Lingua del documento :

ECLI:EU:C:2024:524

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

18 June 2024 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 33(2)(a) – No possibility for the authorities of a Member State to reject an application for asylum as inadmissible on the ground that refugee status was previously granted in another Member State – Article 4 of the Charter of the Fundamental Rights of the European Union – Risk of being subjected to inhuman or degrading treatment in that other Member State – Examination by those authorities of that application for asylum despite the granting of refugee status in that other Member State – Directive 2011/95/EU – Article 4 – Individual examination)

In Case C-753/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 7 September 2022, received at the Court on 12 December 2022, in the proceedings

QY

v

Bundesrepublik Deutschland,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, K. Jürimäe (Rapporteur), E. Regan, T. von Danwitz, Z. Csehi and O. Spineanu-Matei, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, S. Rodin, I. Jarukaitis, A. Kumin, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: L. Medina,

Registrar: K. Hötzel, Administrator,

having regard to the written procedure and further to the hearing on 26 September 2023,

after considering the observations submitted on behalf of:

– QY, by S. Kellmann, Rechtsanwalt,

– the German Government, by J. Möller, A. Hoesch and R. Kanitz, acting as Agents,

– the Belgian Government, by M. Jacobs, A. Van Baelen and M. Van Regemorter, acting as Agents,

– the Czech Government, by A. Edelmannová, M. Smolek and J. Vláčil, acting as Agents,

– Ireland, by M. Browne, Chief State Solicitor, A. Joyce and D. O'Reilly, acting as Agents, and by A. McMahon, Barrister-at-Law,

– the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,

– the French Government, by R. Bénard, O. Duprat-Mazaré, B. Fodda and J. Illouz, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by W. Ferrante, avvocato dello Stato,

– the Luxembourg Government, by A. Germeaux, J. Reckinger and T. Schell, acting as Agents,

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

– the Austrian Government, by A. Posch, J. Schmoll and M. Kopetzki, acting as Agents,

– the European Commission, by A. Azéma, J. Hottiaux and H. Leupold, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the second sentence of Article 3(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31), of the second sentence of Article 4(1) and Article 13 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), and of Article 10(2) and (3) and Article 33(1) and (2)(a) 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).

2 The request has been made in proceedings between QY, a Syrian national who obtained refugee status in Greece, and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany; 'the Federal Office') concerning the latter's decision to reject QY's application for recognition of refugee status.

Legal context

European Union law

Regulation No 604/2013

3 Recital 6 of Regulation No 604/2013 states:

‘The first phase in the creation of a [Common European Asylum System] that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the [European] Union, for those granted international protection, has now been completed. …’

4 Article 1 of that regulation defines the purpose of that regulation as follows:

‘This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (“the Member State responsible”).’

5 Article 3(1) of that regulation provides:

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

Directive 2011/95

6 Recitals 7 and 9 to 13 of Directive 2011/95 are worded as follows:

‘(7) The first phase in the creation of a Common European Asylum System has now been achieved. …

…

(9) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78 [TFEU], for those granted international protection, by 2012 at the latest.

(10) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying [Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12)] as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards.

(11) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States’ efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressure on their asylum systems, due in particular to their geographical or demographic situation.

(12) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

(13) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.’

7 Article 1 of Directive 2011/95 defines the purpose of that directive as follows:

‘The purpose of this Directive is to lay down 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].’

8 Article 3 of that directive, entitled ‘More favourable standards’, provides:

‘Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.’

9 Chapter II of that directive, entitled ‘Assessment of applications for international protection’, includes Articles 4 to 8 of that directive. Article 4 of that directive, entitled ‘Assessment of facts and circumstances’, 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.

…

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;

(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(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;

(d) whether the applicant’s activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

…’

10 Chapter III of Directive 2011/95, entitled ‘Qualification for being a refugee’, includes Articles 9 to 12 of that directive. Articles 11 and 12 of that directive define (i) the scenario in which a third-country national or a stateless person ceases to be a refugee and (ii) the scenario in which a third-country national or a stateless person is excluded from being a refugee, respectively.

11 Articles 13 and 14 of that directive are contained in Chapter IV, entitled ‘Refugee status’.

12 Under Article 13 of that directive:

‘Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.’

13 Article 14 of Directive 2011/95, entitled ‘Revocation of, ending of or refusal to renew refugee status’, provides:

‘1. Concerning applications for international protection filed after the entry into force of [Directive 2004/83], Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(a) he or she should have been or is excluded from being a refugee in accordance with Article 12;

…’

14 Chapter VII of Directive 2011/95 defines the ‘content of international protection’ and includes Articles 20 to 35. Article 29 of that directive, entitled ‘Social welfare’, provides, in paragraph 1:

‘Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.’

15 The second paragraph of Article 36 of that directive states:

‘Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.’

Directive 2013/32

16 Recitals 4, 12, 13 and 43 of Directive 2013/32 state:

‘(4) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Union rules leading to a common asylum procedure in the Union.

…

(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.

(13) The approximation of rules on the procedures for granting and withdrawing international protection should help to limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, and to create equivalent conditions for the application of Directive [2011/95] in Member States.

…

(43) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive [2011/95], except where this Directive provides otherwise, in particular where it can reasonably be assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an application for international protection where a first country of asylum has

granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country.'

17 Article 1 of Directive 2013/32 defines the purpose of that directive as follows:

'The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive [2011/95].'

18 Article 5 of Directive 2013/32, headed 'More favourable provisions', provides:

'Member States may introduce or retain more favourable standards on procedures for granting and withdrawing international protection, in so far as those standards are compatible with this Directive.'

19 Under Article 10(2) and (3) of that directive:

'2. When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.

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, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(c) the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law;

(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 Article 33(1) and (2)(a) of that directive states:

'1. In addition to cases in which an application is not examined in accordance with Regulation [No 604/2013], Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive [2011/95], where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

(a) another Member State has granted international protection …'

21 Articles 44 and 45 of Directive 2013/32 specify the procedures for the withdrawal of international protection.

22 Under the second subparagraph of Article 49 of that directive:

'Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.'

German law

23 Paragraph 1(1)(2) of the Asylgesetz (AsylG) (Law on Asylum) of 26 June 1992 (BGBl. 1992 I, p. 1126), in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798), as last amended by Paragraph 9 of the Gesetz zur Weiterentwicklung des Ausländerzentralregisters (Law on the development of the central register of foreign nationals) of 9 July 2021 (BGBl. 2021 I, p. 2467) ('the AsylG'), states:

'(1) This Law shall apply to foreign nationals applying for:

…

2. international protection under Directive [2011/95].'

24 Paragraph 29 of the AsylG, entitled 'Inadmissible applications', provides in point 2 of subparagraph 1:

'An application for asylum shall be inadmissible if:

2. another Member State of the European Union has already granted to the foreign national the international protection referred to in Paragraph(1)(1)(2) …'

25 Paragraph 60(1) of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz – AufenthG) (Law on the residence, occupational activity and integration of foreign nationals in the Federal territory) of 30 July 2004 (BGBl. 2004 I, p. 1950), in the version published on 25 February 2008 (BGBl. 2008 I, p. 162), as last amended by Paragraph 4 of the Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze (Law governing an immediate supplement and a single payment in minimum social security systems and amending the Law on financial equalisation and other laws) of 23 May 2022 (BGBl. 2022 I, p. 760), provides:

'Pursuant to the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 [*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)] [and which entered into force on 22 April 1954] (BGBl. 1953 II, p. 559), a foreign national may not be deported to a State in which his or her life or freedom is threatened on account of his or her race, religion, nationality, membership of a social group or political opinion. The same shall apply to persons entitled to asylum and to foreign nationals who have either been granted refugee status by act not open to appeal or who enjoy, for another reason, the foreign refugee status in the Federal territory, or who have been recognised outside of the Federal territory as foreign refugees in accordance with the Convention relating to the Status of Refugees. Where a foreign national relies on the prohibition on deportation referred to in this subparagraph, the Federal Office shall determine in an asylum procedure, except in the cases provided for in the second sentence, whether the conditions of the first sentence are met and whether the foreign national must be granted refugee status. An appeal may be brought against the decision of the Federal Office only on the basis of the provisions of the AsylG.'

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

26 QY, a Syrian national, obtained refugee status in Greece in 2018.

27 On a date not supplied by the referring court, QY made an application for international protection in Germany.

28 By a final decision, referred to but not dated in the request for a preliminary ruling, a Verwaltungsgericht (administrative court, Germany) held that QY faced, in Greece, a serious risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter'), with the result that she could not return there.

29 By decision of 1 October 2019, the Federal Office rejected QY's application for refugee status, but granted her subsidiary protection.

30 QY brought an action against that decision, which was dismissed by the Verwaltungsgericht (administrative court) hearing the case. According to that court, the application for refugee status was unfounded because QY was not at risk of persecution in Syria.

31 QY then brought a direct appeal, allowed by the Verwaltungsgericht (administrative court), before the Bundesverwaltungsgericht (Federal Administrative Court, Germany), which is the referring court. In support of that appeal, she submits that the Federal Office was bound by the Greek authorities' recognition of refugee status.

32 That court states that the Verwaltungsgericht (administrative court) was required to rule on the substance of QY's application for international protection. That application could not be declared inadmissible on the ground that that status had been previously granted in Greece, since QY runs a serious risk of facing, in that Member State, inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

33 The referring court observes that, as regards the substance, it is established that QY does not qualify as a refugee. Furthermore, in accordance with the second sentence of Paragraph 60(1) of the Law on the residence, occupational activity and integration of foreign nationals in the Federal territory, as amended, the only legal effect of the decision to grant refugee status taken by the Greek authorities is to prohibit the deportation of that refugee to the third country which he or she has fled. By contrast, under German law, such a decision does not create any right to a new recognition of refugee status. Similarly, under German law, that decision to grant refugee status does not have any binding effect meaning that the German authorities, which are exceptionally obliged to conduct a new asylum procedure, must necessarily grant refugee status to the person concerned in that procedure.

34 In those circumstances, the referring court considers that it is necessary to determine whether EU law precludes the Federal Office from conducting a new independent examination of the application for international protection and whether EU law requires that the decision granting refugee status taken in another Member State be binding on that office.

35 In that regard, first, that court is of the view that EU primary law, in particular Article 78 TFEU, is not capable of justifying such an effect. There is nothing in EU primary law to give rise to any principle of mutual recognition of decisions granting refugee status. Consequently, and in the absence, to date, of a uniform status of international protection, the examination of the substantive conditions of an application for such protection is a matter for the Member State to which that application has been made.

36 Nor, according to that court, can the principle of mutual trust justify the mutual recognition of such decisions. Moreover, that trust was broken in the present case, on account of the serious risk incurred by the person concerned of being exposed, in the Member State which granted her international protection, to inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

37 Secondly, the referring court observes that no rule of secondary EU law expressly provides that the recognition of refugee status by one Member State is binding on the asylum procedure in another Member State.

38 That being so, that court is uncertain whether the principle that an application for international protection must be examined only once, as referred to in the second sentence of Article 3(1) of Regulation No 604/2013, or the provisions of the second sentence of Article 4(1) and Article 13 of Directive 2011/95 could imply that refugee status granted by one Member State should be recognised in all the other Member States without any further examination being carried out.

39 In that context, that court is uncertain as to the legal consequences, in the event of a serious risk of infringement of Article 4 of the Charter in the Member State that granted international protection, of the loss of the possibility for another Member State, to which a new application for international protection has been made, to reject that application as inadmissible under Article 33(2)(a) of Directive 2013/32. In its view, the applicant should be regarded as a 'first-time applicant' by that other Member State and that Member State should carry out a new examination, without being bound by the considerations set out in the decision previously taken by the first Member State to grant refugee status.

40 However, that court notes that such an approach could entail a circumvention of the special rules on cessation, exclusion and revocation of refugee status, laid down in Articles 11, 12 and 14 of Directive 2011/95. That said, it points out that, in the present case, there is no risk of a deterioration in the legal position of the person concerned, who cannot, in any event, be deported to her country of origin since the Federal Office granted her subsidiary protection.

41 Thirdly, the referring court raises the question of how paragraph 42 of the order of 13 November 2019, *Hamed and Omar* (C-540/17 and C-541/17, EU:C:2019:964), should be understood. The reference to a 'new' asylum procedure could militate in favour of a new examination, whereas a reference to the rights attaching to refugee status could imply recognition of the status already granted by another Member State.

42 In the light of the foregoing considerations, the Bundesverwaltungsgericht (Federal Administrative Court) stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'In the event that a Member State may not exercise the power conferred by Article 33(2)(a) of Directive 2013/32 to reject as inadmissible an application for international protection with a view to the granting of refugee status in another Member State because living conditions in that [other] Member State would expose the applicant to a serious risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, must the second sentence of Article 3(1) of Regulation No 604/2013, the second sentence of Article 4(1) and Article 13 of Directive 2011/95 as well as Article 10(2) and (3) and Article 33(1) and (2)(a) of Directive 2013/32 be interpreted as meaning that the fact that refugee status has already been granted prevents the [first] Member State from carrying out an examination of the application for international protection submitted to it that is unbiased as to the outcome, and obliges the Member State to grant the applicant refugee status without examining the substantive conditions for that protection?'

Admissibility of the request for a preliminary ruling

43 Ireland contends that the request for a preliminary ruling is inadmissible on the ground that the interpretation sought is covered by the application of the 'acte clair' doctrine. According to Ireland, as EU law currently stands, no provision of EU law provides for mutual recognition by the Member States of decisions granting international protection taken by another Member State.

44 In accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid and X (*Ex officio *review of detention)*, C-704/20 and C-39/21, EU:C:2022:858, paragraph 61 and the case-law cited).

45 In the present case, it is unequivocally clear from the request for a preliminary ruling that the question referred does indeed concern the interpretation of provisions of EU law relevant for the purposes of the dispute in the main proceedings. The fact, alleged by Ireland, that the interpretation thus sought is clear concerns the substantive answer to that question and cannot, even if it were established, justify rebutting the presumption that that question is relevant.

46 In any event, those circumstances in no way prevent a national court from referring questions for a preliminary ruling to this Court, the answer to which leaves no scope for reasonable doubt. Accordingly, even if that were the case, the request for a preliminary ruling containing such a question does not thereby become inadmissible (see, to that effect, judgment of 9 March 2023, *Vapo Atlantic*, C-604/21, EU:C:2023:175, paragraph 33).

47 Accordingly, the request for a preliminary ruling is admissible.

Consideration of the question referred

48 By its single question, the referring court asks, in essence, (i) whether Article 3(1) of Regulation No 604/2013, Article 4(1) and Article 13 of Directive 2011/95, and Article 10(2) and (3) and Article 33(1) and (2)(a) of Directive 2013/32 must be interpreted as meaning that, where the competent authority of a Member State cannot exercise the option available to it under the last of those provisions to reject as inadmissible an application for international protection made by an applicant, to whom another Member State has already granted such protection, on account of a serious risk that that applicant will be subjected, in that other Member State, to inhuman or degrading treatment, within the meaning of Article 4 of the Charter, that authority is required to grant that applicant refugee status on the sole ground that he or she has already been granted refugee status by that other Member State or (ii) whether it may carry out a new, independent examination of the substance of that application.

49 As a preliminary point, it must be borne in mind that, under Article 33(1) of Directive 2013/32, in addition to cases in which an application is not examined in accordance with Regulation No 604/2013, Member States are not required to examine whether an applicant qualifies for international protection in accordance with Directive 2011/95 where an application is considered inadmissible pursuant to that article. Article 33(2) of Directive 2013/32 sets out an exhaustive list of the situations in which the Member States may consider an application for international protection to be inadmissible (judgments of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 76, and of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)*, C-483/20, EU:C:2022:103, paragraph 23).

50 In that regard, Article 33(2) of Directive 2013/32 seeks, as is apparent from recital 43 of that directive, to relax the obligation on the part of the Member States to examine any application for international protection by defining the cases in which such an application is considered to be inadmissible. In the light of that purpose, that provision, taken as a whole, constitutes a derogation from that obligation (see, to that effect, judgment of 1 August 2022, *Bundesrepublik Deutschland (Child of refugees, born outside the host State)*, C-720/20, EU:C:2022:603, paragraph 49 and the case-law cited).

51 Those situations include the situation, provided for in point (a) of Article 33(2) of Directive 2013/32, in which international protection has already been granted by another Member State. When applying that ground of inadmissibility in such a situation, the Member States are therefore exempt from the obligation referred to in the preceding paragraph of the present judgment (see, to that effect, judgment of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)*, C-483/20, EU:C:2022:103, paragraphs 23 and 24).

52 That being said, the Court held that, by way of exception, the authorities of a Member State cannot exercise the option made available to them under Article 33(2)(a) of Directive 2013/32 to reject an application for international protection as inadmissible on the ground that the applicant has been previously granted international protection by another Member State, where they reached the conclusion that the living conditions that that applicant could be expected to encounter as the beneficiary of international protection in that other Member State would expose him or her to a substantial risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter (see, to that effect, judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 92; order of 13 November 2019, *Hamed and Omar*, C-540/17 and C-541/17, EU:C:2019:964, paragraph 35, and judgment of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)*, C-483/20, EU:C:2022:103, paragraphs 32 and 34).

53 Since the option made available under Article 33(2)(a) of Directive 2013/32 constitutes, within the framework of the common asylum procedure established by that directive, an expression of the principle of mutual trust, which allows and requires Member States to presume, in the context of the Common European Asylum System, that the treatment of applicants for international protection in each Member State complies with the requirements of the Charter, in particular Articles 1 and 4 thereof, which enshrine one of the fundamental values of the European Union and its Member States, where it is established that this is not in fact the case in a given Member State, that presumption, and the exercise of the option resulting therefrom, cannot be justified (judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 83 to 86, and order of 13 November 2019, *Hamed and Omar*, C-540/17 and C-541/17, EU:C:2019:964, paragraph 41).

54 In that regard, it must be stated that the deficiencies referred to in paragraph 52 of the present judgment must attain a particularly high level of severity, which depends on all the circumstances of the case (see, to that effect, judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 89 to 91).

55 In the light of that case-law, the referring court asks whether, if it is not possible for an authority of a Member State to declare inadmissible, under Article 33(2)(a) of Directive 2013/32, an application for international protection submitted to it, it can then assess the merits of that application for international protection, without being bound by the fact that another Member State has already granted the applicant such protection.

56 In order to answer the question referred, it should be noted, in the first place, that EU law on international protection does not, as it currently stands, impose an express obligation on the Member States to recognise automatically decisions granting refugee status adopted by another Member State.

57 In that regard, it should be noted that, by virtue of Article 78(1) TFEU, the common policy developed by the European Union on asylum seeks to offer appropriate status to any third-country national requiring international protection and to ensure compliance with the principle of non-refoulement. The various aspects of the Common European Asylum System are listed in points (a) to (g) of Article 78(2) TFEU (see, to that effect, judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 75).

58 In particular, Article 78(2)(a) TFEU provides that the European Parliament and the Council of the European Union are to adopt measures for a Common European Asylum System comprising ‘a uniform status of asylum for nationals of third countries, valid throughout the Union’.

59 Although that provision thus provides a legal basis for the adoption, by the EU legislature, of EU acts containing such a uniform status, the fact remains that, as the Advocate General noted, in essence, in point 48 of her Opinion, intervention by the EU legislature is necessary in order to give concrete effect to all

the rights pertaining to that status which, granted by a Member State and recognised by all the others, is valid throughout the European Union.

60 In that regard, it is apparent from the recitals of the acts adopted on the basis of Article 78(2) TFEU, and in particular from recital 6 of Regulation No 604/2013, recitals 7 and 9 to 11 of Directive 2011/95, and recitals 4 and 12 of Directive 2013/32, that the EU legislature intends progressively to create, in successive stages, the Common European Asylum System which should lead, in time, to a common procedure and a uniform refugee status, valid throughout the European Union.

61 Thus, first of all, Directive 2011/95, adopted on the basis of Article 78(2)(a) and (b) TFEU, seeks, as is apparent from Article 1, read in the light of recital 12, inter alia, to ensure that all Member States apply common criteria for the identification of persons genuinely in need of international protection (see, to that effect, judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 37).

62 As regards, in particular, the provisions of that directive referred to by the referring court, Article 4 of that directive establishes such common criteria in relation to the assessment of the facts and circumstances in the context of the examination of an application for international protection, stating, in the second sentence of its first paragraph, that, in cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application. Article 13 of that directive obliges Member States to grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III of that directive.

63 However, neither those provisions nor any other provision of Directive 2011/95 require Member States to recognise automatically decisions granting refugee status adopted by another Member State. On the contrary, certain provisions of that directive, such as Article 29(1) relating to social welfare, limit certain rights relating to refugee status to the Member State that has granted that status.

64 Next, the purpose of Directive 2013/32, adopted on the basis of Article 78(2)(d) TFEU, is, according to Article 1, 'to establish common procedures for granting and withdrawing international protection pursuant to Directive [2011/95]'.

65 Article 10 of Directive 2013/32, referred to by the referring court, sets out requirements for the examination of applications for international protection, and requires, in paragraph 2, that the determining authority first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection. In accordance with Article 10(3), that authority must take its decision after an appropriate examination and satisfying the requirements set out in that provision. By contrast, neither Article 10 nor Article 33(1) and (2)(a) of Directive 2013/32, the content of which has been referred to in paragraphs 49 to 51 of the present judgment, require that authority to recognise automatically decisions granting refugee status adopted by another Member State.

66 Lastly, the purpose of Regulation No 604/2013, based on Article 78(2)(e) TFEU, pursuant to Article 1, is to lay down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

67 Although, in accordance with Article 3(1) of that regulation, an application for asylum by a third-country national or a stateless person on the territory of any one of the Member States is, in principle, to be examined by the single Member State which the criteria set out in Chapter III of that regulation indicate is responsible (judgment of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 56), it does not follow, however, in the absence of any provision to that effect, that the decision adopted by the Member State thus designated must be recognised automatically by the other Member States.

68 It is apparent from the grounds set out in paragraphs 57 to 67 of the present judgment that, as the Common European Asylum System currently stands, the EU legislature has not yet fully achieved the objective pursued by Article 78(2)(a) TFEU, namely a uniform status of asylum for nationals of third countries, valid throughout the European Union. In particular, the EU legislature has not, at this stage, established a principle that Member States are obliged to recognise automatically the decisions granting refugee status that have been adopted by another Member State, nor has it specified the detailed arrangements for implementing such a principle.

69 Although the Member States are thus, as EU law currently stands, free to make recognition of all of the rights relating to refugee status on their territory subject to the adoption, by their competent authorities, of a new decision granting that status, it is open to them to provide for automatic recognition of such decisions adopted by another Member State, by way of a more favourable provision, within the meaning of Article 3 of Directive 2011/95 and Article 5 of Directive 2013/32. It is common ground that the Federal Republic of Germany has not exercised that option.

70 In those circumstances, it is necessary to determine, in the second place, the scope of the examination, by the competent authority of a Member State, of an application for international protection made by an applicant to whom another Member State has already granted refugee status.

71 In that regard, it must be borne in mind that, as has been stated in paragraph 62 of the present judgment, pursuant to Article 13 of Directive 2011/95, Member States are to grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III of that directive, and they do not have any discretion in that respect (see, to that effect, judgments of 24 June 2015, *T.*, C-373/13, EU:C:2015:413, paragraph 63; of 14 May 2019, *M and Others (Revocation of refugee status)*, C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraph 89; and of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 72 and the case-law cited). By contrast, apart from the possibility of applying more favourable national standards, provided for in Article 3 of Directive 2011/95, that directive does not provide for refugee status to be granted to third-country nationals or stateless persons other than those fulfilling those requirements (see, to that effect, judgments of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 48 and the case-law cited, and of 9 November 2021, *Bundesrepublik Deutschland (Maintaining family unity)*, C-91/20, EU:C:2021:898, paragraphs 39 and 40 and the case-law cited).

72 In order to determine whether those requirements are satisfied, Member States must, in accordance with Article 4(3) of Directive 2011/95, undertake an individual assessment of each application for international protection, taking into account, inter alia, all relevant facts as they relate to the country of origin of the applicant at the time of taking a decision on the application, the relevant statements and documentation presented by him or her as well as his or her individual position and personal circumstances (see, to that effect, judgments of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 41, and of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 98).

73 Similarly, it follows, in essence, from Article 10(3) of Directive 2013/32 that applications for international protection must be examined individually, objectively and impartially in the light of precise and up-to-date information.

74 Therefore, in the event that, in accordance with the case-law referred to in paragraph 52 of the present judgment, where it is not possible for the competent authority of a Member State to declare inadmissible, under Article 33(2)(a) of Directive 2013/32, an application for international protection which has been made to it, that authority must carry out an individual, full and up-to-date examination of the qualification for refugee status.

75 If the applicant qualifies as a refugee in accordance with Chapters II and III of Directive 2011/95, that authority must grant him or her refugee status, and it does not have any discretion.

76 In that regard, although that authority is not required to grant refugee status to that applicant on the sole ground that that status was previously granted to him or her by decision of another Member State, it must nevertheless take full account of that decision and of the elements supporting it.

77 The Common European Asylum System, which includes common criteria for the identification of persons genuinely in need of international protection, as stated in recital 12 of Directive 2011/95, is based on the principle of mutual trust, in accordance with which it must be presumed, save in exceptional circumstances, that the treatment of applicants for international protection in each Member State complies with the requirements of EU law, including those of the Charter, the Geneva Convention, and the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, to that effect, judgments of 21 December 2011, *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 78 to 80, and of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 84 and 85).

78 Furthermore, in the light of the principle of sincere cooperation set out in the first subparagraph of Article 4(3) TEU, by virtue of which the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 42), and to which concrete expression is given in Article 36 of Directive 2011/95 and in Article 49 of Directive 2013/32, and in order to ensure, as far as possible, the consistency of the decisions taken by the competent authorities of two Member States on the need for international protection of the same third-country national or stateless person, it must be held that the competent authority of the Member State called upon to decide on the new application must, as soon as possible, initiate an exchange of information with the competent authority of the Member State which previously granted refugee status to the same applicant. In that regard, it is for the first of those authorities to inform the second of the new application, to send it its opinion on that new application and to obtain from it, within a reasonable time, the information in its possession that led to refugee status being granted.

79 That exchange of information is intended to ensure that the authority of the Member State to which the new application has been made is in a position to proceed on a fully informed basis with the checks which it is required to carry out under the international protection procedure.

80 In the light of all the foregoing, the answer to the question referred is that Article 3(1) of Regulation No 604/2013, Article 4(1) and Article 13 of Directive 2011/95, and Article 10(2) and (3) and Article 33(1) and (2)(a) of Directive 2013/32 must be interpreted as meaning that where the competent authority of a Member State cannot exercise the option available to it under the last of those provisions to reject as inadmissible an application for international protection made by an applicant, to which another Member State has already granted such protection, on account of a serious risk that that applicant will be subjected, in that other Member State, to inhuman or degrading treatment, within the meaning of Article 4 of the Charter, that authority must carry out a new, individual, full and up-to-date examination of that application in a new international protection procedure conducted in accordance with Directives 2011/95 and 2013/32. Within the framework of that examination, that authority must nevertheless take full account of the decision of that other Member State to grant international protection to that applicant and of the elements on which that decision is based.

Costs

81 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:

Article 3(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, Article 4(1) and Article 13 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, and Article 10(2) and (3) and Article 33(1) and (2)(a) 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

must be interpreted as meaning that where the competent authority of a Member State cannot exercise the option available to it under the last of those provisions to reject as inadmissible an application for international protection made by an applicant, to which another Member State has already granted such protection, on account of a serious risk that that applicant will be subjected, in that other Member State, to inhuman or degrading treatment, within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, that authority must carry out a new, individual, full and up-to-date examination of that application in a new international protection procedure conducted in accordance with Directives 2011/95 and 2013/32. Within the framework of that examination, that authority must nevertheless take full account of the decision of that other Member State to grant international protection to that applicant and of the elements on which that decision is based.

[Signatures]

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* Language of the case: German.