

Case (C-267/17)

*Applicant:* Rhenus Veniro GmbH & Co. KG

*Defendant:* Kreis Heinsberg

*Intervener:* WestVerkehr GmbH (C-267/17)

### Operative part of the judgment

Article 5(2) of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road does not apply to the direct award of contracts for public passenger transport services by bus which do not take the form of service concessions contracts for the purposes of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

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<sup>(1)</sup> OJ C 283, 28.8.2017.

OJ C 269, 14.8.2017.

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**Judgment of the Court (Grand Chamber) of 19 March 2019 (requests for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bashar Ibrahim (C-297/17), Mahmud Ibrahim and Others (C-318/17), Nisreen Sharqawi, Yazan Fattayrji, Hosam Fattayrji (C-319/17) v Bundesrepublik Deutschland, Bundesrepublik Deutschland v Taus Magamadov (C-438/17)**

(Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17) <sup>(1)</sup>

*(Reference for a preliminary ruling — Area of freedom, security and justice — Common procedures for granting and withdrawing international protection — Directive 2013/32/EU — Article 33(2)(a) — Rejection by the authorities of a Member State of an application for asylum as being inadmissible because of the prior granting of subsidiary protection in another Member State — Article 52 — Scope ratione temporis of that directive — Articles 4 and 18 of the Charter of Fundamental Rights of the European Union — Systemic flaws in the asylum procedure in that other Member State — Systematic rejection of applications for asylum — Substantial risk of suffering inhuman or degrading treatment — Living conditions of those granted subsidiary protection in that other State)*

(2019/C 187/13)

Language of the case: German

### Referring court

Bundesverwaltungsgericht

### Parties to the main proceedings

*Applicants:* Bashar Ibrahim (C-297/17), Mahmud Ibrahim, Fadwa Ibrahim, Bushra Ibrahim, Mohammad Ibrahim, Ahmad Ibrahim (C-318/17), Nisreen Sharqawi, Yazan Fattayrji, Hosam Fattayrji (C-319/17), Bundesrepublik Deutschland (C-438/17)

*Defendants:* Bundesrepublik Deutschland (C-297/17, C-318/17, C-319/17), Taus Magamadov (C-438/17)

### Operative part of the judgment

1. The first paragraph of Article 52 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection must be interpreted as meaning that it permits a Member State to provide for the immediate application of the provision of national law transposing Article 33(2)(a) of that directive to applications for asylum on which no final decision has yet been made, which were lodged before 20 July 2015 and before the entry into force of that provision of national law. However, the first paragraph of Article 52 of that directive, read in the light of, *inter alia*, Article 33 thereof, precludes such an immediate application in a situation where both the application for asylum and the take back request were lodged before the entry into force of Directive 2013/32 and, in accordance with Article 49 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, still fall fully within the scope of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
2. In a situation such as that at issue in Cases C-297/17, C-318/17 and C-319/17, Article 33 of Directive 2013/32 must be interpreted as meaning that it is not a condition for Member States to be able to reject an application for asylum as being inadmissible under Article 33(2)(a) of the directive that they must, or must be able, to have recourse, as the first resort, to the take charge or take back procedures provided for by Regulation No 604/2013.
3. Article 33(2)(a) of Directive 2013/32 must be interpreted as not precluding a Member State from exercising the option granted by that provision to reject an application for the grant of refugee status as being inadmissible on the ground that the applicant has been previously granted subsidiary protection by another Member State, where the living conditions that that applicant could be expected to encounter as the beneficiary of subsidiary protection in that other Member State would not expose him to a substantial risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union. The fact that the beneficiaries of such subsidiary protection do not receive, in that Member State, any subsistence allowance, or that such allowance as they receive is markedly inferior to that in other Member States, though they are not treated differently from nationals of that Member State, can lead to the finding that that applicant would be exposed in that Member State to such a risk only if the consequence is that that applicant would, because of his or her particular vulnerability, irrespective of his or her wishes and personal choices, be in a situation of extreme material poverty.

Article 33(2)(a) of Directive 2013/32 must be interpreted as not precluding a Member State from exercising that option, where the asylum procedure in the other Member State that has granted subsidiary protection to the applicant leads to a systematic refusal, without real examination, to grant refugee status to applicants for international protection who satisfy the conditions laid down in Chapters II and III of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

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(<sup>1</sup>) OJ C 309, 18.9.2017.

OJ C 347, 16.10.2017.

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