Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 17 May 2018 [1]

Case C-585/16

Serin Alheto
v
Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

(Request for a preliminary ruling
from the Administrativen sad Sofia-grad (Bulgaria))

(References for a preliminary ruling — Area of freedom, security and justice — Borders, asylum and immigration — Rules on the grant of refugee status — Directives 2004/83/EC and 2011/95/EU — Persons receiving protection or assistance from UNRWA — Procedure for examining applications for international protection — Directives 2005/85/EC and 2013/32/EU — Admissibility of the application — First country of asylum — Right to an effective remedy)

1. The request for a preliminary ruling which is the subject of this Opinion concerns the interpretation of Article 12(1)(a) of Directive 2011/95 [2] and Articles 33(2)(b), 34, 35, first paragraph, point (b), and 46(3) of Directive 2013/32. [3] The request was made by the Administrativen sad Sofia-Grad (Administrative Court, Sofia (Bulgaria)) in annulment proceedings brought by Ms Alheto, a stateless person of Palestinian origin, against an administrative decision by which the Bulgarian authorities rejected her application for international protection.

1 Original language: Italian.

2 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 (recast), OJ 2011 L 337, p. 9.

3 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.

I. Relevant law

A. International law

1. The Convention relating to the Status of Refugees

2. Article 1D of the Convention relating to the Status of Refugees, which was concluded in Geneva on 28 July 1951 and entered into force on 22 April 1954 ('the Geneva Convention'),[4] states:

'This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees [('UNHCR')] protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.'

2. United Nations Relief and Works Agency for Palestine Refugees

3. The United Nations Relief and Works Agency for Palestine Refugees in the Near Est ('UNRWA') was established following the 1948 Arab-Israeli conflict by United Nations General Assembly Resolution No 302 (IV) of 8 December 1949. Its mandate is to provide Palestinian refugees falling within its area of operations with services encompassing education, healthcare, relief and social services, camp infrastructure and improvement, microfinance and emergency assistance, including in times of armed conflict.[5] At present, approximately 5 million Palestinian refugees are registered with UNRWA. The agency operates in Jordan, Lebanon, Syria, the Gaza Strip and the West Bank, including East Jerusalem. No solution having been found to the Palestinian refugee crisis, UNRWA's mandate has been regularly extended and currently runs until 30 June 2020.[6]

4. UNRWA is one of the organs of the United Nations other than the UNHCR which are referred to in Article 1D of the Geneva Convention and Article 12(1)(a) of Directive 2011/95.[7]

B. European Union law

1. Directive 2011/95

5. The first sentence of Article 12(1)(a) of Directive 2011/95 provides, under the heading 'Exclusion', that a third-country national or a stateless person is excluded from being a refugee if 'he or she falls within the scope of Article 1D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the [UNHCR]'. The second sentence of

4 The Geneva Convention is supplemented by the Protocol relating to the Status of Refugees, which was adopted on 31 January 1967 and entered into force on 4 October 1967.

5 See UNRWA's website (https://www.unrwa.org/who-we-are). UNRWA does not, however, own or administer refugee camps, which are the sole responsibility of the host authorities (https://www.unrwa.org/palestine-refugees).

6 See https://www.unrwa.org/who-we-are/frequently-asked-questions. On UNRWA's role, see, most recently, Resolution 72/82 of the United Nations General Assembly of 7 December 2017.

7 See judgment of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351, paragraph 44).

Article 12(1)(a) provides: 'When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this directive'.

2. Directive 2013/32

6. Pursuant to Article 33(1) of Directive 2013/32, Member States are not required to examine whether an applicant qualifies for international protection in accordance with Directive 2011/95 where the application is considered inadmissible pursuant to Article 33(2) of the directive. Under Article 33(2)(b), Member States may consider an application for international protection inadmissible, in particular, if 'a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35' of the directive. The first paragraph of Article 35 provides that 'a country can be considered to be a first country of asylum for a particular applicant if: (a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or (b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*'.

7. In accordance with Article 46(1)(a)(i) of Directive 2013/32, 'Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against … a decision taken on their application for international protection, including a decision considering an application to be unfounded in relation to refugee status and/or subsidiary protection status'. Article 46(3) provides that, 'in order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance'.

C. National law

8. In Bulgaria, applications for international protection are examined in accordance with the Zakon za ubezhishteto i bezhantsite (Law on asylum and refugees, 'the ZUB'). Directives 2011/95 and 2013/32 were transposed into Bulgarian law by means of amendments made to the ZUB by two laws which entered into force on 16 October and 28 December 2015 respectively.[8] The ZUB provides for two forms of international protection, the first being recognition of the status of refugee (Article 8 of the ZUB), the other being the grant of humanitarian status (Article 9 of the ZUB), which corresponds to subsidiary protection under Directive 2011/95.

9. Pursuant to Article 6 of the ZUB, in the version currently in force, the powers provided for by that law are exercised by the Darzhavna agentsia za bezhantsite (State Agency for Refugees, 'the DAB'). The DAB is responsible for ascertaining all the facts and matters relevant to its examination of applications for international protection.

10. Article 12(1) of the ZUB, in the version currently in force, provides as follows:

'The status of refugee shall not be granted to foreign nationals:

…

8 The first of these laws laying down provisions amending and supplementing the ZUB, was published in *State Gazette* No 80 of 2015 and the second in *State Gazette* No 101 of 2015.

4. who are receiving protection or assistance from organs or agencies of the United Nations other than the [UNHCR]; where such protection or assistance has not ceased,[9] without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of the [Geneva] Convention.'

11. The version of Article 12(1) of the ZUB in force prior to the law transposing Directive 2011/95, which was inserted into the ZUB in 2007 by a law transposing Directive 2004/83[10] provided:

'The status of refugee shall not be granted to foreign nationals:

…

4. who are receiving protection or assistance from organs or agencies of the United Nations other than the [UNHCR] and such protection or assistance has not ceased, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nation.'

12. Article 13(2)(2) and (3) of the ZUB, in the version currently in force, provide that procedures for the grant of international protection shall not be initiated, or shall be terminated, where the foreign national 'has been granted the status of refugee by a third country or another form of effective protection which includes observance of the principle of *non-refoulement* and that status or protection has not been withdrawn, provided that the person will be re-admitted into that country' or where the foreign national 'comes from a safe third country, provided that the person will be re-admitted into that country'.

13. Article 13(2)(2) of the ZUB, in the version in force prior to the transposition of Directive 2013/32 provided:

'(2) The procedure for the grant of refugee status or humanitarian status shall not be initiated or shall be suspended where [the applicant] has:

…

2. the status of refugee granted by a safe third country, provided that the person will be re-admitted into that country.'

14. In the version in force prior to the law transposing Directive 2013/32, Article 13(13) of the ZUB provided that an application for the grant of the status of refugee or humanitarian status must be rejected as manifestly unfounded where the conditions laid down in Article 8(1) and (9) or in Article 9(1), (6) and (8) of the ZUB are not met and where the foreign national comes 'from a safe country of origin or from a safe third country included on the joint minimum list adopted by the Council of the European Union or on the national lists adopted by the Council of Ministers'. Article 13(3) of the ZUB provided that the mere fact that an applicant comes from a safe country of origin or from a safe third country does not in itself provide grounds for declaring the application manifestly inadmissible.

9 The version of Article 12(1) of the ZUB currently in force closely follows the wording of Article 12(1)(a) of Directive 2011/95, except that it uses a negative form of words, 'has not ceased' rather than the positive formulation 'has ceased'.

10 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12). The law transposing this directive into Bulgarian law was published in *State Gazette* No 52 of 2007.

15. Pursuant to Article 75(2) of the ZUB, in the version currently in force, 'in the course of the examination of an application for international protection, all the relevant facts, statements and documents concerning the personal situation of the applicant shall be assessed …'. [11]

16. Pursuant to Article 2(1) thereof and except as otherwise provided for by law, the adminidtrativnoprotsesualen Kodeks (Code of Administrative Procedure, 'the APK') applies to all administrative procedures before all Bulgarian authorities. Article 168(1) of the APK defines the scope of the judicial review of appeals against administrative acts brought before a court of first instance in the following terms: 'the court shall not confine its review to the grounds put forward by the appellant, but shall review, on the basis of the evidence submitted by the parties, the lawfulness of the administrative act under appeal with reference to all the grounds of appeal set out in Article 146' of the APK.

17. Pursuant to Article 172(2) of the APK, 'the court may declare the administrative act appealed against null and void, or annul it in whole or in part, or amend it, or dismiss the appeal'. Article 173(1) of the APK states that 'where the issue has not been assessed by the administrative authority, the court may, after declaring the administrative act appealed against null and void, or after annulling the administrative act, rule on the merits'. Article 173(2) of the APK provides that, 'in addition to the cases referred to in paragraph 1, where the act is null and void for lack of competence or where the nature of the act precludes a ruling on the merits, the court shall refer the matter back to the competent administrative authority, giving that authority mandatory directions on the interpretation and application of the law'.

II. The facts, the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court of Justice

18. Serin Auad Alheto, the applicant in the main proceedings, is a stateless person of Palestinian origin. She was born on 29 November 1972 in Gaza City in Palestine. She holds a passport that was issued by the Palestinian National Authority on 1 April 2014 and is valid until 31 March 2019.

19. Ms Alheto entered Bulgaria on 10 August 2014 with a tourist visa issued on 7 August 2014 by the Consulate of the Republic of Bulgaria in Amman (Jordan) and valid until 1 September 2014. On 24 August 2014, the period of validity of her visa was extended to 17 November 2014 by the Bulgarian authorities. On 25 November 2014, Ms Alheto lodged an application for international protection with the DAB. In the course of a personal interview held on 2 December 2014, Ms Alheto stated that she had illegally left the Gaza Strip by an underground tunnel on 15 July 2014, first entering Egypt, where she had remained for two days, and then going on to Jordan, where she had remained for 23 days before leaving by air for Bulgaria. During the interview Ms Alheto stated that she was of the Christian faith. Ms Alheto was asked to attend two further personal interviews on 24 February and 5 March 2015. According to her statements, she had been forced to leave the Gaza Strip by the deteriorating situation there and her conflict with Hamas, the organisation which controls the Gaza Strip, which had resulted from her having disseminated information about women's rights. It is apparent from the order for reference that, in the course of the interview of 5 March 2015, Ms Alheto had stated that she was in possession of a document issued by UNRWA. That document has been produced to the referring court. It records Ms Alheto's registration with UNRWA as a Palestinian refugee. [12]

11 Article 75(2) of the ZUB in the version in force prior to the transposition of Directives 2011/95 and 2013/32 contained substantially identical provisions.

12 A different passage of the order for reference states that Ms Alheto maintains that she produced the UNRWA document during an interview with the DAB, but the DAB had refused to place the document on her case file.

20. On 12 May 2015, the Deputy Director of the DAB rejected Ms Alheto's application, after considering the merits thereof, denying her the status of refugee in accordance with Article 8 of the ZUB and humanitarian status in accordance with Article 9 thereof ('the decision of the DAB'). According to the Deputy Director, the statements which Ms Alheto had made had not proven any risk of persecution, contained inconsistencies, in particular concerning her religious affiliations, and were not credible in some respects. Contrary to what her statements suggested, Ms Alheto had not been forced to leave the Gaza Strip, where the situation was allegedly stable, but had planned her departure some time before June or July 2014, given that her passport had been issued on 1 April 2014.

21. Ms Alheto appealed against the decision of the DAB before the Administrativen sad Sofia-grad (Administrative Court, Sofia). In her appeal, Ms Alheto maintains that the decision infringed Articles 8 and 9 of the ZUB and Article 15(c) of Directive 2004/83, as interpreted by the Court of Justice in its judgment of 17 February 2009, *Elgafaji* (C-465/07, EU:C:2009:94). The Deputy Director's view that the situation in the Gaza Strip was stable was based solely on a report dated 9 April 2015 from the 'European Affairs, International Affairs and European Refugee Fund' department of the DAB, which did not provide a basis for properly assessing the situation in the Gaza Strip for the purposes of applying the principle of *non-refoulement*.

22. According to the Administrativen sad Sofia-grad (Administrative Court, Sofia), since Ms Alheto is a stateless person of Palestinian origin registered with UNRWA, the DAB should not have taken the view that her application for international protection had been made in accordance with Article 1A of the Geneva Convention, but that it fell within the scope of Article 1D thereof and it should consequently have examined her application in the light of Article 12(1)(4) of the ZUB, rather than on the basis of Articles 8 and 9 of that law. That court questions whether it is permissible under European Union law not to examine an application for international protection made by a stateless person in the position of Ms Alheto by reference to the law transposing Directive 2011/95 into national law and, if that is not permissible, whether, in the circumstances of the main proceedings, it must carry out that examination or whether it may only annul the decision of the DAB and refer the case back to it for re-examination. The Administrativen sad Sofia-grad (Administrative Court, Sofia) also has doubts about the scope of the judicial review of the decision denying international protection which the court of first instance is required to carry out in accordance with Article 46(3) of Directive 2013/32 and, in particular, whether it may examine the admissibility of an application for international protection on the basis of Article 33 of that directive even where that issue has not been considered by the competent authority and whether it may consider, for the first time, whether the applicant may be returned to the country where he or she was habitually resident before lodging the application.

23. It was in those circumstances that, by decision of 8 November 2016, the Administrativen sad Sofia-grad (Administrative Court, Sofia) stayed the proceedings before it and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Does it follow from Article 12(1)(a) of Directive 2011/95, read in conjunction with Article 10(2) of Directive 2013/32 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 [UNRWA] and who, before making that application, was resident in that agency's area of operations (the Gaza Strip) to be examined as an application under Article 1A of the 1951 Geneva Convention relating to the Status of Refugees rather than as an application for international protection under the second sentence of Article 1D of that convention, where responsibility for examining the application has been assumed on grounds 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 to be examined without taking into account 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 … is not applied?

(2) Is Article 12(1)(a) of Directive 2011/95, read in conjunction with Article 5 thereof, to be interpreted as precluding provisions of national law such as Article 12(1)(4) of the [ZUB], at issue in the main proceedings, which, in the version currently in force, does not contain any express clause on *ipso facto* protection for Palestinian refugees and does not lay down the condition that the assistance must have ceased for some 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 of a kind that must be examined in accordance with the second sentence of Article 1D of the Geneva Convention relating to the Status of Refugees?

(3) Does it follow from Article 46(3) of Directive 2013/32, read 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 adopted in accordance with Article 10(2) of Directive 2013/32, it is permissible, taking into account the facts in the main proceedings, for the court or tribunal of first instance to treat the application for international protection as an application under the second sentence of Article 1D of the Geneva Convention relating to the Status of Refugees and to carry out the assessment provided for in Article 12(1)(a) of Directive 2011/95 where the application for international protection has been made by a stateless person of Palestinian origin who is registered as a refugee with the UNRWA and who, before making that application, was resident within that agency's area of operations (the Gaza Strip) and where, in the decision refusing international protection, that application was not examined in the light of the abovementioned 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 Article 33, Article 34 and the second paragraph of Article 35 of that directive, Article 21(1) of Directive 2011/95 and 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 adopted in accordance with Article 10(2) of Directive 2013/32, those provisions permit 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 or she was resident before making the application for international protection, after requiring the determining authority to produce the evidence necessary for that purpose and after giving the person in question the opportunity to present his or her views on the admissibility of the application; or

(B) to annul the decision for breach of an essential procedural requirement and to require the determining authority, following directions on the interpretation and application of the law, to re-examine 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 or she was resident before making the application for international protection;

(C) to assess the security status of the country in which the person had been resident, at the time of the hearing or, where there have been fundamental changes in the situation that must be taken into account in the person's favour in the decision to be taken, at the time when judgment is given?

(5) Does the assistance provided by [UNRWA] constitute 'sufficient protection' otherwise enjoyed, within the meaning of point (b) of the first paragraph of Article 35 of Directive 2013/32, in the relevant country within the agency's area of operations where that country applies the principle of *non-refoulement*, within the meaning of the 1951 Geneva Convention …, to persons assisted by the agency?

(6) Does it follow from Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights, that the right to an effective remedy incorporating the requirement, 'where applicable, [for] an examination of the international protection needs pursuant to Directive 2011/95' compels the court or tribunal of first instance, in an appeal against a decision examining the substance of an application for international protection and refusing to grant such 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 of granting international protection, by carrying out a proper examination of the application for international protection, irrespectively of any breaches of procedural requirements made by the determining authority when assessing the application?'

III. Analysis

A. Preliminary observations

24. It is clear from recitals 4, 23 and 24 of Directive 2011/95 that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of the directive for determining who qualifies for refugee status and the content of that status were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria.[13] Furthermore, it follows from recital 3 of Directive 2011/95 that, drawing on the Conclusions of the Tampere European Council, the EU legislature intended to ensure that the European asylum system, to whose definition that directive contributes, is based on the full and inclusive application of the Geneva Convention.[14]

25. Directive 2011/95 must, for those reasons, be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 16 thereof, the directive must also be interpreted in a manner consistent with the rights recognised by the Charter of Fundamental Rights of the European Union.[15] It is in the light of those interpretative criteria that the questions referred for a preliminary ruling must be examined in this Opinion.

13 See judgment of 1 March 2016, *Kreis Warendorf and Osso* (C-443/14 and C-444/14, EU:C:2016:127, paragraph 28). See also, with regard to Directive 2004/83, judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 42).

14 See judgment of 1 March 2016, *Kreis Warendorf and Osso* (C-443/14 and C-444/14, EU:C:2016:127, paragraph 30).

15 See judgment of 1 March 2016, *Kreis Warendorf and Osso* (C-443/14 and C-444/14, EU:C:2016:127, paragraph 29). See also, with regard to Directive 2004/83, judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 43).

26. I shall deal with those questions in the following order. First of all, I shall examine the first, second and third questions referred for a preliminary ruling, the first two concerning the interpretation of Article 12(1)(a) of Directive 2011/95 and the third the competence of the national courts to carry out an examination, for the first time, of the application for international protection on the basis of that provision. Then I shall address the fifth question, which concerns the interpretation of Articles 33 and 35 of Directive 2013/32. Finally, I shall examine together the fourth and sixth questions, which concern the interpretation of Article 46(3) of Directive 2013/32.

B. The first question referred for a preliminary ruling

27. By its first question, the referring court essentially asks the Court of Justice whether the competent authority of a Member State may examine an application for international protection made by a stateless person of Palestinian origin and registered with UNRWA other than by reference to the legal framework laid down by Article 12(1)(a) of Directive 2011/95, which contains an exclusion clause pursuant to which third country nationals and stateless persons falling within the scope of Article 1D of the Geneva Convention are excluded from being refugees.

28. Article 1D of the Geneva Convention applies to a specific group of people who, although having characteristics which would entitle them to be recognised as refugees in accordance with Article 1A of the convention, are excluded, under the first sentence of Article 1D thereof, from the benefits of the convention because they are receiving protection or assistance from organs or agencies of the United Nations other than the UNHCR.

29. Palestinians, who are regarded as refugees following the Arab-Israeli conflicts of 1948 and 1967, who avail themselves of the protection or assistance offered by UNRWA and who do not fall within the cases described in Article 1C, E or F of the Geneva Convention, fall within the scope of Article 1D of the convention [16] and consequently also within the scope of Article 12(1)(a) of Directive 2011/95. [17] At present, they are the only group of refugees to which those provisions apply.

30. While the first sentence of Article 1D of the Geneva Convention lays down an *exclusion clause* excluding persons from the benefits of the convention, the second sentence of Article 1D contains an *inclusion clause* which applies to refugees for whom protection or assistance from the organs or agencies of the United Nations mentioned in the first sentence has ceased for some reason and whose situation has not been definitively settled in accordance with resolutions adopted by the General Assembly of the United Nations. [18] Such persons are *ipso facto* entitled to the benefits of the Geneva Convention.

16 See the *Note on UNHCR's Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection*, May 2013 (available at http://www.refworld.org/docid/518cb8c84.html). That document states (on pp. 2 and 3) that two groups of Palestinian refugees and their descendants fall within the scope of Article 1D of the Geneva Convention: (1) Palestinians who are 'Palestine refugees' within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine, which became Israel, and are unable to return there, and (2) Palestinians who do not fall within that category but who are 'displaced persons' within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly Resolutions and who, as a result of the 1967 Arab-Israeli conflict, have been displaced from the Palestinian territory occupied by Israel since 1967 and are unable to return there. See also UNHCR, *Guidelines on International Protection No 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, Dec. 2017, at: http://www.refworld.org/publisher,UNHCR,THEMGUIDE,,5a1836804,0.html, paragraph 8.

17 See, to that effect, judgment of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351, paragraphs 47 and 48).

18 The resolutions in point are Resolution 194 (III) of the General Assembly of the United Nations of 11 December 1948 and subsequent resolutions. The General Assembly of the United Nations periodically checks the degree of implementation of measures adopted with regard to Palestinian refugees and, where necessary, adapts them to developments in the relevant territories. The most recent resolution, Resolution 72/80 of 7 December 2017 on assistance to Palestine refugees, states, in paragraph 1 thereof, that the General Assembly 'notes with regret that repatriation or compensation of the refugees, as provided for in paragraph 11 of General Assembly Resolution 194 (III), has not yet been effected and that, therefore, the situation of the Palestine refugees continues to be a matter of grave concern'.

31. In parallel with that, the second sentence of Article 12(1)(a) of Directive 2011/95 contains an *inclusion clause* drafted in almost identical terms to those of Article 1D of the Geneva Convention. Persons falling within the scope of the first sentence of Article 12(1)(a) of Directive 2011/95 are, where the conditions laid down in the inclusion clause in the second sentence of that provision are met, '*ipso facto* … entitled to the benefits of [the] directive'. [19]

32. The Court has already had occasion to rule on the scope of, and conditions for the application of the exclusion and inclusion clauses in Article 12(1)(a) of Directive 2004/83, which are identical in content to the exclusion and inclusion clauses in the corresponding provisions of Directive 2011/95.

33. In so far as the first of these clauses is concerned, the Court has held, first, that only those persons who have 'actually availed themselves' of the protection or assistance offered by organs or agencies of the United Nations other than the UNHCR are excluded from refugee status in accordance with the first sentence of Article 12(1)(a) of Directive 2004/83 [20] (judgment of 17 June 2010, *Bolbol*, C-31/09, EU:C:2010:351, paragraph 51) and, secondly, that such exclusion does not end as a result of the mere absence or voluntary departure from such organs' or agencies' areas of operations (judgment of 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraphs 49 to 52).

34. As regards the conditions for the application of the inclusion clause, the Court has clarified that the cessation 'for any reason' of the protection or assistance provided by an agency or organ of the United Nations other than the UNHCR, for the purposes of the second sentence of Article 12(1)(a) of Directive 2004/83, is brought about not only by the abolition of the organ or agency giving protection or assistance, but also by the fact that it is impossible for that organ or agency to carry out its mission. [21] According to the Court, the cessation of such protection or assistance also includes the situation in which, after actually availing himself of such protection or assistance, a person ceases to receive it for a reason beyond his control and independent of his volition. [22]

35. Lastly, in so far as concerns the effects of the inclusion clause, the Court has held that, where the competent authorities of the Member State responsible for examining applications for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations agency or organ referred to in the first sentence of Article 12(1)(a) of Directive 2004/83 is satisfied as regards the applicant, the fact that that person is *ipso facto* 'entitled to the benefits of [the] directive', pursuant to the second sentence of Article 12(1)(a) of the directive, means that the Member State must recognise him as a refugee within the meaning of Article 2(c) of Directive 2004/83 and that the person must automatically be granted refugee status, provided that he is not caught by Article 12(1)(b) or (2) or (3) of the directive. [23]

19 It is worth noting that, while the second sentence of Article 12(1)(a) of Directive 2011/95 refers generally to the 'benefits' of the directive, the inclusion clause, like the exclusion clause in the first sentence of that provisions, merely relates to 'refugee status'; see, to that effect, judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 67).

20 The UNHCR does not endorse this interpretation, which it regards as excessively formalistic and restrictive of Article 1D of the Geneva Convention. According to the UNHCR, not only those who have actually availed themselves of the protection or assistance offered by UNRWA, but every person who is eligible to receive such protection or assistance, because he falls under the mandate of UNRWA, falls within the scope of that provision whether or not he or she has ever exercised that entitlement; see, to that effect, UNHCR, *Guidelines on International Protection No 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, cited above, paragraphs 12 and 13 and footnote 27.

21 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 56).

22 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 65 and paragraph 1 of the operative part).

23 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 81 and paragraph 2 of the operative part).

36. More generally, the Court of Justice has acknowledged, in its judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826), that Article 12(1)(a) of Directive 2004/83 relates to a specific category of persons who, because of their particular situation, benefit from the special treatment which the States signatory to the Geneva Convention deliberately decided in 1951 to afford them.[24] The persons falling into that category are *already recognised as refugees* by the international community and, as such, benefit from a special programme of protection entrusted to the bodies of the UN.

37. As the Court has also emphasised, in addition to confirming the special status of Palestinian refugees, Article 1D of the Geneva Convention also pursues the objective of ensuring that they *continue to receive protection* in the event that the protection they receive from United Nations bodies should cease.[25] At the same time, Article 1D is intended to prevent the overlapping of competences between those bodies and the UNHCR.[26]

38. Clearly, if the aims of Article 1D of the Geneva Convention are to be attained and if the status which the international community confers on the category of persons contemplated by that provision is to be respected, and they are to be afforded the special treatment reserved to them by the convention, the application of Article 12(1)(a) of Directive 2011/95 to asylum applicants falling into that category cannot be left to the discretion of the national authorities which examine such applications.

39. The position of Palestinians assisted by UNRWA who submit an application for asylum in a Member State is not comparable to that of other asylum applicants, who must prove that they have a well-founded fear of persecution in order to gain recognition of the status of 'refugee' within the meaning of Article 2(d) of Directive 2011/95.[27] Their applications cannot therefore be examined, at least not initially, by reference to that provision, which reproduces Article 1A(2) of the Geneva Convention, but must be examined in the light of the criteria defined in Article 12(1)(a) of Directive 2011/95.

40. The exclusion and inclusion clauses set out in Article 12(1)(a) of Directive 2011/95 must, moreover, be read together and their application to a given asylum applicant must be assessed within the framework of a single examination, which must be conducted in successive stages.[28] Once it has been established that the person in question falls within the category of Palestinian refugees to whom the scheme under the Geneva Convention, and therefore also Directive 2011/95, does not apply, in accordance with the first sentence of Article 1D of the convention, it is necessary to ascertain, taking into account the statements made by the person in question, whether he or she is nevertheless included within that scheme by virtue of the second sentence of Article 1D, and consequently within the scope of Directive 2011/95 pursuant to the second sentence of Article 12(1)(a) of the directive, by reason of the fact that he or she has since ceased to receive protection or assistance from UNRWA.

24 See paragraph 80 of the judgment.

25 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 62).

26 See UNHCR, *Guidelines on International Protection No 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, cited above, paragraphs 6 and 7.

27 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 79).

28 See, with regard to Article 1D of the Geneva Convention, UNHCR, *Guidelines on International Protection No 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, cited above, paragraph 11.

41. In practice, as the Court made clear in its judgment of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351), the national authority competent to examine applications for international protection made by Palestinian refugees must first of all ascertain whether the applicant has availed himself of protection or assistance from UNRWA. Where it cannot be established that he has, the applicant cannot be regarded as excluded from the scope of Directive 2011/95 in accordance with the first sentence of Article 12(1)(a) of the directive, and his application for international protection must be examined in the light of Article 2(c),[29] or possibly 2(f) of the directive.[30]

42. Where, on the other hand, it is apparent that the applicant has availed himself of protection or assistance from UNRWA, it will be necessary for the competent national authority to conduct an individual examination of all the relevant factors, in order to ascertain whether the departure of the person concerned from UNRWA's area of operations may be justified by reasons beyond his control and independent of his volition which forced him to leave the area in question, preventing him from receiving that agency's assistance.[31] That will be the case where the applicant's personal safety was at serious risk and it was impossible for UNRWA to guarantee that his living conditions in its area of operations would be commensurate with the mandate entrusted to it.[32]

43. While such an examination is, in certain regards, similar to that which must be carried out where an application for international protection is assessed in the light of Article 2(d) of Directive 2011/95, inasmuch as it will be based, at least in part, on an analysis of the same facts and circumstances (in particular, the individual position and personal circumstances of the applicant, the situation in his country of origin or country of habitual residence and the statements made by the applicant and the relevant documents produced by him),[33] its purpose is in fact different.

44. The aim of the examination that is required under the second sentence of Article 12(1)(a) of Directive 2011/95 is to establish whether the assistance or protection provided by UNRWA to an asylum applicant has actually ceased, which may be the case where, as mentioned, for objective reasons or reasons relating to the applicant's individual position, that agency is no longer in a position to guarantee that his living conditions will be commensurate with the mandate entrusted to it, or where, because of obstacles of a practical or legal nature or relating to the security situation in the relevant UNRWA area of operations, the applicant is unable to return to that area.[34]

45. In this context, in order to obtain recognition as a refugee, it will not be necessary for the asylum applicant to prove a fear of persecution, within the meaning of Article 2(d) of Directive 2011/95, although proof of such a fear may bring him fully within the scope of the inclusion clause in the second sentence of Article 12(1)(a) of the directive. It will, for example, be sufficient for him to prove that there has been a hiatus in the protection or assistance offered by UNRWA, or that a situation of armed conflict prevails, or, more generally, that there is violence and a lack of security such as to render UNRWA's protection or assistance ineffective or inexistent, albeit that such situations, when relied on by an applicant who does not fall within the scope of Article 12(1)(a) of Directive 2011/95 are more likely to justify the grant of subsidiary protection status than the grant of refugee status.

29 See, to that effect, judgment of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351, paragraph 54).

30 In accordance with Article 10(2) of Directive 2013/32.

31 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraphs 61 and 64).

32 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 63; see also paragraph 65 and paragraph 1 of the operative part).

33 See judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraph 64), in which the Court confirmed that Article 4(3) of Directive 2004/83 (now Article 4(3) of Directive 2011/95) is applicable by analogy to the individual examination that must be carried out under the second sentence of Article 12(1)(a) of the directive.

34 See, with regard to Article 1D of the Geneva Convention, UNHCR, *Guidelines on International Protection No 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, cited above, paragraph 22.

46. It follows from the foregoing that, in the circumstances at issue in the main proceedings, the examination of the application for international protection made by Ms Alheto, an asylum applicant of Palestinian origin, should have been conducted by the DAB on the basis of the national provisions transposing the first and second sentences of Article 12(1)(a) of Directive 2011/95. Given that the inclusion of a Palestinian refugee in UNRWA's registration system is conclusive evidence that that refugee benefits from, or has benefited from UNRWA's protection or assistance, [35] Ms Alheto, who has furnished evidence of such registration, falls within the scope of Article 1D of the Geneva Convention and therefore also of Article 12(1)(a) of Directive 2011/95. Consequently, the DAB should have assessed, on the basis of an individual examination and in the light of all the relevant facts and circumstances, whether Ms Alheto fell within the inclusion clause in the second sentence of Article 12(1)(a) of Directive 2011/95. To that end, it should have ascertained whether Ms Alheto's departure from the Gaza Strip was justified by reasons independent of her volition which forced her to leave that area and thus prevented her from continuing to benefit from UNRWA's protection or assistance. [36] If that was the case, the DAB should have verified that none of the other conditions of exclusion was fulfilled and then granted Ms Alheto refugee status.

47. Before concluding on this point, it is important to emphasise that, in checking whether UNRWA's protection or assistance has ceased, for the purposes of the second sentence of Article 12(1)(a) of Directive 2011/95, the national authority competent to examine applications made by Palestinian asylum seekers must only take into consideration the situation existing in the place within UNRWA's area of operations where the applicant habitually resided before making the application for asylum, which, in Ms Alheto's case, was the Gaza Strip, even if the applicant has passed through other places within UNRWA's area of operations before reaching the territory of a Member State. [37]

48. In the light of all the foregoing considerations, I am of the opinion that the answer to the first question referred for a preliminary ruling should be that Directive 2011/95 is to be interpreted as meaning that an application for international protection made by a stateless person of Palestinian origin registered with UNRWA, whose habitual residence before entering the European Union was located within the area of operations of that agency, must be examined on the basis of the provisions of Article 12(1)(a) of that directive.

C. The second question referred for a preliminary ruling

49. By its second question, the referring Court essentially asks the Court of Justice whether Article 12(1)(a) of Directive 2011/95 has direct effect and whether it may be applied in the main proceedings despite the fact that it was not invoked by Ms Alheto.

35 See judgment of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351, paragraph 52). See also UNHCR, *Guidelines on International Protection No 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, cited above, paragraph 42, and UNRWA's Consolidated Eligibility and Registration Instructions (CERI), 1 January 2009, section III.A.1, p. 3 (available at http://www.refworld.org/docid/520cc3634.html CERI 2009). Registration with UNRWA is not, however, a necessary condition in order for a person to be regarded as falling within the scope of Article 1D of the Geneva Convention and Article 12(1)(a) of Directive 2011/95; see, to that effect, judgment of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351, paragraphs 46 and 52).

36 In this connection, I would merely point out that Ms Alheto left the Gaza Strip on 15 July 2014, that is, just a few days after Israel launched Operation Protective Edge (on 8 July 2014), which resulted in 51 days of war that, according to United Nations information, caused the deaths of thousands of civilians. See the resolution adopted on 23 July 2014, during the conflict, by the UN Human Rights Council.

37 See paragraph 77 of judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826). See also UNHCR, *Guidelines on International Protection No 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, cited above, paragraph 22(k). On this point I would also refer to the observations I make in point 87 below.

50. The Administrativen sad Sofia-grad (Administrative Court, Sofia) has remarked that the version of Article 12(1)(4) of the ZUB resulting from the amendments made by the law transposing Directive 2011/95,[38] is not applicable *ratione temporis* to Ms Alheto's situation[39] and that the version prior to that amendment only partly transposed Article 12(1)(a) of Directive 2004/83, inasmuch as it did not contain the inclusion clause laid down in the second sentence of Article 12(1)(a) of the directive.[40]

51. Given that the law transposing Directive 2011/95 into Bulgarian law is not applicable *ratione temporis* in the main proceedings, I shall not linger on the amendments which it made to Article 12(1)(4) of the ZUB, nor shall I give my opinion on whether that latter provision, in the version currently in force, is consistent with Article 12(1)(a) of Directive 2011/95, even though some passages of the order for reference and the first part of the second question referred for a preliminary ruling invite the Court to express a position on that issue.

52. In so far as concerns the version of Article 12(1)(4) of the ZUB prior to the entry into force of the law transposing Directive 2011/95, while it is true that it is not for the Court of Justice to call into question the referring court's interpretation of its own national law, I will not conceal the fact that I am somewhat puzzled by the view of the Administrativen sad Sofia-Grad (Administrative Court, Sofia) that it is impossible for it to interpret that provision in a manner consistent with Article 12(1)(a) of Directive 2004/83. Indeed, although the inclusion clause in the second sentence of Article 12(1)(a) of Directive 2004/83 was not expressly set out in the national provision, the national provision nevertheless clearly indicated that the clause excluding the possibility of refugee status applied only if the protection or assistance of the United Nations organ or agency had not ceased. A finding that such protection or assistance had ceased therefore could not but lead to the non-application of the exclusion clause, and the consequential effects thereof as illustrated by the Court of Justice in its judgment of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826). I would point out in this connection that the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that EU law is fully effective and to achieving an outcome consistent with the objective pursued by it.[41]

53. That said, in answer to the referring court's question, I am in no doubt that the content of the second sentence of Article 12(1)(a) of Directive 2011/95, which enshrines, in unequivocal terms, the right of Palestinian refugees who fall within the scope of the first sentence thereof but who are no longer able to avail themselves of UNRWA's protection or assistance to enjoy the benefits of the directive, is unconditional and sufficiently precise to be relied on by an individual in proceedings before national courts.[42]

54. As regards the question whether the second sentence of Article 12(1)(a) of Directive 2011/95 may be applied by the referring court despite the fact that it was not invoked by the applicant in the main proceedings, I would observe that the Court of Justice has already had occasion to hold, in its judgment of 11 July 1991, *Verholen and Others* (C-87/90, C-88/90 and C-89/90, ECLI:EU:C:1991:314, paragraph 15), that 'the recognised right of an individual to rely, in certain conditions, before a national

38 Article 12 of Directive 2011/95 did not in fact require the adoption of transposition measures since it is substantially identical to Article 12 of Directive 2004/83. (It is not in fact included in the list of provisions set out in Article 39(1) of Directive 2011/95 in respect of which the Member States are required to adopt transposition measures.) Nevertheless, the Bulgarian legislature evidently wished to take advantage of the transposition of Directive 2011/95 to correct the wording of Article 12(1)(4) of the ZUB, which transposed Article 12 of Directive 2004/83 incorrectly.

39 The decision of the DAB rejecting Ms Alheto's application for international protection was adopted on 12 May 2015, while the law transposing Directive 2011/95 entered into force on 16 October 2015 and, under Bulgarian law, does not apply retroactively.

40 Article 12(1)(a) of Directive 2004/83 was the same in content as Article 12(1)(a) of Directive 2011/95.

41 See judgment of 11 November 2015, *Klausner Holz Niedersachsen* (C-505/14, EU:C:2015:742, paragraph 34). See also, to that effect, judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 27 and the case-law cited).

42 See, inter alia, judgment of 7 September 2017, *H.* (C-174/16, EU:C:2017:637, paragraph 69).

court, on a directive where the period for transposing it has expired does not preclude the power for the national court to take that directive into consideration even if the individual has not relied on it' and to apply directly the precise and unconditional provisions of that directive and disapply provisions of national law which conflict with them.

55. On the basis of the foregoing, I am of the opinion that the answer to the second question referred for a preliminary ruling by the Administrativen sad Sofia-Grad (Administrative Court, Sofia) should be that the second sentence of Article 12(1)(a) of Directive 2011/95 contains a provision which is sufficiently precise and unconditional to be relied upon by individuals in proceedings before a national court. The fact that a provision of European Union law that has direct effect has not been relied upon in legal proceedings by the person concerned does not preclude a national court from applying it directly, where it considers it necessary to do so.

D. The third question referred for a preliminary ruling

56. By its third question, the referring court essentially asks the Court of Justice whether it follows from Article 46(3) of Directive 2013/32 that, in the context of an appeal against an administrative order rejecting an application for international protection made by a stateless person of Palestinian origin registered with UNRWA, the court of first instance may examine that application on the basis of the principles established in Article 12(1)(a) of Directive 2011/95 even where such an examination has not previously been carried out by the competent authority.

57. First of all, it is necessary to consider the applicability *ratione temporis* of Directive 2013/32 to the dispute in the main proceedings.

58. Under Article 51(1) of Directive 2013/32, the period allowed the Member States to bring into force measures transposing the provisions of the directive listed in Article 51(1), which include Article 46, ended on 20 July 2015. Pursuant to the first sentence of the first paragraph of Article 52 of Directive 2013/32, 'Member States [are to] apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged … after 20 July 2015 or an earlier date'. In accordance with the second sentence of the first paragraph of Article 52 of the directive, 'applications lodged before 20 July 2015 … shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive [2005/85/EC]'.

59. Although the correlation between the first and second sentences of the first paragraph of Article 52 of Directive 2013/32 is unclear,[43] it would seem that the words 'or an earlier date' which appear in the first sentence and which were inserted into the directive at the Council's request,[44] must be interpreted as meaning that the Member States are allowed the option, when transposing the directive, of stipulating that the national provisions designed to comply with the provisions listed in Article 51(1) should also apply to applications for international protection made before the date fixed in Article 52. For cases where that option is not exercised, the second sentence of the first paragraph of Article 52 of Directive 2013/32 provides that the provisions transposing Directive 2005/85 continue to apply.

60. The European Union legislature thus made specific transitional arrangements to coordinate the temporal application of the provisions of the new directive (Directive 2013/32) with those of the repealed directive (Directive 2005/85). In accordance with those arrangements, applications for international protection made prior to 20 July 2015 are to be examined on the basis of the provisions transposing Directive 2005/85 unless otherwise specified by the national legislature.

43 The two sentences seem to contradict one another inasmuch as the first authorises the application of national measures transposing Directive 2013/32 to applications for international protection lodged before 20 July 2015, while the second establishes that such applications are to be examined on the basis of the national provisions transposing Directive 2005/85.

44 See Position (EU) No 7/2013 of the Council of 6 June 2013 (OJ 2013 C 179 E, p. 27).

61. In reply to a request for clarification made in accordance with Article 101 of the Rules of Procedure of the Court of Justice, the referring court has stated that Article 37 of the law transposing Directive 2013/32, which entered into force on 28 December 2015, states that procedures commenced before that date are to be completed on the basis of the provisions previously in force. It follows from that, albeit only implicitly, that the Bulgarian legislature decided not to exercise the option allowed under the first sentence of the first paragraph of Article 52 of Directive 2013/32 of stipulating that the national provisions transposing the directive should also apply to applications for international protection made before 20 July 2015.

62. Given that Ms Alheto made her application for international protection on 25 November 2014, before both the date of entry into force of the law transposing Directive 2013/32 into Bulgarian law and the date fixed in the first sentence of the first paragraph of Article 52 of that directive, that application, in accordance with both national law (Article 37 of the law transposing Directive 2013/32) and European Union law (the second sentence of the first paragraph of Article 52 of Directive 2013/32), had to be examined on the basis of the provisions transposing Directive 2005/85 into Bulgarian law. [45]

63. Therefore, Directive 2013/32 is not applicable *ratione temporis* to the facts at issue in the main proceedings. The case-law of the Court of Justice, mentioned by the referring court, according to which, during the period prescribed for transposition of a directive, the courts of the Member States must refrain as far as possible from interpreting domestic law in a manner which might seriously compromise, after the period for transposition has expired, attainment of the objective pursued by that directive, [46] is, in my opinion, not applicable to the present reference for a preliminary ruling. Indeed, despite the fact that, as the Administrativen sad Sofia-grad (Administrative Court, Sofia) has observed, the Bulgarian legislature had not laid down specific provisions to transpose Article 46(3) of Directive 2013/32, with the result that the provisions which existed prior to the transposition of that directive must be regarded as 'falling within its scope', [47] the directive, which entered into force before Ms Alheto made her application for asylum, specifically provides that, unless national law stipulates otherwise, applications for asylum made before 20 July 2015 must be examined on the basis of the provisions transposing Directive 2005/85.

64. For those reasons, the third question referred for a preliminary ruling should, in my opinion, be declared inadmissible. [48] The following observations are therefore set out merely in the alternative.

65. I would mention at the outset that Article 46(3) of Directive 2013/32, and the definition of the scope of the judicial review of administrative orders in asylum matters which it introduced, has excited some interest on the part of national courts, as is evidenced by the fact that questions on the interpretation of that provision have been raised in another five requests for a preliminary ruling currently pending before the Court of Justice. [49] Indeed, by comparison with Article 39 of Directive

45 That view is, moreover, shared, in so far as Bulgarian law is concerned, by the referring court, which has emphasised that the retroactive application of the law transposing Directive 2013/32 to Ms Alheto's case would be contrary to the Bulgarian Constitution.

46 See, inter alia, judgments of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraphs 122 and 123), and of 23 April 2009, *VTB-VAB and Galatea* (C-261/07 and C-299/07, EU:C:2009:244, paragraph 37). The referring court has also mentioned the position expressed by Advocate General Mazák in *Kadzoev* (C-357/09 PPU, EU:C:2009:691, points 32 to 35).

47 See judgment of 23 April 2009, *VTB-VAB and Galatea* (C-261/07 and C-299/07, EU:C:2009:244, paragraph 37).

48 See, however, judgment of 26 July 2017, *Sacko* (C-348/16, EU:C:2017:591), in which the Court answered the question referred by the Tribunale di Milano without first examining the issue of the application *ratione temporis* of Directive 2013/32 to the procedure for the examination of Mr Sacko's application for international protection (submitted before 20 July 2015 but referred after that date).

49 Two other requests for a preliminary ruling have been made by the Administrativen sad Sofia-grad (Administrative Court, Sofia) (Cases C-652/16 and C-56/17). A request for a preliminary ruling has also been made by the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) in circumstances in which successive refusals of an application for international protection have been consistently overturned on appeal and in which the referring court therefore questions whether it may be considered that the right to an effective judicial remedy is actually being observed (Case C-113/17). Another request for a preliminary ruling comes from Hungary (Case C-556/17) and the fifth comes from the Raad van State (Council of State, the Netherlands) and concerns new grounds for asylum (Case C-586/17).

2005/85, which confined itself to enunciating an obligation to guarantee the right to an effective remedy, leaving it to the Member States to define the scope of that right,[50] Article 46 of Directive 2013/32 marks a change in perspective that reveals the different levels of harmonisation pursued by these two measures.

66. It is clear from the terminology used in Article 46 of Directive 2013/32 that, in setting the standard which the Member States must meet in accordance with Article 46(3) in order to satisfy the obligation laid down in Article 46(1) to ensure that an effective remedy is available to applicants for international protection, the European Union legislature adopted, as its framework of reference, the case-law of the European Court of Human Rights (ECtHR) concerning the combined application of Articles 3 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[51]

67. Pursuant to Article 46(3) of Directive 2013/32, a remedy will be effective if it entails 'a full and *ex nunc* examination of both facts and points of law' and, 'where applicable', 'an examination of the international protection needs [of the applicant] pursuant to Directive [2011/95]'.

68. The requirement for a 'full examination', one that is not confined to verifying the observance of applicable law but includes the establishment and appraisal of the facts, has long been asserted by the ECtHR. According to that court, the importance of Article 3 ECHR and the irreversible nature of the harm that may be caused by its infringement demand that, in order for a remedy to be regarded as effective, there must be 'close scrutiny'[52] or 'independent and rigorous scrutiny'[53] or an '*examen attentif*'[54] of the grounds for considering there to be a risk of treatment such as is prohibited by Article 3 ECHR. That scrutiny 'must be such as to enable any doubts, however legitimate, to be dispelled regarding the lack of merits of the application for protection, irrespectively of the extent of the competences of the authority responsible for examining it'.[55] The requirement for a full examination means that the court's review must go beyond merely checking whether the facts or evidence have been distorted and whether there has been any manifest error of assessment.

69. Article 46(3) of Directive 2013/32 also provides that the full factual and legal examination of the grounds of the appeal must be carried out '*ex nunc*', that is to say, not on the basis of the circumstances of which the authority that adopted the decision appealed against was aware or should have been aware when it adopted that decision, but on the basis of the circumstances present at the time when the court gives its ruling.[56] That means, first, that the applicant must be allowed to rely on new matters that were not put forward before the authority which examined his or her application for international protection[57] and, secondly, that the court hearing the appeal must be free to take account of new factors that are relevant in the assessment of the applicant's position.

50 The second sentence of recital 27 of Directive 2005/85 states that 'the effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.'

51 Article 3 ECHR provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, while Article 13 enshrines the right to an effective remedy for anyone whose rights and freedoms under the convention have been violated.

52 See ECtHR, 12 April 2005, *Shamayev and Others v. Georgia and Russia* (CE:ECHR:2005:0412JUD003637802, § 448).

53 ECtHR, 11 July 2000, *Jabari v. Turkey* (CE:ECHR:2000:0711JUD004003598, § 50) and 21 January 2011, *M.S.S v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609, § 293 and 388).

54 See, to that effect, ECtHR, 2 October 2012, *Singh and Others v. Belgium* (CE:ECHR:2012:1002JUD003321011, § 103). See also judgments of 28 July 2011, *Samba Diouf* (C-69/10, EU:C:2011:524, paragraph 56), and of 31 January 2013, *H.I.D. and B.A.* (C-175/11, EU:C:2013:45, paragraph 75).

55 ECtHR, 2 October 2012, *Singh and Others v. Belgium* (CE:ECHR:2012:1002JUD003321011, § 103; only the original French is authentic). In similar vein, in its judgment of 28 July 2011, *Samba Diouf* (C-69/10, EU:C:2011:524, paragraph 56), the Court of Justice held that 'the reasons which led the competent authority to reject the application for asylum as unfounded [must] be the subject of a thorough review by the national court'.

56 See, to that effect, ECtHR, 2 October 2012, *Singh and Others v. Belgium* (CE:ECHR:2012:1002JUD003321011, § 91).

57 See, to that effect, ECtHR, 21 January 2011, *M.S.S v. Belgium* (CE:ECHR:2011:0121JUD003069609, § 389).

70. As regards the examination of the applicant's 'international protection needs' that forms part of the standard set by Article 46(3) of Directive 2013/32, this implies that the court must be free, where it considers itself to be in possession of all the necessary facts, to give a ruling ('where applicable') on the issue which underlies all of the decisions listed in Article 46(1) of Directive 2013/32, which is to say, the question whether the applicant is entitled to be granted refugee status or subsidiary protection status.

71. In this connection it is important to remember that the recognition of refugee status is a 'declaratory act',[58] rather than an act giving rise to rights and that, as the Court of Justice made clear in its judgment of 24 June 2015, *H. T.* (C-373/13, EU:C:2015:413, paragraph 63),[59] this means that the Member States — and thus the national authorities competent to examine asylum applications — must grant that status to any person who satisfies the minimum requirements established by European Union law and that they may 'exercise no discretion in that respect'. When examining applications for international protection, such authorities must therefore undertake a legal assessment of the facts that does not involve the exercise of any administrative discretion. Where a court considers that the legal assessment of the facts is incorrect, it must itself be able, in accordance with Article 46(3) of Directive 2013/32 and where it has sufficient facts before it, to examine the applicant's international protection needs, without being required to refer the case back to the administrative authority. If, on the basis of that examination, it reaches the conclusion that the applicant satisfies the criteria for recognition as a refugee or for entitlement to subsidiary protection, the court must, where it has no powers under national law to adopt a decision granting international protection and cannot therefore vary the decision appealed against, have the power to formulate mandatory directions on the applicant's needs for international protection with which the authority competent to adopt the relevant decision must comply.

72. On that basis, I take the view that, if Article 46(3) of Directive 2013/32 were applicable to the facts at issue in the main proceedings, the referring court would be required to interpret, as far as possible, the rules laid down in the Bulgarian Code of Administrative Procedure (the APK) as meaning that, in a situation such as that of Ms Alheto, it does have power to give a ruling on the application for international protection in the light of Article 12(1)(a) of Directive 2011/95 and, if such an interpretation is impossible, that it has power to disapply any such rules which prevent it from examining the application.

73. However, I do not think that such a solution can be arrived at on the basis of Article 39 of Directive 2005/85, for the reasons I gave in point 65 above.

E. The fifth question referred for a preliminary ruling

74. By its fifth question, the referring court essentially asks the Court of Justice whether the assistance provided by UNRWA in its area of operations may be regarded as 'sufficient protection' within the meaning of point (b) of the first paragraph of Article 35 of Directive 2013/32. It is apparent from the order for reference that the purpose of asking that question is to assess whether, in the circumstances at issue in the main proceedings, Jordan may be regarded as Ms Alheto's 'first country of asylum'. According to the referring court, if such a conclusion is permissible, Ms Alheto's application for international protection could be considered inadmissible on the basis of Article 33 of Directive 2013/32.

58 See recital 21 of Directive 2011/95. Logically, the recognition of subsidiary protection status should also be a declaratory act.

59 In this judgment, the Court referred to recital 14 of Directive 2004/83, which uses the same wording, asserting that 'the recognition of refugee status is a declaratory act'.

75. Before answering this question, I would observe that point (b) of the first paragraph of Article 35 of Directive 2013/32 reproduces the wording of point (b) of the first paragraph of Article 26 of Directive 2005/85, which preceded Directive 2013/32. Given that, as I explained in points 58 to 63 above, only the provisions of Bulgarian law adopted to comply with Directive 2005/85 apply to Ms Alheto's application for international protection, the fifth question referred for a preliminary ruling should be reformulated so as to address the interpretation of point (b) of the first paragraph of Article 26 of Directive 2005/85.

76. Article 25(1) of Directive 2005/85 — like the current Article 33(1) of Directive 2013/32 — provided that the Member States are not required to examine the merits of an application for international protection where the application is inadmissible on one of the grounds listed in Article 25(2) of Directive 2005/85. Those grounds include, in point (b) of Article 25(2), the fact that a third country is considered the applicant's 'first country of asylum' pursuant to Article 26 of the directive. Points (a) and (b) of the first paragraph of Article 26 described two situations in which a third country could be considered the applicant's 'first country of asylum'. The first was the situation where the applicant had been 'recognised in that country as a refugee' and could still avail himself or herself of that protection. The second was the situation where the applicant 'otherwise [enjoyed] sufficient protection in that country, including benefiting from the principle of *non-refoulement*'.

77. However, it is apparent from the order for reference [60] that the version of Article 13(2)(2) of the ZUB that is applicable to Ms Alheto's application did not contemplate the second situation, provided for by point (b) of the first paragraph of Article 26 of Directive 2005/85. According to the referring court, when Directive 2005/85 was transposed, the Bulgarian legislature decided to restrict the possibility of declaring asylum applications inadmissible in accordance with Article 25(2)(b) of the directive to cases where the applicant enjoyed the status of refugee in a safe third country. According to what may be deduced from the order for reference, it was only when Directive 2013/32 was transposed that the Bulgarian legislature included in Article 13(2)(2) of the ZUB the further ground of inadmissibility relating to cases where the applicant has been granted by a third country 'another form of effective protection which complies with the principle of *non-refoulement*'. That version of Article 13(2)(2) of the ZUB is not, however, applicable to the facts at issue in the main proceedings.

78. In accordance with Article 5 of Directive 2005/85, Member States could 'introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, in so far as those standards [were] compatible with [that] directive'. From the wording of Article 25(1) of Directive 2005/85 it is clear that Member States had the *option*, but not the obligation to lay down, in their respective national procedures for examining asylum applications, the grounds of inadmissibility described in Article 25(2), while it is clear from recital 22 of the directive that Article 25 thereof constituted an *exception* to the rule that all asylum applications must be examined on their merits by the competent authorities of the Member States. [61]

60 Paragraph 49 of the order for reference.

61 The same may currently be said of Article 33(1) of Directive 2013/32 (and see recital 43 of Directive 2013/32, which is the same in content as recital 22 of Directive 2005/85). I would, however, point out that the Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM/2016/0467 final) introduces, in Article 36(1)(a), an obligation for Member States to assess the admissibility of applications for international protection with reference to the concept of 'first country of asylum', which is defined in Article 44 of the proposal.

79. It follows that, when transposing Directive 2005/85, the Bulgarian legislature could legitimately decide, as indeed it did, not to transpose all of the grounds for finding an asylum application inadmissible laid down in Article 25(2) of that directive and, in particular, the ground constituted by the combined provisions of Article 25(2)(b) and point (b) of the first paragraph of Article 26 of the directive. [62]

80. In those circumstances, given that, on the basis of the Bulgarian law which applies to the examination of Ms Alheto's application for international protection, that application could not in any event be declared inadmissible on the ground contemplated by the combined provisions of Article 25(2)(b) and point (b) of the first paragraph of Article 26 of Directive 2005/85, the fifth question referred for a preliminary ruling, inasmuch as, once reformulated, it concerns the interpretation of those provisions, is merely hypothetical and thus inadmissible. [63]

81. It is therefore merely in the alternative that I shall now briefly examine the fifth question referred for a preliminary ruling.

82. Point (b) of the first paragraph of Article 26 of Directive 2005/85 must be read in the light of recital 22 of the directive, to which I have already referred, according to which Member States may refrain from examining the substance of an application for international protection where 'it can be reasonably assumed that another country would … provide sufficient protection', in particular, 'where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be re-admitted to this country'.

83. It is clear, therefore, from that recital that only protection that is *granted by the country which it is proposed be treated as the applicant's first country of asylum* can be relevant for the purposes of applying the ground of inadmissibility constituted by the combined provisions of Article 25(2)(b) and point (b) of the first paragraph of Article 26 of Directive 2005/85. Indeed, it could not be otherwise, given that protection against *refoulement*, which is one component of the protection referred to in point (b) of the first paragraph of Article 26 of Directive 2005/85, must necessarily be guaranteed by the country to which the applicant would return, provided that he will be re-admitted there, in the event that his application is considered inadmissible pursuant to Article 25(2)(b) of the directive. Although a body such as UNRWA can provide assistance and essential services in some respects comparable to those offered by State authorities in the context of an international or humanitarian protection regime, it cannot offer individuals coming within its sphere of operations any guarantee that, should they leave the country where they habitually reside, for reasons independent of their volition, and go to another country within its area of operations, they will not be turned away from that country and sent back to the place from which they came.

84. Furthermore, the relationship between points (a) and (b) of the first paragraph of Article 26 of Directive 2005/85 leads me to think that only protection that entails the grant to the applicant by the country considered to be his or her first country of asylum of a specific status that, albeit not the same in content as refugee status as defined in the relevant international instruments, protects the applicant

62 Moreover, it appears from a comparative study carried out by the UNCHR that not only did Bulgaria not transpose point (b) of the first paragraph of Article 26 of Directive 2005/85, but also, at least until 2010, it did not apply the concept of 'first country of asylum' in practice, and the fact that an applicant enjoyed the status of refugee in a third country was regarded as a reason for rejecting an asylum application on the merits, rather than as a reason for declaring it inadmissible; see UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice — Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, p. 285 (available at: http://www.unhcr.org/4c7b71039.pdf).

63 See, inter alia, order of 22 June 2017, *Fondul Proprietatea* (C-556/15 and C-22/16, not published, EU:C:2017:494, paragraphs 20 and 21).

effectively,[64] in particular against *refoulement*,[65] may constitute 'sufficient protection' within the meaning of point (b) of the first paragraph of Article 26 of the directive. In other words, just as the mere possibility that an applicant may seek and obtain recognition of refugee status is not sufficient to make the country in question a 'first country of asylum' within the meaning of point (a) of that provision, the mere establishment of a protection regime to which an applicant might be admitted if he or she is re-admitted into the country in question is not sufficient to give rise to the application of point (b) of the first paragraph of Article 26 and so render the application for international protection potentially inadmissible pursuant to Article 25(2)(b) of Directive 2005/85.

85. However, it is not apparent from the order for reference that Ms Alheto, who spent 23 days in Jordan before boarding an aircraft for Bulgaria, enjoys any specific status in Jordan that would protect her from *refoulement* to the Gaza Strip.[66] The mere fact that Ms Alheto is a member of a group of people (Palestinian refugees registered with UNRWA) who enjoy a special international status, one which Jordan recognises,[67] is not sufficient for the purposes of applying Article 25(2)(b) of Directive 2005/85, because the conditions to which that provision makes subject the Member State's entitlement to declare an application for international protection inadmissible must be verified by reference to the *individual position* of the applicant in question.

86. Equally, there is no suggestion in the order for reference that, if returned to Jordan, Ms Alheto would receive UNRWA's protection or assistance in that country.

87. I would point out in this connection that, in the December 2017 Guidelines on the applicability of Article 1D of the Geneva Convention to Palestinian refugees,[68] the UNHCR stated that 'no State can safely assume that a Palestinian refugee will be able to access the protection or assistance of UNRWA in an area of operation where they have never resided, or other than that in which he or she was formerly residing'.[69] To make such an assumption would, according to the UNHCR, impose 'unreasonable and insurmountable obstacles on applicants' and ignore the reality of international relations, which are based on State sovereignty. In other words, the fact that an asylum applicant registered with UNRWA has received protection or assistance from that agency in the country where he was habitually resident before entering the European Union affords no guarantee that he will receive UNRWA's protection or assistance in a different country within that agency's area of operations with which he has previously had no connection. In Ms Alheto's case, the order for reference mentions no link with Jordan, by reason of family relations or otherwise.

64 According to the UNHCR's recommendations, Member States which apply the 'first country of asylum' concept should interpret 'sufficient protection', for the purposes of point (b) of the first paragraph of Article 26 of Directive 2005/85, and now point (b) of the first paragraph of Article 35 of Directive 2013/32, as meaning protection that is 'effective and available in practice', see UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice — Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, pp. 282 and 291 (available at: http://www.unhcr.org/4c7b71039.pdf); see also UNHCR, *Summary Conclusions on the Concept of 'Effective Protection' in the Context of Secondary Movements of Refugees and Asylum-Seekers, (Lisbon Expert Roundtable, 9 and 10 December 2002)*, February 2003 (available at: http://www.unhcr.org/protection/globalconsult/3e5f323d7/lisbon-expert-roundtable-summary-conclusions-concept-effective-protection.html).

65 I would point out that the return of an asylum applicant to a country from which he or she risks being expelled to his or her country of origin constitutes indirect *refoulement* contrary to Article 33 of the Geneva Convention. A country of first asylum must therefore offer a genuine guarantee that the principle of *non-refoulement* will be observed with regard to the applicant. I would also point out in this connection that, although it is host to an egregious number of Palestinian refugees, Jordan is not a signatory of the Geneva Convention.

66 I would mention in this connection that a number of cases of *refoulement* of Palestinian refugees, in particular, Palestinian refugees coming from Syria, have been recorded by Human Rights Watch in Jordan; see Global Detention Project (GDP), *Immigration Detention in Jordan*, March 2015 (available at: http://www.refworld.org/docid/556738404.html), p. 11. On Jordan's observance of the principle of *non-refoulement*, see also Human Rights Watch, World Report, 2018, p. 307.

67 Jordan has been issuing Palestinians who left the Gaza Strip in 1967 with a temporary passport which attests to their residence in Jordan. On the effect of such temporary passports, see the study by A. Tiltnes and H. Zhang, *Progress, challenges, diversity — Insights into the socio-economic conditions of Palestinian refugees in Jordan* (available at: https://www.unrwa.org/sites/default/files/insights_into_the_socio-economic_conditions_of_palestinian_refugees_in_jordan.pdf), p. 32. The study highlights the conditions of poverty afflicting Palestinians coming from the Gaza Strip who do not hold Jordanian nationality and restrictions on their access to social services, education and healthcare, even where they hold a temporary passport; see, in particular, p. 258 et seq. Registration with UNRWA does not seem to improve significantly their access to certain essential services: see, regarding healthcare, p. 99 et seq.

68 Cited in footnote 16.

69 See paragraph 22(IV)(k) of the guidelines.

88. On the basis of the foregoing, I think that, in the circumstances of the case in the main proceedings, there are not sufficient guarantees that Ms Alheto would be able to receive UNRWA's assistance in Jordan, should she be re-admitted into that country, or that she would enjoy 'sufficient protection' in that country within the meaning of point (b) of the second paragraph of Article 26 of Directive 2005/85.

89. In concluding on this point, I would emphasise that, while the Geneva Convention neither provides for nor expressly excludes recourse to measures for the recognition of 'protection elsewhere' (by means of the application of concepts such as 'first country of asylum' or 'safe third country'), such measures can only be considered compatible with the convention in so far as they ensure that persons coming within the definition of refugees given in Article 1 of the convention enjoy the rights enshrined in the convention. Where they intend to have recourse to the concept of 'country of first asylum', within the meaning of point (b) of the first paragraph of Article 26 of Directive 2005/85, or now point (b) of the first paragraph of Article 35 of Directive 2013/32, the authorities of the Member State competent to examine applications for international protection must therefore ascertain whether the protection afforded to the applicant by such a country is in fact effective, especially where, as in the case of Jordan, the country is already host to a large refugee population.[70]

F. The fourth and sixth questions referred for a preliminary ruling

90. By its fourth question, the Administrativen sad Sofia-grad (Administrative Court, Sofia) essentially asks whether Article 46(3) of Directive 2013/32 permits a national court hearing an appeal against a decision rejecting an application for international protection on the merits to give a ruling for the first time (i) on the admissibility of the application by reference to the grounds laid down in Article 33(2)(a) to (c) of Directive 2013/32 even where the interview provided for by Article 34(1) of Directive 2013/32 has not been conducted and (ii) on the return of the applicant to his or her country of origin or to the country in which he or she was habitually resident.

91. This question is, in my opinion, inadmissible in its entirety for the reasons set out in points 57 to 63 above. Part A of the question is also inadmissible for the reasons set out in 76 to 80 above.[71].

92. In so far as concerns part B of the fourth question, I would merely observe, in the alternative, that the examination of an application for international protection implies the taking into consideration of the risks to which the applicant would be exposed if he were returned to his country of origin or to the country where he was habitually resident before making the application, in order to ascertain whether the conditions for the grant of refugee status or for granting international protection are fulfilled and to ensure that the principle of *non-refoulement* is observed. It follows that, where it is apparent that the competent authority has correctly assessed those risks in the course of an examination carried out in accordance with the basic principles and guarantees referred to in Chapter II of Directive 2013/32, the mere fact that it did not express a position in its decision refusing international protection on the question of whether the applicant could be immediately removed from the territory of the Member State concerned and returned to his country of origin or to the country where he was habitually resident is not an omission of such a kind as to result in the annulment of the decision. Under the powers with which it is invested in accordance with Article 46(3) of Directive 2013/32, a national court hearing an appeal against a refusal decision may, if it considers it appropriate, give a first ruling

70 Jordan hosts approximately two million Palestinian refugees and displaced persons. On their living conditions there, see the study by A. Tiltnes and H. Zhang, *Progress, challenges, diversity — Insights into the socio-economic conditions of Palestinian refugees in Jordan*, cited above.

71 Despite the fact that the body of the order for reference mentions the concept of 'safe third country', within the meaning of Article 38 of Directive 2013/32, the wording of the fourth question referred for a preliminary ruling by the Administrativen sad Sofia-Grad (Administrative Court, Sofia) does not specifically ask the Court about the ground of inadmissibility laid down in Article 33(2)(c) of Directive 2013/32.

on this question. In any event, it is clear that, in order to ensure observance of the principle of *non-refoulement*, the applicant's situation must be taken into consideration by the competent authority at the time when a decision is taken on his removal and before such a decision is put into effect.

93. By its sixth question, the referring court essentially asks the Court of Justice about the powers which a national court hearing an appeal against a decision refusing international protection has pursuant to Article 46(3) of Directive 2013/32 and, in particular, whether such a court must confine itself to reviewing the lawfulness of the decision appealed against or whether it may give a ruling on the applicant's need for international protection, including where, under national law, such protection may only be granted by decision of an administrative authority.

94. This question too is inadmissible for the reasons set out in points 57 to 63 above. As to the substance, I would refer to the observations I made in points 74 and 75 above.

IV. Conclusion

95. In the light of all the foregoing considerations, I propose that the Court should declare inadmissible the third, fourth, fifth and sixth questions referred by the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) for a preliminary ruling and answer the first and second questions as follows:

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 is to be interpreted as meaning that an application for international protection made by a stateless person of Palestinian origin registered with UNRWA, whose habitual residence before entering the European Union was located within the area of operations of that agency, must be examined on the basis of the provisions of Article 12(1)(a) of that directive.

The second sentence of Article 12(1)(a) of Directive 2011/95 contains a provision which is sufficiently precise and unconditional to be relied upon by individuals in proceedings before a national court. The fact that a provision of European Union law that has direct effect has not been relied upon in legal proceedings by the person concerned does not preclude a national court from applying it directly, where it considers it necessary to do so.