Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 March 2020*

(Reference for a preliminary ruling – Asylum policy – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Application for international protection – Article 33(2) – Grounds of inadmissibility – National legislation under which an application is inadmissible if the applicant has arrived in the Member State concerned via a country in which he or she is not exposed to persecution or the risk of serious harm, or if that country provides sufficient protection – Article 46 – Right to an effective remedy – Judicial review of administrative decisions concerning the inadmissibility of applications for international protection – Time limit of eight days within which to give a decision – Article 47 of the Charter of Fundamental Rights of the European Union)

In Case C-564/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary), made by decision of 21 August 2018, received at the Court on 7 September 2018, in the proceedings

LH

v

Bevándorlási és Menekültügyi Hivatal,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, M. Safjan, L. Bay Larsen and C. Toader, Judges,

Advocate General: M. Bobek,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 11 September 2019,

after considering the observations submitted on behalf of

– LH, by T.Á. Kovács and B. Pohárnok, ügyvédek,

– the Hungarian Government, initially by M.Z. Fehér, G. Tornyai and M.M. Tátrai, and subsequently by M.Z. Fehér and M.M. Tátrai, acting as Agents,

* Language of the case: Hungarian.

– the German Government, initially by T. Henze and R. Kanitz, and subsequently by the latter, acting as Agents,

– the French Government, by D. Colas, D. Dubois and E. de Moustier, acting as Agents,

– the European Commission, by M. Condou-Durande, A. Tokár and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 December 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 33 and Article 46(3) 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 (OJ 2013 L 180, p. 60), as well as Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between LH and the Bevándorlási és Menekültügyi Hivatal (Immigration and Asylum Office, Hungary), further to the latter's decision rejecting LH's application for international protection as inadmissible, without any examination of its substance, and ordering his removal together with a two-year ban on entry and residence.

Legal context

EU law

3 Recitals 11, 12, 18, 43, 44, 50, 56 and 60 of Directive 2013/32 state:

'(11) In order to ensure a comprehensive and efficient assessment of the international protection needs of applicants within the meaning of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [(OJ 2011 L 337, p. 9)], the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a single procedure.

(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.

…

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

…

(43) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive 2011/95/EU, except where this Directive provides otherwise, in particular where it can reasonably be assumed that another country would do the examination or provide sufficient protection. …

(44) Member States should not be obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles should be established for the consideration or designation by Member States of third countries as safe.

…

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection … are subject to an effective remedy before a court or tribunal.

…

(56) Since the objective of this Directive, namely to establish common procedures for granting and withdrawing international protection …

…

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.'

4 Article 1 of Directive 2013/32 states:

'The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.'

5 Under the heading 'Guarantees for applicants', Article 12 of Directive 2013/32 provides:

'1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

…

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. …

(c) they shall not be denied the opportunity to communicate with [the United National High Commission for Refugees (UNHCR)] or with any other organisation providing legal advice or other counselling …

(d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d) …

(e) they shall be given notice in reasonable time of the decision by the determining authority on their application. …

…

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).'

6 Article 20(1) of that directive provides:

'Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. …'

7 Article 22 of Directive 2013/32 recognises the right of applicants for international protection to legal assistance and representation at all stages of the procedure.

8 Article 24 of that directive, entitled 'Applicants in need of special procedural guarantees' provides, in paragraph 3 thereof:

Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

…'

9 Article 25 of Directive 2013/32 covers guarantees for unaccompanied minors.

10 Article 31 of the directive, entitled 'Examination procedure', which opens Chapter III, headed 'Procedures at first instance', provides in paragraph 2 thereof:

'Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.'

11 Under Article 33 of the directive:

'1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013 [of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31)], Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU 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;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;

(d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or

(e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.'

12 Under Article 35 of Directive 2013/32:

'A country can be considered to be a first country of asylum for a particular applicant if:

(a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or

(b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*,

provided that he/she will be re-admitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.'

13 Article 38 of that directive is worded as follows:

'1. Member States may apply the safe third country concept only where the competent authorities are satisfied that an applicant for international protection will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

(c) the principle of non-refoulement in accordance with the [Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, vol. 1 189, p. 150, No 2545 (1954)) as supplemented and amended by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967 ("the Geneva Convention")] is respected;

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national law, including:

(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

3. When implementing a decision solely based on this Article, Member States shall:

(a) inform the applicant accordingly; and

(b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.'

14 Under Article 46(1), (3), (4) and (10) of Directive 2013/32:

'1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

…

(ii) considering an application to be inadmissible pursuant to Article 33(2);

…

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. …

…

10. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.'

Hungarian law

15 Article XIV(4) of the Magyarország Alaptörvénye (Basic Law of Hungary), as amended on 29 June 2018, provides:

'Hungary shall, upon request, grant asylum to non-Hungarian citizens being persecuted or having a well-founded fear of persecution in their native country or in the country of their usual residence for reasons of race, nationality, membership of a particular social group, religious or political belief, if they do not receive protection from their country of origin or from any other country. A person who does not hold Hungarian nationality and who has arrived on the territory of Hungary via a country in which he or she was not exposed to persecution or a direct risk of persecution shall not be able to benefit from the right to asylum.'

16 Paragraph 6(1) of the menedékjogról szóló 2007. évi LXXX. törvény (Law No LXXX of 2007 on the right to asylum), in the version in force as from 1 July 2018 ('the Law on the right to asylum'), provides:

'Hungary shall grant refugee status to foreign nationals who satisfy the conditions set out in the first sentence of Article XIV(4) of the Basic Law of Hungary.'

17 Paragraph 12(1) of the Law on the right to asylum is worded as follows:

'Hungary shall grant subsidiary protection status to foreign nationals who do not fulfil the conditions for being recognised as refugees but who run the risk of serious harm should they return to their country of origin and who may not or, because of the fear of that risk, wish not to request the protection of their country of origin.'

18 Paragraph 51(2) of that law provides:

'The application shall be inadmissible if

…

(e) there is a third country which can be considered to be a safe third country for the applicant;

(f) the applicant has arrived in Hungary via a State in which he or she is not exposed to persecution within the meaning of Article 6(1), or a risk of serious harm within the meaning of Article 12(1), or in which an adequate degree of protection is guaranteed.'

19 Under Paragraph 53(2) and (4) of the Law on the right to asylum, the rejection of an application for asylum as inadmissible by the national asylum authority can be subject to appeal before the courts, which must give a decision within eight days after the notice of appeal is received.

20 Article 2 of Government Decree No 191/2015 of 21 July 2015 sets out a list of countries considered to be safe third countries. That list contains the Member States and candidate States for accession to the European Union, including the Republic of Serbia.

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

21 The applicant in the main proceedings is a Syrian national of Kurdish ethnicity, who arrived in Hungary in a transit zone. On 19 July 2018, he made an application for international protection to the Immigration and Asylum Office. In support of his application, he claimed that he had wanted to live in Europe even before the war in Syria, so that he could study archaeology.

22 The Immigration and Asylum Office rejected that application as inadmissible, on the basis of Article 51(2)(f) of the Law on the right to asylum, without, therefore, examining the substance of the application, and found that the principle of *non-refoulement* did not apply to the applicant in the main proceedings. The Immigration and Asylum Office therefore (i) issued a return decision in respect of the applicant in the main proceedings directing that he leave the territory of the European Union and return to Serbian territory, and (ii) ordered that that decision be enforced by removal. That office also imposed on the applicant a two-year ban on entry and residence.

23 The applicant in the main proceedings challenged that decision before the referring court.

24 The referring court – which considers that the list of grounds of inadmissibility set out in Article 33(2) of Directive 2013/32 is exhaustive and that Article 51(2)(f) of the Law on the right to asylum cannot, by virtue of its content, relate to any of the grounds of inadmissibility listed in Article33(2) – is uncertain whether national legislation has introduced a new ground of inadmissibility which is contrary to EU law.

25 Furthermore, the referring court observes that Article 53(4) of the Law on the right to asylum requires that the court hearing an action against a decision rejecting an application for international protection on the ground of inadmissibility give a decision within eight days of receipt of the notice of appeal. The referring court considers that, having regard to the individual circumstances and particular features of the case at issue, such a time limit may prove to be insufficient to obtain evidence and determine the factual framework and, therefore, give a properly reasoned judicial decision. That court therefore entertains doubts as to the compatibility of the national legislation at issue with Article 31(2) of Directive 2013/32 and Article 47 of the Charter.

26 In those circumstances, the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) May the provisions on inadmissible applications in Article 33 of [Directive 2013/32] … be interpreted as not precluding a Member State’s legislation pursuant to which an application is inadmissible in the context of the asylum procedure when the applicant has arrived in that Member State, Hungary, via a country where he or she is not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed?

(2) May Article 47 of the [Charter] and Article 31 of Directive [2013/32] – having regard also to the provisions of Articles 6 and 13 of the [European Convention on Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950] – be interpreted as meaning that a Member State’s legislation complies with those provisions when it lays down a mandatory time limit of eight days for the administrative-law proceedings before a court in respect of applications declared inadmissible in asylum procedures?’

Procedure before the Court

27 The referring court requested that the case be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union. On 19 September 2018, after hearing the Advocate General, the First Chamber decided not to grant that request.

Consideration of the questions referred

The first question

28 By its first question, the referring court asks, in essence, whether Article 33 of Directive 2013/32 must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed.

29 Under Article 33(1) of Directive 2013/32:, in addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95 where an application is considered inadmissible pursuant to that article. In that connection, Article 33(2) of Directive 2013/32 sets out an exhaustive list of situations in which the Member States may consider an application for international protection to be inadmissible (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 76).

30 The fact that the list set out in Article 33(2) of Directive 2013/32 is exhaustive is based on both the wording of that article – in particular, on the word 'only' preceding the list of grounds of inadmissibility – and the purpose thereof, which consists specifically, as the Court has previously found, in relaxing the obligation of the Member State responsible for examining an application for international protection by defining the cases in which such an application is considered to be inadmissible (see, to that effect, judgment of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraph 43).

31 It is therefore necessary to determine whether national legislation, such as that at issue in the main proceedings, can be regarded as implementing one of the grounds of inadmissibility laid down in Article 33(2) of Directive 2013/32.

32 In that regard, it should be observed that, as the Hungarian Government confirmed at the hearing, the national legislation at issue in the main proceedings refers to two different situations that give rise to the inadmissibility of an application for international protection, namely where (i) the applicant has arrived in Hungary via a State in which he or she is not exposed to persecution or a risk of serious harm, and (ii) the applicant has arrived in that Member State via a State in which a sufficient degree of protection is guaranteed.

33 In the light of the content of both that legislation and Article 33(2) of Directive 2013/32, it must be ruled out from the outset that the grounds of inadmissibility set out in that legislation could constitute the implementation of the grounds laid down in Article 33(2)(a), (d) and (e) of the directive, since only the grounds of inadmissibility relating to the first country of asylum and the safe third country – set out in Article 33(2)(b) and (c) of the directive, respectively – can be taken into consideration to that end.

34 In that context, the Hungarian Government argues that the national legislation at issue in the main proceedings aims to supplement the national rules adopted for the purposes of applying the ground of inadmissibility relating to the safe third country laid down in Article 33(2)(c) of Directive 2013/32.

35 In that connection, it should be borne in mind that, under that provision, the Member States can consider an application for international protection to be inadmissible where a country that is not an EU Member State is considered to be a safe third country for the applicant under Article 38 of the directive.

36 As the Advocate General notes in points 42 to 45 of his Opinion, it is clear from Article 38 of Directive 2013/32 that the application of the concept of 'safe third country', for the purposes of Article 33(2)(c) of that directive, is subject to compliance with the conditions laid down in Article 38(1) to (4).

37 Specifically, in the first place, Article 38(1) of Directive 2013/32 requires that the competent authorities of the Member States be satisfied that the third country concerned complies with the principles expressly set out in that provision, namely that (i) the life and liberty of the applicant for international protection are not threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion; (ii) there is no risk, for the applicant for international protection, of serious harm as defined in Directive 2011/95/; (iii) the principle of *non-refoulement* is respected in accordance with the Geneva Convention; (iv) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (v) the possibility exists for the applicant for international protection to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

38 In the second place, under Article 38(2) of Directive 2013/32, the application of the concept of 'safe third country' is subject to rules laid down in national law and, in particular, (i) those requiring such a connection between the applicant for international protection and the third country concerned that it would be reasonable to return that person to that country; (ii) those on the methodology by which the competent authorities satisfy themselves that the concept of 'safe third country' may be applied to a particular country or to a particular applicant for international protection, such methodology being required to include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe; and (iii) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant for international protection and, in that context, allowing that applicant to challenge both the application of the concept of 'safe third country' on the grounds that the third country is not safe in his or her particular circumstances and the existence of a connection between him or her and the third country.

39 In the third place, Article 38(3) and (4) of Directive 2013/32 requires that (i) Member States implementing a decision based solely on that concept of 'safe third country' inform the applicant for international protection accordingly and provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance, and (ii) Member States ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II of that directive where the third country does not permit the applicant to enter its territory.

40 It should be pointed out that the conditions laid down in Article 38 of Directive 2013/32 are cumulative (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 121), with the effect that the ground of inadmissibility laid down in Article 33(2)(c) of that directive cannot be applied where one of those conditions has not been satisfied.

41 Consequently, it is only where national legislation which has the effect of dismissing an application for international protection as inadmissible satisfies all of the conditions set out in Article 38 of Directive 2013/32 that such legislation could constitute an application of the ground of inadmissibility laid down in Article 33(2)(c) of that directive.

42 In the present case, as regards, in the first place, the condition laid down in Article 38(1) of Directive 2013/32, in the light of the wording itself of the national legislation at issue in the main proceedings, it would appear – and this is a matter for the referring court to determine – that the application of the ground of inadmissibility relating to the first situation referred to in that legislation is subject to compliance, in the third country concerned, with only some of the principles laid down in

Article 38(1) of that directive, the requirement of compliance in that country with the principle of *non-refoulement*, inter alia, being absent. The condition laid down in Article 38(1) of that directive has not, therefore, been satisfied.

43 As regards the ground of inadmissibility based on in the second situation referred to in the national legislation at issue in the main proceedings, the referring court did not provide any indication as to the content of the 'sufficient degree of protection' required by that legislation or, in particular, as to whether such a degree of protection includes compliance, in the third country concerned, with all of the principles laid down in Article 38(1) of Directive 2013/32. It is for the referring court to determine whether that is the case.

44 As regards, in the second place, the conditions laid down in Article 38(2) of Directive 2013/32 and, in particular, that relating to the existence of a connection between the applicant for international protection and the third country concerned, the connection that the national legislation at issue in the main proceedings establishes between such an applicant and the third country concerned is based simply on that applicant's transit through the territory of that country.

45 Consequently, it is necessary to determine whether such transit is capable of constituting a 'connection' within the meaning of Article 38(2)(a) of Directive 2013/32.

46 In that regard, it should be observed that, as is clear from recital 44 and Article 38(2)(a) of Directive 2013/32, the connection which there must be between the applicant for international protection and the third country concerned, for the purposes of applying the ground of inadmissibility laid down in Article 33(2)(c) of that directive, must be sufficient to make the applicant's return to that country reasonable.

47 The fact that an applicant for international protection has transited through the territory of a third country cannot alone constitute a valid reason for considering that that applicant could reasonably return to that country.

48 Furthermore, as is apparent from Article 38(2) of Directive 2013/32, the Member States are to adopt rules providing not only for the existence of a 'connection' within the meaning of that provision, but also for the methodology applicable for assessing, on a case-by-case basis, in relation to the individual circumstances of the applicant for international protection, whether the third country concerned satisfies the conditions for being regarded as safe for that person, as well as for the possibility for that applicant to challenge the existence of such a connection.

49 As the Advocate General notes in point 53 of his Opinion, the obligation imposed on Member States by the EU legislature, for the purposes of applying the concept of 'safe third country', to lay down such rules could not be justified if the mere fact that the applicant for international protection transited through the third country concerned constituted a sufficient or significant connection for those purposes. If that were the case, those rules, along with the individual examination and the possibility for that applicant to challenge the existence of the connection for which those rules must make express provision, would be devoid of any purpose.

50 It follows from the foregoing that the transit by an applicant for international protection through the third country concerned cannot constitute a 'connection' within the meaning of Article 38(2)(a) of Directive 2013/32.

51 Consequently, even if the national legislation at issue in the main proceedings satisfied the condition laid down in Article 38(1) of Directive 2013/32, that national legislation could not constitute an application of the ground of inadmissibility relating to a safe third country, laid down in Article 33(2)(c) of that directive, since the condition that there must be a connection, as laid down in Article 38(2)(a) of that directive, has not been satisfied in any event.

52 Lastly, such national legislation also cannot constitute an application of the ground of inadmissibility relating to the first country of asylum, laid down in Article 33(2)(b) of Directive 2013/32.

53 It is sufficient to observe that, according to the very wording of subparagraphs (a) and (b) of the first paragraph of Article 35 of Directive 2013/32, a country can be considered to be a first country of asylum for a particular applicant for international protection only if that person has been recognised in that country as a refugee and can still avail him- or herself of that protection; or if he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*, provided that that person will be readmitted to that country.

54 It is clear from the information before the Court that the application of the ground of inadmissibility laid down in the national legislation at issue in the main proceedings is not subject to the applicant for international protection benefiting, in the country concerned, from refugee status or otherwise sufficient protection, with the result that it there is no need to examine the need for protection in the European Union.

55 Accordingly, it must be held that national legislation, such as that at issue in the main proceedings, cannot be regarded as implementing one of the grounds of inadmissibility laid down in Article 33(2) of Directive 2013/32.

56 In the light of the foregoing considerations, the answer to the first question is that Article 33 of Directive 2013/32 must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed.

The second question

57 As a preliminary point, it should be observed that, while the second question, as formulated by the referring court, relates to the interpretation of Article 31 of Directive 2013/32, concerning the administrative procedure for examining applications for international protection, the question in fact relates to the implementation of the right to an effective remedy provided for in Article 46 of that directive. It is therefore appropriate to interpret the latter provision, and in particular paragraph 3 thereof, so as to provide a useful answer to the referring court.

58 Thus, by its second question, the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as precluding national legislation which sets a time limit of eight days within which a court hearing an appeal against a decision rejecting an application for international protection as inadmissible is to give a decision.

59 Article 46(1) of Directive 2013/32 requires the Member States to guarantee the right to an effective remedy before a court or tribunal against a decision rejecting an application for international protection, including against decisions dismissing the application as manifestly inadmissible or unfounded.

60 The requirement thus imposed on the Member States to provide for such a right to a remedy corresponds to the right enshrined in Article 47 of the Charter, entitled ‘Right to an effective remedy and to a fair trial’, which provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a court or tribunal (judgment of 18 October 2018, *E.G.*, C-662/17, EU:C:2018:847, paragraph 46 and the case-law cited).

61 It follows that the characteristics of the remedy provided for in Article 46 of Directive 2013/32 must be determined in a manner that is consistent with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection (judgment of 18 October 2018, *E.G.*, C-662/17, EU:C:2018:847, paragraph 47 and the case-law cited).

62 As regards, in particular, the time limit for a decision, it should be observed that not only does Directive 2013/32 not lay down harmonised rules on time limits for decisions, but it authorises the Member States to set such time limits in Article 46(10) thereof (judgment delivered today, *Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216, paragraph 25).

63 Furthermore, as is clear from the settled case-law of the Court, in the absence of EU rules on the matter, it is for the national legal order of each Member State to lay down the detailed procedural rules governing actions safeguarding the rights of individuals in accordance with the principle of procedural autonomy, on condition, however, 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) (judgment delivered today, *Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216, paragraph 26 and the case-law cited).

64 In so far as concerns compliance with the condition relating to the principle of equivalence as regards a time limit for a decision such as that at issue in the main proceedings, it should be noted, subject to the checks which are a matter for the referring court, that it is not apparent from the information before the Court – and nor, moreover, has it been argued – that similar situations are governed by national procedural arrangements that are more favourable than those laid down for the implementation of Directive 2013/32 and applied to the case in the main proceedings (see, to that effect, judgment delivered today, *Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216, paragraph 27 and the case-law cited).

65 As to compliance with the principle of effectiveness, it should be recalled that Article 46(3) of Directive 2013/32 defines the scope of the right to an effective remedy by specifying that Members States bound by it must ensure that the court or tribunal before which the decision relating to the application for international protection is contested carries out 'a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95]' (judgment delivered today, *Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216, paragraph 28 and the case-law cited).

66 In that connection, it must be pointed out that, even in the case of an appeal against a decision rejecting an application for international protection as inadmissible, the court hearing such an appeal is required to carry out the full and *ex nunc* examination referred to in Article 46(3) of Directive 2013/32

67 As the Court has previously found, the words 'where applicable', contained in the phrase 'including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95]', underline the fact that the full and *ex nunc* examination to be carried out by the court need not necessarily involve a substantive examination of the need for international protection and may accordingly concern the admissibility of the application for international protection, where national law so allows, pursuant to Article 33(2) of Directive 2013/32 (judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 115).

68 Moreover, as regards, in particular, an appeal against a decision rejecting an application for international protection as inadmissible on the basis of the grounds of inadmissibility relating to the first country of asylum or the safe third country, referred to, respectively, in Article 33(2)(b) and (c) of Directive 2013/32, in the full and up-to-date examination which is to be carried out by the court

hearing such an appeal, the latter is required, inter alia, to determine whether the applicant for international protection will benefit from sufficient protection in a third country or whether a third country can be regarded as a safe third country for the applicant.

69 For the purposes of that determination, that court must examine thoroughly whether each of the cumulative conditions to which the application of such grounds of inadmissibility is subject – such as those referred to, as regards (i) the ground relating to the first country of asylum, in Article 35 of Directive 2013/32 and (ii) the ground relating to the safe third country, in Article 38 of that directive – is satisfied, by asking, where necessary, the authority responsible for examining applications for international protection to produce any documents and any factual evidence that may be relevant, and to satisfy itself, before giving a decision, that the applicant has had the opportunity to set out his or her point of view in person on the applicability of the ground of inadmissibility to his or her specific situation (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 121 and 124).

70 Furthermore, it should be noted, as the Advocate General observed in point 84 of his Opinion, that, in the context of the judicial remedy provided for in Article 46(3) of Directive 2013/32, applicants enjoy a certain number of specific procedural rights pursuant to (i) Article 12(2) of that directive, namely the right to an interpreter, the possibility of communicating with, inter alia, the United Nations High Commission for Refugees (UNHCR) and access to certain information; (ii) Article 20 of that directive, namely the possibility of free legal assistance and representation; (iii) Article 22 of that directive, concerning access to a legal advisor; and (iv) Articles 24 and 25 of the directive, relating to the rights of persons who have specific needs and of unaccompanied minors.

71 Moreover, if the court hearing an appeal against a decision rejecting an application for international protection as inadmissible considers that it is necessary to hear the applicant in order to carry out the full and *ex nunc* examination which the court is required to conduct, it must hold such a hearing; in such a case, the applicant has the right, where necessary, during the hearing before the court, to the services of an interpreter in order to submit his or her arguments (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 126 and 128).

72 In the present case, the national legislation at issue in the main proceedings sets a time limit of eight days in which a decision must be given on an appeal against a decision rejecting an application for international protection as inadmissible. The referring court considers that it is impossible to give a decision on such an appeal within the eight days following the receipt of the notice of appeal by the court without infringing the requirement of a complete examination.

73 In that connection, a time limit of eight days – although it cannot be ruled out that it might be sufficient in the clearest cases of inadmissibility – may prove to be, in certain circumstances, as the Advocate General notes in points 86 and 87 of his Opinion, insufficient in practical terms to allow the court hearing an appeal against a decision rejecting an application for international protection as inadmissible to ensure compliance with all of the rights referred to in paragraphs 65 to 71 above in each of the cases before it and, therefore, to guarantee the right of applicants for international protection to an effective remedy.

74 Article 46(4) of Directive 2013/32 lays down the requirement that Member States provide for reasonable time limits for such decisions.

75 Thus, in a situation in which the time limit set for the court hearing an appeal against a decision rejecting an application for international protection as inadmissible does not make it possible to ensure that the substantive rules and procedural guarantees enjoyed by the applicant under EU law are effective, the principle of the effectiveness of EU law gives rise to an obligation for the court concerned

to disapply the national legislation that imposed that time limit as imperative (see, to that effect, judgment delivered today, *Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216, paragraph 34).

76 In any event, in the light of the overall aim that decisions be made as soon as possible on applications for international protection, set in recital 18 of Directive 2013/32, the obligation for the court to disapply national legislation which lays down a time limit for decisions that is incompatible with the principle of the effectiveness of EU law cannot exempt it from any obligation to act expeditiously but simply requires that that court regard the time limit imposed on it as indicative and that it give a decision as soon as possible when such a time limit is exceeded (judgment delivered today, *Bevándorlási és Menekültügyi Hivatal*, C-406/18, EU:C:2020:216, paragraphs 35 and 36).

77 In the light of the foregoing considerations, the answer to the second question is that Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as precluding national legislation which sets a time limit of eight days within which a court hearing an appeal against a decision rejecting an application for international protection as inadmissible is to give a decision, where that court is unable to ensure, within such a time limit, that the substantive rules and procedural guarantees enjoyed by the applicant under EU law are effective.

Costs

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

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

1. **Article 33 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 must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed.**

2. **Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which sets a time limit of eight days within which a court hearing an appeal against a decision rejecting an application for international protection as inadmissible is to give a decision, where that court is unable to ensure, within such a time limit, that the substantive rules and procedural guarantees enjoyed by the applicant under EU law are effective.**

[Signatures]