List of Relevant Asylum Judgments and Pending Preliminary References from the Court of Justice of the European Union

January 2018

The text provided in this list has been taken from the Court's judgments and pending reference questions and is also publicly available on the Court's website.

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Judgment // AG Opinion // Application

1. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States must be interpreted as meaning that a Member State in receipt of an application for asylum is obliged to grant the minimum conditions for reception of asylum seekers laid down in Directive 2003/9 even to an asylum seeker in respect of whom it decides, under Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant.

2. The obligation on a Member State in receipt of an application for asylum to grant the minimum reception conditions laid down in Directive 2003/9 to an asylum seeker in respect of whom it decides, under Regulation No 343/2003, to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant, ceases when that same applicant is actually transferred by the requesting Member State, and the financial burden of granting those minimum conditions is to be assumed by that requesting Member State, which is subject to that obligation.

Case C-534/11 Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie (reference on Council Directive 2008/115/EC, Article 2(1) in conjunction with Recital 9, Council Directive 2003/9/EC, 30 May 2013)

Judgment // AG Opinion // Application

1. Article 2(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with recital 9 in the preamble, must be interpreted as meaning that that directive does not apply to a third-country national who has applied for international protection within the meaning of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status during the period from the making of the application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known.

2. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers and Directive 2005/85 do not preclude a third-country national who has applied for international protection within the meaning of Directive 2005/85 after having been detained under Article 15 of Directive 2008/115 from being kept in detention on the basis of a provision of national law, where it appears, after an assessment on a case-by-case basis of all the relevant circumstances, that the application was made solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.

Case C-79/13 Saciri and others (Arbeidshof te Brussel, Belgium, reference for a preliminary ruling on Articles 13 and 14 of the Reception Conditions Directive, 27 February 2014)

Judgment // AG Opinion // Application

1. Article 13(5) of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers must be interpreted as meaning, where a Member State has opted to grant the material reception conditions in the form of financial allowances or vouchers, that those allowances must be provided from the time the application for asylum is made, in accordance with the provisions of Article 13(1) of that directive, and must meet the minimum standards set out in Article 13(2) thereof. That Member State must ensure that the total amount of the financial allowances covering the material reception conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17 of that directive. The material reception conditions laid down in Article 14(1), (3), (5) and (8) of Directive 2003/9 do not apply to the Member States where they have opted to grant those conditions in the form of financial allowances only. Nevertheless, the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.

2. Directive 2003/9 must be interpreted as meaning that it does not preclude, where the accommodation facilities specifically for asylum seekers are overloaded, the Member States from referring the asylum seekers to bodies within the general public assistance system, provided that that system ensures that the minimum standards laid down in that directive as regards the asylum seekers are met.

Case C-601/15 J.N v. Staatssecretaris van Justitie en Veiligheid PPU– request for a preliminary ruling from the Raad van State (Netherlands) (whether Article 8(3)e) of the Reception Conditions Directive 2013/32/EU is valid in light of Article 6 CFREU, 15 February 2016)

Judgment // AG Opinion // Application

Consideration of point (e) of the first subparagraph of Article 8(3) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection has disclosed no factor of such a kind as to affect the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.

Case C-18/16 K, Rechtbank Den Haag zittingsplaats Haarlem – Netherlands, lodged 13 January 2016

Judgment // AG Opinion // Application

The examination of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection has disclosed nothing capable of affecting the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.

Pending Preliminary References

n/a

Dublin II Regulation 343/2003 (recast 604/2013)

Judgments

Case C-19/08 Petrosian and others (interpretation of Articles 20(1)(d) and 20(2) of the Dublin Regulation, 2003/343/CE, 29 January 2009)

Judgment // AG Opinion // Application

Article 20(1)(d) and Article 20(2) of Regulation No 343/2003 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national are to be interpreted as meaning that, where the legislation of the requesting Member State provides for suspensive effect of an appeal, the period for implementation of the transfer begins to run, not as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation.

Joined Cases C-411/10 N. S and C-493/10 M.E and others, concerning Dublin Regulation, 2003/343/CE, Article 3(1) and (2), 21 December 2011)

Judgment // AG Opinion // Application

1. The decision adopted by a Member State on the basis of Article 3(2) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of that Regulation, implements European Union law for the purposes of Article 6 TEU and/or Article 51 of the Charter of Fundamental Rights of the European Union.

2. European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No343/2003 indicates as responsible observes the fundamental rights of the European Union.
-Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision.
-Subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the

Member State which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.

-The Member State in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.

3. Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to a different answer.

4. In so far as the preceding questions arise in respect of the obligations of the United Kingdom of Great Britain and Northern Ireland, the answers to the second to sixth questions referred in Case C-411/10 do not require to be qualified in any respect so as to take account of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom.

Case C-4/11 Puid (German Hessischer Verwaltungsgerichtshof reference on Dublin Regulation, 2003/343/EC, Article 3(2), 4 November 2013)

Judgment // AG Opinion // Application

Where the Member States cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible in accordance with the criteria set out in Chapter III of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national provide substantial grounds for believing that the asylum seeker concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, which is a matter for the referring court to verify, the Member State which is determining the Member State responsible is required not to transfer the asylum seeker to the Member State initially identified as responsible and, subject to the exercise of the right itself to examine the application, to continue to examine the criteria set out in that chapter, in order to establish whether another Member State can be identified as responsible in accordance with one of those criteria or, if it cannot, under Article 13 of the Regulation.

Conversely, in such a situation, a finding that it is impossible to transfer an asylum seeker to the Member State initially identified as responsible does not in itself mean that the Member State which is determining the Member State responsible is required itself, under Article 3(2) of Regulation No 343/2003, to examine the application for asylum.

Case C-245/11 K (Asylgerichtshof (Austria) reference on Dublin Regulation, 2003/343/EC, Articles 15, 15(1), 3(2), 6 November 2012)

Judgment // AG Opinion // Application

In circumstances such as those in the main proceedings, Article 15(2) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that a Member State which is not responsible for examining an application for asylum pursuant to the criteria laid down in Chapter III of that regulation becomes so responsible. It is for the Member State which has become the responsible Member State within the meaning of that regulation to assume the obligations which go along with that responsibility. It must inform in that respect the Member State previously responsible. This interpretation of Article 15(2) also applies where the Member State which was responsible pursuant to the criteria laid down in Chapter III of Regulation No 343/2003 did not make a request in that regard in accordance with the second sentence of Article 15(1) of that regulation.

Case C-528/11 Halaf (Administrativen sad Sofia-grad (Bulgaria) reference on the interpretation of Article 3(2) of Council Regulation 2003/343/EC, 30 May 2013)

Judgment // AG Opinion // Application

1. Article 3(2) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as permitting a Member State, which is not indicated as responsible by the criteria in Chapter III of that regulation, to examine an application for asylum even though no circumstances exist which establish the applicability of the humanitarian clause in Article 15 of that regulation. That possibility is not conditional on the Member State responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned.

2. The Member State in which the asylum seeker is present is not obliged, during the process of determining the Member State responsible, to request the Office of the United Nations High Commissioner for Refugees to present its views where it is apparent from the documents of that Office that the Member State indicated as responsible by the criteria in Chapter III of Regulation No 343/2003 is in breach of the rules of European Union law on asylum.

Case C-648/11 MA and Others v Secretary of State of the Home Department (Court of Appeal (England and Wales) (UK) reference on the interpretation of Article 6(2) of Council Regulation 343/2003/EC, 6 June 2013)

Judgment // AG Opinion // Application

The second paragraph of Article 6 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that

minor is present after having lodged an asylum application there is to be designated the 'Member State responsible'.

Case C-620/10 Kastrati (Kammarrätten I Stockholm- Migrationsöverdomstolen (Swedish) reference on Dublin Regulation, 2003/343/EC, 3 May 2012)

Judgment // AG Opinion // Application

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that the withdrawal of an application for asylum within the terms of Article 2(c) of that regulation, which occurs before the Member State responsible for examining that application has agreed to take charge of the applicant, has the effect that that regulation can no longer be applicable. In such a case, it is for the Member State within the territory of which the application was lodged to take the decisions required as a result of that withdrawal and, in particular, to discontinue the examination of the application, with a record of the information relating to it being placed in the applicant's file.

Case C-394/12 Shamso Abdullahi (Asylgerichtshof, Austria, reference for a preliminary ruling on Articles 10(1), 18 and 19 Dublin Regulation 343/2003, 10 December 2013)

Judgment // AG Opinion // Application

Article 19(2) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that, in circumstances where a Member State has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Article 10(1) of that regulation – namely, as the Member State of the first entry of the applicant for asylum into the European Union – the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

Case C-155/15 George Karim v Migrationsverket (request for a preliminary ruling from the Kammarrätten i Stockholm — Migrationsöverdomstolen (Sweden), Articles 19(2) and 27(1) of Dublin III Regulation, 7 June 2016)

Judgment // AG Opinion // Application

1. Article 19(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted to the effect that that provision, in particular its second

subparagraph, is applicable to a third-country national who, after having made a first asylum application in a Member State, provides evidence that he left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State.

2. Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, must be interpreted to the effect that, in a situation such as that at issue in the main proceedings, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke an infringement of the rule set out in the second subparagraph of Article 19(2) of that regulation.

Case C-63/15 Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie (interpretation of Article 27 of Regulation No 604/2013, 7 June 2016)

Judgment // AG Opinion // Application

Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 of the regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Article 12 of the regulation.

Case C-695/15 PPU Mirza (Request for a preliminary ruling from Administrative and Labour Court, Debrecen, Hungary, interpretation of Articles 3(3) and 18, 17 March 2016)

Judgment // AG Opinion // Application

1. Article 3(3) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that the right to send an applicant for international protection to a safe third country may also be exercised by a Member State after that Member State has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that Member State before a decision on the substance of his first application for international protection had been taken.

2. Article 3(3) of Regulation No 604/2013 must be interpreted as not precluding the sending of an applicant for international protection to a safe third country when the Member State carrying out the transfer of that applicant to the Member State responsible has not been informed, during the take-back procedure, either of the rules of the latter Member State relating to the sending of applicants to safe third countries or of the relevant practice of its competent authorities.

3. Article 18(2) of Regulation No 604/2013 must be interpreted as not requiring that, in the event that an applicant for international protection is taken back, the procedure for examining that applicant's application be resumed at the stage at which it was discontinued.

C-578/16 PPU - C. K. and Others (request for a preliminary ruling, Slovenia, transfer of a seriously ill asylum seeker under Dublin III, 16 February 2017)

Judgment // AG Opinion // Application

1. Article 17(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.

2. Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:

– even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Regulation No 604/2013 can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;

– in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;

– it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the Member States concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer; and

– where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting

Member State may choose to conduct its own examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) of Regulation No 604/2013.

Article 17(1) of Regulation No 604/2013, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that Member State to apply that clause.

Case C-528/15, Al Chodor (interpretation of Article 28(2) and 2(n) of Dublin III Regulation, 15 March 2017)

Judgment // AG Opinion // Application

Article 2(n) and Article 28(2) 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, read in conjunction, must be interpreted as requiring Member States to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of Article 28(2) of that regulation.

C-36/17 Ahmed (request for a preliminary ruling from the German Administrative Court of Minden, lodged 25 January 2017, Order 5 April 2017)

Judgment // AG Opinion // Application

Order of the Court (Third Chamber):

The provisions and principles 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 which govern, directly or indirectly, the time limits for lodging an application for a take-back are not applicable in a situation, such as that at issue in the main proceedings, in which a third-country national has lodged an application for international protection in one Member State after being granted the benefit of subsidiary protection by another Member State.

C-490/16 A.S. (request for a preliminary ruling by the Supreme Court of the Republic Slovenia on the interpretation of Articles 27 and 13, lodged 13 September 2016, ruling of 26 July 2017)

Judgment // AG Opinion // Application

1. On a proper construction of Article 27(1) of Regulation 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, read in the light of recital 19 of that regulation, an applicant for international protection is entitled, in an appeal against a decision to transfer him, to plead incorrect application of the criterion for determining responsibility relating to the irregular crossing of the border of a Member State, laid down in Article 13(1) of that regulation.

2. On a proper construction of Article 13(1) of Regulation No 604/2013, a third-country national whose entry has been tolerated by the authoriti es of a first Member State faced with the arrival of an exceptionally large number of third-country nationals wishing to transit through that Member State in order to lodge an application for international protection in another Member State, without satisfying the entry conditions in principle required in that first Member State, must be regarded as having 'irregularly crossed' the border of that first Member State, within the meaning of that provision.

3. On a proper construction of Article 13(1), second sentence, of Regulation No 604/2013, read together with Article 7(2) of that regulation, the lodging of an appeal against a transfer decision has no effect on the running of the period laid down in Article 13(1).

On a proper construction of Article 29(1) and (2) of that regulation, the lodging of such an appeal means that the period laid down by those provisions does not start to run until the final decision on that appeal, including when the court hearing the appeal has decided to request a preliminary ruling from the Court of Justice, as long as that appeal had suspensory effect in accordance with Article 27(3) of that regulation.

C-646/16 Jafari (Request for a preliminary ruling by the Austrian Administrative High Court on the interpretation of Articles 2, 12 and 13 of the Dublin III Regulation, lodged 14 December 2016, ruling of 26 July 2017)

Judgment // AG Opinion // Application

1. Article 12 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, read in conjunction with Article 2(m) of that regulation, must be interpreted as meaning that the fact that the authorities of one Member State, faced with the arrival of an unusually large number of third-country nationals seeking transit through that Member State in order to lodge an application for international protection in another Member State, tolerate the entry into its territory of such nationals who do not fulfil the entry conditions generally imposed in the first Member State, is not tantamount to the issuing of a 'visa' within the meaning of Article 12 of Regulation No 604/2013.

2. Article 13(1) of Regulation No 604/2013 must be interpreted as meaning that a third-country national whose entry was tolerated by the authorities of one Member State faced with the arrival of an unusually large number of third-country nationals seeking transit through that Member State in order to lodge an application for international protection in another Member State, without fulfilling the entry conditions generally imposed in the first Member State, must be regarded as having 'irregularly crossed' the border of the first Member State within the meaning of that provision.

C-670/16 Mengesteab (Request for a preliminary ruling by the German Administrative Court of Minden, lodged 22 December 2016, ruling of 26 July 2017)

Judgment // AG Opinion // Application

1. Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 thereof, must be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.

2. Article 21(1) of Regulation No 604/2013 must be interpreted as meaning that a take charge request cannot validly be made more than three months after the application for international protection has been lodged, even if that request is made within two months of receipt of a Eurodac hit within the meaning of that article.

3. Article 20(2) of Regulation No 604/2013 must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.

Case C-60/16 Mohammed Khir Amayry v Migrationsverket (request for a preliminary ruling from the Stockholm Court of Appeal on the interpretation of time frames under Articles 27 and 28 of the Dublin III Regulation, lodged 3 February 2016, ruling of 13 September 2017).

Judgment // AG Opinion // Application

1. Article 28 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, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that:

– it does not preclude national legislation, such as that at issue in the main proceedings, which provides that, where the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request, that detention may be maintained for no longer than two months, provided, first, that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, second, that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect; and

– it does preclude national legislation, such as that at issue in the main proceedings, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out.

2. Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the number of days during which the person concerned was already detained after a Member State has accepted the take charge or take back request need not be deducted from the six week period established by that provision, from the moment when the appeal or review no longer has suspensive effect.

3. Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the six week period beginning from the moment when the appeal or review no longer has suspensive effective, established by that provision, also applies when the suspension of the execution of the transfer decision was not specifically requested by the person concerned.

C-201/16 Shiri (request for a preliminary ruling by the Austrian Higher Administrative Court on the interpretation of Articles 27 and 29 on the transfer of responsibility under Dublin, lodged 12 April 2016, ruling of 25 October 2017).

Judgment // AG Opinion // Application

1. Article 29(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that, where the transfer does not take place within the six-month time limit as defined in Article 29(1) and (2) of that regulation, responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.

2. Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted. The right which national legislation such as that at issue in the main proceedings accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy.

C-360/16 Hasan (Request for a preliminary ruling from the Bundesverwaltungsgericht on the issue of transfer decisions), judgment of 25 January 2018

Judgment // AG Opinion // Application

1. Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection

lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 of the regulation and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which provides that the factual situation that is relevant for the review by a court or tribunal of a transfer decision is that obtaining at the time of the last hearing before the court or tribunal determining the matter or, where there is no hearing, at the time when that court or tribunal gives a decision on the matter.

2. Article 24 of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national who, after having made an application for international protection in a first Member State (Member State 'A'), was transferred to Member State 'A' as a result of the rejection of a fresh application lodged in a second Member State (Member State 'B') and has then returned, without a residence document, to Member State 'B', a take back procedure may be undertaken in respect of that third-country national and it is not possible to transfer that person anew to Member State 'A' without such a procedure being followed.

3. Article 24(2) of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national has returned, without a residence document, to the territory of a Member State that has previously transferred him to another Member State, a take back request must be submitted within the periods prescribed in that provision and those periods may not begin to run until the requesting Member State has become aware that the person concerned has returned to its territory.

4. Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where a take back request is not made within the periods laid down in Article 24(2) of that regulation, the Member State on whose territory the person concerned is staying without a residence document is responsible for examining the new application for international protection which that person must be permitted to lodge.

5. Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that the fact that an appeal procedure brought against a decision that rejected a first application for international protection made in a Member State is still pending is not to be regarded as equivalent to the lodging of a new application for international protection in that Member State, as referred to in that provision.

6. Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where the take back request is not made within the periods laid down in Article 24(2) of that regulation and the person concerned has not made use of the opportunity that he must be given to lodge a new application for international protection:

– the Member State on whose territory that person is staying without a residence document can still make a take back request, and

– that provision does not allow the person to be transferred to another Member State without such a request being made.

Pending Preliminary References

C-647/16 Hassan (Request for a preliminary ruling by the Lille Administrative Tribunal on the interpretation of Article 26, lodged 15 December 2016)

Judgment // AG Opinion // Application

Does Article 26 of the Dublin III Regulation prevent the competent authorities in a Member State, who have requested another Member State to take responsibility under a take back or take charge request of an applicant who has applied for international protection (which has not yet been ruled definitely upon) or any other person caught by Article 18(1)(c) or (d), from taking a transfer decision and notifying the applicant before the requested State has accepted the take back or take charge request?

Joined case C-47/17 and C-48/17 X. and X. (Request for a preliminary ruling from the Court of The Hague, lodged 3 February 2017)

Judgment // AG Opinion // Application

(1) Should the requested Member State, having regard to the objective, the content and the scope of the Dublin Regulation 1 and the Procedures Directive, 2 respond within two weeks to a re-examination request as contained in Article 5(2) of the Implementing Regulation? 3

(2) If the answer to the first question is in the negative, does the time limit of a maximum of one month as provided for in Article 20(1)(b) of Regulation No 343/2003 4 (now Article 25(1) of the Dublin Regulation) apply, having regard to the last sentence of Article 5(2) of the Implementing Regulation?

(3) If the answer to the first and second questions is in the negative, does the requested Member State, due to the use of the word 'beijvert' [English: 'shall endeavour'] in Article 5(2) of the Implementing Regulation, have a reasonable period of time to respond to the re-examination request?

(4) If there is indeed a reasonable period of time within which the requested Member State should respond to the re-examination request under Article 5(2) of the Implementing Regulation, can there, after over six months have passed, as in the present case, still be talk of a reasonable period of time? If the answer to that question is in the negative, what qualifies as a reasonable period of time?

(5) What should be the consequence of the requested Member State not responding within two weeks, one month or a reasonable period of time to a re-examination request? Is the requesting Member State then responsible for the substantive assessment of the foreign national's asylum application or is that the responsibility of the requested Member State?

(6) If one should proceed on the assumption that the requested Member State becomes responsible for the substantive examination of the asylum application due to the lack of a timely response to the re-examination request as referred to in Article 5(2) of the

Implementing Regulation, within what period of time should the requesting Member State, the defendant in the present case, notify the foreign national of that?

Case C-56/17 Fathi (Request for a preliminary ruling from the Administrative Court of Sofia, Bulgaria, lodged 3 February 2017)

Judgment // AG Opinion // Application

(also under "Qualification Directive" on this document)

1. Does it follow from Article 3(1) of Regulation (EU) No 604/2013, 1 interpreted in conjunction with recital 12 and Article 17 of the regulation, that a Member State may issue a decision that constitutes an examination of an application made to it for international protection within the meaning of Article 2(d) of the regulation, without expressly deciding on the responsibility of that Member State under the criteria in the regulation if, in the particular case, there are no indications for a derogation pursuant to Article 17 of the Regulation?

2. Does it follow from the second sentence of Article 3(1) of Regulation (EU) No 604/2013, interpreted in conjunction with recital 54 of Directive 2013/32/EU, 2 that, in the circumstances of the main proceedings, where there is no derogation pursuant to Article 17(1) of the regulation, a decision must be issued in respect of an application for international protection within the meaning of Article 2(b) of the regulation by which the Member State undertakes to examine the application in accordance with the criteria in the regulation and which is based on the fact that the provisions of the regulation apply to the applicant?

3. Is Article 46(3) of Directive 2013/32/EU to be interpreted as meaning that, in proceedings against a decision refusing international protection, the court must rule pursuant to recital 54 of the directive on whether the provisions of Regulation (EU) No 604/2013 apply to the applicant if the Member State has not expressly decided on its responsibility for examining the application for international protection in accordance with the criteria in the regulation? Must it be presumed on the basis of recital 54 of Directive 2013/32/EU that, where there are no indications suggesting that Article 17 of Regulation (EU) No 604/2013 applies and the application for international protection was examined on the basis of Directive 2011/95/EU 3 by the Member State to which it was made, the legal situation of the person concerned is within the scope of the regulation even if the Member State has not expressly decided on its responsibility in accordance with the criteria in the regulation?

4. Does it follow from Article 10(1)(b) of Directive 2011/95/EU that, in the circumstances of the main proceedings, the reason for persecution of 'religion' exists where the applicant has not made statements and presented documents relating to all the components covered by the concept of religion as defined in this provision which are of fundamental importance for the membership of the person concerned of a particular religion?

5. Does it follow from Article 10(2) of Directive 2011/95/EU that reasons for persecution based on religion within the meaning of Article 10(1)(b) of the directive exist where the applicant, in the circumstances of the main proceedings, claims that he has been

persecuted on grounds of his membership of a religion but has not made any statements or presented any evidence regarding the circumstances that are characteristic of a person's membership of a particular religion and would be a reason for the actor of persecution to believe that the person concerned belonged to this religion — including circumstances linked to taking part in or abstaining from religious actions or religious expressions of view — or regarding the forms of individual or communal conduct based on or mandated by a religious belief?

6. Does it follow from Article 9(1) and (2) of Directive 2011/95/EU, interpreted in conjunction with Articles 18 and 10 of the Charter of Fundamental Rights of the European Union and the concept of religion as defined in Article 10(1)(b) of the directive, that in the circumstances of the main proceedings:

a) the concept of religion as defined in EU law does not encompass any acts considered to be criminal in accordance with the national law of the Member States? Is it possible for such acts that are considered to be criminal in the applicant's country of origin to constitute acts of persecution?

b) In connection with the prohibition of proselytism and the prohibition of acts contrary to the religion on which the laws and regulations in the country in question are based, are limitations to be regarded as permitted that are established to protect the rights and freedoms of others and public order in the applicant's country of origin? Do these prohibitions as such constitute acts of persecution within the meaning of the cited provisions of the directive when violation of them is threatened with the death penalty even if the laws are not explicitly aimed against a particular religion?

7. Does it follow from Article 4(2) of Directive 2011/95/EU, interpreted in conjunction with Article 4(5)(b) of the directive, Article 10 of the Charter of Fundamental Rights of the European Union and Article 46(3) of Directive 2013/32/EU, that, in the circumstances of the main proceedings, an appraisal of the facts and circumstances may be conducted only on the basis of the statements made and the documents presented by the applicant, but it is still permitted to require proof of the missing components covered by the concept of religion as defined in Article 10(1)(b) of the directive where:

– without this information the application for international protection would be considered unfounded within the meaning of Article 32 in conjunction with Article 31(8)(e) of Directive 2013/32/EU and

– national legislation provides that the competent authority must establish all the relevant circumstances for the examination of the application for international protection and the court, should the refusal decision be contested, must point out that the person concerned has not offered and presented any evidence?

Case C-163/17 Jawo (Request for a preliminary ruling from the Court of Baden Wurtemburg, Germany, lodged 15 March 2017)

Judgment // AG Opinion // Application

Is an asylum seeker absconding within the meaning of the second sentence of Article 29(2) of Regulation (EU) No 604/2013 1 only where he purposefully and deliberately

evades apprehension by the national authorities responsible for carrying out the transfer in order to prevent or impede the transfer, or is it sufficient if, for a prolonged period, he ceases to live in the accommodation allocated to him and the authority is not informed of his whereabouts and therefore a planned transfer cannot be carried out?

Is the person concerned entitled to rely on the correct application of the provision and to plead in proceedings against the transfer decision that the transfer time limit of six months has expired, because he was not absconding?

Does an extension of the time limit provided for under the first subparagraph of Article 29(1) of Regulation (EU) No 604/2013 arise solely as a result of the fact that the transferring Member State informs the Member State responsible, before the expiry of the time-limit, that the person concerned has absconded, and at the same time specifies an actual time limit, which may not exceed 18 months, by which the transfer will be carried out, or is an extension possible only in such a way that the Member States involved stipulate by mutual agreement an extended time limit?

Is transfer of the asylum seeker to the Member State responsible inadmissible if, in the event of international protection status being granted, he would be exposed there, in view of the living conditions then to be expected, to a serious risk of experiencing treatment as referred to in Article 4 of the Charter of Fundamental Rights?

Does this question as formulated still fall within the scope of application of EU law?

According to which criteria under EU law are the living conditions of a person recognised as a beneficiary of international protection to be assessed?

Case C-213/17 X (Request for a preliminary ruling from the Rechtbank Den Haag, Netherlands, lodged 25 April 2017)

Judgment // AG Opinion // Application

Must Article 23(3) of the Dublin Regulation 1 be interpreted as meaning that Italy has become responsible for examining the application for international protection lodged by the applicant in that country on 23 October 2014, despite the fact that the Netherlands were the Member State primarily responsible on the basis of the applications for international protection, within the meaning of Article 2(d) of the Dublin Regulation, previously lodged in that country, the last of which was still under examination in the Netherlands at that time, because the Administrative Law Division of the Raad van State had not yet delivered judgment in the appeal brought by the applicant against the ruling [AWB 14/13866] of the Rechtbank [Den Haag, sitting in Middelburg] of 7 July 2014 …?

Does it follows from Article 18(2) of the Dublin Regulation that the application for international protection which was still under examination in the Netherlands when the claim request of 5 March 2015 was submitted should have been suspended by the Netherlands authorities immediately after that claim request had been submitted and should have been halted following the expiry of the period specified in Article 24 through revocation or amendment of the earlier decision of 11 June 2014 rejecting the asylum application of 4 June 2014?

If the answer to Question 2 is in the affirmative, has the responsibility for examining the applicant's application for international protection not been transferred to Italy but remained with the Netherlands authorities, because the defendant has not revoked or amended the decision of 11 June 2014?

Did the Netherlands authorities, by not mentioning the appeal in the second asylum procedure pending before the Administrative Law Division of the Raad van State in the Netherlands, fall short of the responsibility resting on them pursuant to Article 24(5) of the Dublin Regulation to supply the Italian authorities with such information as would enable those authorities to check whether Italy is the Member State responsible on the basis of the criteria laid down in that regulation?

If the answer to Question 4 is in the affirmative, does that shortcoming lead to the conclusion that responsibility for examining the applicant's application for international protection has thereby not been transferred to Italy, but remained with NL authorities?

If the responsibility has not remained with the Netherlands, ought the Netherlands authorities then, with regard to the surrender of the applicant by Italy to the Netherlands in the context of the criminal proceedings against him, pursuant to Article 17(1) of the Dublin Regulation, in derogation from Article 3(1) of the Dublin Regulation, to have examined the application for international protection lodged by the applicant in Italy, and, by extension, ought those authorities, in all reasonableness, not to have made use of the power laid down in Article 24(1) of the Dublin Regulation to request the Italian authorities to take back the applicant?

Case C-582/17 H. (Request for a preliminary ruling from the Raad van State, Netherlands, lodged on 4 October 2017)

Judgment // AG Opinion // Application

Must Regulation (EU) No 604/2013 1 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 … be interpreted as meaning that only the Member State in which the application for international protection was first lodged can determine the Member State responsible, with the result that a foreign national has a legal remedy only in that Member State, under Article 27 of the Dublin Regulation, against the incorrect application of one of the criteria for determining responsibility set out in Chapter III of that Regulation, including Article 9?

Case C-577/17 Alake and others (Request for a preliminary ruling from the Supreme Administrative Court of Austria, lodged on 2 October 2017)

Judgment // AG Opinion // Application

1. Can the requested Member State — and the Member State responsible in accordance with the criteria set out in Chapter III of the Dublin III Regulation 1 — effectively accept the take back request under Article 23(1) of the Dublin III Regulation even though the time limit for replying specified in Article 25(1) of that regulation has already passed and the requested Member State had previously refused the take back request within the

time limit and also negatively replied within the time limit to the request for re-examination based on Article 5(2) of the Implementing Regulation?

2. If the first question is to be answered in the negative: As a consequence of the refusal, communicated within the prescribed period, of the take back request by the Member State responsible in accordance with the criteria set out in Chapter III of the Dublin III Regulation, must the requesting Member State in which the new application was lodged examine that application in order to ensure that the application is examined by a Member State in accordance with Article 3(1) of the Dublin III Regulation?

Case C-582/17 H. and C-583/17 R. (Request for a preliminary ruling from the Dutch Council of State, lodged on 4 October 2017)

Judgment // AG Opinion // Application

Must Regulation (EU) No 604/2013 1 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 … be interpreted as meaning that only the Member State in which the application for international protection was first lodged can determine the Member State responsible, with the result that a foreign national has a legal remedy only in that Member State, under Article 27 of the Dublin Regulation, against the incorrect application of one of the criteria for determining responsibility set out in Chapter III of that Regulation, including Article 9?

In answering Question 1, to what extent is it significant that, in the Member State in which the application for international protection was first lodged, a decision on that application had already been made or, alternatively, that the foreign national had withdrawn that application prematurely?

Case C-661/17 M.A., S.A., A.Z. (Request for a preliminary ruling from the Irish High Court, lodged on 27 November 2017)

Judgment // AG Opinion // Application

When dealing with transfer of a protection applicant under regulation 604/20131 to the UK, is a national decision-maker, in considering any issues arising in relation to the discretion under art. 17 and/or any issues of protection of fundamental rights in the UK, required to disregard circumstances as they stand at the time of such consideration in relation to the proposed withdrawal of the UK from the EU?

Does the concept of the “determining member state” in regulation 6[0]4/2013 include the role of the member state in exercising the power recognised or conferred by art. 17 of the regulation?

Do the functions of a member state [under] art. 6 of regulation 604/2013 include the power recognised or conferred by art. 17 of the regulation?

Does the concept of an effective remedy apply to a first instance decision under art. 17 of regulation 604/2013 such that an appeal or equivalent remedy must be made available against such a decision and/or such that national legislation providing for an

appellate procedure against a first instance decision under the regulation should be construed as encompassing an appeal from a decision under art. 17?

Does art. 20(3) of regulation 604/2013 have the effect that in the absence of any evidence to displace a presumption that it is in the best interests of a child to treat his or her situation as indissociable from that of the parents, the national decision maker is not required to consider such best interests separately from the parents as a discrete issue or as a starting point for consideration of whether the transfer should be take place?

Qualification Directive 2004/83/EC (recast 2011/95/EU)

Judgments

Case C-465/07 Elgafaji (interpretation of Council Directive 2004/83/EC, Article 15(c) on qualification of refugees, 17 February 2009)

Judgment // AG Opinion // Application

Article 15(c) of 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, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:

- the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred
- reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 Abdulla and others (interpretation of Article 11(1)(e) of Council Directive 2004/83/EC, 2 March 2010)

Judgment // AG Opinion // Application

1. Article 11(1)(e) of 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 must be interpreted as meaning that:

– refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of persecution for one of the reasons referred to in Article 2(c) of Directive 2004/83, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of Directive 2004/83;
– for the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of Directive 2004/83 have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status;
- the actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.

2. When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.

3. In so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of Directive 2004/83 may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of that directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognized as being a refugee. However, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.

Case C-31/09 Bolbol (exclusion of Palestinians under Article 1D, Geneva Convention on refugee status, Council Directive 2004/83/EC, Article 12(1)(a), 17 June 2010)

Judgment // AG Opinion // Application

For the purposes of the first sentence of Article 12(1)(a) of 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, a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance.

Cases C-57/09 and C-101/09 B and D (exclusion and terrorism, Council Directive 2004/83/EC, Articles 12(2)(b) and (c), 9 November 2010)

Judgment // AG Opinion // Application

1. Article 12(2)(b) and (c) of 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 must be interpreted as meaning that
2. – the fact that a person has been a member of an organisation which, because of its involvement in terrorist acts, is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and that that person has actively supported the armed struggle waged by that organisation does not automatically constitute a serious reason for considering that that person has committed 'a serious nonpolitical crime' or 'acts contrary to the purposes and principles of the United Nations';
   - the finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts, with a view to determining whether the acts committed by the organization concerned meet the conditions laid down in those provisions and whether individual responsibility for carrying out those acts can be attributed to the person concerned, regard being had to the standard of proof required under Article 12(2) of the directive.
   - Exclusion from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on the person concerned representing a present danger to the host Member State.
   2. The exclusion of a person from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on an assessment of proportionality in relation to the particular case.
   3. Article 3 of Directive 2004/83 must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to Article 12(2) of the directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive.

Joined Cases C-71/11 Y and C-99/11 Z (German Bundesverwaltungsgericht references on Council Directive 2004/83/EC, Article 9(1)(a), 5 September 2012)

Judgment // AG Opinion // Application

1. Articles 9(1)(a) of 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 must be interpreted as meaning that:

–not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an 'act of persecution' within the meaning of that provision of the Directive;

–there may be an act of persecution as a result of interference with the external manifestation of that freedom, and

–for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of Directive 2004/83.

2. Article 2(c) of Directive 2004/83 must be interpreted as meaning that the applicant's fear of being persecuted is well founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

Case C-277/11 M v Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Irish High Court reference on Council Directive 2004/83/EC, Article 4(1), 22 November 2012)

Judgment // AG Opinion // Application

1. The requirement that the Member State concerned cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1) of 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, cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged – before adopting its decision – to inform the applicant that it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard.

2. However, in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance, in each of those procedures, of the applicant's fundamental rights and, more particularly, of the right to be heard in the sense that the applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection.

Case C-364/11 Abed El Karem El Kott and Others (Fővárosi Bíróság (Hungary) reference on Article 12(1)(a)Council Directive 2004/83/EC, 19 December 2012)

Judgment // AG Opinion // Application

1. The second sentence of Article 12(1)(a) of 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 must be interpreted as meaning that the cessation of protection or assistance from organs or agencies of the United Nations other than the High Commission for Refugees (HCR) 'for any reason' includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the Member State responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency.

2. The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is satisfied as regards the applicant, the fact that that person is *ipso facto* 'entitled to the benefits of [the] directive' means that that Member State must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive.

Joined Cases C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie en Asiel (Raad van State, reference on Council Directive 2004/83/EC, 7 November 2013)

Judgment // AG Opinion // Application

1. Article 10(1)(d) of 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 must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.

2. Article 9(1) of Directive 2004/83, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.

3. Article 10(1)(d) of Directive 2004/83, read together with Article 2(c) thereof, must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member States are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.

Case C-285/12 Aboubacar Diakite v Commissaire général aux réfugiés et aux apatrides (Conseil d'État (Belgium) reference on Article 15(c) Council Directive 2004/83, 30 January 2014)

Judgment // AG Opinion // Application

On a proper construction of Article 15(c) of 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, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

Case C-604/12 HN (Supreme Court, Ireland, reference for a preliminary ruling on the qualification directive and Article 41 of the EU Charter of Fundamental Rights, 8 May 2014)

Judgment // AG Opinion // Application

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 refuges or as persons who otherwise need international protection and the content of the protection granted, the principle of effectiveness and the right to good administration do not preclude a national procedural rule, such as that at issue in the main proceedings, under which an application for subsidiary protection may be considered only after an application for refugee status has been refused, provided that, first, it is possible to submit the application for refugee status and the application for subsidiary protection at the same time and, second, the national procedural rule does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time, which is a matter to be determined by the referring court.

Case C-481/13 Qurbani (Oberlandesgericht Bamberg, Germany, reference for a preliminary ruling on provisions of the 1951 Refugee Convention, lack of jurisdiction)

Judgment // AG Opinion // Application

The Court of Justice of the European Union does not have jurisdiction to reply to the questions referred for a preliminary ruling by the Oberlandesgericht Bamberg (Germany), by decision of 29 August 2013 in Case C‑481/13.

Cases C-148, C-149 and C-150/13 A, B and C v Staatssecretaris van Veiligheid en Justitie (Raad van State, the Netherlands, reference for a preliminary ruling on Article 4 of Council Directive 2004/83/EC and Articles 3 and 7 CFREU, 2 December 2014)

Judgment // AG Opinion // Application

Article 4(3)(c) of 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 and Article 13(3)(a) of Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals.

Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the competent national authorities from carrying out detailed questioning as to the sexual practices of an applicant for asylum.

Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to ‘tests’ with a view to establishing his homosexuality or, yet, the production by him of films of such acts.

Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of that assessment, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution.

Case C-542/13, Mohamed M’Bodj v Conseil des ministres (Cour constitutionnelle, Belgium, reference for a preliminary ruling concerning Articles 2(e) and (f), 15, 18, 20, 28 and 29 of Directive 2004/83/EC, 19 December 2014)

Judgment // AG Opinion // Application

Articles 28 and 29 of 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, read in conjunction with Articles 2(e), 3, 15, and 18 of that directive, are to be interpreted as not requiring a Member State to grant the social welfare and health care benefits provided for in those measures to a third country national who has been granted leave to reside in the territory of that Member State under national legislation such as that at issue in the main proceedings, which allows a foreign national who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment to reside in that Member State, where there is no appropriate treatment in that foreign national's country of origin or in the third country in which he resided previously, unless such a foreign national is intentionally deprived of health care in that country.

Case C-562/13, Abdida v Centre public d'action sociale d'Ottignies-Louvain-La-Neuve (Cour du travail de Bruxelles, Belgium, reference for a preliminary ruling concerning Article 15(b) of the Qualification Directive and a number of Articles of the EU Charter of Fundamental Rights, 19 December 2014)

Judgment // AG Opinion // Application

Articles 5 and 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, taken in conjunction with Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union and Article 14(1)(b) of that directive, are to be interpreted as precluding national legislation which:

– does not endow with suspensive effect an appeal against a decision ordering a third country national suffering from a serious illness to leave the territory of a Member State, where the enforcement of that decision may expose that third country national to a serious risk of grave and irreversible deterioration in his state of health, and

– does not make provision, in so far as possible, for the basic needs of such a third country national to be met, in order to ensure that emergency health care and essential treatment of illness are in fact made available during the period in which that Member State is required to postpone removal of the third country national following the lodging of the appeal.

Case C-472/13, Andre Lawrence Shepherd v Federal Republic of Germany (Bayerisches Verwaltungsgericht München, Germany, reference for a preliminary ruling on Articles 9(2) and 12(2) of Directive 2004/83/EC, 26 February 2015)

Judgment // AG Opinion // Application

Articles 5 and 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, taken in conjunction with Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union and Article 14(1)(b) of that directive, are to be interpreted as precluding national legislation which:

– does not endow with suspensive effect an appeal against a decision ordering a third country national suffering from a serious illness to leave the territory of a Member

State, where the enforcement of that decision may expose that third country national to a serious risk of grave and irreversible deterioration in his state of health, and

– does not make provision, in so far as possible, for the basic needs of such a third country national to be met, in order to ensure that that person may in fact avail himself of emergency health care and essential treatment of illness during the period in which that Member State is required to postpone removal of the third country national following the lodging of the appeal.

Case C-373/13, H. T. v Land Baden-Württemberg (Verwaltungsgerichtshof Baden-Württemberg, Germany, reference for a preliminary ruling concerning Articles 21 and 24 of Council Directive 2004/83/EC, 24 June 2015)

Judgment // AG Opinion // Application

1. 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 must be interpreted as meaning that a residence permit, once granted to a refugee, may be revoked, either pursuant to Article 24(1) of that directive, where there are compelling reasons of national security or public order within the meaning of that provision, or pursuant to Article 21(3) of that directive, where there are reasons to apply the derogation from the principle of non-refoulement laid down in Article 21(2) of the same directive.

2. Support for a terrorist organisation included on the list annexed to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, in the version in force at the material date, may constitute one of the 'compelling reasons of national security or public order' within the meaning of Article 24(1) of Directive 2004/83, even if the conditions set out in Article 21(2) of that directive are not met. In order to be able to revoke, on the basis of Article 24(1) of that directive, a residence permit granted to a refugee on the ground that that refugee supports such a terrorist organisation, the competent authorities are nevertheless obliged to carry out, under the supervision of the national courts, an individual assessment of the specific facts concerning the actions of both the organisation and the refugee in question. Where a Member State decides to expel a refugee whose residence permit has been revoked, but suspends the implementation of that decision, it is incompatible with that directive to deny access to the benefits guaranteed by Chapter VII of the same directive, unless an exception expressly laid down in the directive applies

Joint Cases C-443/14 and C-444/14, Kreis Warendorf v. Ibrahim Alo and Amira Osso v. Region Hannover on the interpretation of Articles 29 and 33 of Directive 2011/95/EU, 1 March 2016)

Judgment // AG Opinion // Application

1. Article 33 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 a residence condition imposed on a beneficiary of subsidiary protection status, such as the conditions at issue in the main proceedings, constitutes a restriction of the freedom of movement guaranteed by that article, even when it does not prevent the beneficiary from moving freely within the territory of the Member State that has granted the protection and from staying on a temporary basis in that territory outside the place designated by the residence condition.

2. Articles 29 and 33 of Directive 2011/95 must be interpreted as precluding the imposition of a residence condition, such as the conditions at issue in the main proceedings, on a beneficiary of subsidiary protection status in receipt of certain specific social security benefits, for the purpose of achieving an appropriate distribution of the burden of paying those benefits among the various institutions competent in that regard, when the applicable national rules do not provide for the imposition of such a measure on refugees, third-country nationals legally resident in the Member State concerned on grounds that are not humanitarian or political or based on international law or nationals of that Member State in receipt of those benefits.
3. Article 33 of Directive 2011/95 must be interpreted as not precluding a residence condition, such as the conditions at issue in the main proceedings, from being imposed on a beneficiary of subsidiary protection status, in receipt of certain specific social security benefits, with the objective of facilitating the integration of third-country nationals in the Member State that has granted that protection — when the applicable national rules do not provide for such a measure to be imposed on third-country nationals legally resident in that Member State on grounds that are not humanitarian or political or based on international law and who are in receipt of those benefits — if beneficiaries of subsidiary protection status are not in a situation that is objectively comparable, so far as that objective is concerned, with the situation of third-country nationals legally resident in the Member State concerned on grounds that are not humanitarian or political or based on international law, it being for the referring court to determine whether that is the case.

Case C-429/15, Evelyn Danqua v. The Minister for Justice and Equality Ireland and the Attorney General on the time frame for submitting an application for subsidiary protection, 20 October 2016)

Judgment // AG Opinion // Application

The principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection.

Case C-573/14, Commissaire général aux réfugiés et aux apatrides v. Mostafa Lounani, on the interpretation of Article 12 on exclusion clauses of Directive 2004/83/EC, 31 January 2017)

Judgment // AG Opinion // Application

4. Article 12(2)(c) of 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 must be interpreted as meaning that it is not a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established that an applicant for international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

5. Article 12(2)(c) and Article 12(3) of Directive 2004/83 must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, such as those of which the defendant in the main proceedings was convicted, may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council. For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted, by the courts of a Member State, on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.

C-560/14 M v Minister for Justice and Equality, Ireland and the Attorney General, request for a preliminary ruling on the right to be heard following rejection of an application for refugee status, 9 February 2017)

Judgment // AG Opinion // Application

The right to be heard, as applicable in the context of 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, does not require, as a rule, that, where national legislation, such as that at issue in the main proceedings, provides for two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, the applicant for subsidiary protection is to have the right to an interview relating to his application and the right to call or cross-examine witnesses when that interview takes place.

An interview must nonetheless be arranged where specific circumstances, relating to the elements available to the competent authority or to the personal or general circumstances in which the application for subsidiary protection has been made, render it necessary in order to examine that application with full knowledge of the facts, a matter which is for the referring court to establish.

C-150/15 - Der Bundesbeauftragte für Asylangelegenheiten v N (Request for a preliminary ruling from the Sächsisches Oberverwaltungsgericht, Germany, lodged on 30 March 2015)

Judgment // AG Opinion // Application

On 9 March 2017, the Saxony Administrative Court informed the CJEU that the domestic litigation had ended - case withdrawn. The questions referred to the CJEU were:

1. Is Article 9(1)(a) in conjunction with Article 10(1)(b) of Directive 2011/95/EU 1 to be interpreted as follows:

a) that a severe violation of the freedom of religion guaranteed by Article 10(1) CFREU (Charter of Fundamental Rights of the European Union) and Article 9(1) ECHR (European Convention on Human Rights) and thus an act of persecution under Article 9(1)(a) of the Directive must be assumed when religious acts or expressions of view that are mandated by a doctrine of faith that the applicant actively professes and which form a core element of the doctrine of faith or are based on the religious convictions of the applicant in the sense that they are a pillar of his religious identity, are prohibited by criminal law in the country of origin,

or

b) is it required that an applicant who actively declares his belief in a particular doctrine of faith must further prove that core elements mandated as religious acts or as or expressions of view by the doctrine of faith, which represent a prohibited religious activity subject to criminal prosecution in his country of origin, are 'particularly important' for the preservation of his religious identity and in this sense are 'essential'?

2. Is Article 9(3) in conjunction with Article 2(d) of Directive 2011/95/EU to be interpreted as follows:

that in order to determine a well-founded fear of being persecuted and a real risk of being persecuted or subjected to inhuman or degrading treatment or punishment by one of the actors specified in Article 6 of Directive 2011/95/EU, with regard to religious acts or expressions of view that are mandated by a doctrine of faith that the applicant actively professes and are a core element of the doctrine of faith or are based on the religious convictions of the applicant in the sense that they are a pillar of his religious identity, and are prohibited by criminal law in the country of origin,

a) it is necessary to evaluate the relationship by comparing the number of members of the applicant's faith who practice their faith despite the prohibition to the number of actual acts of persecution of these acts of faith in the applicant's country of origin, including any possible uncertainties or unknowns regarding governmental enforcement practices,

or

b) it is sufficient if, in the enforcement of the criminal law in the country of origin, the actual application of the laws threatening prosecution of religious acts or expressions of view that are mandated by a doctrine of faith that the applicant actively professes and which form a core element of the doctrine of faith or are based on the religious convictions of the applicant in the sense that they are a of particular importance for his religious identity can be proved?

2. Is a provision of national administrative law under which a trial court is bound by the legal judgment of the court of third instance (here: Section 144(6) VwGO (Verwaltungsgerichtsordnung) [Administrative Court Procedure Act]) compatible with the principle of the primacy of EU law if the trial court wishes to interpret a

standard in EU law differently to the court of third instance but, even after implementation of a preliminary ruling procedure pursuant to Article 267(2) TFEU, is precluded from applying this interpretation of EU law by national law binding the court to the legal analysis of the court of third instance?

Case C-473/16 F. v. Office for Immigration and Nationality (request for preliminary ruling on the interpretation of Article 4 for the assessment of LGBTI-related asylum claims, judgment 25 January 2018)

Judgment // AG Opinion // Application

1. Article 4 of Directive 2011/95/EC 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 it does not preclude the authority responsible for examining applications for international protection, or, where an action has been brought against a decision of that authority, the courts or tribunals seised, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant, provided that the procedures for such a report are consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, that that authority and those courts or tribunals do not base their decision solely on the conclusions of the expert's report and that they are not bound by those conclusions when assessing the applicant's statements relating to his sexual orientation.

2. Article 4 of Directive 2011/95, read in the light of Article 7 of the Charter of Fundamental Rights, must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.

Pending Preliminary References

Case C-353/16 MP (Request for a preliminary ruling from the Supreme Court of the United Kingdom, lodged on 22 June 2016)

Judgment // AG Opinion // Application

Does article 2(e), read with article 15(b), of EU Council Directive 2004/83/EC1 cover a real risk of serious harm to the physical or psychological health of the applicant if returned to the country of origin, resulting from previous torture or inhuman or degrading treatment for which the country of origin was responsible?

Case C-391/16 M v Ministerstvo vnitra (Request for a preliminary ruling from the Ministery of the Interior of the Czech Republic on the validity of Article 14(4) and (6) of Directive 2011/95 in light of Article 78(1) TFEU, lodged on 14 July 2016)

Judgment // AG Opinion // Application

Is Article 14(4) and (6) of Directive 2011/95/EU [1] of the European Parliament and of the Council 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 invalid on the grounds that it infringes Article 18 of the Charter of Fundamental Rights of the European Union, Article 78(1) of the Treaty on the Functioning of the European Union and the general principles of EU law under Article 6(3) of the Treaty on European Union?

Case C-366/16 H. F. v Belgische Staat (request for a preliminary ruling on the interpretation of Citizenship Directive and Article 12 Qualification Directive related to grounds for exclusion, lodged on 5 July 2016)

Judgment // AG Opinion // Application

Should Union law, in particular Article 27(2) of the Citizenship Directive [1] , whether or not in conjunction with Article 7 of the Charter, be interpreted as meaning that a residence application, lodged by a third-country family member in the context of family reunification with a Union citizen, who in turn has used his right of free movement and residence, can be refused in a Member State because of a threat resulting from the mere presence in society of that family member, who in another Member State was excluded from refugee status pursuant to Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive [2] because of his involvement in events within a certain socio-historical context in his country of origin, where the genuineness and the reality of the threat posed by the conduct of that family member in the Member State of residence is based solely on a reference to the exclusion decision in the absence of an assessment of the risk of recidivism in the Member State of residence?

C-585/16 Alheto, Bulgarian Court Sofia-grad (request for a preliminary ruling on provisions related to protection of stales applicants and UNRWA, lodged 18 November 2016)

Judgment // AG Opinion // Application

1. Does it follow from Article 12(1)(a) of Directive 2011/95 1 in conjunction with Article 10(2) of Directive 2013/32 2 and Article 78(2)(a) of the Treaty on the Functioning of the European Union that:

A) it is permissible for an application for international protection made by a stateless person of Palestinian origin who is registered as a refugee with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and, before making that application, was resident in that agency's area of operations (the Gaza Strip) to be examined as an application under Article 1(A) of the 1951 Geneva Convention rather than as an application for international protection under the second

sentence of Article 1(D) of that convention, on condition that responsibility for examining the application was assumed on a basis other than compassionate or humanitarian grounds and the examination of the application is governed by Directive 2011/95?

B) it is permissible for such an application not to be examined in the light of the conditions laid down in Article 12(1)(a) of Directive 2011/95, with the result that the interpretation of that provision by the Court of Justice of the European Union is not applied?

2. Is Article 12(1)(a) of Directive 2011/95 in conjunction with Article 5 thereof to be interpreted as precluding provisions of national law such as those at issue in the main proceedings, contained in Article 12(1)(4) of the Zakon za ubezhishteto i bezhantsite (Law on asylum and refugees, 'ZUB'), which, in the version applicable at the relevant time, do not contain an express clause on ipso facto protection for Palestinian refugees and do not lay down the condition that the assistance must have ceased for any reason, and as meaning that Article 12(1)(a) of Directive 2011/95, being sufficiently precise and unconditional and therefore directly effective, is applicable even if the person seeking international protection does not expressly rely on it, where the application is to be examined as an application under the second sentence of Article 1(D) of the Geneva Convention?

3. Does it follow from Article 46(3) of Directive 2013/32 in conjunction with Article 12(1)(a) of Directive 2011/95 that, in an appeal before a court or tribunal against a decision refusing international protection which was adopted in accordance with Article 10(2) of Directive 2013/32, it is permissible for the court or tribunal of first instance, taking into account the facts of the main proceedings, to treat the application for international protection as an application under the second sentence of Article 1(D) of the Geneva Convention and to carry out the assessment provided for in Article 12(1)(a) of Directive 2011/95, where an application for international protection has been made by a stateless person of Palestinian origin who is registered as a refugee with the UNRWA and, before making that application, was resident within that agency's area of operations (the Gaza Strip), and, in the decision refusing international protection, that application was not examined in the light of the aforementioned provisions?

4. Does it follow from the provisions of Article 46(3) of Directive 2013/32, concerning the right to an effective remedy incorporating the requirement of a 'full and ex nunc examination of both facts and points of law', interpreted in conjunction with Articles 33, 34 and the second paragraph of Article 35 of that directive and Article 21(1) of Directive 2011/95, in conjunction with Articles 18, 19 and 47 of the Charter of Fundamental Rights of the European Union, that, in an appeal before a court or tribunal against a decision refusing international protection which was adopted in accordance with Article 10(2) of Directive 2013/32, they allow the court or tribunal of first instance:

A) To decide for the first time on the admissibility of the application for international protection and on the refoulement of the stateless person to the country in which he was resident before making the application for international protection, after requiring the asylum authority to produce the evidence necessary for that purpose and giving the person in question the opportunity to present his views on the admissibility of the application; or

B) to annul the decision for breach of an essential procedural requirement and to require the asylum authority, taking into account the instructions on the interpretation and application of the law, to reconsider the application for international protection, inter alia by conducting the admissibility interview provided for in Article 34 of Directive 2013/32 and deciding whether it is possible to return the stateless person to the country in which he was resident before making the application for international protection;

C) to assess the security status of the country in which the person was resident at the time of the hearing or, if the situation has been the subject of fundamental changes which must be taken into account in the person's favour in the decision to be taken, at the time when the judgment is given?

5. Does the assistance granted by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) constitute otherwise sufficient protection, within the meaning of point (b) of the first paragraph of Article 35 of Directive 2013/32, in the relevant country within the relief agency's area of operations, where that country applies the principle of non-refoulement, within the meaning of the 1951 Geneva Convention, in relation to persons supported by the relief agency?

6. Does it follow from Article 46(3) of Directive 2013/32 in conjunction with Article 47 of the Charter of Fundamental Rights that the right to an effective remedy incorporating the requirement, 'where applicable, [of] an examination of the international protection needs pursuant to Directive 2011/95' compels the court or tribunal of first instance, in an appeal against the decision examining the substance of an application for international protection and refusing to grant that protection, to give a judgment:

A) which has the force of res judicata in relation not only to the question of the lawfulness of the refusal but also to the applicant's need for international protection pursuant to Directive 2011/95, including in cases where, under the national law of the Member State concerned, international protection may be granted only by decision of an administrative authority;

B) on the necessity to grant international protection, by carrying out a proper examination of the application for international protection, notwithstanding the breaches of procedural requirements committed by the asylum authority when assessing the application?

C-78/17 X, Request for preliminary ruling from the Conseil du Contentieux des étrangers (Belgium) on the interpretation of Article 14 § 4 of the Qualification Directive

Judgment // AG Opinion // Application

A. Must Article 14(4) of Directive 2011/95/EU (1) be interpreted as creating a new ground for exclusion from refugee status provided for in Article 13 of the Directive and, consequently, from Article 1A of the Geneva Convention?
B. If the answer to question A is yes, is Article 14(4) of Directive 2011/95/EU, thus interpreted, compatible with Article 18 of the Charter of Fundamental Rights and Article 78(1) of the Treaty on the Functioning of the European Union, which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention, the exclusion

clause laid down in Article 1F of the Convention being exhaustively worded and requiring strict interpretation?
C. If the answer to question A is no, must Article 14(4) of Directive 2011/95/EU be interpreted as introducing a ground for withdrawing refugee status which is not provided for in the Geneva Convention, compliance with which is required by Article 18 of the Charter of Fundamental Rights and Article 78(1) of the Treaty on the Functioning of the European Union?
D. If the answer to question C is yes, is Article 14(4) of Directive 2011/95/EU compatible with Article 18 of the Charter of Fundamental Rights and Article 78(1) of the Treaty on the Functioning of the European Union, which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention, as it introduces a ground for withdrawing refugee status for which no provision is made in the Geneva Convention, and for which no basis can be found in the Convention?
E. If the answer to questions A and C is no, how can Article 14(4) of Directive 2011/95/EU be interpreted in a manner consistent with Article 18 of the Charter and Article 78(1) of the Treaty on the Functioning of the European Union, which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention?

C-77/17 X, Request for preliminary ruling from the Conseil du Contentieux des étrangers (Belgium) on the interpretation of Article 14 § 5 of the Qualification Directive

Judgment // AG Opinion // Application

A. Must Article 14(5) of Directive 2011/95/EU (1) be interpreted as creating a new ground for exclusion from refugee status provided for in Article 13 of the Directive and, consequently, from Article 1A of the Geneva Convention?
B. If the answer to question A is yes, is Article 14(5) of Directive 2011/95/EU, thus interpreted, compatible with Article 18 of the Charter of Fundamental Rights and Article 78(1) of the Treaty on the Functioning of the European Union, which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention, the exclusion clause laid down in Article 1F of the Convention being exhaustively worded and requiring strict interpretation?
C. If the answer to question A is no, must Article 14(5) of Directive 2011/95/EU be interpreted as introducing a ground for refusing refugee status which is not provided for in the Geneva Convention, compliance with which is required by Article 18 of the Charter of Fundamental Rights and Article 78(1) of the Treaty on the Functioning of the European Union?
D. If the answer to question C is yes, is Article 14(5) of Directive 2011/95/EU compatible with Article 18 of the Charter of Fundamental Rights and Article 78(1) of the Treaty on the Functioning of the European Union, which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention, as it introduces a ground for refusing refugee status without any consideration of fear of persecution, as required by Article 1A of the Geneva Convention?
E. If the answer to questions A and C is no, how can Article 14(5) of Directive 2011/95/EU be interpreted in a manner consistent with Article 18 of the Charter and Article 78(1) of the Treaty on the Functioning of the European Union, which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention?

C-652/16 Ahmedbekova, Request for preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) on the interpretation of several provisions of the Qualification Directive (lodged on 19 December 2016)

Judgment // AG Opinion // Application

1. Does it follow from Article 78(1) and 78(2)(a), (d) and (f) of the Treaty on the Functioning of the European Union and from recital 12 and Article 1 of Directive 2013/32/EU 1 of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) that the ground for the inadmissibility of applications for international protection provided for in Article 33(2)(e) of that directive constitutes a directly effective provision which the Member States may not choose not to apply, for example by applying more favourable provisions of national law under which the initial application for international protection must, in accordance with Article 10(2) of that directive, be examined first from the point of view of whether the applicant fulfils the conditions for qualification as a refugee and then from the point of view of whether that person is eligible for subsidiary protection?

2. Does it follow from Article 33(2)(e) of Directive 2013/32, in conjunction with Article 7(3) and Article 2(a), (c) and (g) and recital 60 of that directive, that, in the circumstances of the main proceedings, an application for international protection lodged by a parent on behalf of an accompanied minor is inadmissible where the reason given for the application is that the child is a member of the family of the person who has applied for international protection on the ground that he is a refugee within the meaning of Article 1(A) of the Geneva Convention on Refugees?

3. Does it follow from Article 33(2)(e) of Directive 2013/32, in conjunction with Article 7(1) and Article 2(a), (c) and (g) and recital 60 of that directive, that, in the circumstances of the main proceedings, an application for international protection lodged on behalf of an adult is inadmissible where the only reason given for the application in the proceedings before the relevant administrative authority is that the applicant is a member of the family of the person who has applied for international protection on the ground that he is a refugee within the meaning of Article 1(A) of the Geneva Convention on Refugees and, at the time when he lodges the application, the applicant has no right to carry on an occupation?

4. Does Article 4(4) of Directive 2011/95/EU 2 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 (recast), in conjunction with recital 36 of that directive, require that the assessment of whether there is a well-founded fear of being persecuted or a real risk of suffering serious harm be carried out only on the basis of facts and circumstances relating to the applicant?

5. Does Article 4 of Directive 2011/95, in conjunction with recital 36 thereof and Article 31(1) of Directive 2013/32, permit national case-law in a Member State which:

(a) obliges the responsible authority to assess the applications for international protection lodged by members of one and the same family in a joint procedure, in cases

where those applications are based on the same facts, specifically the assertion that only one of the family members is a refugee;

(b) obliges the responsible authority to suspend the proceedings relating to applications for international protection lodged by family members who do not personally meet the conditions for such protection until such time as the proceedings relating to the application lodged by the family member on the ground that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention on Refugees are concluded; and

is that case-law also permissible in the light of considerations relating to the best interests of the child, maintenance of family unity and respect for the right to private and family life and the right to remain in the Member State pending the assessment of the application, more specifically in the light of Articles 7, 18 and 47 of the Charter of Fundamental Rights of the European Union, recitals 12 and 60 and Article 9 of Directive 2013/32, recitals 16, 18 and 36 and Article 23 of Directive 2011/95 and recitals 9, 11 and 35 and Articles 6 and 12 of Directive 2013/33/EU 3 of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection?

6. Does it follow from recitals 16, 18 and 36 and Article 3 of Directive 2011/95, in conjunction with recital 24 and Article 2(d) and (j), Article 13 and Article 23(1) and (2) of that directive, that a provision of national law, such as Article 8(9) of the Zakon za ubezhishteto i bezhantsite (Law on asylum and refugees), at issue in the main proceedings, pursuant to which the members of the family of a foreign national who has been granted refugee status are also regarded as refugees in so far as this is compatible with their personal status and there are no reasons in national law for excluding the granting of refugee status, is permissible?

7. Does it follow from the rules relating to the reasons for persecution contained in Article 10 of Directive 2011/95 that the bringing of a complaint before the European Court of Human Rights against the State of origin of the person concerned establishes that person's membership of a particular social group within the meaning of Article 10(1)(d) of that directive, or that the bringing of that complaint is to be regarded as constituting a political opinion within the meaning of Article 10(1)(e) of the directive?

8. Does it follow from Article 46(3) of Directive 2013/32 that the court is obliged to examine the substance of new grounds for international protection which have been put forward in the course of the judicial proceedings but which were not relied on in the action brought against the decision refusing international protection?

9. Does it follow from Article 46(3) of Directive 2013/32 that the court is obliged to assess the admissibility of the application for international protection on the basis of Article 33(2)(e) of that directive in the proceedings brought against the decision refusing international protection, in so far as, in accordance with Article 10(2) of that directive, the contested decision assessed the application first from the point of view of whether the applicant meets the conditions for qualification as a refugee and then from the point of view of whether that applicant is eligible for subsidiary protection?

Case C-56/17 Fahti (Request for a preliminary ruling from the Administrative Court of Sofia, Bulgaria, lodged 3 February 2017)

(also under “Dublin Regulation” on this document)

1. Does it follow from Article 3, paragraph 1 of Regulation (EU) No 604/2013, read in conjunction with Recital 12 and Article 17 thereof, that a Member State may take a decision which must be considered as an ‘examination of an application for international protection’ as defined in Article 2 d) of the Regulation, while there is no explicit decision on the responsibility of that Member State in accordance with the criteria of the Regulation, where in the concrete case there are no indications of a derogation as meant in Article 17 of the Regulation?

2. Does it follow from Article 3, paragraph 1, second sentence of Regulation (EU) no. 604/2013, in conjunction with Recital 54 of Directive 2013/32/EU, that in the circumstances of the case, in respect of an application for international protection as defined in Article 2 b) of that Regulation, if there is no derogation as meant in Article 17 paragraph 1 thereof, a decision should be taken whereby the State obliges itself to examine the application in accordance with the criteria of the Regulation and whereby the decision is based on the fact that the provisions of the Regulation apply to the applicant?

3. Is Article 46, paragraph 3, of Directive 2013/32/EU to be interpreted that the judge in an appeal procedure against a decision of refusal of international protection, has to decide in accordance with Recital 54 of that Directive whether the provisions of Regulation (EU) no. 604/2013 apply to the applicant, if the Member State has not taken an explicit decision on its responsibility for examining the application for international protection under the criteria of the Regulation? Should it be assumed on the basis of Recital 54 of Directive 2013/32 that, when there are no indications for the applicability of Article 17 of Regulation no. 604/2013 and the application for international protection is examined on the basis of Directive 2011/95/EU by the Member State in which the application is lodged, the Regulation also then applies to the legal situation of the person concerned if the Member State has taken no explicit decision on its responsibility under the criteria of the Regulation?

4. Does it follow from Article 10, paragraph 1 b) of Directive 2011/95/EU that in the circumstances of the case there is persecution on the ground of "religion", if the applicant has not made statements and provided documents related to all aspects covered by the concept of religion within the meaning of that provision that are fundamental to assess whether the person adheres to a particular religion?

5. Does it follow from Article 10, paragraph 2 of Directive 2011/95/EU that there is persecution based on religion in the sense of Article 10, paragraph 1 b) of that Directive, if the applicant in the circumstances of the case states to be persecuted on the basis of his religious beliefs, but did not make statements and submit evidence concerning aspects which are characteristic of adhering to a particular religion and which for the prosecuting party would constitute a reason to assume that that person adheres to that religion - including aspects related to whether or not the individual was carrying out religious activities or religious statements -, or concerning forms of individual or communal conduct based on religious belief or prescribed by religious belief?

6. Does it follow from Article 9, paragraphs 1 and 2 of Directive 2011/95/EU in conjunction with Articles 18 and 10 of the Charter of Fundamental Rights of the European Union and the concept of religion in the sense of Article 10 paragraph 1 b) of that Directive, that in the circumstances of the case:

a) the concept of religion within the meaning of EU law does not include activities which are punishable under the national law of the Member States? Can such acts, which are punishable in the country of origin of the applicant, be acts of persecution?

b) relating to the prohibition of proselytism and the prohibition of acts contrary to the religion to which the laws and regulations of the country of origin of the applicant are based, restrictions must be considered permissible which are set in order to protect the rights and freedoms of others and of the public order in that country? Should such prohibitions be regarded in itself as acts of persecution within the meaning of the cited provisions of the Directive if infringements to them are punished by a death sentence, although the legislation in question is not directed specifically against a particular religion?

7. Does it follow from Article 4, paragraph 2 of Directive 2011/95/EU, in conjunction with paragraph 5, under b) of that provision, Article 10 of the Charter of Fundamental Rights of the European Union and Article 46, paragraph 3 of Directive 2013/32/EU, that in the circumstances of the case the assessment of the facts and circumstances may be made only on the basis of statements and documents submitted by the applicant, but it is also permitted to require proof of missing aspects covered by the concept of religion within the meaning of Article 10, paragraph 1 b) of the Directive if:

- the application for international protection without such data should be considered unfounded in the sense of Article 32 in conjunction with Article 31, paragraph 8 e) of Directive 2013/32/EU; and

- national law provides that the competent authority should establish all circumstances relevant for the assessment of the application for international protection and the judge in case of dispute concerning the decision of refusal should point out that the applicant has not offered and presented evidence?

Case C-369/17 Ahmed (Request for a preliminary ruling from the Hungarian Metropolitan Administrative and Labour Court,, lodged 3 February 2017)

Judgment // AG Opinion // Application

Does it follow from Article 17 (1) b) of the Qualification Directive that a "serious crime" may only be defined based on the punishment ordered for the crime in question by the law of the given Member State and that exclusion from subsidiary protection may only be based on this definition?

Procedures Directive 2005/85/EC (recast 2013/32/EU)

Judgments

Case C-133/06 European Parliament v Council of the European Union (request for the annulment of Arts 29(1) and (2) and 36(3) of Council Directive 2005/85/EC, 6 May 2008)

Judgment // AG Opinion // Application

1. Annuls Articles 29(1) and (2) and 36(3) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;

2. Orders the Council of the European Union to pay the costs;

3. Orders the French Republic and the Commission of the European Communities to bear their own costs.

Case C-69/10 Samba Diouf (interpretation of Article 39 of Directive 2005/85/EC, 28 July 2011)

Judgment // AG Opinion // Application

On a proper construction, Article 39 of Council Directive 2005/85/EC of 1 December on minimum standards on procedures in Member States for granting and withdrawing refugee status, and the principle of effective judicial protection, do not preclude national rules such as those at issue in the main proceedings, under which no separate action may be brought against the decision of the competent national authority to deal with an application for asylum under an accelerated procedure, provided that the reasons which led that authority to examine the merits of the application under such a procedure can in fact be subject to judicial review in the action which may be brought against the final decision rejecting the application – a matter which falls to be determined by the referring court.

Case C-431/10 Commission v Ireland (related to the non-transposition of Council Directive 2005/85/EC, 7 April 2011)

Judgment // AG Opinion // Application

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Ireland has failed to fulfill its obligations under Article 43 of that directive;

2. Orders Ireland to pay the costs.

Case C-175/11 HID, BA v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General (reference on Articles 23 and 39 of Directive 2005/85/EC, 31 January 2013)

Judgment // AG Opinion // Application

1. Article 23(3) and (4) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status must be interpreted as not precluding a Member State from examining by way of prioritised or accelerated procedure, in compliance with the basic principles and guarantees set out in Chapter II of that directive, certain categories of asylum applications defined on the basis of the criterion of the nationality or country of origin of the applicant.

2. Article 39 of Directive 2005/85 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows an applicant for asylum either to lodge an appeal against the decision of the determining authority before a court or tribunal such as the Refugee Appeals Tribunal (Ireland), and to bring an appeal against the decision of that tribunal before a higher court such as the High Court (Ireland), or to contest the validity of that determining authority's decision before the High Court, the judgments of which may be the subject of an appeal to the Supreme Court (Ireland).

Case C-239/14 Abdoulaye Amadou Tall v Centre public d'action sociale de Huy (CPAS de Huy (related to the suspensive effective of subsequent applications and appeals under Directive 2005/85/EC, 17 December 2015)

Judgment // AG Opinion // Application

Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, read in the light of Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not confer suspensory effect on an appeal brought against a decision, such as the one at issue in the main proceedings, not to further examine a subsequent application for asylum.

Case C-348/16 Sacko Moussa v Commissione Territoriale per il riconoscimento della Protezione internazionale di Milano (request for a preliminary ruling from Tribunale di Milano on judicial review under Directive 2013/32/EU, lodged 22 June 2016, ruling 26 July 2017)

Judgment // AG Opinion // Application

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, in particular Articles 12, 14, 31 and 46 thereof, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the

national court or tribunal hearing an appeal against a decision rejecting a manifestly unfounded application for international protection from dismissing the appeal without hearing the applicant where the factual circumstances leave no doubt as to whether that decision was well founded, on condition that, first, during the proceedings at first instance, the applicant was given the opportunity of a personal interview on his or her application for international protection, in accordance with Article 14 of the directive, and the report or transcript of the interview, if an interview was conducted, was placed on the case-file, in accordance with Article 17(2) of the directive, and, second, the court hearing the appeal may order that a hearing be conducted if it considers it necessary for the purpose of ensuring that there is a full and ex nunc examination of both facts and points of law, as required under Article 46(3) of the directive.

Pending Preliminary References

Case C-113/17 QJ: Request for preliminary ruling from the Supreme Court of the Slovak Republic, lodged on 6 March 2017

Judgment // AG Opinion // Application

1. Is Article 46(3) 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 (recast) to be interpreted as meaning that the national judge who is assessing the need for international protection of an applicant, is entitled to grant the applicant that protection, given the fact that previous negative decisions of an administrative authority have been repeatedly overturned, which has raised doubts about effectiveness of subsequent appeals; even when it is not apparent from national legislation that the judge has such competence?

2. If the previous question is answered in the affirmative, does such competence extend to the (highest) court of appeal (Supreme Court) as well?

Case C-175/17 X: Request for preliminary ruling from the Dutch Council of State (the Netherlands), lodged on 29 March 2017

Judgment // AG Opinion // Application

1. Must Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98; 'the Return Directive'), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that under EU law, if national law makes provision to that effect, in proceedings challenging a decision which includes a return decision within the meaning of Article 3(4) of Directive 2008/115/EC, the legal remedy of an appeal has automatic suspensory effect where the third-country national claims that enforcement of the return decision would result in a serious risk of infringement of the principle of nonrefoulement? In other words, in such a case, should the expulsion of the third-country national concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the third-country national concerned being required to submit a separate request to that effect?

2. Must Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13; 'the Procedures Directive'), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that, under EU law, if national law makes provision to that effect, in proceedings relating to the rejection of an application for asylum within the meaning of Article 2 of Directive 2005/85/EC, the legal remedy of an appeal has automatic suspensory effect? In other words, in such a case, should the expulsion of the asylum-seeker concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the asylum-seeker concerned being required to submit a separate request to that effect?

Case C-180/17 X, Y: Request for preliminary ruling from the Raad van State (Netherlands), lodged on 7 April 2017

Judgment // AG Opinion // Application

Must Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98; 'the Return Directive'), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that under EU law, if national law makes provision to that effect, in proceedings challenging a decision which includes a return decision within the meaning of Article 3(4) of Directive 2008/115/EC, the legal remedy of an appeal has automatic suspensory effect where the third-country national claims that enforcement of the return decision would result in a serious risk of infringement of the principle of non-refoulement? In other words, in such a case, should the expulsion of the third-country national concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the third-country national concerned being required to submit a separate request to that effect?

Must Article 46 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 (recast) (OJ 2013 L 180, p. 60), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that, under EU law, if national law makes provision to that effect, in proceedings relating to the rejection of an application for the granting of international protection, the legal remedy of an appeal has automatic suspensory effect? In other words, in such a case, should the expulsion of an applicant be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the applicant concerned being required to submit a separate request to that effect?

In order for there to be such automatic suspensory effect, is it still relevant whether the application for international protection which prompted the procedures of bringing an action in law and a subsequent appeal has been rejected on one of the grounds mentioned in Article 46(6) of Directive 2013/32/EU? Alternatively, does that requirement apply for all categories of asylum decisions as set out in that directive?

Case C-297/17 Ibrahim: Request for preliminary ruling from the German Federal Constitutional Court, lodged on 23 March 2017

Judgment // AG Opinion // Application

1. Does the transitional provision in Article 52 of the recast Asylum Procedures Directive (APD) preclude a national provision according to which an application is inadmissible if another Member State has already granted subsidiary protection, as long as the national provision (in the absence of a transitional national provision) is applicable for claims filed before 20 July 2015? Does the transitional provision allow a national law to be retroactively applied in a case that was pending before the recast APD provision was transposed into national law?

2. According to Article 33 of the recast APD, are Member States able to choose whether they consider applications inadmissible based on the Dublin Regulation or based on the fact that the applicant has already been granted subsidiary protection by another Member State (Art. 33(2) recast APD)?

3. If Member States can chose whether they reject applications inadmissible on the basis of the Dublin Regulation or on Article 33(2) APD, does Union Law prevent Member States from rejecting an application as inadmissible based on said directive, if:
a) the applicant seeks an upgrade of his/her international protection to refugee status instead of subsidiary protection, granted by another Member State whose asylum process has or has had systematic deficiencies, or;
b) the protection offered, particularly the applicant's living conditions in that Member State, violates Article 4 CFR (Article 3 ECHR) or; does not meet the standards set out in Article 20 of the Qualification Directive, without having violated Article 4 CFR (Art. 3 ECHR).

4. If question 3(b) is answered in the affirmative: Is this also applicable if the beneficiaries of subsidiary protection are granted none or, compared to other Member States, significantly less basic needs support, as long as there is no difference between the treatment of nationals of this Member State?

5. If question 2 is answered in the negative:
a) Is the Dublin III Regulation applicable when deciding on the granting of international protection if the application has been lodged before 1 January 2014, the claim for resumption after 1 January 2014, and when the applicant has been granted subsidiary protection in that Member State before (in February 2013)?
b) Is there a transfer of responsibility to the Member State that requests the Dublin transfer if the other Member State rejects the request and refers to a bilateral readmission agreement?

Case C-404/17 A: Request for preliminary ruling from the Administrative Court of Malmo, Sweden, lodged on 6 July 2017

Judgment // AG Opinion // Application

Is an application in which the applicant's information is deemed to be reliable and so is taken as the basis for the assessment, but insufficient to form the basis of a need for

international protection on the ground that the country-of-origin information suggests that there is acceptable protection, to be regarded as clearly unfounded under Article 31(8) of the recast Asylum Procedure Directive?

Case C-438/17 Magamadov - Request for preliminary ruling from the German Federal Administrative Court, lodged on 20 July 2017

Judgment // AG Opinion // Application

1. Does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU 1 preclude the application of national legislation which, in transposition of the power conferred in Article 33(2)(a) of Directive 2013/32/EU, which is more extensive than that conferred in the directive that preceded it, provides that an application for international protection is inadmissible if the applicant has been granted subsidiary protection in another Member State, in so far as the national legislation, in the absence of any national transitional provisions, is applicable even to applications lodged before 20 July 2015? Is that in any event the case if, in accordance with Article 49 of Regulation (EU) No 604/2013, the asylum application still falls entirely within the scope of Regulation (EC) No 343/2003?

2. In particular, does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU allow the Member States, in particular, to transpose the extended power conferred in Article 33(2)(a) of Directive 2013/32/EU retroactively, with the result that even applications that were lodged before the entry into force of Directive 2013/32/EU and before that extended power was transposed into national law, but that were not yet the subject of a final decision at the time of transposition, are inadmissible?

Case C-517/17 Addis - Request for preliminary ruling from the German Federal Administrative Court, lodged on 28 August 2017

Judgment // AG Opinion // Application

1. Does EU law preclude a Member State (in this case, Germany) from rejecting an application for international protection as inadmissible on the ground that refugee status has been granted in another Member State (in this case, Italy), in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU 1 or under the rule in Article 25(2)(a) of Directive 2005/85/EC 2 that preceded it, if the form which the international protection takes, and more specifically, the living conditions of persons qualifying as refugees, in the other Member State which has already granted the applicant international protection (in this case, Italy), does not satisfy the requirements of Article 20 et seq. of Directive 2011/95/EU but does not, in and of itself, infringe Article 4 of the Charter of Fundamental Rights of the European Union or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?

If Question 1 is to be answered in the affirmative, is this also the case where, although the persons qualifying as refugees in the Member State in which they so qualify (in this case, Italy)

(a) do not receive any subsistence benefits at all, or those which they do receive are very limited by comparison with those available in other Member States, they are to this extent not treated any differently from nationals of that Member State, and they

(b) are admittedly, granted the rights provided for under Article 20 et seq. of Directive 2011/95/EU but in fact have greater difficulty in accessing the related benefits or benefits under family or social networks which replace or supplement State benefits?

2. Does the first sentence of Article 14(1) of Directive 2013/32/EU or the rule in the first sentence of Article 12(1) of Directive 2005/85/EC that preceded it preclude the application of a national provision under which the failure to conduct a personal interview with the applicant in the case where the determining authority rejects an asylum application as inadmissible, in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU or the rule in Article 25(2)(a) of Directive 2005/85/EC that preceded it, does not result in that decision being annulled by reason of that failure if the applicant has an opportunity in the judicial proceedings to set out all the circumstances mitigating against a decision of inadmissibility and, even having regard to those submissions, no other decision can be taken in the case?

Case C-540/17 Hamed - Request for preliminary ruling from the German Federal Administrative Court, lodged on 15 September 2017

Judgment // AG Opinion // Application

1. Does EU law preclude a Member State (in this case, Germany) from rejecting an application for international protection as inadmissible on the ground that refugee status has been granted in another Member State (in this case, Bulgaria), in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU (1) or under the rule in Article 25(2)(a) of Directive 2005/85/EC (2) that preceded it, if the form which the international protection takes, and, more specifically, the living conditions of persons qualifying as refugees, in the other Member State which has already granted the applicant international protection (in this case, Bulgaria),

(a) does not meet the requirements of Article 20 et seq. of Directive 2011/95/EU (3) and/or
(b) infringes Article 4 of the Charter of Fundamental Rights of the European Union and/or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?

2. If Question 1(a) or (b) is to be answered in the affirmative, is this also the case where

(a) persons qualifying as refugees in the Member State in which they so qualify (in this case, Bulgaria) do not receive any subsistence benefits at all, or those which they do receive are very limited by comparison with those available in other Member States, but they are to that extent not treated any differently from nationals of that Member State,
(b) persons qualifying as refugees are, admittedly, formally treated in the same way as nationals of that State with regard to the conditions relating to subsistence but in fact have greater difficulty in accessing the corresponding benefits and there is no integration programme appropriately tailored and addressing the special needs of the persons concerned such as to ensure de facto equivalent treatment to that of nationals of that State?

Case C-541/17 Omar - Request for preliminary ruling from the German Federal Administrative Court, lodged on 15 September 2017

Judgment // AG Opinion // Application

1. Does EU law preclude a Member State (in this case, Germany) from rejecting an application for international protection as inadmissible on the ground that refugee status has been granted in another Member State (in this case, Bulgaria), in implementation of the power under Article 33(2)(a) of Directive 2013/32/EU (1) or under the rule in Article 25(2)(a) of Directive 2005/85/EC (2) that preceded it, if the form which the international protection takes, and, more specifically, the living conditions of persons qualifying as refugees, in the other Member State which has already granted the applicant international protection (in this case, Bulgaria),

(a) does not meet the requirements of Article 20 et seq. of Directive 2011/95/EU (3) and/or
(b) infringes Article 4 of the Charter of Fundamental Rights of the European Union and/or Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?

2. If Question 1(a) or (b) is to be answered in the affirmative, is this also the case where

(a) persons qualifying as refugees in the Member State in which they so qualify (in this case, Bulgaria) do not receive any subsistence benefits at all, or those which they do receive are very limited by comparison with those available in other Member States, but they are to that extent not treated any differently from nationals of that Member State,
(b) persons qualifying as refugees are, admittedly, formally treated in the same way as nationals of that State with regard to the conditions relating to subsistence but in fact have greater difficulty in accessing the corresponding benefits and there is no integration programme appropriately tailored and addressing the special needs of the persons concerned such as to ensure de facto equivalent treatment to that of nationals of that State?

Case C-556/17 Torubarov - Request for preliminary ruling from the Pecs Administrative and Labour Court in Hungary, lodged on 22 September 2017

Judgment // AG Opinion // Application

Is Article 46(3) of Directive 2013/32/EU 1 of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that the Hungarian courts have the power to amend administrative decisions of the competent asylum authority refusing international protection, and also to grant such protection?

Case C-586/17 I., D. - Request for preliminary ruling from the Dutch Council of State, lodged on 6 October 2017

Judgment // AG Opinion // Application

1(a) Does Article 46(3) of Directive 2013/32/EU 1 of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) …, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, preclude a system under which the administrative court of first instance in asylum cases may not, in principle, take into account a ground for asylum first put forward by a foreign national in the judicial proceedings before it when assessing that action?

1(b) Does it matter in this regard whether a de facto new ground for asylum is put forward, that is to say, a ground for applying for international protection based on facts and circumstances which arose after the decision of the determining authority on the application for international protection, or whether it is a ground for asylum which was initially withheld, that is to say, a ground for applying for international protection which is based on facts and circumstances which arose before the decision of the determining authority on the application for international protection and which the foreign national knew about but was at fault for not disclosing in the administrative phase?

1(c) Does it matter in this regard whether the ground for asylum is put forward in the framework of judicial proceedings before the administrative court of first instance in asylum cases challenging a decision of the determining authority on a first application or on a subsequent application for international protection?

2. If Question 1(a) is answered in the affirmative, does EU law then also preclude an administrative court of first instance in asylum cases from choosing to refer the examination of a ground for asylum first put forward in the judicial proceedings before it for a fresh procedure before the determining authority, in order thereby to safeguard the due process of law in the judicial proceedings or to prevent those proceedings from being unduly delayed?

Case C-662/17 E.G. - Request for preliminary ruling from the Supreme Court of Slovenia, lodged on 27 November 2017

Judgment // AG Opinion // Application

Is the appellant's interest within the meaning of the second paragraph of Article 46(2) of Procedural Directive II 1 to be interpreted to the effect that subsidiary protection status does not grant the same rights and benefits as refugee status if, under national law, foreign nationals granted international protection do enjoy the same rights and benefits but a different approach is adopted in defining the duration or cessation of international protection, inasmuch as refugee status is granted to refugees for an indefinite period but ceases when the circumstances on the basis of which it was granted cease, whereas subsidiary protection is granted for a specified period and is extended if the reasons for it continue to exist?

Must the appellant's interest within the meaning of the second paragraph of Article 46(2) of Procedural Directive II be interpreted to the effect that subsidiary protection status does not offer the same rights and benefits as refugee status, if, under national law, foreign nationals granted international protection do enjoy the same rights and benefits but the ancillary rights on which those rights and benefits are based are different?

Is it necessary, in the light of the appellant's individual situation, to examine whether, in view of his particular circumstances, the grant of refugee status would confer on him more rights than those afforded by the grant of subsidiary protection, or whether, for the interest referred to in the second paragraph of Article 46(2) of Procedural Directive II to continue to exist, it is sufficient for there to be legislative provisions [Or. 8] that draw a distinction between the ancillary rights that are based on the rights and benefits of the two forms of international protection?

Other relevant judgments

Case C-357/09 Kadzoev (interpretation of Articles 15(4)-(6) of Directive 2008/115/EC on detention pending removal, 30 November 2009)

Judgment // AG Opinion // Application

1. Article 15(5) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced before the rules in that directive become applicable.

2. A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115.

3. Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

4. Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.

5. Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

6. Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.

Joined Cases C-188/10 Melki and C-189/10 Abdeli (interpretation of Articles 67 and 267, TFEU, and Regulation 2006/562/EC, 16 April 2010)

Judgment // AG Opinion // Application

1. Article 267 TFEU precludes Member State legislation which establishes an interlocutory procedure for the review of the constitutionality of national laws, in so far as the priority nature of that procedure prevents – both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court on that question – all the other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling. On the other hand, Article 267 TFEU does not preclude such national legislation, in so far as the other national courts or tribunals remain free:
– to refer to the Court of Justice for a preliminary ruling, at whatever stage of the proceedings they consider appropriate, even at the end of the interlocutory procedure for the review of constitutionality, any question which they consider necessary,
– to adopt any measure necessary to ensure provisional judicial protection of the rights conferred under the European Union legal order, and
– to disapply, at the end of such an interlocutory procedure, the national legislative provision at issue if they consider it to be contrary to European Union law.
It is for the referring court to ascertain whether the national legislation at issue in the main proceedings can be interpreted in accordance with those requirements of European Union law.

2. Article 67(2) TFEU, and Articles 20 and 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), preclude national legislation which grants to the police authorities of the Member State in question the power to check, solely within an area of 20 kilometres from the land border of that State with States party to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, the identity of any person, irrespective of his behaviour and of specific circumstances giving rise to a risk of breach of public order, in order to ascertain whether the obligations laid down by law to hold, carry and produce papers and documents are fulfilled, where that legislation does not provide the necessary framework for that power to guarantee that its practical exercise cannot have an effect equivalent to border checks.

Case C-61/11 El Dridi (interpretation of Articles 15 and 16 of Directive 2008/115/EC, 28 April 2011)

Judgment // AG Opinion // Application

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 15 and 16 thereof, must be interpreted as precluding a Member State's legislation, such as that at issue in the main

proceedings, which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

Case C-430/11 Md Sagor (Tribunale di Rovigo, Italy, reference for a preliminary ruling on Articles 2, 4, 6, 7, 8, 15 and 16 of Directive 2008/115, 6 December 2012)

Judgment // AG Opinion // Application

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as:

– not precluding Member State legislation, such as that at issue in the main proceedings, which penalises illegal stays by third-country nationals by means of a fine which may be replaced by an expulsion order, and

– precluding Member State legislation which allows illegal stays by third-country nationals to be penalised by means of a home detention order without guaranteeing that the enforcement of that order must come to an end as soon as the physical transportation of the individual concerned out of that Member State is possible.

Joined cases C-356/11 and C-357/11 O. and S., Maahanmuuttovirasto and Maahanmuttovirasto (Korkein hallinto-oikeus, Finland, reference for a preliminary ruling on Article 20 TFEU, 6 December 2012)

Judgment // AG Opinion // Application

Article 20 TFEU must be interpreted as not precluding a Member State from refusing to grant a third country national a residence permit on the basis of family reunification where that national seeks to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national, provided that such a refusal does not entail, for the Union citizen concerned, the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union, that being for the referring court to ascertain.

Applications for residence permits on the basis of family reunification such as those at issue in the main proceedings are covered by Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Article 7(1)(c) of that directive must be interpreted as meaning that, while Member States have the faculty of requiring proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter of Fundamental Rights of the European Union, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive. It is for the referring court to ascertain whether the decisions refusing residence permits at issue in the main proceedings were taken in compliance with those requirements.

Case C-23/12 Zakaria (Augstākās tiesas Senāts, Latvia, reference for a preliminary ruling on Article 13(3) of Regulation 562/2006, 17 January 2013)

Judgment // AG Opinion // Application

Article 13(3) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) obliges Member States to establish a means of obtaining redress only against decisions to refuse entry.

Joined cases C-141/12 & C-372/12 Y.S. & M and S v Minister voor Immigratie, Integratie en Asiel (Rechtbank Middelburg and from the Raad van State, Netherlands, reference for a preliminary ruling concerning Articles 2(a), 12(a) and 13(1)(d), (f) and (g) of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and of Articles 8(2) and 41(2)(b) of the Charter of Fundamental Rights of the European Union, 17 July 2014)

Judgment // AG Opinion // Application

1. Article 2(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that the data relating to an applicant for a residence permit contained in an administrative document, such as the 'minute' at issue in the main proceedings, setting out the grounds that the case officer puts forward in support of the draft decision which he is responsible for drawing up in the context of the procedure prior to the adoption of a decision concerning the application for such a permit and, where relevant, the data in the legal analysis contained in that document, are 'personal data' within the meaning of that provision, whereas, by contrast, that analysis cannot in itself be so classified.

2. Article 12(a) of Directive 95/46 and Article 8(2) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for a residence permit has a right of access to all personal data concerning him which are processed by the national administrative authorities within the meaning of Article 2(b) of that directive. For that right to be complied with, it is sufficient that the applicant be in possession of a full summary of those data in an intelligible form, that is to say a form which allows that applicant to become aware of those data and to check that they are accurate and processed in compliance with that directive, so that he may, where relevant, exercise the rights conferred on him by that directive.

3. Article 41(2)(b) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the applicant for a residence permit cannot rely on that provision against the national authorities.

Case C-338/13 Noorzia v Bundesministerin für Inneres (Verwaltungsgerichtshof, Austria, reference for a preliminary ruling on Article 4(5) of Directive 2003/86/EC on the right to family reunification, 17 July 2014)

Judgment // AG Opinion // Application

Article 4(5) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that that provision does not preclude a rule of national law requiring that spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to reunification is lodged.

Joined Cases C-473/13 and C-514/13, Adala Bero and Ettayebi Bouzalmate v Regierungspräsidium Kassel & Kreisverwaltung Kleve (Bundesgerichtshof and the Landgericht München I, Germany, reference for a preliminary ruling on Article 16(1) of Directive 2008/115/EC, 17 July 2014)

Judgment // AG Opinion // Application

Article 16(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as requiring a Member State, as a rule, to detain illegally staying third-country nationals for the purpose of removal in a specialised detention facility of that State even if the Member State has a federal structure and the federated state competent to decide upon and carry out such detention under national law does not have such a detention facility.

Case C-474/13 Thi Ly Pham v Stadt Schweinfurt, Amt für Meldewesen und Statistik (Bundesgerichtshof, Germany, reference for a preliminary ruling on Article 16(1) of Directive 2008/115/EC, 17 July 2014)

Judgment // AG Opinion // Application

The second sentence of Article 16(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not permitting a Member State to detain a third-country national for the purpose of removal in prison accommodation together with ordinary prisoners even if the third-country national consents thereto.

Case C-481/13 Qurbani (Oberlandesgericht Bamberg, Germany, reference for a preliminary ruling concerning Article 31 of the Geneva Convention, 17 July 2014)

Judgment // AG Opinion // Application

The Court of Justice of the European Union does not have jurisdiction to reply to the questions referred for a preliminary ruling by the Oberlandesgericht Bamberg (Germany), by decision of 29 August 2013 in Case C‑481/13.

Case C-146/ Bashir Mohamed Ali Mahdi (Reference for a preliminary ruling from the Administrativen sad Sofia-grad, Bulgaria, on Article 15 of the Returns Directive, 5 June 2014)

Judgment // AG Opinion // Application

1. Article 15(3) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States

for returning illegally staying third-country nationals, read in the light of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that any decision adopted by a competent authority, on expiry of the maximum period allowed for the initial detention of a third-country national, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision.

2. Article 15(3) and (6) of Directive 2008/115 must be interpreted as meaning that the 'supervision' that has to be undertaken by a judicial authority dealing with an application for extension of the detention of a third-country national must permit that authority to decide, on a case-by-case basis, on the merits of whether the detention of the third-country national concerned should be extended, whether detention may be replaced with a less coercive measure or whether the person concerned should be released, that authority thus having power to take into account the facts stated and evidence adduced by the administrative authority which has brought the matter before it, as well as any facts, evidence and observations which may be submitted to the judicial authority in the course of the proceedings.

3. Article 15(1) and (6) of Directive 2008/115 must be interpreted as precluding national legislation such as that at issue in the main proceedings, pursuant to which an initial six-month period of detention may be extended solely because the third-country national concerned has no identity documents. It is for the referring court alone to undertake an individual assessment of the facts and circumstances of the case in question in order to determine whether a less coercive measure may be applied effectively to that third-country national or whether there is a risk of him absconding.

4. Article 15(6)(a) of Directive 2008/115 must be interpreted as meaning that a third-country national who, in circumstances such as those in issue in the main proceedings, has not obtained an identity document which would have made it possible for him to be removed from the Member State concerned may be regarded as having demonstrated a 'lack of cooperation' within the meaning of that provision only if an examination of his conduct during the period of detention shows that he has not cooperated in the implementation of the removal operation and that it is likely that that operation lasts longer than anticipated because of that conduct, a matter which falls to be determined by the referring court.

5. Directive 2008/115 must be interpreted as meaning that a Member State cannot be obliged to issue an autonomous residence permit, or other authorisation conferring a right to stay, to a third-country national who has no identity documents and has not obtained such documentation from his country of origin, after a national court has released the person concerned on the ground that there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of that directive. However, that Member State must, in such a case, provide the third-country national with written confirmation of his situation.

Case C-101/13 U (Verwaltungsgerichtshof Baden-Württemberg, reference for a preliminary ruling on Regulation (EC) No 2252/2004, 2 October 2014)

Judgment // AG Opinion // Application

1. The Annex to Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 must be interpreted as requiring the machine readable personal data page of passports issued by the Member States to satisfy all the compulsory specifications provided for by Part 1 of Document 9303 of the International Civil Aviation Organisation (ICAO).

2. The Annex to Regulation No 2252/2004, as amended by Regulation No 444/2009, read in conjunction with International Civil Aviation Organisation Document 9303, Part 1, must be interpreted, where the law of a Member State provides that a person's name comprises his forenames and surname, as not precluding that State from being entitled nevertheless to enter the birth name either as a primary identifier in Field 06 of the machine readable personal data page of the passport or as a secondary identifier in Field 07 of that page or in a single field composed of Fields 06 and 07.

3. The Annex to Regulation No 2252/2004, as amended by Regulation No 444/2009, read in conjunction with the provisions of International Civil Aviation Organisation Document 9303, Part 1, Section IV, point 8.6, must be interpreted, where the law of a Member State provides that a person's name comprises his forenames and surname, as precluding that State from being entitled to enter the birth name as an optional item of personal date in Field 13 of the machine readable personal data page of the passport.

4. The Annex to Regulation No 2252/2004, as amended by Regulation No 444/2009, read in conjunction with International Civil Aviation Organisation Document 9303, Part 1, must be interpreted, in the light of Article 7 of the Charter, as meaning that, where a Member State whose law provides that a person's name comprises his forenames and surname chooses nevertheless to include the birth name of the passport holder in Fields 06 and/or 07 of the machine readable personal data page of the passport, that State is required to state clearly in the caption of those fields that the birth name is entered there.

C-166/13 Sophie Mukarubega (Tribunal administratif de Melun, France, reference for a preliminary ruling on the Returns Directive and Article 41 of the Charter of Fundamental Rights of the EU, 5 November 2014)

Judgment // AG Opinion // Application

In circumstances such as those at issue in the main proceedings, the right to be heard in all proceedings, as it applies in the context of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, and in particular Article 6 thereof, must be interpreted as meaning that a national authority is not precluded from failing to hear a third-country national specifically on the subject of a return decision where, after that authority has determined that the third‑country national is staying illegally in the national territory on the conclusion of a procedure which fully respected that person's right to be heard, it is contemplating the adoption of such a decision in respect of that person, whether or not that return decision is the result of refusal of a residence permit.

Case C-249/13 Boudjlida (Tribunal Administratif de Pau, France, reference for a preliminary ruling on Directive 2008/115/EC and Article 41 of the Charter of Fundamental Rights, 11 December 2014)

Judgment // AG Opinion // Application

The right to be heard in all proceedings, as it applies in the context of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, and, in particular, Article 6 of that directive, must be interpreted as extending to the right of an illegally staying third-country national to express, before the adoption of a return decision concerning him, his point of view on the legality of his stay, on the possible application of Articles 5 and 6(2) to (5) of that directive and on the detailed arrangements for his return.

However, the right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and, in particular, Article 6 of that directive, must be interpreted as meaning that it does not require a competent national authority to warn the third-country national, prior to the interview arranged with a view to that adoption, that it is contemplating adopting a return decision with respect to him, or to disclose to him the information on which it intends to rely as justification for that decision, or to allow him a period of reflection before seeking his observations, provided that the third-country national has the opportunity effectively to present his point of view on the subject of the illegality of his stay and the reasons which might, under national law, justify that authority refraining from adopting a return decision.

The right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and, in particular, Article 6 of that directive, must be interpreted as meaning that an illegally staying third-country national may have recourse, prior to the adoption by the competent national authority of a return decision concerning him, to a legal adviser in order to have the benefit of the latter’s assistance when he is heard by that authority, provided that the exercise of that right does not affect the due progress of the return procedure and does not undermine the effective implementation of Directive 2008/115.

However, the right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and, in particular, Article 6 of that directive, must be interpreted as meaning that it does not require Member States to bear the costs of that assistance by providing free legal aid.

Case C-554/13, Zh. and O. v Staatssecretaris van Veiligheid en Justitie (Raad van State, the Netherlands, reference for a preliminary ruling concerning Article 7(4) of the Returns Directive, 11 June 2015)

Judgment // AG Opinion // Application

1. Article 7(4) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as precluding a national practice whereby a third-country national, who is staying illegally within the territory of a Member State, is deemed to pose a risk to public policy within the meaning

of that provision on the sole ground that that national is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law.

2. Article 7(4) of Directive 2008/115 must be interpreted to the effect that, in the case of a third-country national who is staying illegally within the territory of a Member State and is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law, other factors, such as the nature and seriousness of that act, the time which has elapsed since it was committed and the fact that that national was in the process of leaving the territory of that Member State when he was detained by the national authorities, may be relevant in the assessment of whether he poses a risk to public policy within the meaning of that provision. Any matter which relates to the reliability of the suspicion that the third-country national concerned committed the alleged criminal offence, as the case may be, is also relevant to that assessment.

3. Article 7(4) of Directive 2008/115 must be interpreted as meaning that it is not necessary, in order to make use of the option offered by that provision to refrain from granting a period for voluntary departure when the third-country national poses a risk to public policy, to conduct a fresh examination of the matters which have already been examined in order to establish the existence of that risk. Any legislation or practice of a Member State on this issue must nevertheless ensure that a case-by-case assessment is conducted of whether the refusal to grant such a period is compatible with that person's fundamental rights.

Case C‑579/13 P, S v Commissie Sociale Zekerheid Breda, College van Burgemeester en Wethouders van de gemeente Amstelveen (Request for a preliminary ruling from the Centrale Raad van Beroep (Netherlands) on the interpretation of Articles 5 and 11 of Directive 2003/109/EC, 4 June 2015)

Judgment // AG Opinion // Application

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents and, in particular, Article 5(2) and Article 11(1) thereof do not preclude national legislation, such as that at issue in the main proceedings, which imposes on third-country nationals who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which it is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.

Case C-38/14, Subdelegación del Gobierno en Gipuzkoa - Extranjería v Samir Zaizoune (Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco, Spain, reference for a preliminary ruling concerning Articles 4(2), 4(3) and 6(1) of the Returns Directive, 23 April 2015)

Judgment // AG Opinion // Application

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular, Articles 6(1) and Article 8(1), read in

conjunction with Article 4(2) and (3), must be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings, which provides, in the event of third-country nationals illegally staying in the territory of that Member State, depending on the circumstances, for either a fine or removal, since the two measures are mutually exclusive.

Case C-153/14 K and A v. Minister van Buitenlandse Zaken (Request for a preliminary ruling from the Raad van State, Netherlands, on the interpretation of Article 7 of Directive 2003/86/EC on family reunification, 9 July 2015)

Judgment // AG Opinion // Application

The first subparagraph of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as meaning that Member States may require third country nationals to pass a civic integration examination, such as the one at issue in the main proceedings, which consists in an assessment of basic knowledge both of the language of the Member State concerned and of its society and which entails the payment of various costs, before authorising that national's entry into and residence in the territory of the Member State for the purposes of family reunification, provided that the conditions of application of such a requirement do not make it impossible or excessively difficult to exercise the right to family reunification. In circumstances such as those of the cases in the main proceedings, in so far as they do not allow regard to be had to special circumstances objectively forming an obstacle to the applicants passing the examination and in so far as they set the fees relating to such an examination at too high a level, those conditions make the exercise of the right to family reunification impossible or excessively difficult.

C-290/14 Skerdjan Celaj (Request for a preliminary ruling from the Tribunale di Firenze (Italy) on Directive 2008/115/EC on return, 1 October 2015)

Judgment // AG Opinion // Application

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not, in principle, precluding legislation of a Member State which provides for the imposition of a prison sentence on an illegally staying third-country national who, after having been returned to his country of origin in the context of an earlier return procedure, unlawfully re-enters the territory of that State in breach of an entry ban.

Case C-558/14 Mimoun Khachab v Delegación de Gobierno en Álava (Request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain), 21 June 2016)

Judgment // AG Opinion // Application

Article 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as allowing the competent authorities of a Member State to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the

members of his family, without recourse to the social assistance system of that Member State, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor's income in the six months preceding that date.

Case C‑47/15 Sélina Affum v Préfet du Pas-de-Calais, Procureur général de la cour d'appel de Douai (Request for a preliminary ruling from the Cour de cassation, France, 7 June 2016)

Judgment // AG Opinion // Application

1. Article 2(1) and Article 3(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that a third-country national is staying illegally on the territory of a Member State and therefore falls within the scope of that directive when, without fulfilling the conditions for entry, stay or residence, he passes in transit through that Member State as a passenger on a bus from another Member State forming part of the Schengen area and bound for a third Member State outside that area.

2. Directive 2008/115 must be interpreted as precluding legislation of a Member State which permits a third country national in respect of whom the return procedure established by that directive has not yet been completed to be imprisoned merely on account of illegal entry across an internal border, resulting in an illegal stay.

That interpretation also applies where the national concerned may be taken back by another Member State pursuant to an agreement or arrangement within the meaning of Article 6(3) of the directive.

C-390/14 Masoud Mehrabipari v. Astinomikos Diefthintis Larnakas (Request for a preliminary ruling from the Eparkhiako Dikastirio Larnakas (Cyprus), lodged on 18 August 2014)

Judgment // AG Opinion // Application

On 11 September 2015, the domestic court informed the CJEU that the domestic litigation had ended - case withdrawn. The questions referred to the CJEU were:

Having regard to the principle of sincere cooperation, the principle of effectiveness with a view to achieving the objectives of directives and the principle that penalties must be proportionate, appropriate and reasonable, can Articles 15 and 16 of Directive 2008/115/EC 1 be interpreted as permitting criminal proceedings to be brought on the basis of national legislation that existed before harmonisation (Article 19(1)(f) and (i) of the [Aliens and Immigration Law ('Chapter 105')]) against an illegally staying third-country national upon whom unsuccessful coercive removal measures have been imposed and who has remained in detention for a period greater than 18 months, because he does not have a passport in his possession and does not cooperate with the authorities for the purpose of issue of such a passport through his embassy, pleading fear that he will be persecuted by the Iranian authorities?

If the above question is answered in the affirmative, can the criminal proceedings in question be brought immediately after the maximum period of 18 months' detention for the purposes of deportation has been completed, with the result that the illegally staying third-country national is not released, but can continue to be detained because the criminal proceedings against him are pending if the court considers that necessary because of the risk of absconding?

What is the meaning of a 'lack of cooperation' by the third-country national in Article 15(6)(a) of Directive 2008/115/EC and, in particular, is it permissible for its meaning to coincide with the provisions of national law (Article 19(1)(f) and (i) of the [Aliens and Immigration Law ('Chapter 105')]) which criminalise any refusal to 'produce to the Director any document that the Director might request' and any 'defi[ance] or hind[rance], whether actively or passively, [of] any Director in the performance of his duties' on account of failure to produce the passport, whilst, at the same time, no evidence is adduced relating to the actions which the authorities have taken vis-à-vis the country of origin for the successful removal of the third-country national?

Case C-527/14 Ukamaka Mary Jecinta Oruche and Nzubechukwu Emmanuel Oruche v Bundesrepublik Deutschland (Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany), lodged on 21 November 2014

On 5 August 2015, the domestic court informed the CJEU that the domestic litigation had ended - case withdrawn. The questions referred to the CJEU were:

Judgment // AG Opinion // Application

Should the first subparagraph of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification 1 be interpreted as precluding a provision of national law which makes the first entry of a member of the family of a sponsor conditional on the requirement that, prior to entry, the family member can demonstrate the ability to communicate, in a basic way, in the German language?

C-638/16 PPU, X and X, Belgian Council for Alien Law Litigation, lodged 12 December 2016

Judgment // AG Opinion // Application

Article 1 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, must be interpreted as meaning that an application for a visa with limited territorial validity made on humanitarian grounds by a third-country national, on the basis of Article 25 of the code, to the representation of the Member State of destination that is within the territory of a third country, with a view to lodging, immediately upon his or her arrival in that Member State, an application for international protection and, thereafter, to staying in that Member State for more than 90 days in a 180-day period, does not fall within the scope of that code but, as European Union law currently stands, solely within that of national law.

Case C-9/16 A. v Staatsanwaltschaft Offenburg, 21 June 2017

Judgment // AG Opinion // Application

1. Article 67(2) TFEU and Articles 20 and 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which confers on the police authorities of the Member State in question the power to check the identity of any person, within an area of 30 kilometres from that Member State's land border with other States parties to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, with a view to preventing or terminating unlawful entry into or residence in the territory of that Member State or preventing certain criminal offences which undermine the security of the border, irrespective of the behaviour of the person concerned and of the existence of specific circumstances, unless that legislation lays down the necessary framework for that power ensuring that the practical exercise of it cannot have an effect equivalent to that of border checks, which is for the referring court to verify.

2. Article 67(2) TFEU and Articles 20 and 21 of Regulation No 562/2006, as amended by Regulation No 610/2013, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which permits the police authorities of the Member State in question to carry out, on board trains and on the premises of the railways of that Member State, identity or border crossing document checks on any person, and briefly to stop and question any person for that purpose, if those checks are based on knowledge of the situation or border police experience, provided that the exercise of those checks is subject under national law to detailed rules and limitations determining the intensity, frequency and selectivity of the checks, which is for the referring court to verify.

Case C-199/16 Max-Manuel Nianga v. État belge (Request for a preliminary ruling from the Conseil d'État (Belgium), lodged on 11 April 2016)

Judgment // AG Opinion // Application

This case was struck off the list after a request by the referring court. The question initially referred was:

Is Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and having regard to the right to be heard in any proceedings, which forms an integral part of respect for the rights of the defence, a general principle of EU law, as applied in the context of that directive, 1 to be interpreted as requiring national authorities to take account of the best interests of the child, family life and the state of health of the third-country national concerned when

issuing a return decision, referred to in Article 3(4) and Article 6(1) of the directive, or a removal decision, as provided for in Article 3(5) and Article 8 of the directive?

C-225/16 Mossa Ouhrami, request for a preliminary ruling from the Supreme Court of the Netherlands, 22 April 2016

Judgment // AG Opinion // Application

Article 11(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the starting point of the duration of an entry ban, as referred to in that provision, which in principle may not exceed five years, must be calculated from the date on which the person concerned actually left the territory of the Member States.

C-643/15 & C-647/15 Slovak Republic, Hungary v. Council of the European Union

Judgment // AG Opinion // Application , Application

Actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers from Greece and Italy.

C-403/16 El Hassani v. Minister Spraw Zagranicznych, 13 December 2017

Judgment // AG Opinion // Application

Article 32(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.

C-240/17 E, request for a preliminary ruling from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), judgment of 16 January 2018

Judgment // AG Opinion // Application

1. Article 25(1) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990 and which entered into force on 26 March 1995 must be interpreted as meaning that it is open to the Contracting State which intends to issue a return decision accompanied by a ban on entry and stay in the Schengen Area to a third-country national who holds a valid residence permit issued by another Contracting State to initiate the consultation

procedure laid down in that provision even before the issue of the return decision. That procedure must, in any event, be initiated as soon as such a decision has been issued.

2. Article 25(2) of the Convention implementing the Schengen Agreement must be interpreted as meaning that it does not preclude the return decision accompanied by an entry ban issued by a Contracting State to a third-country national who is the holder of a valid residence permit issued by another Contracting State being enforced even though the consultation procedure laid down in that provision is ongoing, if that third-country national is regarded by the Contracting State issuing the alert as representing a threat to public order or national security, without prejudice to that third-country national's entitlement to rely on the rights he derives from that residence permit by going subsequently to the territory of the second Contracting State. However, after a reasonable time from the initiation of the consultation procedure and in the absence of a response from the Contracting State consulted, the Contracting State issuing the alert for the purposes of refusing entry must withdraw it and, if necessary, put the third-country national on its national list of alerts.

3. Article 25(2) of the Convention implementing the Schengen Agreement must be interpreted as meaning that a third-country national who is the holder of a valid residence permit issued by a Contracting State, and to whom a return decision accompanied by an entry ban has been issued in another Contracting State, may rely before the national courts on the legal effects deriving from the consultation procedure on the Contracting State issuing the alert and the requirements deriving therefrom.

Other relevant pending preliminary references

Case C-82/16 K. and Others v Belgische Staat –(Request for a preliminary ruling from the Raad voor Vreemdelingenbetwistingen (Belgium) lodged on 12 February 2016)

Judgment // AG Opinion // Application

1. Should Union law, in particular Article 20 TFEU, Articles 5 and 11 of Directive 2008/115/EC (1) together with Articles 7 and 24 of the Charter, (2) be interpreted as precluding in certain circumstances a national practice whereby a residence application, lodged by a family member/third-country national in the context of family reunification with a Union citizen in the Member State where the Union citizen concerned lives and of which he is a national and who has not made use of his right of freedom of movement and establishment ('static Union citizen'), is not considered — whether or not accompanied by a removal decision — for the sole reason that the family member concerned is a third-country national subject to a valid entry ban with a European dimension?

   (a) Is it important when assessing such circumstances that there is a relationship of dependence between the family member/third-country national and the static Union citizen which goes further than a mere family tie? If so, what factors play a role in determining the existence of a relationship of dependence? Would it be useful in that regard to refer to case-law relating to the existence of a family life under Article 8 ECHR and Article 7 of the Charter?

   (b) With reference to minor children in particular, does Article 20 TFEU require more than a biological tie between the parent/third-country national and the child/Union citizen? Is it important in that regard that cohabitation is demonstrated, or do emotional and financial ties suffice, like a residential or visiting arrangement and the payment of maintenance? Would it be useful in that regard to refer to what was stated in the Court of Justice judgments of 10 July 2014 in Case C-244/13 *Ogieriakhi*, paragraphs 38 and 39; 16 July 2015 in Case C-218/14 *Singh and Others*, paragraph 54; and 6 December 2012 in Joined Cases C-356/11 and C-357/11 *O.* and *S.*, paragraph 56? See in that regard also the pending request for a preliminary ruling in Case C-133/15.

   (c) Is the fact that the family life was created at a moment that the third-country national was already subject to an entry ban and thus aware of the fact that his stay in the Member State was illegal, important for the assessment of such circumstances? Could that fact be of relevance to combat the possible abuse of residence procedures in the context of family reunification?

   (d) Is the fact that no legal remedy within the meaning of Article 13(1) of Directive 2008/115/EC was applied for against the decision to impose an entry ban or the fact that the appeal against the decision to impose an entry ban was rejected important for the assessment of such circumstances?

   (e) Is the fact that the entry ban was imposed on grounds of public policy or on grounds of irregular stay a relevant factor? If so, must an examination also be undertaken of whether the third-country national concerned also represents a genuine, real and sufficiently serious threat to one of the fundamental interests of society? In that regard, can Articles 27 and 28 of Directive 2004/38/EC, (3) which were transposed

in Articles 43 and 45 of the Vreemdelingenwet, and the associated case-law of the Court of Justice on public policy, be applied by analogy to family members of static Union citizens? (cf. the pending requests for preliminary rulings in Cases C-165/14 and C-304/14)

2. Should Union law, in particular Article 5 of Directive 2008/115/EC and Articles 7 and 24 of the Charter, be interpreted as precluding a national practice whereby a valid entry ban can be invoked in order not to consider a subsequent application for family reunification with a static Union citizen, lodged in the territory of a Member State, without taking due account of family life and the best interests of the children involved, which were mentioned in that subsequent application for family reunification?

3. Should Union law, in particular Article 5 of Directive 2008/115/EC and Articles 7 and 24 of the Charter, be interpreted as precluding a national practice whereby a decision on removal is taken with regard to a third-country national who is already subject to a valid entry ban, without taking due account of family life and the best interests of the children involved, which were mentioned in a subsequent application for family reunification with a static Union citizen, i.e. after the entry ban was imposed?

4. Does Article 11(3) of Directive 2008/115/EC imply that a third-country national must in principle lodge an application for the lifting or suspension of a current and final entry ban outside the European Union or are there circumstances in which he can also lodge that application in the European Union?

   (a) Must the third and fourth subparagraphs of Article 11(3) of Directive 2008/115/EC be understood to mean that the requirement laid down in the first subparagraph of Article 11(3) of the said Directive, to the effect that the withdrawal or the suspension of the entry ban can only be considered if the third-country national concerned is able to demonstrate that he or she has left the territory in full compliance with a return decision, must plainly have been met in every individual case or in all categories of cases?

   (b) Do Articles 5 and 11 of Directive 2008/115/EC preclude an interpretation whereby a residence application in the context of family reunification with a static Union citizen, who has not exercised his right of freedom of movement and establishment, is regarded as an implicit (temporary) application to lift or suspend the valid and final entry ban whereby, if it is shown that the residence conditions have not been met, the valid and final entry ban is revived?

   (c) Is the fact that the obligation to lodge a request for lifting or suspension in the country of origin possibly entails only a temporary separation between the third-country national and the static Union citizen, a relevant factor? Are there nevertheless circumstances in which Articles 7 and 24 of the Charter preclude such a temporary separation?

   (d) Is the fact that the only effect of the obligation to lodge a request for lifting or suspension in the country of origin is that the Union citizen would, if necessary, only have to leave the territory of the European Union in its entirety for a limited time, a relevant factor? Are there circumstances in which Article 20 TFEU nevertheless precludes the fact that the static Union citizen would have to leave the territory of the European Union in its entirety for a limited time?

Case C-181/16 Sadikou Gnandi v État belge (Request for a preliminary ruling from the Conseil d'État (Belgium), lodged on 31 March 2016)

Judgment // AG Opinion // Application

Must Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 1 which requires Member States to respect the principle of non-refoulement when they are implementing that directive, and the right to an effective remedy provided for under Article 13(1) of that directive and under Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as precluding the adoption of a return decision, as provided for under Article 6 of the aforementioned Directive 2008/115/EC and under Article 52/3(1) of the Law of 15 December 1980 on entry to the national territory, settlement, residence and removal of foreign nationals and Article 75(2) of the Royal Decree of 8 October 1981 on entry to the national territory, residence, settlement and removal of foreign nationals, after the rejection of the asylum application by the Commissioner General for Refugees and Stateless Persons and therefore before the legal remedies available against that rejection decision can be exhausted and before the asylum procedure can be definitively concluded?

Case C-331/16 K. v Staatssecretaris van Veiligheid en Justitie (Request for a preliminary ruling from the District Court of The Hague (Netherlands), lodged on 13 June 2016)

Judgment // AG Opinion // Application

Does Article 27(2) of Directive 2004/38/EC [1] permit a Union citizen, as in the present case, in respect of whom it has been established in law that Article 1(F)(a) and (b) of the Refugee Convention is applicable to him, to be declared undesirable because the exceptional seriousness of the crimes to which that Convention relates leads to the conclusion that it must be assumed that, by its very nature, the threat affecting one of the fundamental interests of society is permanently present?

If the answer to question 1 is in the negative, how should an assessment be carried out, in the context of an intended declaration of undesirability, of whether the conduct of a Union citizen, as referred to above, to whom Article 1(F)(a) and (b) of the Refugee Convention has been declared applicable, should be regarded as a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society? To what extent does the fact that the 1(F) conduct, as in the present case, took place long ago — in this case: in the period between 1992 and 1994 — play a role therein?

In what way does the principle of proportionality play a role in the assessment of whether a declaration of undesirability can be imposed on a Union citizen to whom Article 1(F)(a) and (b) of the Refugee Convention has been declared applicable, as in the present case? Should the factors mentioned in Article 28(1) of the Residence Directive be involved, either as part of such an assessment, or separately? Should the period of ten years' residence in the host country mentioned in Article 28(3)(a) be taken into account, either as part of such an assessment, or separately? Should the factors listed in paragraph 3.3 of the Guidance for better transposition and application of Directive 2004/38/EC, (COM (2009)313), be fully involved?

C-550/16 A. and S., Request for a preliminary ruling from the District Court of The Hague (Netherlands), 26 October 2016

Judgment // AG Opinion // Application

Should 'unaccompanied minor' within the meaning of Article 2(f) of the Family Reunification Directive be understood to include a third-country national or stateless person below the age of eighteen, who has arrived on the territory of a Member State unaccompanied by an adult responsible by law or by custom, and who:

- applies for asylum;
- turns 18 on the territory of the Member State during the asylum procedure;
- gets granted asylum retrospectively to the date of application; and
- subsequently requests family reunification?

C-474/17 Bundesrepublik Deutschland v Sociedad de Transportes SA, request for a preliminary ruling from German Federal Administrative Court, 8 August 2017

Judgment // AG Opinion // Application

1. Does Article 67(2) TFEU and Articles 22 and 23 of the Schengen Borders Code preclude a national rule of a Member State obliging bus companies operating regular services within the Schengen area to check documents of their passengers upon crossing a border in order to prevent the transportation of foreigners without passport or residence permit into the territory of the Federal Republic of Germany? In particular:

> a. Does the general statutory obligation, or the official obligation addressed to a single transport company requiring that foreigners are transported into the German federal territory without the required passport or residence permit, which can only be complied with by checking the documents of all passengers before crossing an internal Schengen border, constitute an identity check within the meaning of Article 22 of the Schengen Border Code?
> b. Are the duties mentioned in the first question to be exercised in line with Article 23 (1)(a) of the Schengen Border Code despite the transport companies not exercising police powers as per those provisions and despite not being formally authorised to make use of sovereign powers by the public authorities to undertake checks?
> c. If 1b is answered in the affirmative: are the demanded checks by the transport companies a prohibited measure of similar effect as border checks, in light of the criteria set out in Article 23 (a) sentence 2 of the Schengen Border Code?
> d. Insofar as they concern bus companies, are the duties mentioned in the first question to be measured in line with Article 23 (1) (b) of the Schengen Borders Code, according to which the absence of border control at internal borders shall not affect the power of transport companies to perform security checks of persons at sea and airports? Does it follow that checks are inadmissible as per question 1 also outside of sea- and airports, if they do not constitute security checks and if they are not undertaken in relation to persons that are travelling in between Member States?

2. Do Articles 22 and 23 of the Schengen Borders Code allow national rules, according to which a suspension of the operating licence and a fine can be issued against a bus company to ensure implementation of that obligation, if, as a result of the failure to undertake checks, foreigners without passport and residence permit have been transported into the territory of the Federal Republic of Germany?

C-380/17 K. and B. - Request for a preliminary ruling from the Raad van State (Netherlands), 26 June 2017

Judgment // AG Opinion // Application

Having regard to Article 3(2)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) and to the judgment of 18 October 2012 in Nolan (Case C-583/10, EU:C:2012:638), does the Court of Justice have jurisdiction to answer questions referred for a preliminary ruling by courts in the Netherlands on the interpretation of provisions of that directive in proceedings concerning the right of residence of a member of the family of a person with subsidiary protection status, if that directive has, under Netherlands law, been declared directly and unconditionally applicable to persons with subsidiary protection status?

Does the system provided for by Council Directive 2003/86/EC … preclude a national rule, such as that at issue in the main proceedings, under which an application for consideration for family reunification on the basis of the more favourable provisions of Chapter V of that directive can be rejected for the sole reason that it was not submitted within the period laid down in the third subparagraph of Article 12(1)?

For the purpose of answering this question, does any relevance attach to the fact that it is possible, in the event of the aforementioned period being exceeded, to submit an application for family reunification, whether or not after a rejection, in which an assessment is made as to whether the requirements laid down in Article 7 of Directive 2003/86/EC have been met and in which the interests and circumstances indicated in Articles 5(5) and 17 of that directive are taken into account?

C-257/17 C. and A, request for a preliminary ruling from the Raad van State (Netherlands), 15 May 2017

Judgment // AG Opinion // Application

Having regard to Article 3(3) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, [p. 12]) and to the Nolan judgment (C-583/10, EU:C:2012:638), does the Court of Justice have jurisdiction to answer questions referred for a preliminary ruling by the courts of the Netherlands concerning the interpretation of certain provisions of that directive in proceedings relating to the right of residence of members of the family of sponsors who have Netherlands nationality, if that directive has been declared to be directly and unconditionally applicable under Netherlands law to those family members?

Should Article 15(1) and (4) of Council Directive 2003/86/EC … be interpreted as precluding national legislation, such as that at issue in the main proceedings, under

which an application for an autonomous residence permit on the part of a foreign national who has resided lawfully for more than five years on the territory of a Member State for family-reunification purposes may be rejected because of non-compliance with conditions relating to integration laid down in national law?

Should Article 15(1) and (4) of Council Directive 2003/86/EC … be interpreted as precluding national legislation, such as that at issue in the main proceedings, on the basis of which an autonomous residence permit cannot be granted earlier than the date on which it is applied for?

C-484/17 K, request for a preliminary ruling from the Raad van State (Netherlands), 10 August 2017

Judgment // AG Opinion // Application

Should Article 15(1) and (4) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251[, p. 12]) be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which an application for an autonomous residence permit on the part of a foreign national who has resided lawfully for more than five years on the territory of a Member State for family-reunification purposes may be rejected because of non-compliance with conditions relating to integration laid down in national law?

C-444/17 Arib, request for a preliminary ruling from French Cour de Cassation, 21 July 2017

Judgment // AG Opinion // Application

1. Is Article 32 of Regulation (EU) No 2016/399 (1) of 9 March 2016, which provides that, when border control at internal borders is reintroduced, the relevant provisions of Title II (relating to external borders) are to apply mutatis mutandis, to be interpreted to the effect that border controls reintroduced at an internal border of a Member State may be equated with border controls at an external border, when that border is crossed by a third-country national who has no right of entry?

2. In the same circumstances of reintroduction of controls at internal borders, do that regulation and Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally (2) staying third-country nationals permit the application to the situation of a third-country national crossing a border at which controls have been reintroduced of the power, conferred on them by Article 2(2)(a) of the directive, to continue to apply simplified national return procedures at their external borders?

3. If the answer to the previous question should be affirmative, do the provisions of Article 2(2)(a) and of Article 4(4) of the directive preclude national legislation such as Article L.621-2 Ceseda, which penalises with a term of imprisonment the illegal entry into national territory of a third-country national in respect of whom the return procedure established by that directive has not yet been completed?

C-557/17 Y.Z. and others, request for a preliminary ruling from the Dutch Council of State, 22 September 2017

Judgment // AG Opinion // Application

1. Must Article 16(2)(a) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification … be interpreted as precluding the withdrawal of a residence permit granted for the purpose of family reunification in the case where the acquisition of that residence permit was based on fraudulent information but the family member was unaware of the fraudulent nature of that information?

2. Must Article 9(1)(a) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents … be interpreted as precluding the withdrawal of long-term resident status in the case where the acquisition of that status was based on fraudulent information but the long-term resident was unaware of the fraudulent nature of that information?