Reports of Cases

OPINION OF ADVOCATE GENERAL
HOGAN
delivered on 19 March 2020[1]

Case C-517/17

Milkiyas Addis
v
Bundesrepublik Deutschland

(Request for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court, Germany))

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum Policy — Directive 2013/32/EU — Common procedures for the grant and refusal of international protection — Article 33 — Inadmissible applications — Article 33(2)(a) — Rejection of an asylum request after the grant of international protection in another Member State — Articles 14 and 34 — Failure to conduct personal interview — Consequences — Appeals procedures — Article 46 — The right to an effective remedy — Full and *ex nunc* examination — Whether it is possible for a court to remedy failure of a determining authority to conduct a personal interview)

I. Introduction

1. The present request for a preliminary ruling, in its current form, concerns the interpretation of Article 14(1) 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[2] and the provision which preceded it, namely, Article 12(1) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.[3] Article 14(1) of Directive 2013/32 stipulates that an applicant for international protection or refugee status must be granted a personal hearing prior to the determining authority adopting a decision.

2. The request arises out of proceedings before the Bundesverwaltungsgericht (Federal Administrative Court, Germany) between Mr Milkiyas Addis and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning, inter alia, a decision by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany; 'the Federal Office') which was taken in February 2013 rejecting Mr Addis' application for refugee status.

1 Original language: English.

2 OJ 2013 L 180, p. 60.

3 OJ 2005 L 326 p. 13. I shall, on occasion, for the sake of convenience, refer to those directives generically as 'the Procedures Directive'.

3. Mr Addis' request for refugee status in Germany was rejected by the Federal Office as inadmissible on the basis that he had already been granted refugee status in Italy. It is, however, agreed that that decision was adopted in breach of Mr Addis' right under both national and European Union law to a personal interview conducted by the determining authority — in this case, the Federal Office — on the question of the admissibility of his request. As we shall see, the fundamental issue presented by this request concerns the consequences of this failure to comply with an express, mandatory provision of the Procedures Directive.

4. It is in this context that the referring court asks the Court whether the exceptions provided for in the Procedures Directive as regards the requirement to conduct a personal interview are exhaustive and, in particular, whether the failure to conduct that interview should result in the annulment of the decision rejecting Mr Addis' application for refugee status as inadmissible. The referring court asks, moreover, whether the failure of the Federal Office to conduct a personal interview can — and, if so, under what conditions — be remedied in the course of judicial proceedings brought by Mr Addis challenging the legality of the decision rejecting as inadmissible his application for refugee status.

5. The Bundesverwaltungsgericht (Federal Administrative Court) has also asked if the decision of the Federal Office on inadmissibility must be annulled where an applicant for refugee status has had the opportunity during subsequent judicial proceedings to raise any pleas or arguments which could militate against that finding of inadmissibility, and even if all those pleas or arguments were taken into account, they would not lead to the adoption of a different decision.

6. Before outlining the applicable legal provisions and the facts of this case, I shall briefly refer to the somewhat complex procedural history of this case before the Court. This arose as the questions referred by the Bundesverwaltungsgericht (Federal Administrative Court) in this case overlapped to some extent — albeit not fully — with those in the cases giving rise to the judgment of 19 March 2019, *Ibrahim and Others*.[4]

II. Procedure before the Court

7. The request for a preliminary ruling in the present case C-517/17, which originally contained three questions, was lodged at the registry of the Court on 28 August 2017. By decision of 29 September 2017, the President of the Court joined Cases C-517/17 (the present case), C-540/17 and C-541/17. On 4 April 2018, it was decided to suspend joined Cases C-517/17, C-540/17 and C-541/17 until a decision in joined Cases C-297/17, C-318/17, C-319/17 and C-438/17 was taken.

8. The judgment of 19 March 2019, *Ibrahim and Others*[5] was notified to the referring court on 26 March 2019. On 26 April 2019, the referring court partly withdrew its questions in joined Cases C-517/17, C-540/17 and C-541/17.

9. As regards, more specifically, Case C-517/17, the referring court withdrew the first two questions it had originally referred to the Court. Those questions concerned the extent to which a Member State is precluded from rejecting an application for international protection as inadmissible on the ground that the applicant has already been granted refugee status by another Member State, where the living conditions in that other Member State do not satisfy the provisions of Article 20 et seq. of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for

4 C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219.

5 C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219.

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,[6] without however being such as to be in breach of Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter').

10. The referring court considered that the first two original questions had been answered by the judgment of 19 March 2019, *Ibrahim and Others*.[7]

11. By letter, lodged at the registry of the Court on 2 May 2019, the Bundesverwaltungsgericht (Federal Administrative Court) considered, however, that its third question in Case C-517/17 had not been addressed in that judgment.

12. By decision of the President of the Court of 16 May 2019, Case C-517/17 was disjoined from joined cases C-540/17 and C-541/17 and the suspension in all those cases was lifted. Joined cases C-540/17 and C-541/17 were disposed of by order of 13 November 2019, *Hamed and Omar*.[8]

13. As regards the present case, C-517/17, following a decision of the Court of 1 October 2019, a request for clarification was addressed to the referring court on 4 October 2019. A reply to that request was received by the Court on 6 November 2019.[9]

14. Prior to the suspension of Case C-517/17, written observations on the third question referred by the Bundesverwaltungsgericht (Federal Administrative Court) were lodged by the German, French, Hungarian and Netherlands Governments and by the European Commission. The German, Hungarian and Netherlands Governments and the Commission consider that Article 14(1) of Directive 2013/32 does not preclude the application of a national provision under which the failure to conduct a personal interview with the applicant in the case where the determining authority rejects an asylum application as inadmissible, pursuant to Article 33(2)(a) of Directive 2013/32, does not result in that decision being annulled by reason of that failure if the applicant has an opportunity in the judicial proceedings to set out all the circumstances militating against a decision of inadmissibility and, even having regard to those submissions, no other decision can be taken in the case.

15. By contrast, the French Government considers, in essence, that Article 14 of Directive 2013/32, read in the light of the general principle of the right to be heard, which forms an integral part of the rights of the defence, precludes a rule of national law in accordance with which an infringement, at first instance before the determining authority, of the right to be heard prior to the adoption of a decision of inadmissibility pursuant to Article 33(2)(a) of that directive does not lead to the annulment of that decision provided the applicant has the opportunity to submit his or her observations in the course of judicial proceedings.

16. A hearing was held before the Court on 15 January 2020, which Mr Addis, the Federal Office, the German Government and the Commission attended.

6 OJ 2011 L 337 p. 9.

7 C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219. I would note in that regard that the Court stated, inter alia, in paragraph 101 of that judgment that 'Article 33(2)(a) of the [Directive 2013/32] must be interpreted as meaning that it does not preclude 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. 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'.

8 C-540/17 and C-541/17, not published, EU:C:2019:964.

9 See point 102 of this Opinion.

III. Legal Framework

A. EU law

1. Directive 2013/32

17. Recitals 18 and 22 of Directive 2013/32 state as follows:

'(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

…

(22) It is also in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. …'

18. Article 1 of Directive 2013/32 states that its purpose is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95 ('the Qualifications Directive').

19. Article 2(b) of Directive 2013/32 defines the concept of 'application for international protection' as a request made by a third- country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of the Qualifications Directive, that can be applied for separately.

20. Article 14 of Directive 2013/32, entitled 'Personal interview', states:

'1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. …

Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010 [of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ 2010 L 132, p. 11)]. Persons conducting personal interviews of applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past.

…

2. The personal interview on the substance of the application may be omitted where:

(a) the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available; or

(b) the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

Where a personal interview is not conducted pursuant to point (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

3. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for international protection.

4. The absence of a personal interview pursuant to paragraph 2(b) shall not adversely affect the decision of the determining authority.

…'

21. Article 15 of Directive 2013/32, entitled 'Requirements for a personal interview', provides that:

'…

2. A personal interview shall take place under conditions which ensure appropriate confidentiality.

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

…

(b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;

…'

22. Article 25 of Directive 2013/32, entitled 'Guarantees for unaccompanied minors', states:

'1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 to 17, Member States shall:

…

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

…

3. Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

…'

23. Article 33 of Directive 2013/32, entitled 'Inadmissible applications', states:

'1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013 [of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31)], Member States are not required to examine whether the applicant qualifies for international protection in accordance with [the Qualifications Directive] where an application is considered inadmissible pursuant to this Article.

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

(a) another Member State has granted international protection;

…'

24. Article 34 of Directive 2013/32, entitled 'Special rules on an admissibility interview', provides:

'1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 33 in their particular circumstances before the determining authority decides on the admissibility of an application for international protection. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 42 in the case of a subsequent application.

This paragraph shall be without prejudice to Article 4(2)(a) of this Directive and to Article 5 of Regulation (EU) No 604/2013.

…'

25. Article 51(1) of Directive 2013/32 states:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate the text of those measures to the Commission.'

26. According to the first paragraph of Article 52 of Directive 2013/32:

'Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged and to procedures for the withdrawal of international protection started after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC.'

27. The first paragraph of Article 53 of Directive 2013/32 provides that Directive 2005/85 is repealed for the Member States bound by that directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of Directive 2005/85 set out in Part B of Annex II to Directive 2013/32.

28. Article 54 of Directive 2013/32 provides that that directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*, on 29 June 2013.

B. National law

29. According to the referring court, the facts at issue in the main proceedings are governed by the provisions of the Asylgesetz (Asylum Act; 'the AsylG') in the version published on 2 September 2008 [10] and modified by the Fünfzigste Gesetz zur Änderung des Strafgesetzbuches — Verbesserung des Schutzes der sexuellen Selbstbestimmung (50th Amendment to the Criminal Code — Improving the Protection of Sexual Self-Determination; 'StrÄndG 50') of 4 November 2016. [11]

30. Paragraph 24 of the AsylG states:

'(1) The Federal Office shall clarify the facts of the case and compile the necessary evidence. … It shall interview the foreigner in person. The hearing may be dispensed with if the Federal Office intends to recognise the foreigner's entitlement to asylum or if the foreigner claims to have entered the federal territory from a safe third country …

…'

31. Paragraph 29 of the AsylG, as modified by Paragraph 6 of the Integrationsgesetz (Integration Act) of 31 July 2016, with effect from 6 August 2016, [12] states:

'(1) An application for asylum shall be inadmissible if

…

2. Another EU Member State has already granted the foreigner international protection …

…'

32. Paragraph 36 of AsylG, entitled 'Procedure in cases of applications for asylum which are inadmissible under Paragraph 29(1) Nos 2 and 4 or which are manifestly unfounded', provides:

'(1) In cases where the asylum application is inadmissible under Paragraph 29(1) Nos 2 and 4 or manifestly unfounded, the foreigner shall be given one week to leave the country.

(2) The Federal Office shall send to the persons involved a copy of their asylum file along with the decision. The administrative file shall be transmitted without delay to the competent administrative court along with proof of delivery.

10 BGB1. 2008 I, p. 1798.
11 BGB1. 2016 I, p. 2460.
12 BGB1. 2016 I, p. 1939.

(3) Appeals of the deportation warning pursuant to Paragraph 80(5) of the Code of Administrative Court Procedure shall be filed within one week of notification; the notice from the Federal Office is to be enclosed with the appeal. The foreigner shall be informed of this. Paragraph 58 of the Code of Administrative Court Procedure shall be applied accordingly. The decision shall be taken in a written procedure; an oral court hearing in which the action is heard at the same time shall not be permitted. The decision is to be taken within one week of the expiry of the time limit under subparagraph 1 above. The chamber of the administrative court may extend the time limit under subparagraph 5 above by one week at a time. The second and additional extensions of the time limit shall be permitted only for serious reasons, in particular if the court is not able to take an earlier decision due to an unusually heavy workload. No deportation shall be permitted prior to a court decision if the appeal has been filed in time. A decision has been taken when the operative provisions of the decision have been signed by the judge or the judges and are available at the registry of the chamber. Applications for temporary relief against decisions by the Federal Office to set time limits for the ban on entry or residence in line with Paragraph 11(2) of the Residence Act and the order and time limits under Paragraph 11(7) of the Residence Act are also to be filed within one week of the notification. This shall not affect the enforceability of the deportation warning.

(4) An order to suspend deportation may be issued only if there are serious doubts as to the legality of the administrative act against which an appeal has been filed. Facts and evidence not stated by the persons involved shall not be considered unless they are obvious or known to the court. The introduction of facts and evidence which were not considered in the administrative procedure pursuant to Paragraph 25(3) and facts and circumstances within the meaning of Paragraph 25(2) which the foreigner did not produce in the administrative procedure may be left unconsidered by the court if the decision would otherwise be delayed.'

33. Paragraph 77(1) of the AsylG states:

'In disputes resulting from this Act, the court shall base its decision on the factual and legal situation at the time of the last oral proceedings; if the decision is taken without oral proceedings, it shall be based on the situation at the time the decision is taken. …'

34. Paragraph 46 of the Verwaltungsverfahrensgesetz (Administrative Procedure Act; 'the VwVfG') of 25 May 1976, in the wording last promulgated on 23 January 2003,[13] as amended by Paragraph 1 of the Viertes Gesetz zur Änderung verwaltungsverfahrensrechtlicher Vorschriften (Fourth Administrative Law Amendment Act) of 11 December 2008[14] states:

'Application for annulment of an administrative act which is not invalid … cannot be made solely on the ground that the act came into being through the infringement of regulations governing procedure, form or local competence, where it is evident that the infringement has not influenced the decision on the matter.'

13 BGB1. 2003 I, p 102.

14 BGB1. 2008 I, p. 2418.

35. Paragraph 80 of the Verwaltungsgerichtsordnung (Code of Administrative Court Procedure; 'the VwGo') in the wording last promulgated on 19 March 1991,[15] most recently amended by Paragraph 9 of the Gesetz zur Umsetzung der Dienstleistungsrichtlinie in der Justiz und zur Änderung weiterer Vorschriften (Act on the Implementation of the Services Directive in the Judiciary and on the Amendment of Other Provisions) of 22 December 2010[16] states:

'(1) An objection and a rescissory action shall have suspensive effect. This shall also apply to constitutive and declaratory administrative acts, as well as to administrative acts with a double effect (Paragraph 80a).

…

(5) On request, the court dealing with the main case may completely or partly order the suspensive effect in cases falling under subparagraph 2 Nos 1 to 3, and may restitute it completely or partly in cases falling under subparagraph 2 No 4. The request shall already be admissible prior to filing of the rescissory action. If the administrative act has already been implemented at the time of the decision, the court may order the rescission of implementation. The restitution of the suspensive effect may be made dependent on the provision of a security or on other instructions. It may also be time-limited.

…'

36. Paragraph 86 of the VwGo provides:

'(1) The court shall investigate the facts *ex officio*; those concerned shall be consulted in doing so. It shall not be bound to the submissions and to the motions for the taking of evidence of those concerned.

…'

IV. The facts of the main proceedings and the reference for a preliminary ruling

37. Mr Addis claims to be an Eritrean national.[17] In 2009, however, he made an application for asylum to the Italian authorities in which he gave a different identity and date of birth for this purpose and was registered as an Ethiopian citizen. This application was successful: he was provided with an identity card and given permission to stay until February 2015. The applicant stayed in Italy until September 2011 when he then travelled to Germany and applied for refugee status there.

38. Although he had previously denied entering any other European country, the details of the original Italian application emerged following a fingerprint analysis. In the light of this information the Federal Office rejected Mr Addis' application for asylum on 18 February 2013 on the basis that he had entered the Federal Republic of Germany from a safe third country and ordered his deportation to Italy.

39. Prior to the adoption of that decision, Mr Addis was not, however, given a personal interview, in breach, inter alia, of the applicable national asylum law. In that regard, the referring court stated that he was not heard on 'the reasons why he was persecuted nor on his residence in Italy nor on his refugee status recognised there'.

15 BGB1. 1991 I, p. 686.

16 BGB1. 2010 I, p. 2248.

17 According to the information provided by him.

40. Mr Addis' appeal against that decision was rejected by the Verwaltungsgericht Minden (Administrative Court, Minden, Germany) on 15 April 2013. He appealed that judgment to the Oberverwaltungsgericht Münster (Higher Administrative Court, Münster, Germany). The Oberverwaltungsgericht Münster (Higher Administrative Court, Münster) annulled the deportation order on 19 May 2016 on the basis that it was unclear whether Italy would take charge of Mr Addis. That court considered, however, that the appeal against the decision rejecting Mr Addis' application for refugee status should be dismissed.

41. Mr Addis appealed the judgment of the Oberverwaltungsgericht Münster (Higher Administrative Court, Münster) to the Bundesverwaltungsgericht (Federal Administrative Court). He argued before that court, in particular, that the Federal Office was not entitled to dispense with a personal interview before adopting the decision of 18 February 2013.

42. The Federal Republic of Germany argued before the Bundesverwaltungsgericht (Federal Administrative Court) that Mr Addis' application for refugee status was, in any event, inadmissible pursuant to Paragraph 29(1)(2) of the AsylG, as he had been already granted refugee status in Italy. It considered that the absence of a personal interview should not prevent the determining authority from deciding on an asylum application.

43. The referring court — the Bundesverwaltungsgericht (Federal Administrative Court) — considers that it is necessary to identify the consequences that an infringement of the obligation to conduct a personal interview will have in respect of the validity of a decision declaring an application for refugee status to be inadmissible. In that regard, the referring court considers that it is necessary to clarify that matter, particularly where the applicant has the opportunity to set out, in appeal proceedings, all the legal and factual elements challenging the contested decision and, despite this, that those elements would not lead to an annulment of that decision.

44. Given the failure of the Federal Office to comply with the obligation to conduct a personal interview pursuant to Article 12(1) of Directive 2005/85 and Articles 14(1) and 34 of Directive 2013/32, the referring court requests that the Court, in essence, interpret the scope of the exceptions provided for in Article 12(2) and (3) of Directive 2005/85 and those provided for in Article 14(2) of Directive 2013/32 and to indicate whether those exceptions are exhaustive, or if, taking into account the procedural autonomy of the Member States, Union law allows for other exceptions expressly provided for in national law.

45. In this regard, the referring court notes that, pursuant to national law, Paragraph 46 of the VwVfG treats the failure to conduct a personal interview as a minor irregularity when it is evident that such a failure had no impact on the substance of the decision adopted. It also states that a decision of inadmissibility adopted on the basis of Paragraph 29(1)(2) of the AsylG is a decision in relation to which there is no margin of discretion. In such cases, the failure to conduct a personal interview has no implications, as the Federal Office and, in turn, the administrative courts, are bound to examine all the conditions relating to the application of the legal provision in question. The referring court, however, referred to the jurisprudence of one chamber of the Bundesverfassungsgericht (Federal Constitutional Court, Germany)[18] in accordance with which the scope of Paragraph 46 of the VwVfG may be limited by the fact that Article 14(2) and Article 34(1) of Directive 2013/32 establish exceptions to the right to a personal interview and thus constitute a special rule of procedure which is exhaustive on the matter.

46. As regards the specific situation of Mr Addis, the referring court noted that the Federal Office and, in turn, the administrative courts, are obliged to examine whether the living conditions of a person granted refugee status in Italy comply, inter alia, with Article 4 of the Charter.

18 See judgment of the Bundesverfassungsgericht (Federal Constitutional Court) of 17 January 2017, 2 BvR 2013/16, DE:BVerfG:2017:rk20170117.2bvr201316, paragraph 20.

47. Indeed, the referring court set out in detail the manner in which the lower courts had rejected Mr Addis' application to annul the decision of the Federal Office of 18 February 2013 after having examined the matter of their own motion and the submissions of both Mr Addis and the Federal Office [19] on the living conditions that he would face in Italy.

48. In these circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) suspended proceedings and referred three questions to the Court for a preliminary ruling.

49. The third question, which is the only one that the Bundesverwaltungsgericht (Federal Administrative Court) has not withdrawn in the light of the judgment of 19 March 2019, *Ibrahim and Others*, [20] is in the following terms:

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

50. It is a consideration of that issue to which we can now turn.

V. Application ratione temporis

51. It must be recalled that Mr Addis applied for refugee status in Germany in September 2011 and that that application was rejected by a decision of the Federal Office in February 2013. The legality of that decision is currently being challenged before the referring court.

52. In its request for a preliminary reference, the Bundesverwaltungsgericht (Federal Administrative Court) referred to *both* Directive 2005/85 and Directive 2013/32.

53. As regards the application *ratione temporis* of the relevant legal provisions of national law in the case before it, the Bundesverwaltungsgericht (Federal Administrative Court) stated that, according to its settled case-law, legal developments which have occurred following the adoption of a judgment on appeal must, in certain circumstances, be taken into account by it. In the context of the present asylum proceedings, the Bundesverwaltungsgericht (Federal Administrative Court) confirmed that, in accordance with the first sentence of Paragraph 77(1) of the AsylG, it must rely on the factual and legal situation existing at the time of the last oral hearing in May 2016.

54. In that regard, the Bundesverwaltungsgericht (Federal Administrative Court) stated that Paragraph 29 of the AsylG, as amended with effect from 6 August 2016 by Paragraph 6 of the Integrationsgesetz (Integration Act), headed 'Inadmissible applications', is applicable in the proceedings before it. [21] Moreover, it would appear that the facts at issue in the main proceedings are governed by the provisions of the AsylG in the version published on 2 September 2008 and modified on 4 November 2016. [22]

19 The referring court stressed that it is the Federal Office which bore the burden of proof in accordance with the judgment of 15 October 2015, *Commission* v *Germany* (C-137/14, EU:C:2015:683, paragraphs 60 to 62).

20 C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219,

21 See, by analogy, judgment of 19 March 2019, *Ibrahim and Others* (C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 67).

22 See point 29 of this Opinion.

55. Article 51(1) of Directive 2013/32 requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 of, and Annex I to, that directive by 20 July 2015 at the latest. However, 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'. It is settled case-law that, by adding the words 'or an earlier date' to the first sentence of the first paragraph of Article 52, the EU legislature intended to enable Member States to apply their provisions implementing that directive with immediate effect to applications for international protection lodged before 20 July 2015. [23]

56. As Mr Addis applied for refugee status in Germany in September 2011, his application for international protection was submitted prior to the entry into force of Directive 2013/32 on 19 July 2013 and, indeed, well before the latest date by which that directive had to be transposed into national law, namely, 20 July 2015.

57. It would appear, however, subject to verification by the referring court, that in accordance with the first sentence of Paragraph 77(1) of the AsylG, it is the provisions of national law transposing or capable of transposing [24] the provisions of Directive 2013/32 which are applicable to the case in the main proceedings. [25]

58. In that regard, it must be recalled that in paragraph 74 of the judgment of 19 March 2019, *Ibrahim and Others*, [26] the Court found, inter alia, that the first paragraph of Article 52 of Directive 2013/32, which contains transitional provisions concerning the application of laws transposing that directive, must be interpreted as meaning that it permits a Member State to provide for the immediate application of the provision of national law transposing 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. [27] Although the Court was not called upon to clarify what exactly was meant by the reference to a 'final decision' in this context, I would interpret this phrase as a reference to a final decision taken by the relevant administrative authorities (in the present case, the Federal Office) on the application for international protection as distinct from any subsequent judicial proceedings in which the decision to grant protection or not was challenged.

59. So far as the present case is concerned, it may be observed that the final decision in respect of Mr Addis's asylum application was taken by the Federal Office as far back as February 2013. This was several months before the publication of Directive 2013/32 in the Official Journal in June 2013 and its entry into force in the following month. [28] In these circumstances, I consider that the anticipated application of Directive 2013/32 in the manner permitted by Article 52 thereof (and as so interpreted

23 Judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraphs 39 and 40 and the case-law cited).

24 See judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraphs 77 to 81).

25 I would note that there is no evidence in the file that the Federal Republic of Germany has failed to transpose Directive 2013/32, in particular, those provisions relating to the requirement of a personal interview. Moreover, the referring court considers that legislation modified in 2016, and thus subsequent to 20 July 2015, is applicable in the main proceedings.

26 C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219. See, also, judgments of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 73), and of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraph 40).

27 In paragraphs 70 to 74 of the judgment of 19 March 2019, *Ibrahim and Others* (C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219), the Court, however, stated, inter alia, that the first paragraph of Article 52 of Directive 2013/32 precludes such an immediate application in a situation where both the application for asylum and a take back request pursuant to 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 (OJ 2003 L 50, p. 1) were lodged before the entry into force of Directive 2013/32. There is no indication in the file before the Court that such a take back request was lodged in respect of Mr Addis. Indeed, the referring court stated in paragraph 3 of the request for a preliminary ruling that such a request could not be made in accordance with the Dublin rules. In that regard, the Bundesverwaltungsgericht (Federal Administrative Court) indicated that Mr Addis might be sent to Italy in accordance with a readmission agreement. In paragraph 5 of the request for a preliminary ruling, the Bundesverwaltungsgericht (Federal Administrative Court) stated, however, that the deportation order to Italy in respect of Mr Addis was unlawful as it was not known whether Italy was still willing to take charge of him after the expiry of the travel document issued to him on 5 February 2015.

28 See Article 54 of Directive 2013/32.

by this Court in its judgment of 19 March 2019, *Ibrahim and Others*)[29] simply does not apply to the present case. While that judgment permitted the anticipated application of that directive to decisions which were pending even before the last date for transposition, namely 20 July 2015,[30] where this was sanctioned by the relevant national law, that principle does *not* apply where the final administrative decision was taken before even the publication of that directive. I take the view, therefore, that the earlier version of the Procedures Directive, namely Directive 2005/85, is the one which applies, *ratione temporis*, to the present case.

60. I note, however, that at the hearing *all* of the parties, including Mr Addis, took a different view of the application *ratione temporis* of the directives in question and they contended that the later directive, namely Directive 2013/32, did in fact govern the present case. While still adhering respectfully to my view that it does *not* apply, given the unanimous attitude of the parties together with the approach adopted by the referring court, I propose, accordingly, for the remainder of this Opinion to proceed on the basis that the present case is, in fact, governed by Directive 2013/32. I shall therefore assume that the provisions of Articles 1 to 30, Article 31(1), (2), and (6) to (9), Articles 32 to 46, Articles 49 and 50 of, and Annex I to, Directive 2013/32 are applicable in the context of the main proceedings.

VI. Analysis

A. Preliminary remarks

61. The right to a personal interview exists not only where the determining authority intends to take a decision on the merits of an application for international protection but also where it intends, as in the case of Mr Addis, to adopt a decision pursuant to Article 33 of Directive 2013/32 on the admissibility of such an application. In that regard, both Articles 14 and 34 of Directive 2013/32[31] specifically require the *determining authority*[32] to conduct a personal interview with an applicant for international protection *prior* to the adoption of a decision on the merits or the admissibility of an application.

62. It is clear from the definition of 'determining authority' in Article 2(f) of Directive 2013/32 that such an interview must be conducted by a quasi-judicial or administrative body designated by a Member State in accordance with Article 4(1) of that directive.[33] Directive 2013/32 itself makes no provision for the conduct of a personal interview by a court or tribunal. It may be noted that the Court, in paragraph 103 of the judgment of 25 July 2018, *Alheto*,[34] drew a clear distinction between the 'determining authority', defined in Article 2(f) of Directive 2013/32 and the 'court or tribunal' referred

29 C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219. See, also, judgments of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 73 et seq.), and of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraph 40 et seq.).

30 See Article 51(1) of Directive 2013/32.

31 Given that the case in the main proceedings concerns the admissibility of an application for refugee status, Article 34 of Directive 2013/32, rather than Article 14 of that directive, applies. I shall, however, for the sake of completeness, refer generally to both provisions unless certain relevant differences need to be highlighted.

32 An exception to this principle is provided in Article 14(1), second paragraph, and Article 34(2) of Directive 2013/32. Article 14(1), second paragraph, of that directive provides 'where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training which *shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010*. Persons conducting personal interviews of applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past'. Article 34(2) of Directive 2013/32 provides that 'Member States may provide that the personnel of authorities other than the determining authority conduct the personal interview on the admissibility of the application for international protection. In such cases, Member States shall ensure that *such personnel receive in advance the necessary basic training*, in particular with respect to international human rights law, the Union asylum *acquis* and *interview techniques*'. Emphasis added.

33 For an exception to that rule, see Article 4(2) of Directive 2013/32.

34 C-585/16, EU:C:2018:584.

to in Article 46 of that directive Thus, the procedure before a determining authority is governed by the provisions of Chapter III of that directive, entitled 'Procedures at first instance', while the procedure before a court or tribunal must comply with the rules laid down in Chapter V of that directive, entitled 'Appeals procedures', which are set out in Article 46 thereof.

63. It is not disputed that Mr Addis' right to a personal interview conducted by the determining authority in accordance with Directive 2013/32 was thereby infringed. [35]

64. It would appear, however, from the request for a preliminary ruling, that while Mr Addis was not heard personally by the Federal Office, inter alia, in respect of the conditions he would face in Italy if he were to be returned there, the referring court nonetheless considers that that lapse was fully repaired or compensated for by the national court proceedings, which were conducted in accordance with Chapter V of Directive 2013/32.

65. Thus, according to the referring court, in these annulment proceedings challenging the admissibility decision, Mr Addis gave a detailed account in his action of the difficulties he would face in Italy. The Verwaltungsgericht Minden (Administrative Court, Minden) court decided that the deportation order issued in respect of him could not be executed. In accordance with the jurisdiction vested in it by Paragraph 86(1) of the VwGO, it decided of its own motion to consult information on the rights that a recognised refugee has in Italy regarding residence, movement, access to work and healthcare. The referring court stated that the administrative court dismissed Mr Addis' appeal on the basis of its own assessment of the facts and evidence. That court concluded, after examining the submissions and the general circumstances of Mr Addis, that as a young unmarried person he could gradually gain a foothold in Italy and that it was also possible for him, at least initially, to rely on the assistance of charitable organisations. It pointed out that many refugees — particularly young men — frequently find seasonal work in the agricultural sector.

66. According to the referring court, the administrative court also examined of its own motion whether, in the event of deportation to the Italian border, Mr Addis might be exposed to treatment contrary to Article 3 of the European Convention on Human Rights ('the ECHR'). Having consulted the relevant country of origin information supplied by the German Foreign Ministry and the Swiss Refugee Council, as well as NGO sources such as the Associazione per gli Studi Giuridici sull'Immigrazione (Association for the Study of Law relating to Immigration), that court concluded that while the opportunities for access by refugees to both public and private assistance were more limited than in the case of Italians, these restricted opportunities were not at a level which would otherwise amount to an infringement of Article 3 of the ECHR by, for example, rendering him totally destitute.

67. In the present request for a preliminary ruling, the Court must examine whether the exceptions to the right to a personal interview pursuant to Articles 14 and 34 of Directive 2013/32 are exhaustive in nature and, if so, what the consequences of a breach of Mr Addis' procedural rights by the determining authority actually are. In particular, the Court is asked whether the failure to conduct that interview should result in the decision rejecting as inadmissible Mr Addis' application for refugee status being annulled or whether the failure of the determining authority can — and, if so, under what conditions — be remedied in the course of judicial proceedings under Chapter V of Directive 2013/32.

35 See Article 34(1) of Directive 2013/32.

B. Are the exceptions to the right to a personal interview in accordance with Articles 14 and 34 of Directive 2013/32 exhaustive in nature?

68. Article 14(2) of Directive 2013/32 outlines the circumstances in which a personal interview may be omitted by the determining authority of a Member State. Moreover, Article 14(3) of Directive 2013/32 provides that 'the absence of a personal interview *in accordance* with this Article shall not prevent the determining authority from taking a decision on an application for international protection'.[36] It follows from the very wording of Article 14(3) of Directive 2013/32 and the use of the terms '*the absence of a personal interview in accordance with this Article*', that a determining authority may not adopt a decision on the merits of an application for international protection in the absence of a personal interview save where one of the two specific exceptions provided for in Article 14 is also applicable. It is not suggested that the present case comes within either of these exceptions.

69. It is plain from the very wording of this provision that the exceptions contained in Article 14(2) of Directive 2013/32 are exhaustive in nature. It follows that Member States may not adopt additional exceptions under their own national law.

70. As regards a decision on the admissibility of an application for international protection, Article 34(1) of Directive 2013/32 provides, in effect, that the determining authority[37] of a Member State shall conduct a personal interview on the admissibility of an application for international protection prior to adopting a decision on the matter. It further states that Member States may provide for an exception to that right *only* in accordance with Article 42 of that directive in the case of a subsequent application. It is thus clear from the wording itself of Article 34(1) of Directive 2013/32 that the exception in respect of a subsequent application is exhaustive in nature.

71. In my view, Member States do not have the power to introduce further exceptions to the right to a personal interview other than those specifically provided for by the EU legislator in Articles 14 and 34 of Directive 2013/32.

72. It is thus clear from the express language of Article 14(3) of Directive 2013/32 that a determining authority may not adopt a decision on the merits of an application for international protection without conducting a personal interview unless one of the exceptions listed in Article 14(2) of that directive applies. The same applies, in my view, to a decision on the admissibility of an application for international protection pursuant to Article 33 of Directive 2013/32 adopted in the absence of a personal interview pursuant to Article 34 of that directive.

73. As I have already observed, it would appear from the file before the Court that none of the exceptions to the right to a personal interview laid down in Directive 2013/32 apply in the case of Mr Addis. It is only fair to add that none of the parties have suggested otherwise.

C. The consequences of a breach of an obligation to conduct a personal interview — can such a breach be remedied during the course of judicial proceedings?

74. This was the issue which lies at the heart of the present dispute between the parties. It must be stressed that — as recitals 11 and 12 and Article 1 of Directive 2013/32 all indicate — the framework for granting international protection is based on the concept of a single procedure and minimum common rules.[38] While Directive 2013/32 is itself silent on the consequences which may ensue when

36 Emphasis added.

37 Subject to Article 34(2) of Directive 2013/32.

38 Judgment of 25 July 2018, *A* (C-404/17, EU:C:2018:588, paragraph 30).

a determining authority fails to conduct a personal interview of an applicant for international protection in the manner which is required by law, it nonetheless seems inherent in the legislative scheme posited by that directive that the explicit requirement of a personal interview is an integral and vital part of the entire asylum process.[39]

75. In these circumstances the Court is asked, in essence, whether in the event of the failure of the determining authority to conduct a personal interview, the court or tribunal which subsequently carries out a full and *ex nunc* examination of both facts and points of law pursuant to Article 46(3) of Directive 2013/32 can, in principle, remedy the breach by itself conducting that personal interview and then confirming the decision of the determining authority. Alternatively, must it nonetheless annul the decision of the determining authority and refer the case back to that authority in order for it to conduct such an interview and adopt a — potentially new — decision?

76. The question of the referring court is novel and, despite certain similarities, has not been previously resolved by the judgments of 26 July 2017, *Sacko*;[40] of 25 July 2018, *Alheto*;[41] or of 29 July 2019, *Torubarov* ,[42] which admittedly touch on related points. These cases are nevertheless instructive as regards the relationship between the 'Procedures at First Instance' in Chapter III of Directive 2013/32 and the 'Appeals Procedures' in Chapter V of that directive. I shall therefore briefly examine this case-law in the context of this case.

1. Previous case-law of the Court — Directive 2013/32

(a) Judgment of 26 July 2017, Sacko (C-348/16, EU:C:2017:591)

77. In paragraphs 33 to 35 of the judgment of 26 July 2017, *Sacko*,[43] the Court restated its settled case-law with regard to the proceedings at first instance covered by Chapter III of Directive 2013/32. It recalled the fact that when the authorities of the Member States take measures which come within the scope of EU law, they are, as a rule, subject to the obligation to observe the rights of defence of addressees of decisions which significantly affect their interests. In particular, the Court has held that the right to be heard in any procedure, inherent in respect of the rights of the defence, which is a general principle of EU law, guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely. In that regard, the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his or her observations before that decision is adopted is, inter alia, to enable that person to correct an error or submit such information relating to his or her personal circumstances in order to argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content.

78. In paragraph 49 of the judgment of 26 July 2017, *Sacko* ,[44] the Court stated that Directive 2013/32, in particular Articles 12, 14, 31 and 46 thereof, read in the light of Article 47 of the Charter, must be interpreted as not precluding the national court or tribunal hearing an appeal against a decision rejecting a manifestly unfounded application for international protection from dismissing the appeal *without hearing the applicant* where the factual circumstances leave no doubt as to whether that decision was well founded. This conclusion was, however, subject to the following conditions: first, during the proceedings at first instance, the applicant must have been given the opportunity of a

39 See, also, to that effect, judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraphs 145 to 149), referred to in point 87 of this Opinion.

40 C-348/16, EU:C:2017:591.

41 C-585/16, EU:C:2018:584.

42 C-556/17, EU:C:2019:626.

43 C-348/16, EU:C:2017:591.

44 C-348/16, EU:C:2017:591.

personal interview on his or her application for international protection, in accordance with Article 14 of that directive, and the report or transcript of the interview, if an interview was conducted, was placed on the case file, in accordance with Article 17(2) of that directive, and, second, the court hearing the appeal may order that a hearing be conducted if it considers it necessary for the purpose of ensuring that there is a full and *ex nunc* examination of both facts and points of law, as required under Article 46(3) of that directive.

79. Thus, in the case which gave rise to the judgment in *Sacko*, the determining authority had in fact conducted a personal interview [45] and what was at stake was whether and to what extent a national court or tribunal hearing an appeal against a decision rejecting a manifestly unfounded application for international protection could rely on a transcript of that interview.

80. In my view, the judgment of 26 July 2017, *Sacko* clearly underscores the importance of a personal interview conducted by the determining authority in the context of Directive 2013/32. The Court further stressed that this requirement 'applies only to the authority responsible for examining applications for international protection that is competent to take decisions at first instance and does not therefore apply to appeal procedures'. [46]

81. The facts of the judgment of 26 July 2017, *Sacko* [47] are also of relevance in this context. Here, the applicant had been interviewed at first instance by the regional commissioner for the grant of international protection. The commissioner concluded that he was an economic migrant and that he was not, on that basis, entitled to asylum. That finding was then challenged before the Italian courts who then referred to this Court the question of whether they were obliged to hear the applicant personally as part of the 'full and *ex nunc* examination of both facts and points of law' which national courts are required to conduct pursuant to Article 46(2). [48]

82. As I have just noted, this Court answered that question in the negative (subject to certain conditions), with Advocate General Sanchez Bordona saying:

'As Directive 2013/323 requires an interview to be held at the administrative stage of processing of the application for international protection, I consider that it need only be repeated in judicial proceedings if the (first) interview turns out to be insufficiently informative for the court which is hearing the judicial action and has doubts as to the outcome of the action.' [49]

83. The real point, however, is that the judgment of 26 July 2017, *Sacko* [50] did not deal directly with the situation presented here, namely, where the interview was not conducted *in the first instance* by the determining authority responsible for examining Mr Addis' application for asylum.

45 Judgment of 26 July 2017 (C-348/16, EU:C:2017:591). According to paragraph 18 thereof, 'on 10 March 2016, the Regional Commission, attached to the Prefettura di Milano (Milan Prefecture, Italy) interviewed Mr Sacko concerning his situation and the reasons for his application'.

46 Judgment of 26 July 2017, *Sacko* (C-348/16, EU:C:2017:591, paragraph 26).

47 C-348/16, EU:C:2017:591.

48 Judgment of 26 July 2017, *Sacko* (C-348/16, EU:C:2017:591, paragraph 50).

49 Opinion of Advocate General Campos Sánchez-Bordona in *Sacko* (C-348/16, EU:C:2017:288, point 65).

50 C-348/16, EU:C:2017:591.

(b) Judgment of 25 July 2018, Alheto (C-585/16, EU:C:2018:584)

84. In the judgment of 25 July 2018, *Alheto*,[51] the Court found that in accordance with Article 47 of the Charter, the requirement for a full and *ex nunc*[52] examination pursuant to Article 46(3) of Directive 2013/32 implies that the court or tribunal seised of the appeal must interview the applicant, unless it considers that it is in a position to carry out the examination solely on the basis of the information in the case file, including, where applicable, the report or transcript of the personal interview before that authority.[53] In the event, however, that *new evidence comes to light after the adoption of the decision* under appeal, the court or tribunal *is required*, pursuant to Article 47 of the Charter, to offer the applicant the opportunity to express his or her views when that evidence could affect him or her negatively.[54]

85. If the determining authority did not examine a ground of inadmissibility and, consequently, did not conduct the personal interview referred to in Article 34 of Directive 2013/32, it is for the court or tribunal, if it considers that such a ground ought to have been examined by that authority or should be examined on account of new evidence that has arisen, to conduct such a hearing.[55] As the Court observed in *Alheto*, 'in the event that the court or tribunal hearing the appeal plans to examine a ground of inadmissibility which has *not* been examined by the determining authority, it must conduct a hearing of the applicant in order to allow that individual to express his or her point of view in person concerning the applicability of that ground to his or her particular circumstances'.[56]

86. It is thus clear from the facts in the case giving rise to the judgment of 25 July 2018, *Alheto*,[57] that the determining authority in that case did *not* adopt a decision of inadmissibility. It was thus *not* required to carry out a personal interview in accordance with Article 34 of Directive 2013/32. As the question of inadmissibility was first raised by a court of tribunal in the context of a full and *ex nunc* examination of both facts and point of law pursuant to Article 46(3) of Directive 2013/32, this Court held that it was incumbent on *that* court or tribunal to conduct a personal interview of the applicant itself in order to protect the rights guaranteed by Article 47 of the Charter.[58] It follows that where a court raises on appeal and of its own motion a question of admissibility which was *not* previously examined by the determining authority, that court *must* itself conduct a personal interview.

51 C-585/16, EU:C:2018:584.

52 In paragraph 52 of the judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626), the Court restated that the expression '*ex nunc*' points to the court or tribunal's obligation to make an assessment that takes into account, should the need arise, new evidence which has come to light after the adoption of the decision being challenged. As for the word 'full', that adjective confirms that the court or tribunal is required to examine both the evidence which the determining authority took into account or could have taken into account and that which has arisen following the adoption of the decision by that authority. In order to ensure that applications are processed as rapidly as possible, without prejudice to an adequate and complete examination being carried out, the court or tribunal must be able to examine all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand, so that the application for international protection may be considered in an exhaustive manner without it being necessary to refer the case back to the determining authority. See paragraph 53 of the same judgment. The full and *ex nunc* examination to be carried out by the court need not necessarily involve a substantive examination of the need for international protection and may accordingly concern the admissibility of the application for international protection, where national law allows this pursuant to Article 33(2) of Directive 2013/32. See judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 115).

53 See judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:58, paragraph 114). In paragraph 126 of that judgment, the Court stated that in the event that the ground of inadmissibility examined by the court or tribunal hearing the action was also examined by the determining authority before the document contested in the action was adopted, that court or tribunal may rely on the report of the personal interview conducted by that authority without hearing the applicant, unless it considers it necessary. See, also, judgment of 26 July 2017, *Sacko* (C-348/16, EU:C:2017:591, paragraph 48).

54 Judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 114).

55 See judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 127). Moreover, in paragraph 128 of that judgment the Court stated that, as laid down in Article 12(1)(b) of Directive 2013/32, for personal interviews conducted by the determining authority the applicant must receive, during his hearing by the court, the services of an interpreter whenever necessary in order to present his or her arguments. See, also, Article 15(3)(c) of Directive 2013/32.

56 Judgment of 25 July 2018 (C-585/16, EU:C:2018:584, paragraph 130). Emphasis added.

57 C-585/16, EU:C:2018:584.

58 See judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 130).

87. In addition, in *Alheto*, the Court stated that Article 46(3) of Directive 2013/32 only concerns the 'examination' of the appeal and does not therefore govern what happens after any annulment of the decision under appeal.[59] The Court held, in essence, that there is no obligation for a court or tribunal seised at first instance, which annuls a decision, to rule on the application for international protection itself,[60] as the EU legislature did not intend to introduce any common rule to the effect that the quasi-judicial or administrative body referred to in Article 2(f) of that directive should be deprived of its powers following the annulment of its initial decision concerning an application for international protection. Member States may thus provide that the file must, following such an annulment, be referred back to that body for a new decision. However, that body must adopt a new decision within a short period of time and must comply with the assessment contained in the judgment annulling the initial decision.[61]

88. This case-law accordingly demonstrates that the court or tribunal seised at first instance must, in certain circumstances, conduct a personal interview where it raises matters of its own motion that were not previously examined by the determining authority. Moreover, the court or tribunal seised at first instance which annuls a decision finding an application for international protection inadmissible on the basis that the applicant's right to a personal interview has been breached by the determining authority *may* refer the file back to the quasi-judicial or administrative body referred to in Article 2(f) of Directive 2013/32 — in this case, the Federal Office — for a new decision.

89. It may nonetheless be observed that the case giving rise to the judgment of 25 July 2018, *Alheto*,[62] is different to the present case in at least two important respects. First, in the present case the determining authority *did* raise the issue of admissibility at first instance, yet did not conduct a personal interview. Second, the Bundesverwaltungsgericht (Federal Administrative Court) has confirmed that even where it is suggested that an interview should be conducted by the reviewing court, a personal interview of the kind envisaged by Article 15 of Directive 2013/32 cannot be guaranteed.

2. Consequences to be determined by national law — principle of equivalence and effectiveness

90. What this case-law has heretofore not addressed is whether a court faced with proceedings seeking the annulment of a decision finding an application for international protection inadmissible on the basis that the applicant's right to a personal interview has been breached by the determining authority is obliged to annul that decision and refer the file back to that authority for a new decision. Alternatively, the question arises as to whether the court or tribunal can itself conduct the personal interview and, having heard all the arguments of the applicant opposing an application for inadmissibility, confirm the decision of the determining authority.

59 Judgment of 25 July 2018 (C-585/16, EU:C:2018:584, paragraphs 145 to 149). See, also, judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraph 54).

60 The Court confirmed in paragraph 69 of the judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626), that Article 46(3) of Directive 2013/32 does not require Member States to confer on courts or tribunals with jurisdiction to hear appeals covered by that provision the power, pursuant to EU law, to substitute its own decision for that of the determining authority. However, Member States are required to ensure, in each case, that the right to an effective remedy enshrined in Article 47 of the Charter is complied with.

61 In that regard, the Court stated in paragraph 58 of the judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626), that Article 46(3) of Directive 2013/32 would be deprived of any practical effect if it were accepted that, after delivery of a judgment in which the court or tribunal of first instance conducted, in accordance with that provision, a full and *ex nunc* assessment of the international protection of the applicant, the quasi-judicial or administrative body referred to in Article 2(f) of Directive 2013/32 could take a decision that ran counter to that assessment.

62 C-585/16, EU:C:2018:584.

91. I consider that it follows by analogy with the settled case-law of the Court on the right to be heard [63] that where, as in the main proceedings, the consequences of the infringement of the right to a personal interview are not laid down by Directive 2013/32 or, indeed, any other provision of EU law, those consequences generally fall to be determined by national law. This, however, is subject to the proviso that the rules adopted to that effect are the same as those to which individuals in comparable situations under national law are subject (the principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights conferred by the European Union legal order (the principle of effectiveness). [64]

92. In this context it is also necessary to bear in mind that Directive 2013/32 seeks to ensure that applications for international protection are dealt with '*as soon as possible …, without prejudice to an adequate and complete examination being carried out*'. [65]

93. Moreover, it must be recalled that in the judgment of 9 February 2017, *M*, [66] the Court stated that the purpose of a personal interview is to ensure that the determining authority is objectively in a position to determine with full knowledge of the facts whether a request for international protection should be granted or not. Where an applicant has particular vulnerabilities, a personal interview becomes all the more imperative.

94. In paragraph 38 et seq. of the judgment of 10 September 2013, *G. and R.*, [67] the Court found that according to European Union law, an infringement of the rights of the defence, in particular the right to be heard, results in annulment only if, had it not been for such an irregularity, the outcome of the procedure might have been different. It follows that not every irregularity in the exercise of the rights of defence in the course of the administrative procedure will result in the annulment or the setting aside of the decision which has been challenged.

95. It would appear from the file before the Court that the relevant applicable national provisions are, inter alia, Paragraph 46 of the VwVfG and Paragraph 29(1)(2) of the AsylG. According to the referring court, Paragraph 46 of the VwVfG treats the failure to conduct a personal interview as a minor irregularity when it is evident that such a failure had no impact on the substance of the decision adopted. Moreover, the referring court states that a decision of inadmissibility adopted on the basis of Paragraph 29(1)(2) of the AsylG is a decision in relation to which there is no margin of discretion. In such cases, the failure to conduct a personal interview has no implications, as the Federal Office and, in turn, the administrative courts are bound to examine all the conditions relating to the application of the legal provision in question.

96. As there is no evidence in the file before the Court that the national procedure before the courts does not respect the principle of equivalence, that procedure must be examined in the light of the principle of effectiveness.

97. The essential question which must now be asked is whether the national court or tribunal seised on appeal is in a position to replicate a personal interview while ensuring that all the relevant mandatory requirements and guarantees specified in Directive 2013/32 are met.

63 In its judgment of 5 November 2014, *Mukarubega* (C-166/13, EU:C:2014:2336, paragraph 45), the Court stated that such a right is inherent in respect for the rights of the defence, which is a general principle of EU law.

64 Judgments of 10 September 2013, *G. and R.* (C-383/13 PPU, EU:C:2013:533, paragraph 35); of 5 November 2014, *Mukarubega* (C-166/13, EU:C:2014:2336, paragraph 51); and of 11 December 2014, *Boudjlida* (C-249/13, EU:C:2014:2431, paragraph 41).

65 Recital 18 of Directive 2013/32, emphasis added. See, also, judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 109).

66 C-560/14, EU:C:2017:101, paragraph 49 et seq.

67 C-383/13 PPU, EU:C:2013:533.

98. In that regard, it is necessary to consider whether, first, a personal interview by a court or tribunal is in fact guaranteed in all cases under national law where the determining authority has failed to conduct such an interview and, second, in the event that a personal interview is guaranteed, whether it complies with the relevant specific mandatory requirements laid down by Directive 2013/32 regarding how such an interview must be conducted.

(a) Is a personal interview guaranteed under national law?

99. Article 46(1) of Directive 2013/32 guarantees applicants for international protection the right to an effective remedy before a court or tribunal against decisions taken on their application. In that regard, Article 46(1)(a)(ii) and (3) of Directive 2013/32 provides, in effect, that Member States must ensure that an applicant has a right to an effective remedy before a court or tribunal when his or her application for international protection is considered inadmissible.[68] The court or tribunal must conduct a full and *ex nunc* examination of both the facts and points of law.

100. It must be noted, however, that one of the consequences for the person whose application is rejected on the basis that it is inadmissible pursuant to Article 33(2)(a) of Directive 2013/32[69] is that, contrary to what is provided for in the case of a simple rejection, that person may not be allowed to remain, pending the outcome of his or her appeal, in the territory of the State in which the application was lodged. This is clear from the provisions of Article 46(5) and (6) of Directive 2013/32.[70]

101. The Court stated, however, in paragraph 53 of the order of 5 July 2018, *C and Others* ,[71] that in accordance with the requirements of the last sentence of Article 46(6) of Directive 2013/32, the person concerned must be able to have recourse to the courts, which will decide whether he or she may remain on that territory until judgment has been given on his or her appeal. Article 46(8) of that directive provides that, pending the outcome of judicial proceedings to determine whether or not the applicant may remain, the Member State in question must grant that person authorisation to remain in its territory.

102. It that regard, it would appear, subject to verification by the referring court, that an appeal brought against a decision of the Federal Office rejecting as inadmissible, pursuant to Paragraph 29 of the AsylG, an application for international protection lodged by a third-country national, does not have a suspensive effect.[72] Moreover, the referring court stated in its answer, lodged at the registry of the Court on 6 November 2019, to a question put to it by the Court[73] that if an application for interim legal protection against the deportation order of the Federal Office is not filed pursuant to Paragraph 80(5) of the VwGO, the deportation decision may be executed before it becomes legally binding.[74] The same applies if an application pursuant to Paragraph 80(5) of the VwGO is made in good time but is unsuccessful. In addition, the referring court indicated that, pursuant to Paragraph 36(3)(4) of the AsylG, where an asylum application is inadmissible pursuant to Paragraph 29 of the AsylG on the basis that the applicant was granted international protection in another Member State, the procedure is normally in writing and, generally speaking, at least, there is no oral hearing nor is there any effective opportunity for the applicant to be heard in person in the manner of a personal interview.

68 Judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraphs 115 and 120).

69 As another Member State has granted international protection.

70 See, by analogy, judgment of 25 July 2018, *A* (C-404/17, EU:C:2018:588, paragraph 27). See, also, order of 5 July 2018, *C and Others* (C-269/18 PPU, EU:C:2018:544, paragraph 55).

71 C-269/18 PPU, EU:C:2018:544.

72 See Paragraph 75(1) of the AsylG.

73 See point 13 of this Opinion.

74 The representative for Mr Addis stressed at the hearing on 15 January 2020 that an application in such cases must be filed within a week.

103. It would appear, therefore, from the answer of the referring court, that in the event that the determining authority — in this case, the Federal Office — fails to conduct a personal interview and rejects an application as inadmissible,, a personal interview by a court or tribunal seised on appeal is not guaranteed. It must follow that on this ground alone the principle of effectiveness is not respected, as the rights of the applicant have not been secured at any stage of the procedure, either administrative or judicial. To find otherwise would, in effect, amount to the judicial quasi-repeal of the applicant's right to a personal interview clearly provided for by Directive 2013/23 and would set at naught a safeguard deemed to be fundamental by the European Union legislator.

104. In the event that a court or tribunal seised on appeal conducts a personal interview where the determining authority had previously failed to conduct a personal interview on the basis that an application is inadmissible, it is necessary to examine whether the manner in which such an interview takes place respects the principle of effectiveness.

105. Before answering that question it may be convenient first to consider the rules for conducting a personal interview by an administrative or quasi-judicial body laid down in Directive 2013/32.

(b) Rules for conducting a personal interview laid down in Directive 2013/32

106. It must be noted that the European legislator did not simply specify in Articles 14 and 34 of Directive 2013/32 that a personal interview of an applicant for international protection must be conducted by the determining authority and then leave the conditions relating thereto entirely to the Member States. On the contrary, the European legislator laid down specific, detailed and mandatory rules regarding the conduct of those interviews. This is evidenced by the repeated use in Article 15 of Directive 2013/32 of terms such as 'a personal interview shall …' and 'Member States shall …'.[75]

107. Thus, Article 15 of Directive 2013/32 in particular lays down a number of requirements or guarantees in respect of the conduct of a personal interview. I would highlight in particular the requirement that, in accordance with Article 15(2) of Directive 2013/32, a personal interview must take place under conditions which ensure appropriate confidentiality.[76] Article 15(4) of Directive 2013/32 states, however, that Member States may provide for rules concerning the presence of third parties at a personal interview.

108. Article 15(3)(a) of Directive 2013/32 requires Member States to ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability.[77]

75 The detailed conditions concerning the conduct of a personal interview laid down in Article 15 of Directive 2013/32 apply in respect of all applications for international protection. No distinction is drawn in Directive 2013/32 between the applications of those conditions in respect of a personal interview pursuant to Article 14 of that directive and Article 34 thereof.

76 This could perhaps be secured by the court or tribunal conducting the personal interview *in camera*.

77 It must be noted that recital 29 of Directive 2013/32 provides that 'certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a *first instance decision* is taken'. Emphasis added. Moreover, recital 32 of Directive 2013/32 provides, inter alia, that 'with a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution'.

(c) Assessment

109. Against this background, one may frankly doubt whether in those instances where an infringement of Articles 14 and 34 has occurred a court or tribunal is then competent in *all cases*, in effect, to step into the shoes of a determining authority and to conduct a personal interview in accordance with Article 15 of Directive 2013/32.[78] After all, the European legislator clearly intended for a detailed personal interview to be conducted at first instance in confidential surroundings by specially trained administrators as distinct from questioning by judges (who may not have this training) in a judicial manner in open court. The principle of effectiveness in Article 47 of the Charter requires that these mandatory requirements should not be set aside lightly, as compliance with this express legislative stipulation was clearly intended by the European legislator to be a prerequisite to the validity of any subsequent adverse asylum decision.

110. In that regard, Article 4(3) and (4) of Directive 2013/32 provides that the Member States must ensure that the personnel of the determining authority *are properly trained*.[79] A combined reading of Article 4(3) and (4) of Directive 2013/32 and Article 6(4)(c) of Regulation No 439/2010 confirms that the personnel of the determining authority must be trained in *interviewing techniques*.[80]

111. The Court has repeatedly recognised that the examination of the application for international protection by the competent administrative or quasi-judicial body, which *has specific resources and staff specialised in the matter*, is a vital stage of the common procedures established by Directive 2013/32.[81]

112. While a court or tribunal must carry out a full and *ex nunc* examination of both facts and points of law in accordance with Article 46(3) of Directive 2013/32 and may, in my view, remedy certain lapses on the part of the determining authority in the procedure conducted before the latter,[82] one may doubt whether the judges who might later be called upon to conduct a personal interview under Directive 2013/32 — in effect, in the place of the determining authority — have received training or acquired skills on interviewing techniques which are equivalent to that of the determining authority.[83] This is, however, ultimately a matter of fact which must be determined by the referring court.

113. Article 15(3)(b) of Directive 2013/32 provides that Member States shall, wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner. There are, however, reasons to doubt whether the requirements of Article 15(3)(b) of Directive 2013/32 can be satisfied in certain Member States, as there may well be very strict rules concerning the assignment of judges to cases and recusal on grounds of gender may not be possible.

114. Indeed, it may be noted that the referring court itself expressed concern as to whether all the requirements and guarantees laid down in Article 15 of Directive 2013/32 on the conduct of a personal interview can be met in the course of judicial proceedings in Germany.

78 This is particularly the case where the court of tribunal is required to examine the substance of an application for international protection.

79 See, also, recital 16 of Directive 2013/32, which provides that 'it is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection'.

80 *Article 4(3) of Directive 2013/32 refers specifically to Article 6(4)(a) to (e) of Regulation No 439/2010.*

81 Judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraph 64 and the case-law cited).

82 In order not to protract unnecessarily the procedure and undermine the specific aim of Directive 2013/32 to ensure that applications are dealt with as soon as possible.

83 In my view, it is clear from the judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584), that the court or tribunal can, under certain circumstances, carry out a personal interview provided certain guarantees laid down by Directive 2013/32, such as the right to an interpreter, are met.

115. In my view, if all of the relevant requirements and guarantees laid down in Article 15 of Directive 2013/32[84] in respect of a personal interview are not met in the course of appeals procedures under Chapter V of Directive 2013/32, then the principle of effectiveness is not respected. This is not an abstract examination, but is rather one which must be tailored to the specific case at hand, as certain requirements and guarantees in Article 15 of Directive 2013/32 may simply not be of relevance in a given case. It must, however, be recalled that *an adequate and complete examination of an applicant's case* must be carried out and that failure to do so must, generally speaking, at least, be regarded as fatal to the validity of any adverse decision in respect of any application for international protection.[85]

116. As regards the case in the main proceedings, it is for the referring court to assess whether the conduct of Mr Addis' personal interview by the Verwaltungsgericht Minden (Administrative Court, Minden) respected the relevant provisions of Article 15 of Directive 2013/32. I would note in that regard that his application was considered inadmissible by the determining authority. The scope of the personal interview to be conducted may accordingly be more limited and certain requirements and guarantees laid down in Article 15 of Directive 2013/32 may not have been relevant.

117. Yet, at the heart of Mr Addis' application is his contention that he would effectively face destitution and an abject standard of living in a manner which exposes him to, in the words of this Court in its judgment of 19 March 2019, *Ibrahim and Others*),[86] 'extreme material poverty that does not allow him to meet his most basic needs', such that his rights under Article 4 of the Charter would thereby be infringed if he were to be deported or otherwise removed to Italy. While the consultation of country reports and reports of non-governmental organisations are doubtless of considerable assistance in any assessment of this issue, they are no substitute for a personal interview in which the applicant is allowed to describe his or her own personal experiences and personal circumstances.[87] This, at any rate, is what the European legislator has ordained.

118. After all, human experience teaches us that this is so: how often have we found that personal discussion or dialogue with another has changed our minds? This is also something of which, surely, of all professions, we as judges and lawyers must also be conscious and aware: how often have we found that, in the immortal words of the English judge, Mr Justice Megarry, 'the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change'?[88]

119. Admittedly, it is true that, as this Court confirmed in its judgment of 10 September 2013, *G. and R.*,[89] not every infringement of the rights of the defence should lead to the annulment of the relevant administrative decision under challenge and it is generally necessary for this purpose to show that, but for this infringement, the outcome of the administrative procedure could have been different. Where,

84 Taking into account also the provisions of Article 4(3) and (4) of that directive.

85 See recital 18 of Directive 2013/32 and judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 109).

86 C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 90.

87 At the hearing on 15 January 2020, Mr Addis' lawyer indicated that he suffers from a psychiatric condition which would make him particularly vulnerable if he were sent to Italy given, inter alia, that he does not speak Italian. It is clear that this Court has no capacity to assess the veracity of this claim or indeed the weight to be accorded to such a claim. I would like to stress, however, that it is very much such matters which an applicant for international protection should be given an opportunity to raise in the course of a personal interview pursuant to Articles 14 and 34 of Directive 2013/32. Moreover, such a claim must be assessed by the trained and experienced staff of the determining authority. The correct forum for such matters is certainly not this Court, nor, indeed, in my view, the courts of a Member State in appeal proceedings pursuant to Article 46 of Directive 2013/32. It is clear from the judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 68), that the fact that an applicant for international protection has a physical or mental illness may be relevant in the context of the transfer of that applicant to another Member State under Regulation No 604/2013. In the same paragraph of that judgment the Court also stated that it follows from the case-law of the European Court of Human Rights relating to Article 3 of the ECHR, which must be taken into account when interpreting Article 4 of the Charter, that the suffering which flows from naturally occurring illness, whether physical or mental, may be covered by Article 3 of the ECHR if it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible, provided that the resulting suffering attains the minimum level of severity required by that article.

88 *John v Rees* [1970] Ch. 345 at 402.

89 C-383/13 PPU, EU:C:2013:533.

as here, however, the infringement goes to the very heart of the key procedural safeguards specified by Union law, then, absent special and unusual circumstances, it is nearly always difficult to say that administrative decisions would not or could not have been different. This, however, is ultimately a matter for the referring court to assess and verify, having regard to the particular circumstances of this case.

120. I would therefore propose that the Court hold that the referring court should assess whether, in accordance with national procedural rules, the national court or tribunal seised on appeal in accordance with Article 46 of Directive 2013/32 is in a position to replicate in full a personal interview pursuant to Article 14 or Article 34 of that directive while ensuring that all the relevant mandatory requirements and guarantees specified by the European legislator in Article 15 of that directive are met. In the event that such a personal interview cannot be adequately replicated, the decision rejecting an application for international protection must be annulled on that basis and the case should be referred back to the determining authority for a new decision.

VII. Conclusion

121. In the light of the foregoing considerations, I propose that the Court hold that the Bundesverwaltungsgericht (Federal Administrative Court, Germany) should assess whether, in accordance with national procedural rules, the national court or tribunal seised on appeal, in accordance with Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, is in a position to replicate in full a personal interview pursuant to Article 14 or Article 34 of that directive while ensuring that all the relevant mandatory requirements and guarantees specified by the European legislator in Article 15 of that directive are met. In the event that such a personal interview cannot be adequately replicated, the decision rejecting an application for international protection must be annulled on that basis and the case should be referred back to the determining authority for a new decision.