Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

9 September 2021 *

(Reference for a preliminary ruling – Common policy on asylum and subsidiary protection – Directive 2011/95/EU – Third indent of Article 2(j) – Concept of 'family member' – Adult applying for international protection on the basis of his or her family relationship with a minor who has already been granted subsidiary protection – Relevant date for assessing 'minor' status)

In Case C-768/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 15 August 2019, received at the Court on 18 October 2019, in the proceedings

Bundesrepublik Deutschland

v

SE,

joined party:

Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, N. Wahl, F. Biltgen, L.S. Rossi (Rapporteur) and J. Passer, Judges,

Advocate General: G. Hogan

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– the Bundesrepublik Deutschland, by A. Schumacher, acting as Agent,

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

* Language of the case: German.

– the Hungarian Government, by K. Szíjjártó and M.Z. Fehér, acting as Agents,

– the European Commission, by A. Azéma, M. Condou-Durande, K. Kaiser and C. Ladenburger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 March 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(j) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

2 The request has been made in proceedings between SE, an Afghan national, and the Bundesrepublik Deutschland concerning the refusal by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) to grant him refugee status or subsidiary protection status for the purposes of family reunification with his son.

Legal context

European Union law

Directive 2011/95

3 Recitals 12, 16, 18, 19 and 38 of Directive 2011/95 state:

‘(12) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

…

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

…

(18) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the … United Nations Convention on the Rights of the Child[, concluded in New York on 20 November 1989 (*United Nations Treaty Series*, vol. 1577, p. 3)]. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

(19) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child.

…

(38) When deciding on entitlements to the benefits included in this Directive, Member States should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary. …'

4 Article 2 of that directive, entitled 'Definitions', provides:

'For the purposes of this Directive the following definitions shall apply:

…

(j) "family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

…

– the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;

(k) "minor" means a third-country national or stateless person below the age of 18 years;

…'

5 Article 3 of that directive, entitled 'More favourable standards', provides:

'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.'

6 Under Article 20(2) and (5) of that directive:

'2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.

…

5. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.'

7 Article 23 of Directive 2011/95, entitled 'Maintaining family unity', provides:

'1. Member States shall ensure that family unity can be maintained.

2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.

…'

8 Article 24(2) of that directive is worded as follows:

'As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be valid for at least 1 year and, in case of renewal, for at least 2 years, unless compelling reasons of national security or public order otherwise require.'

Directive 2013/32/EU

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) provides, in Article 6 thereof, entitled 'Access to the procedure':

'1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

…'

German law

9 Directive 2011/95 was transposed into German law by the Asylgesetz (Law on asylum, BGBl. 2008 I, p. 1798) ('the AsylG').

10 The AsylG draws a distinction between an informal application for asylum (Paragraph 13(1) of the AsylG) and a formal application for asylum (Paragraph 14(1) of the AsylG).

11 Paragraph 13(1) of the AsylG provides:

'An asylum application exists if it can be inferred from the third-country national's intention, expressed in writing, verbally or in any other way, that he seeks protection in the territory of the Federal Republic from political persecution or that he requests protection against removal or any other form of forced return to a State in which he is at risk of persecution within the meaning of Paragraph 3(1) or of serious harm within the meaning of Paragraph 4(1).'

12 Paragraph 26 of the AsylG provides:

'The asylum application shall be lodged at the local branch of the Federal Office for Migration and Refugees which is assigned to the reception centre responsible for admitting third-country nationals.'

13 Paragraph 26 of the AsylG provides:

'…

(2) An unmarried minor who is the child of a third-country national beneficiary of asylum and who was a minor at the time of his asylum application shall be recognised as being eligible for asylum on application if the recognition of that third-country national as a beneficiary of asylum cannot be challenged and that recognition cannot be revoked or withdrawn.

(3) The parents of an unmarried minor who is a beneficiary of asylum or another adult within the meaning of Article 2(j) of Directive [2011/95] shall be recognised as being eligible for asylum on application, if:

1. the recognition of the person's eligibility for asylum cannot be challenged,

2. the family within the meaning of Article 2(j) of Directive [2011/95] already existed in the State in which the person eligible for asylum is politically persecuted,

3. they entered German territory prior to the recognition of the person's eligibility for asylum or they lodged the asylum application immediately after entering that territory,

4. the recognition of the person's eligibility for asylum cannot be revoked or withdrawn, and

5. they are responsible for taking care of the person eligible for asylum.

Points 1 to 4 of the first sentence shall apply *mutatis mutandis* to unmarried siblings of the minor person eligible for asylum who are minors at the time of their application.

…

(5) The provisions of subparagraphs 1 to 4 shall apply *mutatis mutandis* to family members within the meaning of subparagraphs 1 to 3 of persons benefiting from international protection. Eligibility for asylum shall be replaced by refugee status or subsidiary protection. Subsidiary protection as a family member of persons benefiting from international protection shall not be granted if there is a ground for exclusion under Paragraph 4(2).'

14 Paragraph 77(1) of the AsylG reads as follows:

'In disputes coming within the scope of this Law, the court shall take into account the situation of fact and of law at the time of the last hearing; if judgment is given without a hearing, the relevant point in time shall be that at which judgment is given. …'

The facts in the main proceedings and the questions referred for a preliminary ruling

15 It is apparent from the documents before the Court that the son of the applicant in the main proceedings, who was born on 20 April 1998, arrived in Germany in 2012 and applied for asylum there on 21 August of that year. On 13 May 2016, that is to say when that child had already reached the age of 18, the Federal Office for Migration and Refugees rejected his application for asylum but granted him subsidiary protection status.

16 The applicant in the main proceedings arrived in Germany in January 2016. The following month he applied for asylum and on 21 April of that year he filed a formal application for international protection. The Federal Office for Migration and Refugees rejected the application for asylum made by the applicant in the main proceedings, refused to grant him refugee status or subsidiary protection status and found that there were no grounds prohibiting his deportation.

17 By decision of 23 May 2018, the Verwaltungsgericht (Administrative Court, Germany) upheld the action brought by the applicant in the main proceedings against the decision of the Federal Office for Migration and Refugees and ordered the Federal Republic of Germany to grant him subsidiary protection status under Paragraph 26(3), point 1, and (5) of the AsylG, as the parent of an unmarried minor child benefiting from that protection. That court held that the son of the applicant in the main proceedings was a minor on the relevant date, namely the date on which he made his application for asylum. In that context, that court held that the moment at which the applicant first applies for asylum in Germany and at which the competent authority becomes aware of that fact must be regarded as the moment at which the application for asylum is made.

18 The Federal Republic of Germany brought an appeal on a point of law against that decision before the Bundesverwaltungsgericht (Federal Administrative Court, Germany), claiming an infringement of the point 1 of Paragraph 26(3) of the AsylG. It argues that, under Paragraph 77(1) of the AsylG, the decision concerning the application for asylum made by the applicant in the main proceedings should take into account the situation of fact and of law

obtaining at the time of the last hearing before the court ruling on the merits or, where the decision is delivered without a hearing, on the date on which the judicial decision is given. Since the son of the applicant in the main proceedings was no longer a minor at the relevant date under that provision, the applicant in the main proceedings could not rely on the application of Paragraph 26(3) of the AsylG, which refers to Article 2(j) of Directive 2011/95. Only a child who was still a minor at the time at which the competent authority granted him or her subsidiary protection status could create rights for his or her parents under Article 2(j) of Directive 2011/95. That conclusion is supported by the objective of Article 26(3) of the AsylG, which is to protect the interests of minors, an objective which becomes devoid of purpose once they reach the age of majority. In any event, even if the existence of the conditions for the granting of a derived right of asylum to a minor's parents ought to be assessed by reference to the date of the asylum application of the parent concerned, account should be taken of the date on which that parent formally lodged an application for asylum, in accordance with Paragraph 14 of the AsylG and not of the date on which he or she first informally applied for asylum, for the purposes of Paragraph 13 of the AsylG.

19 The referring court states that the application for subsidiary protection made by the applicant in the main proceedings as a family member of a person benefiting from international protection should be granted if his son was a 'minor', within the meaning of Article 2(k) of Directive 2011/95, and if he had custody of that minor at the relevant date for assessing the facts. Under Article 2(j) of Directive 2011/95, the 'family members' of the beneficiary of international protection, when that beneficiary is a minor and unmarried, include the minor's father provided that he is present in the territory of the same Member State in relation to the application for international protection and that the family of the person concerned already existed in the country of origin. According to the referring court, the wording of that provision does not make it possible to determine with certainty the date to which reference must be made in order to assess whether that beneficiary is a minor and, if so, whether the status of that minor's father as a family member, for the purposes of that provision, continues to exist even after that beneficiary has reached the age of majority.

20 As regards the determination of that date, the referring court points out that, in the case which gave rise to the judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248), the Court held that national legislation which makes the right to family reunification depend upon the moment at which the competent national authority formally adopts the decision recognising the refugee status of the person concerned is likely to deny a substantial proportion of refugees who have submitted their application for international protection as an unaccompanied minor from the benefit of that right. However, the referring court considers that the reasoning followed by the Court in that case might not apply in the present case, because, unlike the situation in that case, the child of the applicant in the main proceedings benefits not from the right to asylum, but from subsidiary protection status, the granting of which is subject, unlike refugee status, to a formal decision.

21 Moreover, where appropriate, in that context the question also arises as to whether, in determining the moment at which the application for international protection is made, it is necessary to take into account the moment at which the informal application for asylum was made or the moment at which the application for asylum was lodged in the prescribed manner.

22 Furthermore, the referring court has doubts as to the importance to be attached to an effective resumption of the family life of the child and of the parent concerned, for the purposes of Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), in the host

Member State and to the prior existence of such a family life in the country of origin, as well as to the intention of the applicant in the main proceedings effectively to exercise his parental authority in the host Member State.

23 Finally, the referring court asks whether an applicant for asylum ceases to have status as a family member, for the purposes of the third indent of Article 2(j) of Directive 2011/95, on the date on which the beneficiary of protection reaches the age of majority, in so far as that status appears to be connected to the limited time during which the beneficiary of protection is a minor.

24 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In the case of an applicant for asylum who, before the point at which the age of majority is reached by his child, by way of whom a family existed in the country of origin and to whom subsidiary protection status was granted, following the attainment of majority, on the basis of an application for protection filed before the age of majority was reached ("the beneficiary of protection"), entered the host Member State of the beneficiary of protection and also made an application for international protection there ("the applicant for asylum"), and in the case of a national provision which, in relation to the granting of a right to be granted subsidiary protection, that right being derived from the beneficiary of subsidiary protection, makes reference to Article 2(j) of Directive [2011/95], is the point in time at which the decision on the asylum application of the applicant for asylum is taken or an earlier point in time to be taken into account for the question as to whether the beneficiary of protection is a "minor" within the meaning of Article 2(j) of Directive [2011/95], such as the point in time at which
(a) the beneficiary of protection was granted subsidiary protection status,
(b) the applicant for asylum made his asylum application,
(c) the applicant for asylum entered the host Member State, or
(d) the beneficiary of protection made his asylum application?

(2) In the event
(a) that the point in time at which the application is made is decisive:

Is the request for protection expressed in writing, verbally or in any other way and made known to the national authority responsible for the asylum application (request for asylum) or the formal application for international protection to be taken as the basis in this respect?
(b) that the point in time at which the applicant for asylum enters the territory or the point in time at which he makes the asylum application is decisive:

Is it also significant whether, at that point in time, the decision on the application for protection of the beneficiary of protection who was subsequently recognised as being a beneficiary of subsidiary protection had not yet been taken?

(3) (a) What requirements are to be imposed in the situation described in Question 1 in order for the applicant for asylum to be a "family member" [third indent of Article 2(j)] of Directive [2011/95] who is present "in the same Member State in relation to the application for international protection" in which the person who was granted international protection is present and by way of whom the family "already" existed "in the country of origin"? Does this require, in particular, that family life between the beneficiary of protection and the applicant for asylum within the meaning of Article 7 of

the Charter has been resumed in the host Member State, or is the mere simultaneous presence of the beneficiary of protection and the applicant for asylum in the host Member State sufficient in this respect? Is a parent a family member even if, depending on the circumstances of the individual case, entry into the territory was not intended for the purpose of actually assuming responsibility within the meaning of the third indent of Article 2(j) of Directive [2011/95] for a beneficiary of international protection who is still a minor and unmarried?

(b) If Question 3(a) is to be answered to the effect that family life between the beneficiary of protection and the applicant for asylum within the meaning of Article 7 of the Charter must have been resumed in the host Member State, is the point in time at which it resumed significant? In that regard, must account be taken, in particular, of whether family life was re-established within a certain period of time after the applicant for asylum entered the territory, or at the point in time at which the applicant for asylum makes the asylum application or at a point in time at which the beneficiary of protection was still a minor?

(4) Does the status of an applicant for asylum as a family member within the meaning of the third indent of Article 2(j) of Directive [2011/95] end when the beneficiary of protection reaches the age of majority and the associated responsibility for a person who is a minor and unmarried ceases to exist? In the event that this is answered in the negative: Does this status as a family member (and the associated rights) continue to exist indefinitely beyond that point in time or does it cease to exist after a certain period of time (if so: what period of time?) or upon the occurrence of certain events (if so: which events?)?'

Procedure before the Court

25 By decision of the President of the Court of 26 May 2020, the proceedings in the present case were stayed, pursuant to Article 55(1)(b) of the Rules of Procedure of the Court, pending the decision in Cases C-133/19, C-136/19 and C-137/19, *État belge (Family reunification – Minor child)*. The judgment of 16 July 2020, *État belge (Family reunification – Minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577), was notified to the referring court in the present proceedings in order to ascertain whether that court wished to maintain its request for a preliminary ruling. By order dated 19 August 2020, which arrived at the Court Registry on 26 August 2020, the referring court informed the Court that it wished to maintain that request for a preliminary ruling. Accordingly, the present proceedings were resumed by decision of the President of the Court of 28 August 2020.

26 By decision of the Court dated 10 November 2020, the German Government was asked to clarify the differences – particularly in terms of procedure, time limits and conditions – that exist in German law between the informal application for asylum, within the meaning of Paragraph 13(1) of the AsylG, and the formal application for asylum, within the meaning of Paragraph 14(1) thereof. On 14 December 2020, the German Government replied to that question.

27 On 10 November 2020, the interested parties in the main proceedings, pursuant to Article 23 of the Statute of the Court of Justice of the European Union, were invited to comment on the possible consequences to be drawn from the judgment of 16 July 2020, *État belge (Family reunification – Minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577), for the purposes of the answer to be given in particular to the first question referred. The Hungarian Government and the European Commission lodged observations in that regard.

The questions referred

The first and second questions

28 By its first and second questions, which should be examined together, the referring court seeks, in essence, to ascertain, in a situation in which an applicant for asylum who has entered the territory of the host Member State in which his unmarried minor child is present and who intends to derive from the subsidiary protection status obtained by that child a right to asylum under legislation of that Member State which grants such a right to persons falling within the scope of the third indent of Article 2(j) of Directive 2011/95, what is the relevant date for assessing whether the beneficiary of international protection is a 'minor', within the meaning of that provision, for the purposes of deciding on the application for international protection lodged by that applicant for asylum.

29 In particular, the referring court seeks to ascertain whether reference must be made to the point in time at which a decision on that applicant's asylum application is taken or to an earlier point in time.

30 In order to answer that question, it should be noted that Directive 2011/95, which was adopted on the basis, in particular, of Article 78(2)(b) TFEU, seeks, inter alia, to establish a uniform subsidiary protection system. In that regard, it is apparent from recital 12 of that directive that one of its main objectives is to ensure that all Member States apply common criteria for the identification of persons genuinely in need of international protection (judgment of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 35 and the case-law cited).

31 In that connection, Article 23(1) and (2) of that directive requires Member States to ensure that family unity is maintained and that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35 thereof, in accordance with national procedures and as far as is compatible with the personal legal status of the family member concerned.

32 The family members of the beneficiary of international protection, who are present in the same Member State in relation to the application for international protection and in so far as the family already existed in the country of origin, include, under the third indent of Article 2(j) of Directive 2011/95, the father, mother or another adult responsible for that beneficiary whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried.

33 In that regard, it must be observed that, while Article 2(k) of Directive 2011/95 provides that a minor must be below the age of 18 years, that provision does not specify the time which must serve as the point of reference for assessing whether that requirement is fulfilled or make any reference to the law of the Member States in that regard.

34 In those circumstances, the EU legislature cannot be regarded as having granted Member States a margin of discretion in determining the time which must serve as the point of reference for assessing whether the beneficiary of international protection is a 'minor' within the meaning of the third indent of Article 2(j) of Directive 2011/95.

35 It must be recalled that, in accordance with the need for a uniform application of EU law and the principle of equality, a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an

autonomous and uniform interpretation throughout the European Union, and that interpretation must take into account, inter alia, the context of the provision and the objective pursued by the legislation in question (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 30 and the case-law cited).

36 Moreover, according to recital 16 of Directive 2011/95, that directive respects the fundamental rights and observes the principles enshrined in the Charter and seeks to promote the application, inter alia, of Articles 7 and 24 thereof.

37 In particular, Article 7 of the Charter, which enshrines rights corresponding to those guaranteed by Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, recognises the right to respect for private and family life. According to settled case-law, Article 7 of the Charter must also be read in conjunction with the obligation to have regard to the child's best interests, recognised in Article 24(2) of the Charter, and with account being taken of the need, expressed in Article 24(3) thereof, for a child to maintain on a regular basis a personal relationship with his or her parents (judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 34 and the case-law cited therein).

38 It follows that the provisions of Directive 2011/95 must be interpreted and applied inter alia in the light of Article 7 and Article 24(2) and (3) of the Charter, as is moreover apparent from recitals 18, 19 and 38 and Article 20(5) of that directive, according to which, when Member States implement that directive, the best interests of the child must be a primary consideration to which they pay special attention and in the assessment of which they should take due account, inter alia, of the principle of family unity and the minor's well-being and social development.

39 However, it must be held that to consider, as the German Government in particular suggests, the date on which the competent authority of the Member State concerned decided on the application for asylum made by the parent concerned, who intends to derive a right to subsidiary protection from the subsidiary protection status obtained by his or her child, as the date which must be referred to in order to assess whether the beneficiary of international protection is a 'minor' within the meaning of the third indent of Article 2(j) of Directive 2011/95, would not be consistent with the objectives pursued by that directive or the requirements arising from Article 7 of the Charter, concerning the promotion of family life, and Article 24(2) of the Charter, which requires that in all actions relating to children, in particular those taken by Member States when applying that directive, the child's best interests must be a primary consideration (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 36).

40 The competent national authorities and courts would not be prompted to treat applications made by the parents of minors as a matter of priority with the urgency necessary to take account of the vulnerability of those minors and could thus act in a way which would jeopardise the right to family life of both a parent with his or her minor child and that child with a member of his or her family (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 37 and the case-law cited).

41 Moreover, nor would such an interpretation make it possible to guarantee, in accordance with the principles of equal treatment and legal certainty, identical and predictable treatment for all applicants who are chronologically in the same situation, in so far as it would lead to the success of the application for international protection depending mainly on circumstances attributable to

the national administration or courts, in particular to the greater or lesser speed with which the application is processed or with which a decision is taken on the action against the decision rejecting such an application, and not on circumstances attributable to the applicant for asylum (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 42 and the case-law cited).

42 In those circumstances, it must be held that, as the Advocate General noted in essence in points 73 and 74 of his Opinion, where an applicant for asylum, who has entered the territory of the host Member State in which his unmarried minor child is present, intends to derive from the subsidiary protection status obtained by that child the right to the benefits referred to in Articles 24 to 35 of Directive 2011/95 and, as appropriate, the right to asylum where, in accordance with Article 3 thereof, this is provided for by national law, the relevant date for assessing whether the beneficiary of international protection is a 'minor' within the meaning of the third indent of Article 2(j) of Directive 2011/95, for the purposes of deciding on the application for asylum lodged by his or her father, is the date on which the latter lodged such an application.

43 The family member's right to those benefits, including, as appropriate, the right to asylum where this is provided for by national law, must therefore be relied on by the parent concerned when his or her child, a beneficiary of international protection, is still a minor. Moreover, it follows from the wording of the third indent of Article 2(j) of Directive 2011/95 that the family must have already existed in the country of origin and that the family members concerned must have been present in the territory of the same Member State in relation to the application for international protection before that beneficiary reached the age of majority, which also means that that beneficiary applied for that protection before reaching the age of majority.

44 Such an interpretation is consistent both with the aims of Directive 2011/95 and with the fundamental rights protected in the EU legal order, which, as pointed out in paragraphs 36 to 38 of the present judgment, require special attention to be paid to the best interests of the child, as a primary consideration of the Member States and in the assessment of which it is important to take due account, in particular, of the principle of family unity and the minor's well-being and social development.

45 In the event that the date of the application by the parent concerned is held to be decisive, the referring court seeks to ascertain whether that date should be considered to be the date on which that parent informally applied for asylum for the first time and on which the competent authority became aware of this or the date on which that parent formally applied for asylum.

46 In the present case, as is apparent from the documents before the Court, the applicable German law distinguishes between an informal application for asylum under Paragraph 13(1) of the AsylG and the formal submission of applications for asylum under Paragraph 14(1) of the AsylG. That distinction reflects that in Article 6(2) of Directive 2013/32 between making and lodging an application for international protection.

47 In that regard, it must be observed, as is clear from the explanations provided by the referring court, that while the submission of an informal application for asylum, for the purposes of Paragraph 13(1) of the AsylG, does not require any specific formalities and depends mainly on circumstances attributable to the applicant for international protection, the lodging of a formal application for asylum, within the meaning of Paragraph 14(1) of the AsylG is, by contrast, subject to the completion of certain formalities by the competent national administration.

48 As the Advocate General noted in point 76 of his Opinion, the Court has held that a third-country national acquires the status of an applicant for international protection, within the meaning of Article 2(c) of Directive 2013/32, from the point when he or she 'makes' such an application. In that regard, whilst it is for the Member State concerned to register the application for international protection, pursuant to the first and second subparagraphs of Article 6(1) thereof, and the lodging of that application requires, in principle, that the applicant for international protection complete a form provided for that purpose, in accordance with Article 6(3) and (4) of that directive, the act of 'making' an application for international protection does not entail the completion of any administrative formalities, since such formalities must be completed when the application is 'lodged' (judgment of 25 June 2020, *Ministerio Fiscal (Authority likely to receive an application for international protection)*, C-36/20 PPU, EU:C:2020:495, paragraphs 92 and 93).

49 Consequently, first, acquisition of the status of applicant for international protection cannot be subject either to the registration or to the lodging of that application and, second, the fact that a third-country national has expressed his or her wish to apply for international protection before 'other authorities', within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32, is sufficient to confer the status of applicant for international protection on that person and, accordingly, trigger the time limit of six working days within which the Member State concerned must register that application (judgment of 25 June 2020, *Ministerio Fiscal (Authority likely to receive an application for international protection)*, C-36/20 PPU, EU:C:2020:495, paragraph 94).

50 In the present case, it is apparent from the order for reference that the parent seeking international protection entered Germany in January 2016. The following month he applied for asylum and on 21 April 2016 he lodged a formal application for asylum, within the meaning of Paragraph 14(1) of the AsylG. The Federal Office for Migration and Refugees rejected the application for asylum made by the applicant in the main proceedings on the ground that his son had reached the age of majority on 20 April 2016.

51 In those circumstances, it must be held that, in the event that the applicant for asylum made his application informally whilst his son was still a minor within the meaning of Article 2(k) of Directive 2011/95, such an applicant must, in principle, be regarded at that time as a family member of the beneficiary of subsidiary protection, for the purposes of that provision.

52 In the light of all the foregoing considerations, the answer to the first and second questions is that the third indent of Article 2(j) of Directive 2011/95 must be interpreted as meaning that, where an applicant for asylum, who has entered the territory of the host Member State in which his unmarried minor child is present, intends to derive from the subsidiary protection status obtained by that child a right to asylum under legislation of that Member State which grants such a right to persons falling within the scope of the third indent of Article 2(j) of Directive 2011/95, the relevant date for assessing whether the beneficiary of that protection is a 'minor', within the meaning of that provision, for the purposes of deciding on the application for international protection lodged by that applicant for asylum, is the date on which the latter submitted, where appropriate informally, his or her application for asylum.

The third question

53 By its third question, the referring court asks, in essence, whether the third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) of that directive and Article 7 of the Charter, must be interpreted as meaning that the concept of 'family member' does not require an

effective resumption of family life between the parent of the beneficiary of international protection and his or her child. That court also asks whether a parent must be regarded as a 'family member' where the objective of entering the territory of the Member State concerned was not the effective exercise of parental responsibility, for the purposes of the third indent of Article 2(j) of Directive 2011/95, in relation to the child concerned.

54 In order to answer that question, it must be recalled that, as regards the father of a child beneficiary of subsidiary protection, the third indent of Article 2(j) of Directive 2011/95 makes the concept of 'family members' dependent solely on the three conditions referred to in that provision, namely, that the family already existed in the country of origin, that the family members of the beneficiary of protection are present in the same Member State in relation to the application for international protection and that the beneficiary of international protection is an unmarried minor. By contrast, the effective resumption of family life in the territory of the host Member State is not one of those conditions.

55 Moreover, Article 23 of that directive makes no reference to an effective resumption of family life. Article 23(1) thereof provides that Member States are to ensure that family unity is maintained and Article 23(2) of the directive states that the Member States are to ensure that family members of the beneficiary of international protection are, in principle, entitled to claim the benefits referred to in Articles 24 to 35 thereof.

56 Similarly, Article 7 of the Charter confines itself to providing for the right of every person to respect for his or her family life and, like the third indent of Article 2(j) and Article 23 of Directive 2011/95, does not impose any specific requirements as regards either the way in which that right is exercised or the intensity of the family relationships concerned.

57 In those circumstances, the view cannot be taken that the concept of 'family member', for the purposes of the third indent of Article 2(j) of Directive 2011/95, depends on the effective resumption of family life between the beneficiary of international protection and the parent who intends to derive a right to subsidiary protection from the subsidiary protection status obtained by his or her child.

58 In other words, the effective resumption of family life is not a condition for obtaining the benefits which are granted to the family members of the beneficiary of subsidiary protection. Accordingly, although the relevant provisions of Directive 2011/95 and the Charter protect the right to a family life and promote its maintenance, they leave, in principle, to the holders of that right the decision as to the manner in which the latter wish to conduct their family life and do not impose, in particular, any requirement as to the intensity of their family relationship.

59 In the light of all the foregoing considerations, the answer to the third question is that the third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) of that directive and Article 7 of the Charter, must be interpreted as meaning that the concept of 'family member' does not require an effective resumption of family life between the parent of the beneficiary of international protection and his or her child.

The fourth question

60 By its fourth question, the referring court asks, in essence, whether Article 2(j) of Directive 2011/95 must be interpreted as meaning that a parent's status as a family member, for the purposes of that provision, ends when the child who is the beneficiary of subsidiary protection

reaches the age of majority and, consequently, when parental responsibility for that child ceases. If the answer to that question is in the negative, the referring court further asks whether that parent's status as a family member and the rights attaching thereto continue indefinitely beyond the date on which the child concerned reaches the age of majority or whether those rights cease to exist at a certain point in time or under certain conditions.

61 In order to answer that question, it must be observed that, in accordance with the third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) thereof, the father, mother or another adult responsible for the beneficiary of the protection whether by law or by the practice of the Member State concerned must not be regarded as a family member, for the purposes of Article 2(j) of Directive 2011/95, and thus enjoy the benefits referred to in Articles 24 to 35 of that directive, relating in particular to the rights to a residence permit and to access to employment and to housing, for an unlimited period.

62 Moreover, in accordance with Article 24(2) of Directive 2011/95, Member States are required to issue to beneficiaries of subsidiary protection status and their family members, as soon as possible after international protection has been granted to them, a renewable residence permit which must be valid for at least one year and, in case of renewal, for at least two years, unless compelling reasons of national security or public order otherwise require.

63 It must be held that, under those provisions, the granting of international protection to a parent as a 'family member' of the beneficiary of subsidiary protection, for the purposes of Article 2(j) of Directive 2011/95, constitutes a right derived from the status conferred by subsidiary protection on his or her child, based on the maintenance of the family unity of the persons concerned. In those circumstances, the protection granted to such a parent cannot, in all circumstances, immediately cease solely because the child benefiting from subsidiary protection reaches the age of majority or, in any event, cannot lead to the automatic withdrawal from the parent concerned of a residence permit which is still valid for a specified period.

64 If the 'family members' of the beneficiary of subsidiary protection have, at a specific moment, satisfied the conditions of that definition, the individual right which they have been granted to the benefits provided for in Articles 24 to 35 of that directive must also continue to exist after that beneficiary reaches the age of majority, for the duration of the period of validity of the residence permit granted to them in accordance with Article 24 of that directive.

65 In that regard, as the Commission notes, Member States may take into account, when determining the duration of the residence permit, the fact that the beneficiary of international protection will reach the age of majority after the individual right of his or her family members arises. The wording of Article 24(2) of Directive 2011/95 does not prevent, inter alia, a distinction being drawn between the duration of the period of validity of the residence permit of the beneficiary of international protection and that of the residence permit of his or her family members. Nevertheless, the residence permit of the family members must be valid for at least one year.

66 In the light of all the foregoing considerations, the answer to the fourth question is that the third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) thereof, must be interpreted as meaning that the rights which family members of a beneficiary of subsidiary protection derive from the subsidiary protection status obtained by their child, in particular the

benefits referred to in Articles 24 to 35 thereof, continue to exist after that beneficiary reaches the age of majority, for the duration of the period of validity of the residence permit granted to them in accordance with Article 24(2) of that directive.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **The third indent of Article 2(j) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted must be interpreted as meaning that, where an applicant for asylum, who has entered the territory of the host Member State in which his unmarried minor child is present, intends to derive from the subsidiary protection status obtained by that child the right to asylum under legislation of that Member State which grants such a right to persons falling within the scope of the third indent of Article 2(j) of Directive 2011/95, the relevant date for assessing whether the beneficiary of that protection is a 'minor', within the meaning of that provision, for the purposes of deciding on the application for international protection lodged by that applicant for asylum, is the date on which the latter submitted, where appropriate informally, his or her application for asylum.**

2. **The third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) of that directive and Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the concept of 'family member' does not require an effective resumption of family life between the parent of the beneficiary of international protection and his or her child.**

3. **The third indent of Article 2(j) of Directive 2011/95, read in conjunction with Article 23(2) thereof, must be interpreted as meaning that the rights which family members of a beneficiary of subsidiary protection derive from the subsidiary protection status obtained by their child, in particular the benefits referred to in Articles 24 to 35 thereof, continue to exist after that beneficiary reaches the age of majority, for the duration of the period of validity of the residence permit granted to them, in accordance with Article 24(2) of that directive.**

[Signatures]