



## Reports of Cases

**Joined Cases C-297/17 and C-318/17, C-319/17 and C-438/17**

**Bashar Ibrahim and Others**  
v  
**Bundesrepublik Deutschland**

**and**

**Bundesrepublik Deutschland**  
v  
**Taus Magamadov**

(Requests for a preliminary ruling from the Bundesverwaltungsgericht)

**Judgment of the Court (Grand Chamber), 19 March 2019**

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

1. *Border controls, asylum and immigration — Asylum policy — Procedures for granting and withdrawing international protection — Directive 2013/32 — Procedure for examining an application for international protection — Application capable of being considered as inadmissible by the Member States — Ground — Prior granting of international protection by another Member State — Scope *ratione temporis* — National legislation allowing rejection of an application for asylum lodged before 20 July 2015 and before the entry into force of that legislation because of the granting of subsidiary protection by another Member State — Whether permissible — Limits — Application for asylum and request to take back that applicant lodged before the entry into force of Directive 2013/32 and falling within the scope of Regulation No 343/2003*  
(European Parliament and Council Regulation No 604/2013, Art. 49; Council Regulation No 343/2003; European Parliament and Council Directive 2013/32, Art. 33(2)(a) and first paragraph of Art. 52.; Council Directive 2005/85)

(See paragraphs 61, 62, 64, 66, 68-74, operative part 1)

2. *Border controls, asylum and immigration — Asylum policy — Procedures for granting and withdrawing international protection — Directive 2013/32 — Procedure for examining an application for international protection — Application capable of being considered as inadmissible by the Member States — Ground — Prior granting of international protection by another Member State — Condition that Member State must, or must be able, to have recourse, as the first resort, to the take charge or take back procedures provided for by Regulation No 604/2013 — Not a condition*  
(European Parliament and Council Regulation No 604/2013; European Parliament and Council Directive 2013/32, Art. 33(1) and (2)(a))

(see paragraph 80, operative part 2)

3. *Fundamental rights — Prohibition of torture and inhuman or degrading treatment or punishment — Scope — Systemic flaws at the end of the procedure for granting of subsidiary protection in a Member State because of the living conditions of the beneficiaries of that protection — Prohibition of the rejection, by the other Member States, of an application for asylum as inadmissible because of the prior granting of subsidiary protection in that Member State — Conditions — Assessment of whether those flaws are established — Criteria — Need for there to be a situation of extreme material poverty*  
(Charter of Fundamental Rights of the European Union, Art. 4; European Parliament and Council Directives 2011/95 and 2013/32, Art. 33(2)(a))

(see paragraphs 85-94, 101, operative part 3)

4. *Border controls, asylum and immigration — Asylum policy — Procedures for granting and withdrawing international protection — Directive 2013/32 — Procedure for examining an application for international protection — Application capable of being considered as inadmissible by the Member States — Ground — Prior granting of international protection by another Member State — Application for asylum lodged by the beneficiary of subsidiary protection in another Member State — Systemic flaws in the asylum procedure in that Member State resulting in systematic rejection of applications for asylum — No effect on the ability to reject that application as inadmissible*  
(Charter of Fundamental Rights of the European Union, Art. 18; European Parliament and Council Directives 2011/95 and 2013/32, Art. 33(1) and (2)(a))

(see paragraphs 98-100, operative part 3)

## Résumé

**An applicant for asylum may be transferred to the Member State which is normally responsible for processing his application or which has already granted him subsidiary protection unless the expected living conditions for beneficiaries of international protection would expose him there to a situation of extreme material poverty, in breach of the prohibition of inhuman or degrading treatment**

In the judgment *Ibrahim and Others* (C-297/17, C-318/17, C-319/17 and C-438/17), delivered on 19 March 2019, the Grand Chamber of the Court provided clarification on the additional ground for inadmissibility of an application for international protection set out in Article 33(2)(a) of

Directive 2013/32<sup>1</sup> (the 'Procedures Directive'). That provision extends the option, previously provided for by Directive 2005/85,<sup>2</sup> to reject an application as being inadmissible where another Member State had previously granted refugee status, in also allowing such rejection where subsidiary protection had been granted. In the cases in the main proceedings, that protection had been granted to a number of third-country nationals, in Poland and Bulgaria respectively. Subsequently, those persons had travelled to Germany, where they had submitted applications for asylum between 2012 and 2013. After unsuccessfully requesting the competent Polish and Bulgarian authorities to take back those persons, the German authorities rejected the applications for asylum without examining their substance, which the parties concerned challenged by court proceedings.

Against that background, the Court gave a ruling, first, on the scope, *ratione temporis*, of the Procedures Directive. In that regard, the transitional provisions in the first paragraph of Article 52 thereof provide, on the one hand, that the national provisions transposing that directive are to apply to applications for international protection lodged 'after 20 July 2015 or an earlier date' and, on the other hand, that applications lodged 'before 20 July 2015' are to be governed by the national provisions adopted pursuant to Directive 2005/85. The Court held that, notwithstanding the tension between those two rules, a Member State may provide for the immediate application of the national provisions transposing the additional ground of inadmissibility to applications for asylum on which no final decision has been made and which were lodged before 20 July 2015 and before the entry into force of that national provision. For reasons of legal certainty and equality before the law, it is, however, necessary that applications lodged within the same period in that Member State should be examined in a predictable and uniform manner. However, the Court stated that such an immediate application is not permitted in a situation where both the application for asylum and the take back request were lodged before the entry into force of the Procedures Directive. In such a situation, at issue in one of the cases in the main proceedings, that application and that request, in accordance with Article 49 of Regulation No 604/2013,<sup>3</sup> still fall fully within the scope of Regulation No 343/2003,<sup>4</sup> whereas Article 33 of the Procedures Directive covers only situations falling within the scope of Regulation No 604/2013.

Second, the Court held that, where a third-country national has been granted subsidiary protection and subsequently lodges an application for asylum in another Member State, that State can dismiss that application as being inadmissible, without being obliged or being able to have recourse, as the first resort, to the take charge or take back procedures provided for by Regulation No 604/2013.

Finally, the Court examined the conditions under which a Member State could be precluded, pursuant to the Charter of Fundamental Rights of the European Union, from exercising the option granted by Article 33(2)(a) of the Procedures Directive. In that regard, making reference to its *Jawo* judgment<sup>5</sup> of the same day, the Court stated that when an applicant faces, in a Member

<sup>1</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013, on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

<sup>2</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

<sup>3</sup> 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 (recast) (OJ 2013 L 180, p. 31).

<sup>4</sup> 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).

<sup>5</sup> Judgment of 19 March 2019, *Jawo* (C-163/17).

State, a risk of suffering inhuman or degrading treatment in breach of Article 4 of the Charter of Fundamental Rights, that precludes his transfer to that State, regardless of whether that risk exists at the very time of transfer, in the course of the asylum procedure or on the conclusion of that procedure. By analogy, the Court held that a Member State may not rely on the additional ground for inadmissibility where the expected living conditions of the applicant in the Member State that had granted him subsidiary protection would expose him, as a beneficiary of that protection, to a serious risk of inhuman or degrading treatment. The deficiencies concerned must, however, attain a particularly high level of severity, characterised by the exposure of the person concerned to a situation of extreme material poverty.

In that regard, infringements of Directive 2011/95<sup>6</sup> that do not go so far as to contravene Article 4 of the Charter of Fundamental Rights are not sufficient. Likewise, the fact that, in the Member State which granted the party concerned subsidiary protection, the beneficiaries of such protection do not receive any subsistence allowance or such allowance as they receive is markedly inferior to that in other Member States, though they are not treated differently from nationals of the Member State concerned, does not allow a finding of a breach of Article 4, unless the applicant is, because of his particular vulnerability and regardless of his personal will and choices, in a situation of extreme material poverty.

Moreover, the Court stated that, where the Member State which granted subsidiary protection systematically refuses, without real examination, to grant refugee status to applicants who nevertheless fulfil the conditions laid down in Directive 2011/95, the treatment of applicants cannot be considered to comply with the obligations arising from Article 18 of the Charter of Fundamental rights concerning the right to asylum. However, it is for the first Member State to resume the procedure for the obtaining of refugee status; the Member State to which the new application has been lodged may, for its part, reject it on the basis of Article 33(2)(a) of the Procedures Directive, read in the light of the principle of mutual trust.

<sup>6</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).