Reports of Cases

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 25 January 2024[1]

Case C-753/22

QY
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 – Common policy on asylum – Decision to grant refugee status adopted by a Member State – Risk of being subjected to inhuman or degrading treatment in that Member State – Consequences for the new application for international protection lodged in another Member State – Examination of that new application by that other Member State – Determination of the possible extraterritorial binding effect of the decision to grant refugee status – Mutual recognition – Information sharing)

I. Introduction

1. The Bundesverwaltungsgericht (Federal Administrative Court, Germany) has made a request for a preliminary ruling in proceedings between QY, a Syrian national who was granted refugee status in Greece, and the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany; 'the Federal Office') concerning the latter's decision to reject QY's application for recognition of that status.

2. In the present case, Germany, the Member State to which the application for refugee status has been made ('the second Member State') cannot return QY to Greece, the Member State that first granted her such status ('the first Member State'), since that would expose her to a serious risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter'), on account of the living conditions for refugees in that Member State.[2]

[1] Original language: English.

[2] See 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 101), and order of 13 November 2019, *Hamed and Omar* (C-540/17 and C-541/17, EU:C:2019:964, paragraph 43).

3. Against that backdrop, the referring court asks, in essence, whether EU primary law and the relevant provisions of three secondary acts adopted in the field of EU refugee law, namely the Dublin III Regulation,[3] the Procedures Directive[4] and the Qualification Directive,[5] must be interpreted as meaning that the second Member State is bound to recognise the refugee status granted by the first Member State, without further examination of the material conditions necessary to qualify for refugee status.

4. The present case raises the question whether there may be mutual recognition of decisions granting refugee status between the Member States and, if so, whether that recognition continues to exist when the principle of mutual trust can no longer be applied. Similar questions are currently the subject of three further cases pending before the Court of Justice.[6]

II. Legal framework

A. European Union law

5. Article 78(1) and (2) TFEU states:

'1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 [7] ["the Geneva Convention"] …

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system [("the CEAS")] comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

…'

1. The Dublin III Regulation

6. Article 3(1) and (2) of the Dublin III Regulation provides:

'1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the

[3] 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) ('the Dublin III Regulation').

[4] 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) ('the Procedures Directive').

[5] 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) ('the Qualification Directive').

[6] See Cases *El Baheer* (C-288/23) and *Cassen* (C-551/23), the Opinion of Advocate General Richard de la Tour in *Generalstaatsanwaltschaft Hamm (Request for the extradition of a refugee to Türkiye)* (C-352/22, EU:C:2023:794) and, for further description, footnote 33 to that Opinion.

[7] *United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954), entered into force on 22 April 1954.

border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the [Charter], the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.'

7. Article 34 of that regulation lays down rules relating to the sharing of information.

2. The Procedures Directive

8. Article 33 of the Procedures Directive, headed 'Inadmissible applications', provides, in paragraphs 1 and 2(a) thereof:

'1. In addition to cases in which an application is not examined in accordance with [the Dublin III Regulation], Member States are not required to examine whether the applicant qualifies for international protection in accordance with [the Qualification 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'.

3. The Qualification Directive

9. Article 4(1), (2) and (3) of the Qualification Directive deals with the assessment of facts and circumstances in relation to applications for international protection.

10. Articles 11, 12, 13 and 14 of that directive are also relevant to the present case.

B. German law

11. The first sentence of Paragraph 60(1) of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, occupational activity and integration of foreign nationals in the Federal territory), in the version applicable to the

dispute in the main proceedings ('the AufenthG'), provides that, pursuant to the Geneva Convention, 'a foreign national may not be deported to a State in which his life or freedom is threatened on account of his race, religion, nationality, membership of a social group or political opinion'.

12. According to the referring court, pursuant to the second sentence of Paragraph 60(1) of the AufenthG, when a person has been granted refugee status outside the Federal territory with respect to a given State, the granting of that status precludes his or her deportation by the German authorities to that State. By adopting that rule, the German legislature conferred mandatory effect on the recognition of that status, which is restricted to the refusal to deport the person concerned, but did not create any new right concerning the recognition of refugee status.

III. The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

13. QY, a Syrian national, was granted refugee status in Greece in 2018. On a date not revealed by the referring court, QY made an application for international protection in Germany.

14. A German administrative court held in its judgment that on account of the reception conditions for refugees in Greece, QY ran a serious risk of suffering inhuman or degrading treatment within the meaning of Article 4 of the Charter, with the result that she could not be returned to that Member State.

15. By decision of 1 October 2019, the Federal Office granted QY subsidiary protection and rejected her application for refugee status.

16. The Verwaltungsgericht (Administrative Court, Germany) dismissed the action brought by QY on the ground that her claim could not be based solely on the fact that she had been granted refugee status in Greece. The Verwaltungsgericht (Administrative Court) considered that the application was unfounded because she was not at risk of persecution in Syria.

17. QY then brought an appeal before the Bundesverwaltungsgericht (Federal Administrative Court), the referring court. She claims that the Federal Office is bound by the refugee status previously granted by Greece.

18. The referring court notes that no provisions of German law confer on QY the right to recognition of refugee status granted by another Member State. It also points out that her request could not be declared inadmissible by German authorities, given that, whilst QY had been granted refugee status in Greece, she is at risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter, if she is returned to that Member State. The referring court stresses that it is necessary to determine the legal consequences of the unavailability of that option on account of the risk of infringing that provision.

19. The referring court deems it necessary to determine whether EU law precludes the Federal Office from conducting a new examination, unbounded by an earlier decision of another Member State granting refugee status, and whether that decision has mandatory extraterritorial effect. That court expresses the view that EU primary and secondary legislation does not indicate that the recognition of refugee status in one Member State precludes the competent authority of a

second Member State examining an application for international protection on its merits. In sum, the referring court is of the view that, under EU law, there is no explicit provision that sets out the principle of mutual recognition of decisions to grant that status.

20. That said, the referring court points out that the Court has yet to rule on the question whether binding effects can be inferred from the second sentence of Article 3(1) of the Dublin III Regulation, according to which the substance of the application for international protection is to be examined by a single Member State. The referring court further suggests that the second sentence of Article 4(1) and Article 13 of the Qualification Directive could be interpreted in the same fashion. Moreover, the option which Article 33(2)(a) of the Procedures Directive confers on the second Member State to declare an application inadmissible on the ground that the first Member State has already granted refugee status could be understood as an expression of the principle that the merits of an application for asylum must be examined only once.

21. The referring court also notes that the present case is different from Case C-352/22, *Generalstaatsanwaltschaft Hamm (Request for the extradition of a refugee to Türkiye)*, which is currently pending before the Court of Justice and concerns an extradition request from a third country which that person fled. In the present case, the Federal Office has granted QY subsidiary protection and she therefore cannot be deported.

22. Finally, the referring court raises the question of how paragraph 42 of the order in *Hamed and Omar*[8] is to be understood. On the one hand, the reference to a 'new' asylum procedure could be favourable to a new examination. On the other hand, the reference to 'the rights attaching to refugee status' might imply recognition of the status already granted by another Member State.

23. In the light of the foregoing considerations, the Bundesverwaltungsgericht (Federal Administrative Court) stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'In the event that a Member State may not exercise the power conferred by Article 33(2)(a) of [the Procedures Directive] to reject as inadmissible an application for international protection with a view to the granting of refugee status in another Member State because living conditions in that Member State would expose the applicant to a serious risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, must the second sentence of Article 3(1) of [the Dublin III Regulation], the second sentence of Article 4(1) and Article 13 of [the Qualification Directive] as well as Article 10(2) and (3) and Article 33(1) and (2)(a) of [the Procedures Directive] be interpreted as meaning that the fact that refugee status has already been granted prevents the Member State from carrying out an examination of the application for international protection submitted to it that is unbiased as to the outcome, and obliges the Member State to grant the applicant refugee status without examining the substantive conditions for that protection?'

24. Written observations were submitted by QY and the Belgian, Czech, German, Irish, Greek, French, Italian, Luxembourg, Netherlands and Austrian Governments, as well as the European Commission. Those parties, except for the Belgian, Czech and Austrian Governments, also presented oral argument at the hearing that took place on 26 September 2023.

[8] Order of 13 November 2019 (C-540/17 and C-541/17, EU:C:2019:964).

IV. Assessment

25. The situation underlying this request for a preliminary ruling is characterised by the fact that the person concerned cannot be sent back to the first Member State, Greece. Therefore, the question referred is based on the premiss that the asylum system of the first Member State – and in particular the reception conditions for refugees – can no longer guarantee the level of protection of fundamental rights required by EU law and, in particular, by Article 4 of the Charter (Section A).

26. Against that backdrop, the question referred to the Court for a preliminary ruling seeks to ascertain, in essence, whether there is a principle of mutual recognition in EU law which requires that the second Member State recognise and enforce the refugee status previously granted to the person concerned by the first Member State. In my view, that question may be divided into two parts. First, it is paramount that it be determined whether such a principle of mutual recognition exists in the area of EU asylum policy (Section B). Second, if the answer to that question is in the negative, the way in which the subsequent administrative procedures with respect to new applications in the second Member State should be carried out must also be determined (Section C). [9]

A. Preliminary remarks on the exceptional circumstances that arise from the loss of mutual trust

27. The principle of mutual trust between the Member States is rooted in the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as is stated in Article 2 TEU. [10] That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the EU legislation implementing them will be respected, and that the national legal systems of the Member States are capable of providing equivalent and effective protection of the fundamental rights recognised by the Charter, including Articles 1 and 4 thereof, which enshrine one of the fundamental values of the European Union and its Member States. [11] Accordingly, in the context of the CEAS, it must be *presumed* that the treatment of applicants for international protection in each Member State complies with the requirements of the Charter, the Geneva Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms. [12]

28. Notwithstanding that presumption of compliance, the Court has also ruled that it is not inconceivable that the CEAS may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that asylum seekers may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights. [13]

[9] The latter issue is a consequence of the question referred for a preliminary ruling, and the Court asked the parties at the hearing to submit their observations on that issue.

[10] See, to that effect, *Opinion 2/13 (Accession of the European Union to the ECHR)* of 18 December 2014 (EU:C:2014:2454, paragraph 168).

[11] 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 83).

[12] Ibid., paragraph 85; that convention was signed in Rome on 4 November 1950 ('the ECHR').

[13] Judgment of 21 December 2011, *N.S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 81; 'the judgment in *N.S. and Others*').

Therefore, in *exceptional circumstances*,[14] the application of the principle of mutual trust becomes incompatible with the duty to interpret and apply the Dublin III Regulation in a manner consistent with fundamental rights.[15]

29. In the present case, the premiss which gives rise to mutual trust in the CEAS – according to which each of those States is required to regard all the other Member States as acting in compliance with the fundamental rights recognised by EU law – no longer applies in respect of that first Member State. The question before the Court has been referred in the context of 'exceptional circumstances' within the meaning of the relevant case-law, and is based on the twofold premiss that the aforementioned presumption cannot be applied, since, first, there has been a breach of mutual trust, in that the applicant would face a serious risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter in the Member State which granted her refugee status. Therefore, second, it is not possible for the German determining authority to reject the application as inadmissible under Article 33(2)(a) of the Procedures Directive.

1. The breach of mutual trust and the interpretation of Article 3(2) of the Dublin III Regulation

(a) Article 3(1) of the Dublin III Regulation and the main rule

30. The system introduced by the Dublin III Regulation aims to lay down 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. It is based on the principle, set out in Article 3(1) of that regulation, that a single Member State is competent to examine the applicant's need for international protection.

31. In order to achieve that aim, Chapter III of the Dublin III Regulation lays down a hierarchy of objective and fair criteria both for the Member States and for the persons concerned.[16] Those criteria, set out in Articles 8 to 15 of that regulation, seek to establish a clear and effective method, making it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection. In application of those criteria, the Greek authorities exercised their competence to adopt the decision granting QY refugee status.

(b) Article 3(2) of the Dublin III Regulation

32. In the judgment in *N.S. and Others*, the Court recognised that the asylum system may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that applicants for international protection may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights.[17] The Court

[14] The phrase 'exceptional circumstances' is highlighted in *Opinion 2/13 (Accession of the European Union to the ECHR)* of 18 December 2014 (EU:C:2014:2454, paragraph 191), and in 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, paragraph 84), in which the Court states that the principle of mutual trust requires, particularly with regard to the area of freedom, security and justice, each of those States, *save in exceptional circumstances*, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.

[15] See, to that effect, judgment 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218, paragraph 84 and the case-law cited).

[16] See recital 5 of the Dublin III Regulation.

[17] The judgment in *N.S. and Others*, paragraph 81.

abandoned the automatic enforcement of the Dublin II Regulation, [18] predecessor to the Dublin III Regulation, in order 'to ensure compliance by the European Union and its Member States with their obligations concerning the protection of the fundamental rights of asylum seekers'. [19] The Court acknowledged that the Member States may not transfer an asylum seeker to the Member State responsible within the meaning of the Dublin II Regulation, where they are aware of systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State that amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

33. Article 3(2) of the Dublin III Regulation codifies the scenario envisaged in the judgment in *N.S. and Others*, namely the exceptional circumstances scenario, introducing the double criterion – the systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State – which allows the refusal to transfer an applicant to the Member State that issued the decision. [20]

34. In the present case, the question referred for a preliminary ruling concerns such a scenario. Hence, the presumption of the equivalence of the national asylum systems – upon which the rules laid down in the Dublin III Regulation are based – does not apply. This means that the German authorities cannot return the person concerned to Greece, since they consider that there are systemic deficiencies in the reception conditions of refugees in that Member State. Where that scenario is triggered by a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, the national authorities in the Member State in which the asylum seeker is present must determine which Member State becomes responsible for examining his or her application.

(c) The competent Member State when Article 3(2) of the Dublin III Regulation is applied

35. At the outset, it is important to bear in mind that the second subparagraph of Article 3(2) of the Dublin III Regulation sets out the following rule of competence: the determining Member State is to continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible. If that examination does not lead to the designation of another Member State responsible, the third subparagraph of that article provides that 'where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible'.

36. In the present case, the referring court has not mentioned whether the German authorities carried out the examination required by the second subparagraph of Article 3(2) of the Dublin III Regulation and, if so, in what way. It is, however, clear that those authorities consider themselves

[18] 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).

[19] The judgment in *N.S. and Others*, paragraph 94.

[20] I should add that, in its seminal judgment of 16 February 2017, *C.K. and Others* (C-578/16 PPU, EU:C:2017:127), the Court provided further nuance to the systemic deficiencies requirement, holding that a transfer in itself may entail a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, where the transfer of an asylum seeker would result in a real and proven risk of a significant and permanent deterioration in his or her state of health. Consequently, such a risk may exist, irrespective of the quality of the reception and the care available in the Member State responsible for examining his or her application.

competent, on the basis of the third subparagraph of that article.[21] Therefore, for the purposes of the present Opinion, one should assume that the competence of the German authorities is based on that third subparagraph.

2. Inadmissibility under Article 33(2)(a) of the Procedures Directive

37. Under Article 33(1) of the Procedures Directive, Member States are not required to examine applications for international protection in accordance with the Qualification Directive, if they are inadmissible pursuant to that article. Article 33(2) of that directive sets out an exhaustive list of the situations in which the Member States may consider an application for international protection to be inadmissible.[22] In particular, Article 33(2)(a) of the Procedures Directive provides that, where another Member State has previously granted international protection to the applicant, his or her application may be rejected as inadmissible. This exception to general admissibility can be explained by the importance of the principle of mutual trust.[23] Article 33(2)(a) of the Procedures Directive gives concrete expression to the principle of mutual trust in the context of the CEAS.[24]

38. However, according to the case-law of the Court on that principle,[25] the authorities of a Member State cannot apply Article 33(2)(a) of the Procedures Directive where they have come to the conclusion, on the basis of information that is objective, reliable, specific and properly updated, and having regard to the standard of protection of fundamental rights guaranteed by EU law, that there are, in the Member State in which the third-country national already enjoys international protection, deficiencies, which may be *systemic or generalised*, or which may *affect certain groups of people* and where, having regard to such deficiencies, there are substantial grounds for believing that the person concerned would face a real risk of being subjected to inhuman or degrading treatment, within the meaning of Article 4 of the Charter.[26]

39. Since the question referred for a preliminary ruling is based on the fact that, in the present case, it is not possible for the German determining authority to adopt a decision of inadmissibility under Article 33(2)(a) of the Procedures Directive, it can logically be inferred that the national court has established the following elements: there are deficiencies which are systemic or generalised or which may affect certain groups of people, and there are substantial grounds for believing that third-country nationals such as QY would face a real risk of being subjected to inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

[21] In any event, if the competence of the German authorities is not based on the third subparagraph of Article 3(2) of the Dublin III Regulation, those authorities could nonetheless base their competence on Article 17(1) of that regulation. I see no reason why the 'discretionary clause' laid down in that latter article could not be applicable in the scenario of the judgment in *N.S. and Others*. That may be the case, for example, where those authorities do not wish to follow the criteria set out in Chapter III of that regulation, preferring instead to exercise their discretion in order to become the Member State responsible for examining the asylum application at issue. However, it is worth noting that that provision is not referred to in the file in the present case.

[22] Judgments 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 76), and of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)* (C-483/20, EU:C:2022:103, paragraph 23).

[23] See, to that effect, judgment of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)* (C-483/20, EU:C:2022:103, paragraphs 28 and 29).

[24] See, to that effect, the judgment in *N.S. and Others*, paragraphs 78 to 80. See also judgments 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 85), and of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)* (C-483/20, EU:C:2022:103, paragraph 29).

[25] See, to that effect, 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, paragraphs 83 to 94), and order of 13 November 2019, *Hamed and Omar* (C-540/17 and C-541/17, EU:C:2019:964, paragraphs 34 to 36).

[26] See, to that effect, judgment of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)* (C-483/20, EU:C:2022:103, paragraph 31 and the case-law cited).

40. In that context, the question arises as to the existence of the mutual recognition of decisions in the area of asylum policy and to the consequences of the loss of mutual trust on such a recognition, if it exists.

3. The effects of the loss of mutual trust

41. As I have already mentioned, the principle of mutual trust is based on the presumption that each Member State is required to consider, save in exceptional circumstances, that all the other Member States act in compliance with EU law and, in particular, with the fundamental rights recognised by EU law.[27] That principle gives rise to obligations incumbent on the Member States.[28] Mutual trust must not be confused with blind trust.[29] The loss of mutual trust may occur in the event of systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in one of the Member States.[30] It follows that, when that presumption is rebutted and one Member State has lost trust in the asylum system of another Member State, a number of questions inevitably arise: what are the effects of that loss of trust on the rights and obligations of the Member States? Conversely, which rights and obligations remain unaffected? Moreover, does a loss of trust on the part of one Member State affect the consequences of the decisions taken by another Member State?

42. The effects of that loss of trust are far from clear. One may argue that, when the second Member State (Germany) loses trust in the asylum system of the first Member State (Greece) owing to the deficiencies in the reception conditions for refugees, the second State would only distrust the first State's treatment of refugees but not its procedures for processing asylum requests. Thus, the effects of that loss of trust would be confined to the non-return of the person concerned to the first Member State. However, the second Member State would still trust that the first Member State's decision granting refugee status was well founded. Conversely, it could be argued that loss of trust gives rise to a general distrust of the first Member State's asylum system as a whole, including the validity of the initial decision issued by the first Member State.

43. In that respect, I take the view that it is important to distinguish between the asylum procedures and, in particular, the conditions governing the procedures for processing asylum requests in the first Member State, on the one hand, and the living conditions of beneficiaries of international protection in that Member State, on the other.[31] In theory, the awareness of the second Member State with respect to deficiencies in the first Member State (and, therefore, the loss of trust) can be established with respect to the asylum procedure and/or the living conditions. In the present case, in its request for a preliminary ruling, the national court clearly refers to the 'living conditions' in the first Member State. Hence, I take the view that it is possible to consider that the decision at issue was validly granted to the person concerned, in spite of the loss of trust determined by the courts of the second Member State with respect to the living conditions in the first Member State. In the light of that distinction, it is necessary to establish whether – and, if so, in what way – the principle of mutual recognition applies in the area of

[27] See point 27 above.

[28] For a critical review on the definition of the concept of mutual trust, see Xanthopoulou, E., 'Mutual trust and rights in EU criminal and asylum law: Three phases of evolution and the uncharted territory beyond blind trust', *Common Market Law Review*, Vol. 55, No 2, 2018, pp. 489 to 509.

[29] See Lenaerts, K. 'La vie après l'avis: Exploring the principle of mutual (yet not blind) trust', *Common Market Law Review*, Vol. 54, No 3, 2017, pp. 805 to 840.

[30] See, to that effect, judgment in *N.S. and Others*, paragraph 106.

[31] See judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609), which is comprised of two separate allegations dealing with the awareness of the deficient *asylum procedures* and the *conditions of detention and living conditions* contrary to the ECHR.

asylum policy where the second and third subparagraphs of Article 3(2) of the Dublin III Regulation are applicable and Article 33(2)(a) of the Procedures Directive cannot be applied because the person concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

B. Mutual recognition in the area of asylum policy

44. The answer to the question whether the principle of mutual recognition applies in the area of asylum policy and, if so, in what way, contains two aspects: at the outset, it should be established whether it applies as an overarching principle under normal circumstances. It is only then that it can be determined whether, in the event of exceptional circumstances, the second Member State is required to recognise automatically the refugee status granted by the first Member State and the protection arising from it.

45. In its basic application, the principle of mutual recognition means that a decision regarding the refugee status of a third-country national adopted in one of the Member States of the European Union must be accepted without any restrictions in another Member State. [32] Mutual recognition thus means that the second Member State recognises and enforces a decision taken by the competent authority of the first Member State as if it were its own. [33] In order for mutual recognition of refugee status to be meaningful, the protection and rights which the refugee is granted in the first Member State should follow that person to the second Member State. [34]

46. In order for such mutual recognition to exist in the area of the CEAS, it should be rooted in EU primary or secondary legislation. I shall therefore analyse the provisions of EU primary law (i) and secondary legislation (ii) in order to determine whether such a principle of mutual recognition of decisions exists in the field of asylum policy.

1. Is there a guiding principle of mutual recognition stemming from EU primary law?

47. According to the first sentence of Article 78(1) TFEU, the European Union is to develop a common policy on asylum, subsidiary protection and temporary protection. For this purpose, the European Parliament and the Council are to adopt, pursuant to Article 78(2)(a) and (b) TFEU, measures for a CEAS. This includes, inter alia, a *uniform status* of asylum for nationals of third countries, *valid throughout the European Union*. [35] However, none of the provisions in Title V, Chapter 2, of the TFEU provides for an obligation or principle of mutual recognition of refugee status granted by another Member State. [36] Moreover, unlike the Treaty provisions on free

[32] Hoogenboom, A., 'Origin and Meaning of Mutual Recognition as Foundational Principle in the European Integration Process', *Europarättslig Tidskrift*, Vol. 17, No 2,2014, pp. 237 to 265; available at https://ssrn.com/abstract= 2477453.

[33] However, in the area of Internal market, the principle of mutual recognition is non-automatic in its nature (see, for example, Janssens, C.. 'The principle of mutual recognition in EU law', OUP Oxford, 2013, Part I, Chapters 2 and 4).

[34] See Mitsilegas, V., *Mutual Recognition of Positive Asylum Decisions in the European Union*; available at https://free-group.eu/2015/05/12/mutual-recognition-of-positive-asylum-decisions-in-the-european-union/.

[35] See Article 78(2)(a) and (b) TFEU.

[36] See, by way of analogy, Article 67(3) and (4) TFEU, which concerns the recognition of certain judicial and extrajudicial decisions, with both of those paragraphs referring explicitly to mutual recognition, and Article 82(1) TFEU which states that 'judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments'. See also Article 53(1) TFEU, which concerns mutual recognition of diplomas and qualifications. Conversely, Article 78 TFEU does not contain any reference to mutual recognition of decisions granting international protection.

movement,[37] which have direct effect,[38] are standalone and contain directly applicable rights making the principle of mutual recognition fully effective and operational, that does not appear to be the case for the Treaty provisions under Title V, Chapter 2, of the TFEU. In fact, there is no Treaty provision explicitly stating that the principle of mutual recognition is fully effective and operational with respect to asylum policy.

48. That said, there remains the question whether the principle of mutual recognition may be inferred from those Treaty provisions.[39] In that respect, I should point out that Article 78(1) TFEU confers on the European Union a competence in the area of asylum policy and defines the purpose thereof, which is to create a common policy on asylum that offers 'appropriate status' to any third-country national 'requiring international protection'. Article 78(2)(a) TFEU constitutes a legal basis[40] that enables the EU legislature to create a 'uniform status of asylum' that is 'valid throughout the Union'.[41] This means, in my view, that the rights attached to that uniform status are neither fully effective nor operational without the intervention of the EU legislature.[42] It follows that a Treaty provision that sets out a legal basis and a transfer of competence to the EU institutions does not suffice to support the contention that it contains directly applicable rights making the principle of mutual recognition fully effective and operational.[43]

49. For the sake of completeness, I should add that Article 18 of the Charter provides that 'the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention'. While under Article 78(1) TFEU, the common policy on asylum 'must be in accordance with the Geneva Convention', as a general principle, international law prohibits the exercise of extraterritorial enforcement jurisdiction unless that is specifically permitted.[44] However, that convention does not require a Contracting State to recognise an asylum seeker's refugee status as previously granted by another Contracting State. Therefore, no extraterritoriality can be inferred from that convention. In the same vein, the case-law of the ECtHR does not require

[37] See, with respect to free movement of workers, Article 45 TFEU; freedom of establishment, Article 49 TFEU; and freedom to provide services, Article 56 TFEU. With respect to the Treaty provisions on free movement as the most adequate legal basis for the principle of mutual recognition, see Janssens, C., cited at footnote 33 above, p. 29.

[38] See, for example; judgments of 4 December 1974, *Van Duyn* (41/74, EU:C:1974:133), regarding free movement of workers; of 21 June 1974, *Reyners* (2/74, EU:C:1974:68), regarding freedom of establishment; and of 3 December 1974, *van Binsbergen* (33/74, EU:C:1974:131), regarding freedom to provide services.

[39] See Opinion of Advocate General Pikamäe in *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)* (C-483/20, EU:C:2021:780, point 42), in which he argues that Article 33(2)(a) of the Procedures Directive 'constitutes a form of *implicit recognition* that the first Member State correctly assessed the merits of the application for international protection'. Emphasis added.

[40] See, by way of example, judgment of 14 May 2019, *M and Others (Revocation of refugee status)* (C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraph 72).

[41] In other words, while it could be argued Article 78(2) TFEU gives the EU legislature the power to 'implement' rather than create a 'uniform status', and that the uniform status is inherent in the principle of mutual trust, in my view, the wording and structure of Article 78(1) and (2) TFEU make it clear that that was not the intention of the authors of the Treaty.

[42] See, by way of analogy, judgment of 15 January 2014, *Association de médiation sociale* (C-176/12, EU:C:2014:2, paragraph 45).

[43] See also the wording of Article 3(2) TEU which refers to 'appropriate measures' with respect to asylum, inter alia.

[44] Kamminga, M., 'Extraterritoriality', in Wolfrum, R. (ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2020; available at https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1040?print. See also UN High Commissioner for Refugees (UNHCR), *Note on the Extraterritorial Effect of the Determination of Refugee Status under* [*the Geneva Convention*] *and the 1967 Protocol Relating to the Status of Refugees*, EC/SCP/9, 24 August 1978. There are however, exceptions to that principle. See, Milanović, M., 'From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties', *Human Rights Law Review*, Vol. 8, No 3, 2008, pp. 411 to 448; available at https://doi.org/10.1093/hrlr/ngn021.

extraterritoriality and, on the contrary, emphasises the exceptional nature of that principle.[45] The principle of mutual recognition, which is unique to the EU legal order, does not stem from the ECHR.[46]

50. Finally, in its observations, the Italian Government states, inter alia, that Protocol (No 24) annexed to the FEU Treaty[47] is relevant to the current procedure. I do not agree with that view, since that protocol concerns nationals of the EU Member States, whereas the present case involves third-country nationals only.

51. Since no overarching principle of mutual recognition can be inferred from EU primary law, the question that arises next is whether EU secondary legislation gives rise to the principle of mutual recognition in the CEAS.

2. Can mutual recognition be inferred from EU secondary legislation in the CEAS?

52. In order to answer the question above, following the usual method of interpretation laid down in the Court's case-law,[48] I shall apply the literal, systematic and purposive criteria of interpretation according to their relevance to the analysis. In that connection, in order for mutual recognition to exist in the CEAS, one must find that the EU legislature intended to impose such recognition on the Member States.[49] However, in my opinion, that intention does not need to be stated explicitly in the wording of the relevant provisions of EU secondary legislation but may be inferred from the context of the relevant provisions and objectives that those provisions pursued. In particular, that can be the case where the effectiveness of a provision in EU secondary legislation is contingent on the existence of the principle of mutual recognition between the Member States. Therefore, while a provision of EU secondary legislation does not need to contain an explicit reference to 'mutual recognition', there must be a clear intention on the part of the EU legislature to impose such a principle.[50]

[45] See decision of ECtHR of 5 March 2020, *M.N. and Others v. Belgium* (No 3599/18, CE:ECHR:2020:0505DEC000359918, §§ 98 to 102), which concerned the issue of whether a Syrian family's humanitarian visa application at the Belgian embassy in Beirut (Lebanon) triggered the respondent State's human rights obligations. The Grand Chamber of the ECtHR not only recalled that a State's jurisdictional competence for the purpose of Article 1 ECHR is 'primarily territorial', but also highlighted its approach whereby any extraterritorial exercise of jurisdiction is 'as a general rule, defined and limited by the sovereign territorial rights of the other relevant States'. See also Gammeltoft-Hansen, T. and Tan, N.F., 'Adjudicating old questions in refugee law: *MN and Others v Belgium* and the limits of extraterritorial refoulement', *European Migration Law Blog*, 2020; available at https://eumigrationlawblog.eu/.

[46] The ECtHR has held that it must be verified that the principle of mutual recognition is not applied automatically and mechanically to the detriment of fundamental rights (judgment of ECtHR of 23 May 2016, *Avotiņš v. Latvia*, CE:ECHR:2016:0523JUD001750207, §§ 105 to 127, in particular § 116). In his concurring opinion in the judgment of 9 July 2019, *Romeo Castaño v. Belgium* (CE:ECHR:2019:0709JUD000835117), Judge Spano refers to the 'EU mechanisms of mutual recognition'.

[47] Protocol (No 24) on asylum for nationals of Member States of the European Union (OJ 2016 C 202, p. 204).

[48] See, in particular, judgment of 17 April 2018, *Egenberger* (C-414/16, EU:C:2018:257, paragraph 44 and the case-law cited).

[49] See Opinion of Advocate General Richard de la Tour in *Generalstaatsanwaltschaft Hamm (Request for the extradition of a refugee to Türkiye)* (C-352/22, EU:C:2023:794, point 65).

[50] At the hearing in the present case, the Italian Government referred to the judgment of 1 August 2022, *Bundesrepublik Deutschland (Child of refugees, born outside the host State)* (C-720/20, EU:C:2022:603, paragraph 42), in which the Court held that the 'clear wording' of a provision of the Dublin III Regulation 'cannot be derogated from' in order to uphold the objective of preventing secondary movements during the asylum process in the European Union. According to that government, that assessment can be interpreted as meaning that the 'general principle' of mutual recognition cannot be derogated from in order to pursue the objective of preventing secondary movements. However, I should point out that the Italian Government did not point to 'clear wording' for mutual recognition of refugee status in any EU primary or secondary law provision but instead referred to Article 78(2)(a) TFEU, specifically the wording allowing for the adoption by the EU legislature of measures to implement a uniform status.

(a) The Dublin III Regulation

53. At the outset, some of the parties to these proceedings argue, first, that the Dublin III Regulation is not applicable, since the Member State responsible (in this case, Greece) has already granted international protection to the person concerned.[51] Second, they contend that the dispute in the main proceedings raises the question of how to deal with the application for international protection lodged in Germany and not with the application previously lodged in Greece.

54. With respect to the question of the applicability of the Dublin III Regulation, as I have already explained, Article 3(2) thereof establishes the competence of the authorities of the second Member State to examine the application for asylum. Since that provision specifically codifies the scenario dealt with in the judgment in *N.S. and Others*, the issue of the recognition of the decision granting refugee status when one Member State has lost trust in the conditions of stay in the other Member State falls within the scope of the Dublin III Regulation.[52] Consequently, I take the view that the present situation falls within the material scope of that regulation.

55. The Dublin III Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States.[53] However, the principle of mutual recognition is not referred to in that regulation. As it currently stands, applications for asylum are to be examined by the Member States individually. While the Dublin system is underpinned by the fundamental idea of equivalence of the Member States' asylum systems, such a presumption does not amount to mutual recognition of decisions granting refugee status.

56. It is important to emphasise that the mechanisms laid down in the Dublin III Regulation provide a high degree of 'automation' in the procedures with respect to *negative* decisions, that is to say, decisions not granting refugee status or subsidiary protection.[54] This 'automation' supports the argument that the Dublin III Regulation makes the principle of mutual recognition fully effective and operational but only with respect to negative decisions.[55] Where the first Member State has adopted a negative decision, the second Member State is not responsible for examining a new application for asylum lodged before it but must return the person concerned to the first Member State, which must in turn take the necessary steps to return that person to his or her country of origin. Moreover, the system introduced by the Dublin III Regulation requires the Member States to carry out 'intense horizontal transnational cooperation amongst national administrations' in order to track possible interventions of other jurisdictions.[56]

57. However, as the Irish Government points out, there is no legal provision in the Dublin III Regulation that explicitly provides for the principle of mutual recognition in respect of positive decisions adopted by other Member States. That regulation does not require that the Member

[51] See judgment of 1 August 2022, *Bundesrepublik Deutschland (Child of refugees, born outside the host State)* (C-720/20, EU:C:2022:603, paragraph 33).

[52] See also judgments of 26 July 2017, *A.S.* (C-490/16, EU:C:2017:585), and of 26 July 2017, *Jafari* (C-646/16, EU:C:2017:586), in which the Court rejected the arguments of Advocate General Sharpston in favour of a disapplication of the Dublin III Regulation in the exceptional circumstances of the 2015 refugee crisis.

[53] Article 1 of the Dublin III Regulation.

[54] See, for instance, Article 18(1) of the Dublin III Regulation.

[55] Mitsilegas, V., 'Humanizing solidarity in European refugee law: The promise of mutual recognition', *Maastricht Journal of European and Comparative Law*, Vol. 24, No 5, 2017, pp. 721 to 739.

[56] Vavoula, N., 'Information Sharing in the Dublin System: Remedies for Asylum Seekers In-Between Gaps in Judicial Protection and Interstate Trust', *German Law Journal*, vol. 22(3), 2021, p. 381-415.

States automatically recognise and enforce each other's *positive* decisions. While legal scholars have made convincing '*de lege ferenda*' arguments in support of the need for the adoption of such a principle,[57] the EU legislature, despite the Commission's efforts,[58] has not taken definitive steps in that direction.

58. I should add that the concept of a single responsible Member State lies at the heart of the CEAS.[59] In the light of that concept, this confines the conduct of the procedure to a single Member State, which then becomes responsible for examining the application for international protection. Therefore, under normal circumstances, the positive and negative decisions are dealt with by one Member State only.

59. In the event of exceptional circumstances, it should be noted that the Member State designated as responsible, pursuant to Article 3(2) of the Dublin III Regulation, undertakes to conduct the entire procedure in keeping with the Dublin III Regulation, the Procedures Directive and the Qualification Directive. That Member State is competent to carry out the examination of the application, to grant international protection or to reject the application or, as the case may be, to return or remove the third-country national. As the Greek Government contends, the Dublin system does not permit the accumulation of international protection schemes for the same person in different Member States. However, when the second Member State cannot return the person concerned to the first Member State that granted him or her refugee status, the concerns regarding the accumulation of multiple protection schemes by one person become devoid of purpose. That is because, in the light of the deficiencies in the reception conditions for refugees in the first Member State, that person cannot exercise the rights attached to his or her refugee status in such a way that his or her fundamental rights, as recognised by EU law, are sufficiently protected.

60. It follows that, in the event of exceptional circumstances, the Dublin III Regulation confers the competence to the second Member State to deal with the application, but leaves the question of the scope of that competence and the applicable procedure open. In any case, it is clear that when those circumstances are triggered, the Dublin III Regulation does not lay down an obligation to give effect to the positive asylum decision of the first Member State.

(b) The Procedures Directive

61. The principle of mutual recognition is also not mentioned in the provisions of the Procedures Directive. The approach taken in that directive is based on the concept of a single procedure and minimum common rules.[60]

62. With respect to the exceptional circumstances scenario, the referring court and the parties referred to Article 10 of the Procedures Directive. That provision, read in the light of recitals 16 and 43 of that directive, states that it is essential that decisions on international protection be taken on the basis of the facts and examined on the merits, and assess on an objective and impartial basis whether the applicant meets the substantive conditions for obtaining international protection. The Procedures Directive thus emphasises the requirement that responsible Member

[57] Mitsilegas, V., 'Humanizing solidarity in European refugee law: The promise of mutual recognition', cited in footnote 55 above.

[58] See, inter alia, Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen (COM(2009) 262 final), pp. 27 to 28.

[59] See recital 7 of the Dublin III Regulation.

[60] See, to that effect, judgment of 25 July 2018, *A* (C-404/17, EU:C:2018:588, paragraph 30), as well as Opinion of Advocate General Hogan in *Addis* (C-517/17, EU:C:2020:225, point 74).

States examine applications individually. On the one hand, one could argue that 'an individual examination' has already been carried out in the first Member State. On the other hand, one could also contend that a new individual examination is required on account of the deficiencies in the reception conditions for refugees in the first Member State. It follows, in my opinion, that no conclusion can be drawn from that requirement, be it either for or against the binding effect of a decision granting refugee status where a risk under Article 4 of the Charter has been established. I regard Article 10 of the Procedures Directive as relevant only if the Court, when interpreting other provisions of EU secondary legislation, decides that the German authorities are to assess *ex nunc* whether the person concerned satisfies the substantive conditions to qualify for refugee status.

63. In the absence of a clear obligation, imposed by the Procedures Directive to recognise automatically a decision granting refugee status, it remains necessary to determine the legal consequences of the unavailability of the option set out in Article 33(2)(a) of that directive, on account of the serious risk for the person concerned of being subjected to inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the first Member State.[61] Under normal circumstances, when there is trust between the Member States, that provision gives concrete expression not only to the principle of mutual trust in the context of the CEAS but also to the principle of a single responsible Member State.[62]

64. However, in the exceptional circumstances scenario, the Court, in the order in *Hamed and Omar*, drawing on previous case-law, held that a Member State (in that case, Germany) may not rely on Article 33(2)(a) of the Procedures Directive in order to reject as inadmissible an application for asylum lodged by a person who has been granted refugee status by another Member State (in that case, Bulgaria) in which the asylum system suffers from systemic deficiencies similar to those at issue in the case that gave rise to the judgment in *N.S. and Others*. The Court also observed, *obiter*, that while German law provided for some sort of protection to asylum seekers confronted with the scenario in the judgment in *N.S. and Others*, it '[did] not provide for the recognition of that status and the grant of the rights attaching thereto in Germany without going through a *new asylum procedure*'.[63] That passage appears to validate, albeit implicitly, the compatibility with EU law of the approach taken by the German legislature. Had the Procedures Directive provided for the recognition of that status, the Court would, in my view, have drafted that passage in a completely different fashion, requiring that the German authorities grant such status to the person concerned. Instead, the reference to a 'new asylum' procedure leads one to think that, when the risk for the person concerned of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter is established, the second Member State is entitled to conduct a second asylum procedure. In practice, the second Member State acquires a twofold competence: to examine the application made by the person concerned and to give effect to that person's rights.

65. I therefore concur with the position adopted by some of the parties, in that the Member State to which a new application has been made may carry out a *new* examination. Such an examination must, however, be exercised in conformity with the underlying objectives of the Procedures Directive as well as of the Charter. That said, and as I will explain in my analysis below (see Section C), a new examination does not mean a 'reset' examination. To put it in more colloquial

[61] See points 37 to 39 above.

[62] See point 58 above.

[63] Order of 13 November 2019, *Hamed and Omar* (C-540/17 and C-541/17, EU:C:2019:964, paragraph 42). Emphasis added.

terms, the Member State to which a new application has been made does not 'start from scratch', but should, in making its determination, take due account of the decision of another Member State granting refugee status to the person concerned.

(c) The Qualification Directive

66. The Qualification Directive seeks to establish a 'uniform [asylum] status' for third-country nationals based on the Geneva Convention.[64] Recitals 4, 23 and 24 of the Qualification Directive state that the Geneva Convention is the 'cornerstone of the international legal regime for the protection of refugees' and that the provisions of that directive have been adopted in order to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria.[65] It follows that the provisions of the Qualification Directive must be interpreted in line with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU.

67. Chapters I, III, IV, V and VI of the Qualification Directive define the common criteria for identifying persons 'genuinely in need of international protection'[66] and to whom one of the two statuses must be granted. The Court has held that, under Article 13 of the Qualification Directive, Member States are without discretion and must grant refugee status to a third-country national or stateless person who satisfies the material conditions to be regarded as a refugee in accordance with Chapters II and III of that directive.[67]

68. Next, in Chapter VII, the Qualification Directive lays down the content of international protection, which creates, in my view, a *link* between the person concerned and the Member State granting that protection. That link is illustrated by the provisions of that chapter, which sets out the requirements, first, to provide the beneficiaries of international protection with access to information, residence permits, travel documents, employment, education, procedures for recognition of qualifications, integration programmes, social welfare and healthcare, and, second, to ensure family unity.[68]

69. Nevertheless, it is important to note that none of the aforementioned provisions of Chapters I to VII of the Qualification Directive have an actual bearing on the extraterritorial effects of positive decisions granting refugee status. In particular, Article 13 of that directive, to which the national court refers in its order for reference, does not constitute a basis for considering that there is an obligation of mutual recognition under that directive.

70. In its observations, the Greek Government argues that the obligation for the Member State to issue a travel document to a refugee so that he or she may travel freely outside its territory, pursuant to Article 25 of the Qualification Directive, gives concrete expression to the principle of

[64] See recitals 5, 6 and 9 of the Qualification Directive. According to Article 1 thereof, that directive lays down standards for, first, the qualification of third-country nationals or stateless persons as beneficiaries of international protection, second, a uniform status for refugees or for persons eligible for subsidiary protection and, third, the content of the protection granted.

[65] Drawing on the conclusions of the Tampere European Council, recital 3 of the Qualification Directive adds that the EU legislature intended to ensure that the European asylum system, which that directive helps to define, is based on the full and inclusive application of the Geneva Convention. Furthermore, a number of provisions of the Qualification Directive refer to provisions of that convention (see Article 9(1), Article 12(1)(a), Article 14(6) and Article 25(1) of the Qualification Directive) or reproduce the content thereof (see, inter alia, Article 2(d), Article 11, Article 12(2) and Article 21(2) of the Qualification Directive).

[66] See recital 12 of the Qualification Directive.

[67] See judgment of 14 May 2019, *M and Others (Revocation of refugee status)* (C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraph 89 and the case-law cited).

[68] See Articles 22 to 30 of the Qualification Directive.

mutual recognition.[69] However, that provision only imposes obligations on the first Member State to deliver those documents, while the second Member State merely recognises those documents as being valid for travel. That recognition is limited in scope and has no bearing on the question whether the principle of mutual recognition applies in respect of positive decisions granting refugee status. In other words, that provision constitutes an illustration of mutual recognition of travel documents that has no bearing on the question of mutual recognition of positive decisions granting refugee status.

71. At the hearing, the parties also referred to the long-term residence permit issued by the first Member State,[70] in order to argue that mutual recognition exists in the area of asylum policy. In that respect, the Court has stated that any third-country national who is present on the territory of a Member State without fulfilling the conditions for entry, stay or residence there is, by virtue of that fact alone, staying there illegally.[71] Article 24 of the Qualification Directive therefore cannot be interpreted as requiring all Member States to grant a residence permit to a person to whom another Member State has granted international protection.[72] It follows, in my view, that no argument can be drawn from the system of residence permits for the purposes of the present case.

72. Moreover, Articles 11, 12 and 14 of the Qualification Directive contain specific rules on the cessation, exclusion and revocation of refugee status. In my view, those articles do not empower a Member State to revoke or end refugee status granted by another Member State. That competence lies solely with the Member State *which granted refugee status*. The fact that the second Member State has lost trust in living conditions in the first Member State does not give the authorities of that second Member State the right to undermine the powers of the first Member State and strip the third-country national of his or her refugee status in the first Member State. The only right that those authorities acquire, when Article 3(2) of the Dublin III Regulation is triggered, is that of being able to determine the competent Member State and, if necessary, to carry out a new examination regarding the question whether the criteria set out in the Qualification Directive for granting that status have been met.

73. Such an assessment is consistent with the objective of Article 14 of the Qualification Directive, which allows the Member State to revoke or refuse to renew the refugee status of a third-country national. In that respect, paragraphs 1 and 2 of that article confirm the idea that the continuation of refugee status is closely connected in particular to the circumstances present in the country of origin of the person concerned. Moreover, the system is designed in such a way that the second Member State is allowed to re-examine the merits of the application, since it can exercise the powers conferred on it by that provision, if it deems this necessary. Therefore, it can be inferred from that provision that the EU legislature intended to give the second Member State powers to re-examine the substantive merits of the application. Finally, it follows from

[69] See also Article 28 of the Geneva Convention, under which refugee status should be accepted by another contracting State.

[70] See Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 (OJ 2011 L 132, p. 1).

[71] See, to that effect, judgment of 24 February 2021, *M and Others (Transfer to a Member State)* (C-673/19, EU:C:2021:127, paragraph 30 and the case-law cited).

[72] Moreover, the Court has stated that, with respect to Directive 2003/109, the second Member State should check whether that third-country national meets the conditions to receive a residence permit or have it renewed. That may be the case even if that national has a valid residence permit in another Member State on the grounds that the latter has granted him or her refugee status (see, to that effect, judgment of 29 June 2023, *Stadt Frankfurt am Main and Stadt Offenbach am Main (Renewal of a residence permit in the second Member State)*, C-829/21 and C-129/22, EU:C:2023:525). That directive therefore requires that the second Member State acknowledge the existence of a residence permit granted in the first Member State, but it is for the second Member State to establish whether the person concerned meets the material conditions for being granted a residence permit. In other words, the second Member State may impose conditions of residence including compliance with integration conditions.

Article 14(4) of the Qualification Directive that the refugee status granted is closely linked to the Member State 'in which [the refugee] is present', which confirms the existence of the link referred to above.[73]

74. Accordingly, in my view, it cannot be inferred from the Qualification Directive that positive asylum decisions in other Member States have binding effect in other Member States, be it under normal or exceptional circumstances.

3. Interim conclusion

75. The CEAS is being built up gradually and, according to the TFEU, it is for the EU legislature alone to decide, when necessary, to give binding cross-border effect to decisions granting refugee status. There is nothing in the Dublin III Regulation, the Procedures Directive or the Qualification Directive to suggest that the Member States are required to grant a person refugee status solely on the ground that another Member State has already granted that status to that person.

76. In the present case, the determining authority of a second Member State (Germany), which is precluded from applying Article 33(2)(a) of the Procedures Directive, since that application would entail a serious risk of breaching the prohibition contained in Article 4 of the Charter, is not bound by a previous decision granting refugee status adopted by the first Member State (in this case, Greece). The determining authority of the second Member State must carry out an assessment on the merits of the new application, in accordance with the provisions of the Qualification Directive and the Procedures Directive.

77. While the decision to grant refugee status, made by the first Member State, does not have a binding effect on the determining authority of the second Member State, it is important to establish whether the latter has any obligations to take due account of that decision when it carries out a new examination of the asylum application at issue.

C. The subsequent administrative procedures in the 'exceptional circumstances' scenario

78. At the outset, I should point out that, where a Member State must carry out an examination of the merits of an application for international protection on account of the fact that the applicant runs the risk of being subjected to inhuman or degrading treatment in the first Member State, Directive 2013/33/EU,[74] which details the arrangements for the treatment of applicants for international protection whilst their applications are being processed, should be applied.

79. Moreover, when examining an application for international protection, the second Member State must comply not only with the principles and safeguards laid down in both the Procedures Directive and the Qualification Directive in order to determine whether the person concerned is in need of such protection, but also with the requirements stemming from the principle of good administration, which impose specific obligations in view of the fact that the person has to undergo two subsequent administrative procedures owing to the exceptional circumstances. In other words, the application of Article 3(2) of the Dublin III Regulation shifts the obligation on to the second Member State, which is bound by those requirements.

[73] See point 68 above.

[74] Directive of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

1. The assessment of an application for international protection

80. First, when examining the application for international protection, the second Member State must take into account the principles and safeguards set out in Chapter II of the Procedures Directive, including Article 10(2) and (3) of that directive, to which the national court has referred. Under Article 10(2), the decision-making authority must first determine whether the applicant qualifies as a refugee and, if not, whether he or she is eligible for subsidiary protection. Under Article 10(3) of the Procedures Directive, Member States are to ensure that decisions on applications for international protection are taken after an appropriate examination, in accordance with the requirements of points (a) to (d) of that provision.

81. Second, Article 4(1) of the Qualification Directive requires that the Member State assess the 'relevant elements of the application', which includes the elements that were previously taken into account by the first Member State, together with the fact that the person has been granted refugee status by the authorities of another Member State. The broad wording of the provision should be highlighted. Therefore, all findings of fact and sources of information qualify as 'elements' within the meaning of Article 4(1) and (2) of the Qualification Directive, including those that led the first Member State to adopt its positive decision. Account should also be taken of the fact that the application made by the person concerned has been already examined and that a positive decision granting refugee status has been delivered.

82. In that respect, the authorities of the second Member State cannot simply disregard the fact that the authorities of the first Member State have previously granted refugee status to the person concerned. Conversely, if the loss of trust occurred on account of inhuman treatment and not on account of deficiencies in the asylum procedure as such, the existence of such a decision should be given due importance. The existence of the positive decision granting refugee status may, therefore, constitute one of the elements substantiating the facts relied upon in support of the application for international protection made by the person concerned. [75]

2. The requirements stemming from the principle of good administration

83. Where the principle of mutual trust cannot be relied upon on account of extraordinary circumstances and where Article 3(2) of the Dublin III Regulation is applied, that regulation and the Procedures and Qualification Directives do not lay down any specific rules on cooperation between the authorities of the first and second Member States – in particular information sharing between them – or on the deadlines with which the second Member States must comply. Since, in the present case, the loss of trust concerns living conditions in the first Member State and not the asylum procedure itself, certain provisions of that regulation and of those directives can be applied by way of analogy in exceptional circumstances. However, when EU law does not lay down detailed rules on the procedure in the event of exceptional circumstances, the Member States remain competent, in accordance with the principle of procedural autonomy, to determine those requirements, on condition that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness). [76]

[75] In addition, in accordance with Article 4(3)(a) to (c) of the Qualification Directive, the assessment of an application for international protection is to be carried out on an individual basis and includes taking into account all the relevant facts as they relate to the country of origin at the time of taking the 'new' decision, the statements and documentation showing persecution or serious harm, and the individual position and personal circumstances of the applicant.

[76] Judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)* (C-194/19, EU:C:2021:270, paragraph 42 and the case-law cited). That issue is, however, not the subject matter of the present proceedings and thus has not been discussed here.

84. However, when enforcing EU law – that is, when applying the Dublin III Regulation and the Procedures and Qualification Directives – a national authority is bound by the principle of good administration as a general principle of EU law, which includes, inter alia, a duty of diligence and care on the part of the national authorities. [77]

(a) Cooperation and information sharing between the Member States

85. Article 34 of the Dublin III Regulation provides for information sharing mechanisms between the Member States. The exchange of information between Member States constitutes, on the basis of that provision, a mere option, since information sharing takes place when the 'Member State … so requests'. [78] However, when the scenario envisaged in Article 3(2) of the Dublin III Regulation is triggered and, in particular, when trust between two Member States is broken, that regulation does not lay down any specific rules with respect to information sharing. It is important to point out that, where the loss of trust relates to the conditions of stay in the first Member State, [79] the obligation of cooperation between Member States with regard to application procedures should not be affected.

86. In that respect, since Article 4(1) of the Qualification Directive requires that the Member State assess the 'relevant elements of the application', and if the person concerned relies on the decision taken by the first Member State granting him or her refugee status, the second Member State needs to determine the circumstances that allowed the first Member State to make that decision. In order to comply with that requirement and taking into account, in view of the principle of good administration, the fact that the person concerned has already been granted refugee status by another Member State, the competent authorities of the second Member State *must* consider whether Article 34 of the Dublin III Regulation should be applied. Pursuant to Article 34(3) thereof, those authorities may address a request to the competent authorities in the first Member State for information and, in particular, an explanation as to the circumstances that gave rise to that status, in which case the authorities in the first Member State are required to reply.

(b) The reasonable period of time

87. In the light of the objective of expediency in processing an application [80] and the principle of good administration as a general principle of EU law, in the examination of asylum applications the procedure concerning the second application must be carried out within a reasonable period of time. Recital 19 of the Procedures Directive clearly restates this principle of expediency in EU asylum procedures and provides Member States with the 'flexibility … to prioritise the examination of any application by examining it before other, previously made applications' in order 'to shorten the overall duration of the procedure in certain cases'.

[77] See, for example, judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraphs 49 and 50), in which the Court applied the principle of good administration to a procedure for granting subsidiary protection.

[78] See Article 34(1) of the Dublin III Regulation.

[79] See point 43 above regarding the distinction between the loss of trust with respect to living conditions and the loss of trust with respect to asylum procedures.

[80] See Article 20(1) of the Dublin III Regulation, which supports that requirement. See also UNHCR, 'Improving the quality of decision-making', *Refugee Status Determination*, 2016, p. 5, EC/67/SC/CRP.12.

88. Thus, when the scenario envisaged in Article 3(2) of the Dublin III Regulation is triggered, account should be taken of the duration of the two cumulative procedures. Applicants who have previously been granted refugee status in another Member State but who cannot avail themselves of that status in the first Member State on account of the risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter, apply to the second Member State for international protection under 'exceptional circumstances' brought about by a loss of trust between the Member States. Cases falling under such 'exceptional circumstances' should be seen as forming part of the 'certain cases' given priority under recital 19 of the Procedures Directive.

89. It is important to note that Article 31(7)(a) of that directive, which allows the Member States to 'prioritise an examination of an application … where the application is likely to be [well founded]', further supports the prioritisation of the application for asylum in the second Member State following those specific 'exceptional circumstances' and where the first Member State has already determined that the person concerned is eligible for refugee status.

90. Thus, when the scenario envisaged in Article 3(2) of the Dublin III Regulation is triggered, the principle of good administration places a specific burden on the second Member State, the authorities of which must act promptly, since the person concerned has already undergone a first application procedure and possibly judicial proceedings establishing the risk under Article 4 of the Charter. In that respect, it is important to note that Article 31(3) of the Procedures Directive requires that Member States ensure that the examination procedure is concluded within six months of the lodging of the application.[81] That six-month period is therefore the maximum time allotted to processing an application under normal circumstances. The exceptional circumstances at hand should require further expediency and the application to the second Member State should be processed in a materially shorter time frame.

91. The first Member State that granted refugee status to the person concerned must also take on a specific extended burden in order to assist the second Member State in processing the application made by the person concerned in the most time-effective manner possible. Generally, when sharing information under Article 34 of the Dublin III Regulation, the deadline laid down in paragraph 5 thereof – which stipulates that the Member States requested to share information must do so within five weeks – applies.[82] That five-week deadline is also the maximum time allotted to processing an application under normal circumstances. The 'exceptional circumstances' posed by the loss of mutual trust between the Member States, on account of a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter in one of the Member States, should be met with additional expediency. The first Member State should respond to all requests for information made by the second Member State within a markedly shorter time frame than that applicable under normal circumstances.[83]

[81] Article 31(3) of the Procedures Directive makes clear that 'where an application is subject to the procedure laid down in [the Dublin III Regulation], the time limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority'. In the present case, that provision requires that Germany processes QY's application within six months of the determination that Germany is the Member State responsible for processing her application.

[82] If the exchange of information cannot take place within the set deadline of five weeks, the second Member State may then decide independently on the request.

[83] Reference should be made to the duty to cooperate in good faith enshrined in Article 4(3) TEU.

3. Interim conclusion

92. In the light of the foregoing, I take the view that the competent authority of the second Member State must carry out an assessment on the merits of the new application, in accordance with the provisions of the Procedures Directive and the Qualification Directive, and determine whether the material conditions necessary to qualify for refugee status are met by the person concerned, whilst ensuring that the principle of good administration is observed. That principle and the requirement to examine all the relevant elements of the application within the meaning of Article 4(1) of the Qualification Directive give rise to the obligation to take account of the fact that the application for asylum made by the person concerned has already been examined and that a positive decision granting refugee status has been delivered by the authorities of the first Member State. The competent authorities of the second Member State are to prioritise the examination of the application and consider the application of Article 34 of the Dublin III Regulation, which provides for information exchange mechanisms between the Member States, whereby the first Member State should respond to all requests for information by the second Member State within a markedly shorter time frame than that applicable under normal circumstances.

V. Conclusion

93. In the light of the foregoing considerations, I propose that the Court answers the question referred by the Bundesverwaltungsgericht (Federal Administrative Court, Germany) as follows:

In the event that a Member State may not exercise the power conferred by Article 33(2)(a) 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 to reject as inadmissible an application for international protection with a view to the granting of refugee status in another Member State because living conditions in that Member State would expose the applicant to a serious risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union,

Article 78(1) and (2) TFEU,

Article 3(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person,

Article 4(1) and Article 13 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, and

Article 10(2) and (3) and Article 33(1) and (2)(a) of Directive 2013/32

must be interpreted as not requiring a Member State to recognise, without a substantive examination, the international protection which another Member State has already granted to the applicant.

When carrying out an assessment of the new application submitted on account of the existence of the exceptional circumstances under Article 3(2) of Regulation No 604/2013, the competent authorities are to determine, in accordance with the provisions of Directive 2011/95 and Directive 2013/32, whether the material conditions necessary to qualify for refugee status are met by the person concerned, whilst ensuring that the principle of good administration is observed and specifically taking into account the fact that the application made by the person concerned has been already examined by the authorities of another Member State, since that fact constitutes a relevant element of the application within the meaning of Article 4(1) of Directive 2011/95. The competent authorities carrying out that assessment are to prioritise the examination of the application and to consider the application of Article 34 of Regulation No 604/2013, which provides for information exchange mechanisms between the Member States, whereby the first Member State should respond to all requests for information by the second Member State within a markedly shorter time frame than that applicable under normal circumstances.