact that they genuinely come to identify with the fundamental value of equality between women and men, where the social, moral or legal norms in their country of origin have the result that those women, on account of that common characteristic, are also perceived as being different by the surrounding society (see, to that effect, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 53).

50 In that context, it should be made clear that it is for the competent authorities of the Member State concerned to determine which surrounding society is relevant when assessing whether such a social group exists. That society may coincide with the entirety of the third country of origin of the applicant for international protection or be more restricted, for example to part of the territory or population of that third country (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 54).

51 It follows that women, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a 'particular social group', within the meaning of Article 10(1)(d) of Directive 2011/95.

52 In the light of the referring court's doubts, it must also be pointed out that there is no requirement that the fact that those women genuinely identify with the fundamental value of equality between women and men be political or religious in order for it to be recognised that, in the case of those women, there is a reason for persecution within the meaning of that provision. It is nonetheless the case that, depending on the circumstances, such identification may also be regarded as a reason for persecution based on religion or political opinion.

53 In the third place, as regards the evaluation of an application for international protection, including a 'subsequent application', based on membership of a particular social group as the reason for persecution, it falls to the competent national authorities to ascertain, as required by Article 2(d) of Directive 2011/95, whether the person relying on that reason for persecution has 'a well-founded fear' of suffering, in his or her country of origin, acts of persecution, within the meaning of Article 9(1) and (2) of that directive, by reason of that membership (see, to that effect, judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 59).

54 For the purposes of such an evaluation, the competent national authority must take account, first, of the fact that, as stated in Article 9(2)(f) of that directive, an act of persecution, within the meaning of

Article 1(A) of the Geneva Convention, may take the form of, inter alia, an act 'of a gender-specific … nature'.

55 In that regard, Article 60(1) of the Istanbul Convention provides that gender-based violence against women – which is to be understood as a violation of human rights and a form of discrimination against women under Article 3 of that convention – is to be recognised as a form of persecution within the meaning of Article 1(A)(2) of the Geneva Convention. Furthermore, Article 60(2) requires parties to ensure that a gender-sensitive interpretation is given to each of the reasons for persecution prescribed by the Geneva Convention, including therefore to the reason for persecution based on membership of a particular social group.

56 Second, pursuant to Article 4(1) of Directive 2011/95, Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. The fact remains that the authorities of the Member States must, if necessary, cooperate actively with the applicant in order to determine and supplement the relevant elements of the application (see, to that effect, judgment of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, C-349/20, EU:C:2022:151, paragraph 64). Furthermore, if Member States make use of the power conferred on them by that provision, Article 4(5) further provides that, where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects do not need confirmation if the cumulative conditions set out in Article 4(5) are met. Those conditions include the coherence and plausibility of the applicant's statements and his or her general credibility (see, to that effect, judgment of 21 September 2023, *Staatssecretaris van Veiligheid en Justitie (Political opinions in the host Member State)*, C-151/22, EU:C:2023:688, paragraph 44).

57 The Court has made it clear in that regard that the statements made by an applicant for international protection are merely the starting point in the process of assessment of the facts and circumstances carried out by the competent authorities, which are often better placed than the applicant to gain access to certain types of documents (see, to that effect, judgments of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraphs 65 and 66; of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, C-238/19, EU:C:2020:945, paragraph 52; and of 9 November 2023, *Staatssecretaris van Justitie en Veiligheid (Concept of serious harm)*, C-125/22, EU:C:2023:843, paragraph 47).

58 It would thus be contrary to Article 4 of Directive 2011/95 to consider that it is necessarily for the applicant alone to submit all the elements substantiating the reasons justifying his or her application for international protection and, in particular, the fact (i) that he or she could be perceived, in his or her country of origin, as belonging to a particular social group, within the meaning of Article 10(1) of that directive, and (ii) that he or she risks being persecuted in that country for that reason (see, to that effect, judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, C-238/19, EU:C:2020:945, paragraphs 54 and 55).

59 Third, in accordance with Article 4(3) of Directive 2011/95, the assessment by the competent national authorities of whether an applicant's fear of being persecuted is well founded must be individual in character and must be carried out on a case-by-case basis with vigilance and care, solely on the basis of a specific evaluation of the facts and circumstances, in order to determine whether the established facts and circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be the victim of acts of persecution if returned to his or her country of origin (see, to that effect, judgments of 21 September 2023, *Staatssecretaris van Veiligheid en Justitie (Political opinions in the host Member State)*, C-151/22, EU:C:2023:688, paragraph 42, and of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 60).

60 In that context, Article 10(3)(b) of Directive 2013/32 requires Member States to ensure (i) that decisions on applications for international protection are taken after an appropriate examination, during which precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants, and (ii) that such information is made available to the personnel responsible for examining applications and taking decisions.

61 To that end, as is clear from point x of paragraph 36 of the HCR Guidelines on International Protection No 1, concerning gender-related persecution within the context of Article 1(A)(2) of the Geneva Convention, the competent national authorities must collect country of origin information that has relevance for the examination of applications made by women, such as the position of women before the law, their political rights, their social and economic rights, the cultural and social mores of the country and consequences for non-adherence, the prevalence of such harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making such a claim (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 61).

62 Fourth, it should be pointed out that the fact that a third-country national genuinely comes to identify with the fundamental value of equality between women and men during her stay in a Member State cannot be regarded as circumstances which that third-country national has created by her own decision since leaving her country of origin, within the meaning of Article 5(3) of Directive 2011/95, or as an activity the sole or main purpose of which was to create the necessary conditions for applying for international protection, within the meaning of Article 4(3)(d) of that directive. Suffice it to note that, where such identification has been established to the requisite legal standard, it can in no way be equated with the abusive intent and abuse of the procedure which those provisions are intended to combat (see, to that effect, judgment of 29 February 2024, *Bundesamt für Fremdenwesen und Asyl (Subsequent religious conversion)*, C-222/22, EU:C:2024:192, paragraphs 32 and 34).

63 In the present case, it is for the referring court to ascertain, in particular, whether the applicants in the main proceedings genuinely identify with the fundamental value of equality between women and men, in its components described in paragraphs 37 and 44 above, by seeking to benefit from that equality in their daily lives, with the result that that value constitutes an integral part of their identity and whether, as a result, they would be perceived as being different by the surrounding society in their country of origin. The fact that they could avoid the genuine risk of being persecuted in their country of origin on account of that identification by exercising restraint in expressing it is not to be taken into account in that respect (see, to that effect, judgment of 7 November 2013, *X and Others*, C-199/12 to C-201/12, EU:C:2013:720, paragraphs 70, 71, 74 and 75).

64 In the light of the foregoing, the answer to the first two questions is that Article 10(1)(d) and (2) of Directive 2011/95 must be interpreted as meaning that, depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may be regarded as belonging to ‘a particular social group’, constituting a ‘reason for persecution’ capable of leading to the recognition of refugee status.

The third and fourth questions

65 As a preliminary point, it should be noted that, by the second part of the third question, the referring court asks, in essence, whether Article 24(2) of the Charter, read in conjunction with Article 51(1) thereof, must be interpreted as precluding a ‘national legal practice’ according to which the competent authority, in

the context of an application for a residence permit ‘on ordinary grounds’, assesses the best interests of the child without ‘first concretely determining’ them.

66 However, as the Advocate General observed in point 67 of his Opinion, it is not apparent either from the order for reference or from the documents before the Court that an application for a residence permit ‘on ordinary grounds’ is at issue in the main proceedings.

67 Although questions referred for a preliminary ruling which relate to EU law enjoy a presumption of relevance, the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgment of 14 January 2021, *The International Protection Appeals Tribunal and Others*, C-322/19 and C-385/19, EU:C:2021:11, paragraph 53).

68 Accordingly, since the second part of the third question seeks, in reality, to obtain an advisory opinion from the Court, it is inadmissible.

69 By the first part of its third question and by its fourth question, which it is appropriate to consider together, the referring court asks, in essence, whether Article 24(2) of the Charter must be interpreted as precluding the competent national authority from deciding upon an application for international protection submitted by a minor without first having concretely determined the best interests of that minor, in the context of an individual assessment.

70 In that context, the referring court also asks whether, and if so how, account should be taken of harm allegedly suffered by the minor as a result of a long stay in a Member State and the uncertainty as to his or her obligation to return.

71 In the light of the arguments exchanged during the oral part of the procedure, it is important to dispel from the outset any doubt as to the possible inadmissibility of those questions for a preliminary ruling, on the ground that K and L are no longer minors, within the meaning of Article 2(k) of Directive 2011/95. It is clear from the order for reference that, at the time when they lodged their subsequent applications, the rejection of which is the subject matter of the main proceedings, namely 4 April 2019, K and L were under 18 years of age.

72 That said, it should be borne in mind that Article 24 of the Charter, which, as is stated in recital 16 of Directive 2011/95, is one of the articles of the Charter the application of which is to be promoted by that directive, provides, in paragraph 2, that ‘in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration’.

73 It follows from Article 24(2) of the Charter and Article 3(1) of the International Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, to which the explanations relating to Article 24 of the Charter expressly refer, that the best interests of the child must not only be taken into account in the substantive assessment of applications concerning children, but must also influence the decision-making process leading to that assessment, subject to specific procedural safeguards. As the United Nations Committee on the Rights of the Child has observed, the expression ‘best interests of the child’, within the meaning of Article 3(1), refers to a substantive right, an interpretative legal principle and a rule of procedure (see General comment No 14 (2013) of the Committee on the Rights of the Children on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1) CRC/C/GC/14, paragraph 6).

74 Furthermore, Article 24(1) of the Charter states that children may express their views freely, and that such views are to be taken into consideration on matters which concern them in accordance with their age and maturity.

75 In the first place, as is apparent from recital 18 of Directive 2011/95, when Member States are assessing the best interests of the child in a procedure for international protection, they should in particular take due account of the principle of family unity, the minor's well-being and social development – which includes his or her health, family situation and education – and safety and security considerations.

76 In that regard, Article 4(3)(c) of Directive 2011/95 provides that the individual assessment of an application for international protection must be carried out taking into account the age of the applicant so as to assess whether, on the basis of his or her personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm. In that context, Article 9(2)(f) of that directive specifies that an act of persecution can, inter alia, take the form of an act of a 'child-specific nature'.

77 The appraisal of the conclusions to be drawn from the age of the applicant, including the taking into account of his or her best interests where he or she is a minor, is solely the responsibility of the competent national authority (see, to that effect, judgment of 22 November 2012, *M*., C-277/11, EU:C:2012:744, paragraphs 69 and 70).

78 It follows from the above considerations that, where an applicant for international protection is a minor, the competent national authority must take into account, after an individual examination, the best interests of that minor when assessing the merits of his or her application for international protection.

79 In the second place, it is apparent from recital 18 of Directive 2011/95 that Member States must take into consideration, in a procedure for international protection, the views of the minor in accordance with his or her age and maturity. In addition, under the fourth subparagraph of Article 14(1) of Directive 2013/32, Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview. Where such an opportunity is offered to the minor, Article 15(3)(e) of that directive provides that Member States are to ensure that that interview is conducted in a child-appropriate manner. In that context, in accordance with Article 10(3)(d) of that directive, Member States are to ensure that the competent national authorities have the possibility to seek advice, whenever necessary, from experts on particular issues, such as, inter alia, child-related issues.

80 In the absence of more specific provisions in Directive 2011/95 and Directive 2013/32, it is for the Member State to determine the detailed rules for assessing the child's best interests in the procedure for international protection, in particular the stage(s) at which that assessment is to be made and the form it is to take, subject to compliance with Article 24 of the Charter and the provisions recalled in paragraphs 75 to 79 above.

81 In that regard, it must be stated, first, that, pursuant to Article 51(1) of the Charter, Member States are to promote the application of Article 24(2) of the Charter when they are implementing Union law and therefore also when they are examining a 'subsequent application', within the meaning of Article 2(q) of Directive 2013/32. Second, since Article 40(2) of that directive does not draw any distinction between a first application for international protection and a 'subsequent application' as regards the nature of the elements or findings capable of demonstrating that the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95, the assessment of the facts and circumstances in support of those applications must, in both cases, be carried out in accordance with Article 4 of Directive 2011/95 (judgment of 10 June 2021, *Staatssecretaris van Justitie en Veiligheid (New elements or findings)*, C-921/19, EU:C:2021:478, paragraph 40).

82 As regards the question whether and, if so, how account is to be taken of harm allegedly suffered by a minor as a result of a long stay in a Member State and the uncertainty as to his or her obligation to return, which may be attributed to the Member State responsible for examining the application for international protection submitted by that minor, it should be noted, as the referring court has done, that it is not for the

competent national authorities to assess the existence of such harm in the context of a procedure the purpose of which is to determine whether the person concerned has a well-founded fear of being persecuted if returned to his or her country of origin on account of his or her 'membership of a particular social group', within the meaning of Article 10(1)(d) of Directive 2011/95.

83 However, a long stay in a Member State, especially where it coincides with a period during which an applicant who is a minor has formed his or her identity, may, under Article 4(3) of that directive, read in the light of Article 24(2) of the Charter, be taken into account for the purpose of assessing an application for international protection based on a reason for persecution such as 'membership of a particular social group', within the meaning of Article 10(1)(d) of that directive.

84 For the reasons set out above, the answer to the first part of the third question and to the fourth question is that Article 24(2) of the Charter must be interpreted as precluding the competent national authority from deciding upon an application for international protection submitted by a minor without having concretely determined the best interests of that minor in the context of an individual assessment.

The fifth question

85 By its fifth question, the referring court asks, in essence, whether Article 7 of the Charter, read in conjunction with Article 24(2) thereof, must be interpreted as precluding a 'national legal practice' which allows 'ordinary grounds' to be taken into consideration when examining a first application for international protection, but not when examining a 'subsequent application', within the meaning of Article 2(q) of Directive 2013/32.

86 However, for the reasons set out in paragraphs 66 to 68 above and as the Advocate General states, in essence, in point 73 of his Opinion, the fifth question is inadmissible since it has no link with the dispute in the main proceedings.

Costs

87 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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(1)(d) and (2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted**

must be interpreted as meaning that depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may be regarded as belonging to 'a particular social group', constituting a 'reason for persecution' capable of leading to the recognition of refugee status.

2. **Article 24(2) of the Charter of Fundamental Rights of the European Union**

must be interpreted as precluding the competent national authority from deciding upon an application for international protection submitted by a minor without having concretely determined the best interests of that minor in the context of an individual assessment.

[Signatures]

* Language of the case: Dutch.