

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 30 May 2017 — Mahmud Ibrahim and Others v Federal Republic of Germany

(Case C-318/17)

(2017/C 309/29)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Mahmud Ibrahim, Fadwa Ibrahim, Bushra Ibrahim, Mohammad Ibrahim, legally represented by Fadwa and Mahmud Ibrahim, Ahmad Ibrahim, legally represented by Fadwa and Mahmud Ibrahim

Defendant: Federal Republic of Germany

Questions referred

1. Does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU⁽¹⁾ preclude the application of national legislation which, in transposition of the power conferred in Article 33(2)(a) of Directive 2013/32/EU, which is more extensive than that conferred in the directive that preceded it, provides that an application for international protection is inadmissible if the applicant has been granted subsidiary protection in another Member State, in so far as the national legislation, in the absence of any national transitional provisions, is applicable even to applications lodged before 20 July 2015?

In particular, does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU allow the Member States, in particular, to transpose the extended power conferred in Article 33(2)(a) of Directive 2013/32/EU retroactively, with the result that even applications which were lodged before that extended power was transposed into national law but which were not yet the subject of a final decision at the time of transposition are inadmissible?

2. Does Article 33 of Directive 2013/32/EU confer on the Member States a right to choose whether to reject an application for asylum as inadmissible either on the ground that responsibility lies with another Member State (the Dublin Regulation) or under Article 33(2)(a) of Directive 2013/32/EU?
3. If the answer to Question 2 is in the affirmative, does EU law prevent a Member State from rejecting an application for international protection as inadmissible on the ground that subsidiary protection has been granted in another Member State, in transposition of Article 33(2)(a) of Directive 2013/32/EU, where
 - a) the applicant seeks to have the subsidiary protection granted to him in another Member State enhanced (by the award of refugee status) and the asylum procedure in the other Member State was (and continues to be) vitiated by systemic flaws, or
 - b) the form which the international protection takes, that is to say the living conditions of those benefiting from subsidiary protection, in the other Member State which has already granted the applicant subsidiary protection,
 - infringes Article 4 of the Charter and Article 3 ECHR or
 - does not satisfy the requirements of Article 20 et seq. of Directive 2011/95/EU but does not in and of itself infringe Article 4 of the Charter or Article 3 ECHR?
4. If Question 3b is to be answered in the affirmative, is this also the case where, although the persons benefiting from subsidiary protection do not receive any subsistence benefits at all or those which they do receive are very limited by comparison with those available in other Member States, they are to this extent not treated any differently from nationals of that Member State?

5. If Question 2 is answered in the negative:

- a) Is the Dublin III Regulation applicable in a procedure for the grant of international protection if the asylum application was lodged before 1 January 2014 but the take back request was not lodged until after 1 January 2014 and the applicant had previously (in February 2013) been granted subsidiary protection in the requested Member State itself?
- b) Do the Dublin provisions support the inference of an — unwritten — transfer of responsibility to the Member State which has requested that an applicant be taken back, where the requested responsible Member State has refused to grant a take back request made, within the prescribed time limit, under the Dublin provisions and has instead referred to an international readmission agreement?

⁽¹⁾ 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 L 180, 2013, p. 60).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 30 May 2017 — Nisreen Sharqawi and Others v Federal Republic of Germany

(Case C-319/17)

(2017/C 309/30)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Nisreen Sharqawi, Yazan Fattayrji, legally represented by Nisreen Sharqawi, Hosam Fattayrji, legally represented by Nisreen Sharqawi

Defendant: Federal Republic of Germany

Questions referred

1. Does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU⁽¹⁾ preclude the application of national legislation which, in transposition of the power conferred in Article 33(2)(a) of Directive 2013/32/EU, which is more extensive than that conferred in the directive that preceded it, provides that an application for international protection is inadmissible if the applicant has been granted subsidiary protection in another Member State, in so far as the national legislation, in the absence of any national transitional provisions, is applicable even to applications lodged before 20 July 2015?

In particular, does the transitional provision contained in the first paragraph of Article 52 of Directive 2013/32/EU allow the Member States, in particular, to transpose the extended power conferred in Article 33(2)(a) of Directive 2013/32/EU retroactively, with the result that even applications which were lodged before that extended power was transposed into national law but which were not yet the subject of a final decision at the time of transposition are inadmissible?

2. Does Article 33 of Directive 2013/32/EU confer on the Member States a right to choose whether to reject an application for asylum as inadmissible either on the ground that responsibility lies with another Member State (the Dublin Regulation) or under Article 33(2)(a) of Directive 2013/32/EU?
3. If the answer to Question 2 is in the affirmative, does EU law prevent a Member State from rejecting an application for international protection as inadmissible on the ground that subsidiary protection has been granted in another Member State, in transposition of Article 33(2)(a) of Directive 2013/32/EU, where
 - a) the applicant seeks to have the subsidiary protection granted to him in another Member State enhanced (by the award of refugee status) and the asylum procedure in the other Member State was (and continues to be) vitiated by systemic flaws, or