

**Case C-753/22**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

12 December 2022

**Referring court:**

Bundesverwaltungsgericht (Germany)

**Date of the decision to refer:**

7 September 2022

**Applicant and appellant:**

QY

**Defendant and respondent:**

Federal Republic of Germany

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**Subject matter of the main proceedings**

Binding effect of the granting of refugee status by one Member State of the European Union on another Member State

**Subject matter and legal basis of the request**

Interpretation of EU law, Article 267 TFEU, in particular

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) ('Directive 2013/32')

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) ('Directive 2011/95')

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, corrigendum OJ 2017 L 49, p. 50) (Dublin III Regulation) ('Regulation No 604/2013')

Charter of Fundamental Rights of the European Union (OJ 2012 C 326, p. 391) ('the Charter')

### **Question referred 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 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 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?

### **Provisions of European Union law relied on**

Directive 2013/32, in particular Article 10(2) and (3), Article 33(1) and Article 33(2)(a)

Directive 2011/95, in particular the second sentence of Article 4(1) and Article 13

Regulation No 604/2013, in particular the second sentence of Article 3(1)

Article 4 of the Charter

### **Provisions of national law relied on**

Asylgesetz (German Law on Asylum; 'the AsylG')

Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (German Law on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory) (Law on Residence; 'the AufenthG')

### **Facts and procedure in the main proceedings**

- 1 The applicant, who has been recognised by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees; 'the Federal Office') as being entitled as a beneficiary of subsidiary protection status, has applied for refugee status.
- 2 The applicant, who was born in 1999, is a Syrian national who was already granted refugee status in Greece in 2018. She cannot return to Greece because, according to the final and binding decision of an administrative court, she would face a serious risk of inhuman or degrading treatment in Greece within the meaning of Article 4 of the Charter.
- 3 The Federal Office granted her subsidiary protection by administrative ruling of 1 October 2019 and rejected her application for refugee status.
- 4 The Verwaltungsgericht (Administrative Court, Germany) dismissed the action on this point on the grounds that the claim asserted could not be based on the mere fact that the applicant had been granted refugee status in Greece. The Administrative Court argued that the applicant's application was unfounded because she was not threatened with persecution in Syria.
- 5 In support of the appeal brought by the applicant before the referring court, her main argument is that the defendant is bound by the refugee status that has already been granted.

### **Reasoning in the request for a preliminary ruling**

- 6 The success of this appeal depends on a decision by the Court of Justice of the European Union ('the Court of Justice') on the interpretation of the treaties.
- 7 In German law, the legal assessment of the contested decision of the Federal Office is governed by the AsylG and the AufenthG.
- 8 Under national law, the applicant is not entitled to be granted refugee status pursuant to the first half-sentence of Paragraph 3(4) in conjunction with Paragraph 1 AsylG. However, without a preliminary ruling from the Court of Justice, the referring court cannot determine whether that understanding of the aforementioned provisions of national law is compatible with the provisions of EU law mentioned in the question referred for a preliminary ruling.
- 9 The question referred for a preliminary ruling, as set out above, therefore requires clarification by the Court of Justice because it has neither been clarified in its previous case-law nor is the answer obvious.
- 10 The applicant is not entitled to be granted refugee status under national law. Given the individual situation of the applicant, such a claim does not arise from the first

half-sentence of Paragraph 3(4) in conjunction with Paragraph 1 AsylG. In the contested judgment of the Administrative Court it was correctly stated that the applicant left Syria without there being any persecution. The actual conditions in Syria are considered to be such that, in the event of a – hypothetical – return, it is unlikely that she would be at risk of persecution.

- 11 In accordance with national law, the applicant is not entitled to have her claim granted simply because she was granted refugee status in Greece. Pursuant to the second sentence of Paragraph 60(1) AufenthG, foreign recognition as a refugee granted by a certain State also precludes deportation to that State for Germany. However, that does not mean that a person has a right to be granted refugee status again. Paragraph 3(3) AsylG does not impose any additional obligation on the Federal Office since its requirements are not met and there are no grounds for an analogous application of this provision.
- 12 The referring court is uncertain whether, in cases such as the one at hand, the provisions of EU law mentioned in the question referred for a preliminary ruling preclude the application for international protection submitted by the applicant from being examined in a manner that is unbiased as to the outcome. In the view of the referring court, there is no binding effect of the granting of refugee status by one Member State of the European Union on another Member State on the basis of primary EU law. Whether this could arise from secondary EU law, however, requires clarification by the Court of Justice.

***Binding effect based on primary European Union law***

- 13 Pursuant to the first sentence of Article 78(1) TFEU, the European Union is to develop a common policy on asylum, subsidiary protection and temporary protection. For this purpose, the European Parliament and the Council are, pursuant to Article 78(2) TFEU, to adopt measures for a common European asylum system ('CEAS'). This includes, inter alia, a uniform status of asylum for nationals of third countries, valid throughout the European Union and a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection (Article 78(2)(a) and (b) TFEU). Neither those provisions nor other provisions of Article 77 et seq. TFEU contain any indications that the granting of refugee status in one Member State precludes an examination of an application for international protection filed in another Member State that is unbiased as to the outcome. Rather, there has been no mutual recognition of positive asylum decisions to date. That is in line with the view taken by the European Commission.
- 14 Moreover, the Court of Justice has developed the 'principle of mutual trust between the Member States' from Articles 2 and 3 TEU and Articles 67 and 82(1) TFEU. That principle requires, with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgments of the Court of Justice of

19 March 2019, *Ibrahim and Others*, C-297/17, C-18/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 83 et seq., 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 28).

- 15 However, that does not entail any binding effect on the granting of refugee status obtained in another Member State. The fact that the European Union has not yet created a uniform status of protection within the meaning of Article 78(2)(a) and (b) TFEU precludes such a far-reaching legal consequence. The examination of whether or not the conditions of the application for international protection have been met therefore remains a matter for the Member State in which that application was made.

***Binding effect based on secondary European Union law***

- 16 Nor is there any rule of procedural or substantive refugee law in secondary EU law which expressly requires that the granting of refugee status by one Member State be binding on the asylum procedure of another Member State.
- 17 The Court of Justice has not yet ruled on the question whether a binding effect of recognition decisions of Member States in asylum proceedings can be derived from the general principle of EU law that the substance of an applicant's asylum application is examined by a single Member State only, which is determined as the Member State responsible in accordance with the criteria of Chapter III of Regulation No 604/2013. The second sentence of Article 3(1) of Regulation No 604/2013 constitutes an expression of this principle.
- 18 According to the case-law of the Court of Justice, this principle is a central principle of the Dublin III Regulation, on which the CEAS is generally based (judgment of the Court of Justice of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 78). Therefore, it could also apply in cases which – like the applicant's case – are not assessed under Regulation No 604/2013. Consequently, a substantive examination in a single Member State – irrespective of the outcome of the examination – could apply in all other Member States.
- 19 Nor does the wording of the second sentence of Article 4(1) and Article 13 of Directive 2011/95 preclude an interpretation that recognition in all Member States of the European Union could depend solely on the granting of refugee status in one Member State.
- 20 In addition, the provisions of Directive 2013/32 must be taken into account, and in particular the second sentence of the 43rd recital, Article 10(2) and (3) as well as Article 33(1) and Article 33(2)(a).
- 21 The option granted to the Member States by Article 33(2)(a) of Directive 2013/32 to waive a decision on the merits in the event that another Member State has

already granted international protection – provided for in the Federal Republic of Germany in Paragraph 29(1) No 2 AsylG – could be understood as an expression of the principle of a single substantive examination of an asylum application in a single Member State of the European Union.

- 22 However, in a case such as the one at hand, where the power under Article 33(2)(a) of Directive 2013/32 cannot be exercised because there would otherwise be a risk of an infringement of Article 4 of the Charter, the question arises as to whether a recognition decision by one Member State can have a binding effect on all Member States and/or as to what the legal consequences are.
- 23 As far as that question is concerned, the referring court finds the opinion of Advocate General Pikamäe (Opinion of Advocate General Pikamäe in *Commissaire général aux réfugiés et aux apatrides* [Family unity – Protection already granted], C-483/20, EU:C:2021:780, point 64), on which the Court of Justice has not yet expressed a view, to be convincing. According to this opinion, the Member State must treat the third-country national concerned as a first-time applicant for international protection, irrespective of the protection already granted to him or her by another Member State. In order not to deprive Article 33(2)(a) of Directive 2013/32 of all practical effect, the fact that international protection has already been granted by a first Member State cannot again be taken into account in any way in the context of the examination of the application on the substance.
- 24 However, certain indications for a binding effect of the granting of refugee status may also arise from the fact that a denial of this legal consequence could lead to a circumvention of the special rules on the cessation, exclusion and revocation of refugee status pursuant to Articles 11, 12 and 14 of Directive 2011/95. Nonetheless, the fact that the asylum procedure in question is not concerned with the cessation or revocation of the refugee status granted in the first Member State, but with whether an asylum applicant can obtain further protection with the associated rights in the second Member State in addition to the refugee status already granted to her in the first Member State, speaks against such a risk of circumvention.

***The Court of Justice's previous case-law***

- 25 The referring court is convinced that the previous case-law of the Court of Justice cannot be relied on with certainty to answer the question raised with regard to the binding nature one way or the other. The decision of 13 November 2019, *Hamed and Omar* (C-540/17 and C-541/17, not published, EU:C:2019:964) does not contain sufficiently clear findings on the manner of how a new asylum procedure should be conducted.
- 26 In paragraph 42 of the decision, the Court of Justice states: ‘Moreover, as is apparent from the reference for a preliminary ruling, although German law offers some protection to an applicant who cannot be returned to a Member State

because of a serious risk of being subjected to inhuman or degrading treatment contrary to Article 4 of the Charter in the Member State which has already granted him or her refugee status, it does not provide for the recognition of that status and the grant of the rights attaching thereto in Germany without going through a new asylum procedure.’

- 27 In so far as, on the one hand, the Court of Justice refers to a ‘new’ asylum procedure, this is an argument in favour of an examination that is unbiased as to its outcome in every respect. On the other hand, in the further course of the cited sentence, the Court of Justice focuses on the rights attaching to refugee status, namely the status-related legal consequences of recognition. Such a finding of the Court of Justice might also be understood as an argument in favour of a binding effect of the initial refugee recognition by one Member State on other Member States.

WORKING DOCUMENT