Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

25 July 2018 *

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection — Directive 2011/95/EU — Article 12 — Exclusion from refugee status — Persons registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) — Existence of a 'first country of asylum', for a refugee from Palestine, in the UNRWA area of operations — Common procedures for granting international protection — Directive 2013/32/EU — Article 46 — Right to an effective remedy — Full and *ex nunc* examination — Scope of the powers of the court of first instance — Examination by the courts of international protection needs — Examination of grounds of inadmissibility)

In Case C-585/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Sofia Administrative Court, Bulgaria), made by decision of 8 November 2016, received at the Court on 18 November 2016, in the proceedings

Serin Alheto

v

Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite,

THE COURT (Grand Chamber),

Composed of K. Lenaerts, President, M. Ilešič (Rapporteur), L. Bay Larsen, T. von Danwitz, A. Rosas, J. Malenovský and E. Levits, Presidents of Chambers, E. Juhász, A. Borg Barthet, F. Biltgen, K. Jürimäe, C. Lycourgos and M. Vilaras, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 23 January 2018,

after considering the observations submitted on behalf of

– Ms Alheto, by P. Zhelev, V. Nilsen, G. Voynov, G. Toshev, M. Andreeva and I. Savova, advokati,

– the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

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

* Language of the case: Bulgarian.

– the European Commission, by M. Condou-Durande, C. Georgieva-Kecsmar and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 May 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12(1) 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), and Article 35 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).

2 The request has been made in proceedings between Ms Serin Alheto and the zamestnik-predsedatel na Darzhavna agentsia za bezhantsite (Deputy Chairperson of the State Agency for Refugees, Bulgaria, 'the DAB') concerning the latter's refusal to grant the application for international protection made by Ms Alheto.

Legal context

International law

The Geneva Convention

3 The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. It was 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').

4 Article 1(A) of the Geneva Convention, in the definition it provides of the term 'refugee', refers inter alia to the risk of persecution.

5 Article 1(D) of that convention states:

'This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.'

United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

6 United Nations General Assembly resolution No 302 (IV) of 8 December 1949, concerning assistance to Palestine refugees, established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Its task is to serve the well-being and human development of Palestine refugees.

7 UNRWA's area of operations covers the Gaza Strip, the West Bank, Jordan, Lebanon and Syria.

EU law

Directive 2011/95

8 Directive 2011/95 was adopted on the basis of Article 78(2)(a) and (b) TFEU, which provides as follows:

'for the purposes of [developing 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], the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

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

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection'.

9 Article 2 of that directive provides as follows:

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

(a) "international protection" means refugee status and subsidiary protection status as defined in points (e) and (g);

…

(c) "Geneva Convention" means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;

(d) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(e) "refugee status" means the recognition by a Member State of a third-country national or a stateless person as a refugee;

(f) "person eligible for subsidiary protection" means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case

of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(g) "subsidiary protection status" means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;

…'

10 Article 4(3) of that directive provides as follows:

'The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.'

11 Article 5(1) of that directive states:

'A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.'

12 Article 7 of Directive 2011/95, entitled 'Actors of protection', provides in paragraphs 1 and 2:

'1. Protection against persecution or serious harm can only be provided by:

(a) the State; or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State;

provided they are willing and able to offer protection in accordance with paragraph 2.

2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.'

13 Articles 9 and 10 of that directive, which are contained in Chapter III, entitled 'Qualification for being a refugee' set out the factors to be taken into account in order to evaluate whether the applicant has been or may be subject to persecution.

14 Article 12 of that directive, which is also contained in Chapter III, is entitled 'Exclusion' and provides as follows:

'1. A third-country national or a stateless person is excluded from being a refugee if:

(a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive'.

…'

15 Article 15 of that directive is contained in Chapter V, entitled 'Qualification for subsidiary protection'. It states as follows:

'Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

16 Article 17 of Directive 2011/95, which is also contained in Chapter V, defines the circumstances in which eligibility for subsidiary protection is excluded.

17 Article 21 of that directive, entitled 'Protection from refoulement', provides in paragraph 1:

'Member States shall respect the principle of non-refoulement in accordance with their international obligations.'

18 Chapter IX of that directive, entitled 'Final provisions', contains Articles 38 to 42. The first paragraph of Article 39(1) of that directive provides as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by 21 December 2013. They shall forthwith communicate to the Commission the text of those provisions.'

19 Article 40 of that directive provides:

'[Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12)] is repealed for the Member States bound by this Directive with effect from 21 December 2013, …

For the Member States bound by this Directive, references to the repealed Directive shall be construed as references to this Directive ...'

20 Article 41 of Directive 2011/95 provides as follows:

'This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 shall apply from 22 December 2013.'

21 The wording of Articles 12 and 15 of Directive 2011/95 corresponds to that of Articles 12 and 15 of Directive 2004/83.

Directive 2013/32

22 Directive 2013/32 was adopted on the basis of Article 78(2)(d) TFEU, which provides for common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status.

23 Recitals 4, 13, 16, 18 and 22 of that directive state:

'(4) ... A Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Union rules leading to a common asylum procedure in the Union.

…

(13) The approximation of rules on the procedures for granting and withdrawing international protection should help to limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, and to create equivalent conditions for the application of Directive [2011/95] in Member States.

…

(16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.

…

(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.

…

(22) It is also in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. To that end, applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances. The provision of such information should, inter alia, enable the applicants to better understand the procedure, thus helping them to comply with the relevant obligations. …'

24 Article 1 of Directive 2013/32 provides as follows:

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

25 Article 2 of Directive 2013/32 provides as follows:

'For the purposes of this Directive:

…

(f) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;

…'

26 According to Article 4(1) of Directive 2013/32:

'1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.

…

3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. … Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.

…'

27 Article 10(2) of that directive states:

'When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.'

28 Under Article 12 of that directive:

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

(a) they shall be informed, in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not

cooperating with the authorities. They shall be informed of the time-frame, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive [2011/95], as well as of the consequences of an explicit or implicit withdrawal of the application. That information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 13;

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. …

…'

29 Article 13(1) of the same directive provides as follows:

'Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive [2011/95]. …'

30 Article 33(2) of Directive 2013/32 provides as follows:

'Member States may consider an application for international protection as inadmissible only if:

…

(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;

…'

31 Under the first paragraph of Article 34(1) of Directive 2001/29:

'Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 33 in their particular circumstances before the determining authority decides on the admissibility of an application for international protection. To that end, Member States shall conduct a personal interview on the admissibility of the application ...'

32 Article 35 of that directive states:

'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 or she will be readmitted 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.'

33 Under Article 36(1) of that directive:

'A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

(a) he or she has the nationality of that country; or

(b) he or she is a stateless person and was formerly habitually resident in that country,

and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive [2011/95].'

34 Article 38 of Directive 2013/32 provides as follows:

'1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking 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];

(c) the principle of non-refoulement in accordance with 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;

…'

35 Under Article 46 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:
   (i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;
   (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], at least in appeals procedures before a court or tribunal of first instance.

…'

36 Article 51(1) of Directive 2013/32 provides as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate the text of those measures to the Commission.'

37 Under the first paragraph of Article 52 of that directive:

'Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged and to procedures for the withdrawal of international protection started after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to [Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13)].'

38 The first paragraph of Article 53 of Directive 2013/32 provides as follows:

'Directive [2005/85] is repealed for the Member States bound by this Directive with effect from 21 July 2015 ...'

39 The first paragraph of Article 54 of Directive 2013/32 states:

'This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.'

40 Since the publication referred to in Article 54 took place on 29 June 2013, Directive 2013/32 entered into force on 19 July 2013.

41 Articles 33, 35 and 38, and Article 46(1) of Directive 2013/32 correspond, respectively, to Articles 25, 26 and 27 and Article 39(1) of Directive 2005/85. By contrast, Article 10(2), Article 34 and Article 46(3) of Directive 2013/32 set out rules which are not contained in Directive 2005/85.

Bulgarian law

42 In Bulgaria, applications for international protection are examined in accordance with the Zakon za ubezhishteto i bezhantsite (Law on asylum and refugees, 'the ZUB'). For the purposes of the transposition into Bulgarian law of Directives 2011/95 and 2013/32, the ZUB was amended by laws which entered into force in October 2015 and December 2015 respectively.

43 Articles 8 and 9 of the ZUB essentially include the criteria set out in Articles 9, 10 and 15 of Directive 2011/95.

44 Article 12(1) of the ZUB provides as follows:

‘The status of refugee shall not be granted to foreign nationals:

…

4. who are receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees; when such protection or assistance has not ceased, without the position of such persons being definitively settled in accordance with a relevant resolution adopted by the United Nations, those persons shall *ipso facto* be entitled to the benefits of the [Geneva Convention];

…’

45 The ZUB, in the version preceding the transposition into Bulgarian law of Directives 2011/95 and 2013/32, provided, in Article 12(1) thereof:

‘The status of refugee shall not be granted to foreign nationals:

…

4. who are receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees and such protection or assistance has not ceased, without the position of such persons being definitively settled in accordance with a relevant resolution adopted by the United Nations;

…’

46 Article 13(2) of the ZUB provides:

‘Procedures for the grant of international protection shall not be initiated, or shall be terminated where the foreign national:

…

2. has been granted refugee status by a third country or another form of effective protection which includes observance of the principle of non-refoulement and that status or protection has not been withdrawn, provided that the person will be re-admitted into that country;

3. comes from a safe third country, provided that the person will be re-admitted into that country.’

47 The ZUB, in the version preceding the transposition into Bulgarian law of Directives 2011/95 and 2013/32, provided, in Article 13(2) thereof:

‘The procedure for the grant of refugee status or humanitarian status shall not be initiated or shall be terminated where the refugee has:

…

2. the status of refugee granted by a safe third country, provided that the person will be re-admitted into that country.’

48 Under Article 75(2) of the ZUB:

'… In the course of the examination of an application for international protection, all the relevant facts, … concerning the personal situation of the applicant shall be assessed …'

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

49 It is apparent from the file lodged before the Court that Ms Alheto, born on 29 November 1972 in Gaza, holds a passport issued by the Palestinian National Authority and is registered with UNRWA.

50 On 15 July 2014, Ms Alheto left the Gaza Strip via underground tunnels linking that territory to Egypt. From that country, she went on to Jordan by boat.

51 On 7 August 2014, the consular service of the Republic of Bulgaria in Jordan issued Ms Alheto with a tourist visa for travel to Bulgaria, valid until 1 September 2014.

52 On 10 August 2014, Ms Alheto entered Bulgaria, having flown from Amman to Varna. On 28 August 2014, the validity of that visa was extended to 17 November 2014.

53 On 11 November 2014, Ms Alheto lodged an application for international protection with the DAB, which she repeated on 25 November 2014. In support of that application, she claimed that to return to the Gaza Strip would expose her to a serious threat to her life since she would risk experiencing torture and persecution there.

54 That threat is linked to the fact that she carries out work in the social sphere informing women of their rights and that that activity is not accepted by Hamas, the organisation which controls the Gaza Strip.

55 Moreover, Ms Alheto claims that, in the light of armed conflict between Hamas and Israel, the situation in the Gaza Strip is one of indiscriminate violence.

56 Between December 2014 and March 2015, the DAB conducted several personal interviews with Ms Alheto.

57 On 12 May 2015, the Deputy Director of the DAB refused the application for international protection lodged by Ms Alheto, on the basis of Article 75 of the ZUB, read in conjunction with Articles 8 and 9 of that law ('the contested decision'), on the ground that Ms Alheto's statements lacked credibility.

58 The Deputy Director of the DAB explained, inter alia, that, although doubts concerning respect for fundamental rights in the Gaza Strip were justified, the mere fact that Ms Alheto is a woman who informs other women residing in the Gaza Strip of their rights is not sufficient to find that there is a real risk of persecution within the meaning of Article 8 of the ZUB or of serious harm within the meaning of Article 9 of that law. In that regard, an international report drawn up in 2014 shows that, in the Gaza Strip, policewomen play a role in important work such as the prevention of drug-related crime, criminal prosecutions and monitoring freedom of movement. In those circumstances, it is difficult to believe that Ms Alheto's activity exposes her to serious and individual threats

59 The Deputy Director of the DAB added that Ms Alheto was not driven to make an application for international protection on account of indiscriminate violence caused by an armed conflict.

60 Ms Alheto brought an action before the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) for annulment of the contested decision. She maintained that some of the evidence put forward during individual interviews had not been examined, in breach of Article 75 of the ZUB, and that the evidence that had been examined had, itself, been incorrectly assessed, in breach of Articles 8 and 9 of the ZUB.

61 That court considers that the DAB should, in principle, have examined the application for international protection lodged by Ms Alheto on the basis of Article 12(1)(4) of the ZUB and not on the basis of Articles 8 and 9 of that law. The contested decision does not therefore comply with the ZUB or with the corresponding rules laid down in Directive 2011/95, in particular Article 12(1)(a) of that directive.

62 However, that court observes that Article 12(1)(4) of the ZUB fails correctly to transpose Article 12(1)(a) of Directive 2011/95 which, it says, complicates the handling of the application for international protection at issue in the main proceedings.

63 Furthermore, having regard to the obligation to ensure an effective remedy, and in particular to the requirement for a full and *ex nunc* examination, set out in Article 46(3) of Directive 2013/32, it is necessary to determine, inter alia in the light of Articles 18, 19 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), the scope of the jurisdiction laid down by the EU legislature. It is important, inter alia, to ascertain, in the context of such a full and *ex nunc* examination, whether the court may factor into its assessment matters, including grounds of inadmissibility, which could not be taken into account when the contested decision rejecting the application for international protection was adopted.

64 In that context, the referring court wishes, in particular, to know whether, in circumstances such as those at issue in the main proceedings, a person registered with UNRWA who has fled the Gaza Strip and stayed in Jordan before travelling to the European Union must be considered to be sufficiently protected in Jordan, with the result that the application for international protection lodged in the European Union must be declared inadmissible.

65 Finally, the question arises whether, after the annulment of a decision rejecting an application for international protection, the court may, or must, itself adopt a decision on the application for international protection.

66 In those circumstances, the Administrativen sad Sofia-grad (Administrative Court, Sofia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does it follow from Article 12(1)(a) of Directive 2011/95, read in conjunction with Article 10(2) of Directive 2013/32 and Article 78(2)(a) of the Treaty on the Functioning of the European Union, that:

(a) it is permissible for an application for international protection made by a stateless person of Palestinian origin who is registered as a refugee with [UNRWA] and who, before making that application, was resident in that agency's area of operations (the Gaza Strip) to be examined as an application under Article 1(A) of the [Geneva Convention] rather than as an application for international protection under the second [paragraph] of Article 1(D) of that convention, where responsibility for examining the application has been assumed on grounds other than compassionate or humanitarian grounds and the examination of the application is governed by Directive 2011/95;

(b) it is permissible for such an application to be examined without taking into account the conditions laid down in Article 12(1)(a) of Directive 2011/95, with the result that the interpretation of that provision by the Court of Justice … is not applied?

(2) Is Article 12(1)(a) of Directive 2011/95, read in conjunction with Article 5 thereof, to be interpreted as precluding provisions of national law such as Article 12(1)(4) of the ZUB, at issue in the main proceedings, which, in the version currently in force, does not contain any express clause on *ipso facto* protection for Palestinian refugees and does not lay down the condition that the assistance must have ceased for some reason, and as meaning that Article 12(1)(a) of Directive 2011/95, being sufficiently precise and unconditional and therefore directly effective, is applicable even if the person seeking international protection does not expressly rely on it, where the application is of a kind that must be examined in accordance with the second sentence of Article 1(D) of the Geneva Convention relating to the Status of Refugees?

(3) Does it follow from Article 46(3) of Directive 2013/32, read in conjunction with Article 12(1)(a) of Directive 2011/95, that, in an appeal before a court or tribunal against a decision refusing international protection adopted in accordance with Article 10(2) of Directive 2013/32, it is permissible, taking into account the facts in the main proceedings, for the court or tribunal of first instance to treat the application for international protection as an application under the second sentence of Article 1(D) of the Geneva Convention relating to the Status of Refugees and to carry out the assessment provided for in Article 12(1)(a) of Directive 2011/95 where the application for international protection has been made by a stateless person of Palestinian origin who is registered as a refugee with the UNRWA and who, before making that application, was resident within that agency's area of operations (the Gaza Strip) and where, in the decision refusing international protection, that application was not examined in the light of the abovementioned provisions?

(4) Does it follow from the provisions of Article 46(3) of Directive 2013/32, concerning the right to an effective remedy incorporating the requirement of a "full and *ex nunc* examination of both facts and points of law", interpreted in conjunction with Article 33, Article 34 and the second paragraph of Article 35 of that directive, Article 21(1) of Directive 2011/95 and Articles 18, 19 and 47 of the [Charter], that, in an appeal before a court or tribunal against a decision refusing international protection adopted in accordance with Article 10(2) of Directive 2013/32, those provisions permit the court or tribunal of first instance:
   (a) to decide for the first time on the admissibility of the application for international protection and on the refoulement of the stateless person to the country in which he or she was resident before making the application for international protection, after requiring the determining authority to produce the evidence necessary for that purpose and after giving the person in question the opportunity to present his or her views on the admissibility of the application; or
   (b) to annul the decision for breach of an essential procedural requirement and to require the determining authority, following directions on the interpretation and application of the law, to re-examine the application for international protection, inter alia, by conducting the admissibility interview provided for in Article 34 of Directive 2013/32 and deciding whether it is possible to return the stateless person to the country in which he or she was resident before making the application for international protection;
   (c) to assess the security status of the country in which the person had been resident, at the time of the hearing or, where there have been fundamental changes in the situation that must be taken into account in the person's favour in the decision to be taken, at the time when judgment is given?

(5) Does the assistance provided by [UNRWA] constitute 'sufficient protection' otherwise enjoyed, within the meaning of point (b) of the first paragraph of Article 35 of Directive 2013/32, in the relevant country within the agency's area of operations where that country applies the principle of non-refoulement, within the meaning of the 1951 Geneva Convention …, to persons assisted by the agency?

(6) Does it follow from Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, that the right to an effective remedy incorporating the requirement, "where applicable, [for] an examination of the international protection needs pursuant to Directive 2011/95" compels the court or tribunal of first instance, in an appeal against a decision examining the substance of an application for international protection and refusing to grant such protection, to give a judgment:
   (a) which has the force of *res judicata* in relation not only to the question of the lawfulness of the refusal but also to the applicant's need for international protection pursuant to Directive 2011/95, including in cases where, under the national law of the Member State concerned, international protection may be granted only by decision of an administrative authority;
   (b) on the necessity of granting international protection, by carrying out a proper examination of the application for international protection, irrespective of any breaches of procedural requirements committed by the determining authority when assessing the application?'

Consideration of the questions referred

Preliminary observations

67 Since the temporal applicability of the provisions of Directive 2013/32 to which the third to sixth questions relate is not clear and was the subject of debate before the Court, it is necessary to provide clarification in that regard at the outset.

68 It is not in dispute that that directive replaced Directive 2005/85 with effect from 21 July 2015, that is to say after the date on which the application for international protection at issue in the main proceedings was lodged.

69 In that context, it must be noted, first, that the second sentence of the first paragraph of Article 52 of Directive 2013/32 states that applications for international protection lodged before 20 July 2015 are to be governed by the national provisions adopted pursuant to Directive 2005/85.

70 Second, the first sentence of the first paragraph of Article 52 of Directive 2013/32 allows national provisions implementing the rules introduced by that directive to be applied to applications lodged before 20 July 2015. That sentence provides that the Member States are to apply those provisions 'to applications for international protection lodged … after 20 July 2015 or an earlier date'.

71 It is apparent from the examination of the *travaux préparatoires* of Directive 2013/32, in particular a comparison of Position (EU) No 7/2013 of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, adopted by the Council on 6 June 2013 (OJ 2013 C 179 E, p. 27), with the Commission Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009) 554 final), that the words 'or an earlier date' were added during the legislative process.

72 Consequently, notwithstanding the tension between the first and second sentences of the first paragraph of Article 52 of Directive 2013/32, it follows from those preparatory documents that the EU legislature intended to allow the Member States to choose whether to apply their provisions implementing that directive with immediate effect to applications for international protection lodged before 20 July 2015.

73 The fact remains that, while the first paragraph of Article 52 of Directive 2013/32 authorised Member States to apply those provisions to applications for international protection lodged before 20 July 2015, it did not require them to do so. Since that provision, by using the words 'started after 20 July 2015 or an earlier date', offers various possibilities as regards temporal applicability, it is important, in order for the principles of legal certainty and equality before the law to be observed in the implementation of EU law and for applicants for international protection to be protected from arbitrariness and to have a right to an effective remedy in the context of procedures for granting and withdrawing international protection, that each Member State bound by that directive should process applications for international protection lodged within the same period on its territory in a predictable and uniform manner.

74 In reply to a request for clarification in that regard, the referring court noted that the requirement for a full and *ex nunc* examination, laid down in Article 46(3) of Directive 2013/32, which was to be implemented, by virtue of Article 51(1) of that directive, by 20 July 2015 at the latest, has existed in Bulgaria since 1 March 2007, so that the Bulgarian legislature did not consider it necessary, when transposing that directive, to take measures to implement Article 46(3).

75 In that regard, that court cited several national provisions concerning administrative actions and provided information concerning the scope of those provisions, the accuracy of which it is not for the Court to determine.

76 In the light of that reply, it appears that the third, fourth and sixth questions, which concern the interpretation of Article 46(3) of Directive 2013/32, are relevant for the purposes of resolving the dispute in the main proceedings.

77 Not only the national provisions specifically intended to transpose a directive but also, from the date of that directive's entry into force, pre-existing national provisions capable of ensuring that the national law is transposed must be considered as falling within the scope of that directive (see, to that effect, judgments of 7 September 2006, *Cordero Alonso*, C-81/05, EU:C:2006:529, paragraph 29, and of 23 April 2009, *VTB-VAB and Galatea*, C-261/07 and C-299/07, EU:C:2009:244, paragraph 35).

78 In the present case, while it is true that the law transposing Directive 2013/32 into Bulgarian law entered into force only in December 2015, that is to say, after Ms Alheto lodged her application for international protection in the European Union and after the contested decision had been adopted, it is apparent, however, from the referring court's reply to the request for clarification that, since 2007, Bulgarian law has included provisions laying down a requirement for a full and *ex nunc* examination, which apply to applications for international protection.

79 It follows from that reply that, according to the referring court, those provisions were considered by the national authorities to be capable of transposing Article 46(3) of Directive 2013/32 into national law.

80 In those circumstances, and given the fact that Directive 2013/32 was already in force when the application for international protection at issue in the main proceedings was lodged and the contested decision adopted, the interpretation of Article 46(3) of that directive sought by the referring court in the context of its third, fourth and sixth questions must be considered necessary in order to allow that court to rule in the main proceedings (see, to that effect, judgment of 23 April 2009, *VTB-VAB and Galatea*, C-261/07 and C-299/07, EU:C:2009:244, paragraphs 37 and 40).

81 As regards the fifth question, which concerns the interpretation of point (b) of the first paragraph of Article 35 of Directive 2013/32, which, in conjunction with Article 33(2)(b) of that directive, authorises Member States to declare an application for international protection inadmissible when the applicant is sufficiently protected in a third country, it follows from the order for reference that that ground of inadmissibility had not yet been transposed into Bulgarian law on the date of adoption of

the contested decision. However, based on the assumption that the national provision that has in the meantime transposed that ground of inadmissibility is nevertheless applicable *ratione temporis* to the main proceedings, an assumption which it is for the referring court alone to confirm, that court correctly asks whether it may, in the context of a full and *ex nunc* examination, as laid down in Article 46(3) of Directive 2013/32, assess the admissibility of the application for international protection at issue in the main proceedings in the light of such a ground of inadmissibility and, if so, what scope should be afforded to that ground of inadmissibility.

The first question

82 By its first question, the referring court asks, in essence, whether Article 12(1)(a) of Directive 2011/95, read in conjunction with Article 10(2) of Directive 2013/32, must be interpreted as meaning that the processing of an application for international protection lodged by a person registered with UNRWA requires an examination as to whether that person benefits from effective protection or assistance from that agency.

83 As is apparent from the order for reference, this question arises on account of the fact that the Deputy Director of the DAB failed specifically to examine, in the contested decision, whether the protection or assistance which the applicant in the main proceedings received from UNRWA in the area of operations of that agency had ceased, in circumstances where, had that fact been established, she would potentially have been eligible, in Bulgaria, for refugee status in accordance with Article 1(D) of the Geneva Convention and Article 12(1)(a) of Directive 2011/95.

84 In that regard, it must be noted, as was recalled in paragraphs 6 and 7 of the present judgment, that UNRWA is an agency of the United Nations which was established to protect and assist, in the Gaza Strip, the West Bank, Jordan, Lebanon and Syria, Palestinians who are 'Palestine refugees'. It follows that a person, such as the applicant in the main proceedings, who is registered with UNRWA, is eligible to receive protection and assistance from that agency in the interests of her well-being as a refugee.

85 On account of that specific refugee status established in those territories of the Near East for Palestinians, persons registered with UNRWA are, in principle, by virtue of the first sentence of Article 12(1)(a) of Directive 2011/95, which corresponds to the first paragraph of Article 1(D) of the Geneva Convention, excluded from refugee status in the European Union. That said, it follows from the second sentence of Article 12(1)(a) of Directive 2011/95, which corresponds to the second paragraph of Article 1(D) of the Geneva Convention, that, when an applicant for international protection in the European Union no longer receives protection or assistance from UNRWA, that exclusion ceases to apply.

86 As the Court has held, the second sentence of Article 12(1)(a) of Directive 2011/95 applies where it becomes evident, based on an assessment, on an individual basis, of all the relevant evidence, that the personal safety of the Palestinian concerned is at serious risk and that it is impossible for UNRWA, whose assistance was requested by that person, to guarantee that the living conditions of that individual would be compatible with its mission, and that person is forced to leave the UNRWA area of operations owing circumstances beyond his control. In that case, that Palestinian may, unless he or she falls within the scope of any of the grounds for exclusion set out in Article 12(1)(b), Article 12(2) and Article 12(3) of that directive, *ipso facto* be entitled to the benefits of that directive, without necessarily having to demonstrate a well-founded fear of being persecuted, within the meaning of Article 2(d) of that directive, until the time when he is able to return to the territory of former habitual residence (judgment of 19 December 2012, *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraphs 49 to 51, 58 to 65, 75 to 77 and 81).

87 It follows from the information recalled above that Article 12(1)(a) of Directive 2011/95 sets out, first, a ground for exclusion from refugee status and, second, a ground for no longer applying that ground for exclusion, both of which may be decisive for the purpose of assessing whether the Palestinian in question is entitled to access to refugee status in the European Union. As the Advocate General essentially noted in points 43 to 45 of his Opinion, the rules laid down in that provision, as interpreted by the Court, therefore constitute a *lex specialis*. The national provisions transposing that set of rules must be applied to an application for international protection lodged by a person registered with UNRWA, providing that that application has not previously been rejected on the basis of another ground for exclusion or of inadmissibility.

88 That finding is borne out by the purpose of Directive 2011/95. Since that directive was adopted on the basis, inter alia, of Article 78(2)(a) TFEU and therefore seeks, in accordance with that provision, to establish a uniform asylum system, it is essential that all the authorities that are empowered in the European Union to deal with applications for international protection apply, when the applicant is a person registered with UNRWA, the provisions transposing the rules set out in Article 12(1)(a) of that directive.

89 Those provisions must also be applied when, as in the present case, the application for international protection includes, in addition to an application for refugee status, an application for subsidiary protection. As is apparent from Article 10(2) of Directive 2013/32, when examining an application for international protection, the competent authority must first determine whether the applicant qualifies as a refugee. Consequently, the fact that the rules set out in Article 12(1)(a) of Directive 2011/95 do not apply to the part of the application relating to subsidiary protection does not exempt the competent authority from its obligation first to apply the provisions transposing those rules, in order to verify whether refugee status must be granted.

90 In the light of the foregoing, the answer to the first question is that Article 12(1)(a) of Directive 2011/95, read in conjunction with Article 10(2) of Directive 2013/32, must be interpreted as meaning that the processing of an application for international protection lodged by a person registered with UNRWA requires an examination of the question whether that person receives effective protection or assistance from that agency, provided that that application has not been previously rejected on the basis of a ground of inadmissibility or on the basis of a ground for exclusion other than that laid down in the first sentence of Article 12(1)(a) of Directive 2011/95.

The second question

91 By the first part of its second question, the referring court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as precluding national legislation that does not lay down or incorrectly transposes the ground for no longer applying the ground for exclusion from refugee status contained in that provision.

92 As set out in paragraphs 85 to 87 of the present judgment Article 12(1)(a) of Directive 2011/95 contains, first, a ground for exclusion, to the effect that any third-country national or stateless person receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commission for Refugees is to be excluded from being a refugee in the European Union, and secondly, a ground for no longer applying that ground for exclusion, to the effect that, when such protection or assistance has ceased without the position of that national or stateless person being definitively settled in accordance with the relevant resolutions adopted by the United Nations, that national or stateless person is *ipso facto* to be entitled to the benefits of the directive.

93 As stated in paragraph 21 of the present judgment, the wording of Article 12(1)(a) of Directive 2011/95 corresponds to that of Article 12(1)(a) of Directive 2004/83.

94 It follows that Article 12(1)(a) of Directive 2004/83 and Article 12(1)(a) of Directive 2011/95 preclude a national law which fails to transpose both that ground for exclusion and that ground for no longer applying it.

95 In the present case, Article 12(1)(4) of the ZUB, in its version applicable prior to the entry into force of the national law transposing Directive 2011/95, did not provide for that ground for no longer applying the ground for exclusion. Article 12(1)(4) of the ZUB, as worded in the version subsequent to the entry into force of that law, for its part, transposed the second sentence of Article 12(1)(a) of Directive 2011/95, but wrongly uses the expression 'has not ceased' instead of the expression 'has ceased'. The referring court considers that, in those circumstances, it is difficult, or impossible, to interpret those national provisions in accordance with Article 12(1)(a) of Directive 2011/95.

96 Subject to the review to be carried out by the referring court of the possibilities provided for by Bulgarian law for the interpretation of those national provisions in accordance with Article 12(1)(a) of Directive 2004/83 or Article 12(1)(a) of Directive 2011/95, it must be held that the latter provisions preclude such national provisions, since those national provisions incorrectly transpose the said directives.

97 By the second part of its second question, the referring court asks, in essence, whether the second sentence of Article 12(1)(a) of Directive 2004/83 and the second sentence of Article 12(1)(a) of Directive 2011/95 have direct effect and may be applied even if the applicant for international protection has not expressly referred to them.

98 In that regard, it follows from the settled case-law of the Court that, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the State has failed to implement the directive in domestic law within the period prescribed or where it has failed to implement the directive correctly (judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 33; of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 31; and of 7 July 2016, *Ambisig*, C-46/15, EU:C:2016:530, paragraph 16).

99 The second sentence of Article 12(1)(a) of Directive 2004/83 and the second sentence of Article 12(1)(a) of Directive 2011/95 satisfy those criteria, since they set out a rule whose content is unconditional and sufficiently precise to be relied on by an individual and applied by a court. Furthermore, those provisions provide that, in the circumstances to which they relate, an applicant may '*ipso facto*' be entitled to the benefits of this directive.

100 In the present case, it follows from the order for reference that Ms Alheto claims, in support of her application for international protection, that, notwithstanding her registration with UNRWA, qualification as a refugee in the European Union is the only way effectively to protect her from the threats to which she is exposed. It follows that, even though the applicant in the main proceedings has not expressly referred either to the second sentence of Article 12(1)(a) of Directive 2004/83 or to the second sentence of Article 12(1)(a) of Directive 2011/95, there is nothing to prevent the referring court from ruling on whether the national legislation is compatible with either of those provisions.

101 In the light of the foregoing, the answer to the second question is that the second sentence of Article 12(1)(a) of Directive 2004/83 and the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as:

– precluding national legislation which does not lay down or which incorrectly transposes the ground for no longer applying the ground for exclusion from being a refugee contained therein;

– having direct effect; and

– being applicable even if the applicant for international protection has not expressly referred to them.

The third question

102 By its third question, the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that a court or tribunal of a Member State seised at first instance of an appeal against a decision on an application for international protection may take into account matters of fact or of law, such as the applicability of Article 12(1)(a) of Directive 2011/95 to the applicant's circumstances, which were not examined by the body that took that decision.

103 In that regard, it should be noted, first of all, that Directive 2013/32 distinguishes between the 'determining authority', which it defines in Article 2(f) as 'any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases' and the 'court or tribunal' referred to in Article 46. The procedure before a determining authority is governed by the provisions of Chapter III of that directive, entitled 'Procedures at first instance', while the procedure before a court or tribunal must comply with the rules laid down in Chapter V of that directive, entitled 'Appeals procedures' which is made up of Article 46.

104 Since Article 46(3) of Directive 2013/32 concerns, in accordance with its wording, 'at least … appeals procedures before a court or tribunal of first instance', the interpretation of that provision set out below applies, at the very least, to any court or tribunal seised of the initial action against a decision by which the determining authority initially ruled on an application. It follows from Article 2(f), of that directive that that is also the case when that authority has a quasi-judicial character.

105 It must be recalled, next, that Article 46(3) of Directive 2013/32 defines the scope of the right to an effective remedy which applicants for international protection must enjoy, as provided for in Article 46(1) of that directive, against decisions concerning their application.

106 Thus, Article 46(3) of Directive 2013/32 states that, in order to comply with Article 46(1) of that directive, Member States bound by that directive 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]'.

107 In the absence of any reference to the laws of the Member States, and having regard to the purpose of Directive 2013/32, set out in recital 4 thereof, those words must be interpreted and applied in a uniform manner. Moreover, as recital 13 of that directive states, the approximation of rules under that directive aims to create equivalent conditions for the application of Directive 2011/95 in the Member States and to limit the movements of applicants for international protection between Member States.

108 According to the Court's settled case-law, it is necessary to determine the scope of those words in accordance with their ordinary meaning, while also taking into account the context in which they occur and the purposes of the rules of which they form part (see, inter alia, judgments of 30 January 2014, *Diakité*, C-285/12, EU:C:2014:39, paragraph 27; of 11 June 2015, *Zh. and O.*, C-554/13, EU:C:2015:377, paragraph 29, and of 26 July 2017, *Jafari*, C-646/16, EU:C:2017:586, paragraph 73).

109 In that regard, apart from the fact that it pursues the overall purpose of establishing common procedural standards, Directive 2013/32 seeks in particular, as is apparent inter alia from recital 18, to ensure that applications for international protection are dealt with 'as soon as possible …, without prejudice to an adequate and complete examination being carried out'.

110 In that context, the words 'shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law' must, in order not to deprive them of their ordinary meaning, be interpreted as meaning that the Member States are required, by virtue of Article 46(3) of Directive 2013/32, to order their national law in such a way that the processing of the appeals referred to includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand.

111 In that regard, the expression '*ex nunc*' points to the court or tribunal's obligation to make an assessment that takes into account, should the need arise, new evidence which has come to light after the adoption of the decision under appeal.

112 Such an assessment makes it possible to deal with the application for international protection exhaustively without there being any need to refer the case back to the determining authority. Thus, the court's power to take into consideration new evidence on which that authority has not taken a decision is consistent with the purpose of Directive 2013/32, as referred to in paragraph 109 of this judgment.

113 For its part, the adjective 'full' used in Article 46(3) of Directive 2013/32 confirms that the court or tribunal is required to examine both the evidence which the determining authority took into account or could have taken into account and that which has arisen following the adoption of the decision by that authority.

114 Furthermore, since that provision must be interpreted in a manner consistent with Article 47 of the Charter, the requirement for a full and *ex nunc* examination implies that the court or tribunal seised of the appeal must interview the applicant, unless it considers that it is in a position to carry out the examination solely on the basis of the information in the case file, including, where applicable, the report or transcript of the personal interview before that authority (see, to that effect, judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraphs 31 and 44). In the event that new evidence comes to light after the adoption of the decision under appeal, the court or tribunal is required, as follows from Article 47 of the Charter, to offer the applicant the opportunity to express his views when that evidence could affect him negatively.

115 The words 'where applicable', contained in the limb of the sentence 'including, where applicable, an examination of the international protection needs pursuant to directive [2011/95]', underline, as the Commission submitted at the hearing, 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 allows pursuant to Article 33(2) of Directive 2013/32.

116 Finally, it must be stressed that it follows from recitals 16 and 22 of Article 4 and from the general scheme of Directive 2013/32 that the examination of the application for international protection by an administrative or quasi-judicial body with specific resources and specialised staff in this area is a vital stage of the common procedures established by that directive. Accordingly, the applicant's right recognised by Article 46(3) of that directive to obtain a full and *ex nunc* examination before a court or tribunal cannot diminish the obligation on the part of that applicant, which is governed by Articles 12 and 13 of that directive, to cooperate with that body.

117 It follows that, in the present case, Article 12(1)(a) of Directive 2011/95 constitutes a relevant point of law which it is for the referring court to examine in its capacity as a court or tribunal of first instance, including, in its assessment of the applicability of that provision to the circumstances of the applicant in the main proceedings, any evidence arising after the adoption of the contested decision.

118 In the light of all the foregoing considerations, the answer to the third question is that Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that a court or tribunal of a Member State seised at first instance of an appeal against a decision relating to an application for international protection must examine both facts and points of law, such as the applicability of Article 12(1)(a) of Directive 2011/95 to the applicant's circumstances, which the body that took that decision took into account or could have taken into account, and those which arose after the adoption of that decision.

The fourth question

119 By its fourth question, the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in conjunction with Articles 18, 19 and 47 of the Charter, must be interpreted as meaning that the requirement for a full and *ex nunc* examination both of facts and of points of law also covers the grounds of inadmissibility of the application for international protection referred to in Article 33(2) of that directive and, if so, whether, in the event of an examination of such a ground of inadmissibility by the court or tribunal, even though that ground had not been examined by the determining authority, the file must be referred back to that authority for it to conduct the admissibility interview provided for in Article 34 of that directive.

120 As stated in paragraph 115 of the present judgment, the full and *ex nunc* examination of the appeal may concern the admissibility of an application for international protection, where permitted under national law. In accordance with the purpose of Directive 2013/32 of establishing a system in which, at the very least, the court or tribunal seised at first instance of an appeal against a decision of a determining authority must conduct a full and up-to-date examination, that court or tribunal may, inter alia, find that the applicant benefits from sufficient protection in a third country, with the result that it becomes unnecessary to examine the requirement for protection in the European Union. The application is then, for that reason, 'inadmissible'.

121 As regards the cumulative conditions to which the application of such a ground of inadmissibility is subject, such as those referred to, as regards the first country of asylum ground, in Article 35 of that directive, or, as regards the safe third country ground, in Article 38 of that directive, that court or tribunal must rigorously examine whether each of those conditions has been satisfied by inviting, where appropriate, the determining authority to produce any documentation or factual evidence which may be relevant.

122 In the present case, it is apparent from the wording of the fourth question and accompanying explanations, that the referring court envisages, as the case may be, the application of the 'first country of asylum' concept, defined in Article 35 of Directive 2013/32, or the 'safe third country' concept, defined in Article 38 of that directive, to which the second paragraph of Article 35 of that directive refers, or even the concept of 'safe country of origin', defined in Article 36(1) of that directive, the latter concept being referred to in point (c) of the fourth question.

123 As regards the concept of 'safe country of origin', it must be noted that that concept is not included, as such, in the grounds of inadmissibility laid down in Article 33 of Directive 2013/32. Consequently, there is no need to examine it further in the context of the present reference for a preliminary ruling.

124 By contrast, in so far as the referring court envisages the application of the 'first country of asylum' or 'safe third country' concepts, it must conduct the examination referred to in paragraph 121 of the present judgment and ensure, before ruling on the matter, that the applicant has had the opportunity to set out her views in person on the applicability of the ground of inadmissibility to her particular situation.

125 While an applicant's right to be heard with regard to the admissibility of his or her application before any decision on the matter is taken is ensured, in the context of the procedure before the determining authority, by the personal interview provided for in Article 34 of Directive 2013/32, that right derives, during the appeal procedure referred to in Article 46 of that directive, from Article 47 of the Charter and is exercised, if necessary, by means of a hearing of the applicant (see, to that effect, judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraphs 37 to 44).

126 It must be held, in that regard, that, in the event that the ground of inadmissibility examined by the court or tribunal hearing the action was also examined by the determining authority before the document contested in the action was adopted, that court or tribunal may rely on the report of the personal interview conducted by that authority without hearing the applicant, unless it considers it necessary.

127 If, by contrast, the determining authority did not examine that ground of inadmissibility and, consequently, did not conduct the personal interview referred to in Article 34 of Directive 2013/32, it is for the court or tribunal, if it considers that such a ground ought have been examined by that authority or should be examined on account of new evidence that has arisen, to conduct such a hearing.

128 As laid down in Article 12(1)(b) of Directive 2013/32, for personal interviews conducted by the determining authority the applicant must receive, during his hearing by the court, the services of an interpreter whenever necessary in order to present his or her arguments.

129 As regards, finally, the point raised by the referring court, concerning whether the requirement for a full and *ex nunc* examination of both facts and points of law must be interpreted in the light of Articles 18 and 19 of the Charter, it suffices to observe that, while the fundamental rights guaranteed by those provisions which relate to the right to asylum and protection in the event of removal, expulsion or extradition must be observed when implementing such a requirement, they do not offer, in the context of the reply to the question now referred, specific additional guidance concerning the scope of that requirement.

130 In the light of the foregoing, the answer to the fourth question is that Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that the requirement for a full and *ex nunc* examination of the facts and points of law may also concern the grounds of inadmissibility of the application for international protection referred to in Article 33(2) of that directive, where permitted under national law, and that, in the event that the court or tribunal hearing the appeal plans to examine a ground of inadmissibility which has not been examined by the determining authority, it must conduct a hearing of the applicant in order to allow that individual to express his or her point of view in person concerning the applicability of that ground to his or her particular circumstances.

The fifth question

131 By its fifth question, the referring court asks, in essence, whether the first paragraph of Article 35 of Directive 2013/32 must be interpreted as meaning that a person registered with UNRWA must, if he is a beneficiary of effective protection or assistance from that agency in a third country that is not the same as the territory in which he habitually resides but which falls within the area of operations of that agency, be considered as enjoying sufficient protection in that third country, within the meaning of that provision.

132 It follows from the order for reference that this question has been raised on account of the fact that Ms Alheto, during the armed conflict between the State of Israel and Hamas in July and August 2014, left the Gaza Strip in search of safety in Jordan where she stayed and from where she left for Bulgaria.

133 Jordan is part of UNRWA's area of operations. Consequently, although it is not for the Court to examine the nature of that agency's mandate or its ability to fulfil it, it cannot be ruled out that that agency may be able to provide a person registered with it with living conditions in Jordan that meet the requirements of its mission after that person has fled the Gaza Strip.

134 Accordingly, in the event that a person who has left the UNRWA area of operations and lodged an application for international protection in the European Union benefits from effective protection or assistance from UNRWA, thereby enabling him or her to stay there in safety, under dignified living conditions and without being at risk of being refouled to the territory of habitual residence for as long as he or she is unable to return there in safety, that person cannot be regarded by the authority empowered to decide on that application as having been forced, by reason of circumstances beyond his or her control, to leave UNRWA's area of operations. That person must, in that case, be excluded from refugee status in the European Union, in accordance with Article 12(1)(a) of Directive 2011/95, as interpreted by the case-law recalled in paragraph 86 of the present judgment.

135 In the present case, it is for the referring court to assess, on the basis of an individual assessment of all the relevant evidence, whether Ms Alheto's case falls within that category.

136 If so, those circumstances would also, subject to the considerations set out below, be likely to lead to the rejection of the application for international protection in so far as it concerns the grant of subsidiary protection.

137 Article 33(2)(b) of Directive 2013/32 allows the Member States to consider an application for international protection inadmissible, as a whole, in particular, when a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35 of the directive.

138 In that regard, the very wording of points (a) and (b) of the first paragraph of Article 35 of Directive 2013/32 provides that a country can be considered to be a first country of asylum for a particular applicant if 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 or she will be readmitted to that country.

139 Persons registered with UNRWA, as recalled in paragraph 6 of this judgment, have the status of 'Palestine refugees in the Near East'. Consequently, they do not benefit from refugee status specifically linked to the Hashemite Kingdom of Jordan and cannot therefore, by the mere fact of that registration and protection or assistance granted to them by that agency, fall within the scope of point (a) of the first paragraph of Article 35 of Directive 2013/32.

140 By contrast, a Palestinian registered with UNRWA who has left his place of habitual residence in the Gaza Strip for Jordan, before travelling to a Member State and filing an application for international protection, must be regarded as otherwise enjoying sufficient protection in that third country, including the benefit of the principle of non-refoulement, within the meaning of point (b) of the first paragraph of Article 35 of Directive 2013/32, provided, first, that he is guaranteed to be able to be readmitted there, second, that he benefits there from effective protection or assistance from UNRWA, which is recognised, or regulated, by that third country and, third, that the competent authorities of the Member State in which the application for international protection was lodged are certain that he will be able to stay in that third country in safety under dignified living conditions for as long as necessary in view of the risks in the Gaza Strip.

141 In that scenario, the Hashemite Kingdom of Jordan, as an independent State whose territory is separate from that of the habitual residence of the person concerned, would constitute, by virtue of its agreement to readmit the person concerned, of its recognition of the effective protection or assistance

provided by UNRWA in its territory, and of its adherence to the principle of non-refoulement, a State actor of protection, within the meaning of Article 7(1)(a) of Directive 2011/95, and would satisfy all the conditions required by point (b) of the first paragraph of Article 35 of Directive 2013/32 in order to fall within the concept of 'first country of asylum', referred to in that provision.

142 It is for the referring court to assess, if necessary after ordering the DAB to produce any relevant documentation or factual evidence, whether all the conditions described in paragraph 140 of the present judgment are satisfied in the present case.

143 In the light of the foregoing, the answer to the fifth question is that point (b) of the first paragraph of Article 35 of Directive 2013/32 must be interpreted as meaning that a person registered with UNRWA must, if he or she is a beneficiary of effective protection or assistance from that agency in a third country that is not the territory in which he or she habitually resides but which forms part of the area of operations of that agency, be considered as enjoying sufficient protection in that third country, within the meaning of that provision, when it:

– agrees to readmit the person concerned after he or she has left its territory in order to apply for international protection in the European Union; and

– recognises that protection or assistance from UNRWA and supports the principle of non-refoulement, thus enabling the person concerned to stay in its territory in safety under dignified living conditions for as long as necessary in view of the risks in the territory of habitual residence.

The sixth question

144 By its sixth question, the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that the court or tribunal seised at first instance of an appeal against a decision concerning an application for international protection must, in the event that it annuls that decision, rule itself on that application for international protection by granting or rejecting it.

145 In that regard, it must be noted that Article 46(3) of Directive 2013/32 only concerns the 'examination' of the appeal and does not therefore govern what happens after any annulment of the decision under appeal.

146 Thus, by adopting Directive 2013/32, the EU legislature did not intend to introduce any common rule to the effect that the quasi-judicial or administrative body referred to in Article 2(f) of that directive should be deprived of its powers following the annulment of its initial decision concerning an application for international protection. It therefore remains open to the Member States to provide that the file must, following such an annulment, be referred back to that body for a new decision.

147 However, Article 46(3) of Directive 2013/32 would be deprived of any practical effect if it were accepted that, after delivery of a judgment by which the court or tribunal of first instance conducted, in accordance with that provision, a full and *ex nunc* assessment of the international protection needs of the applicant by virtue of Directive 2011/95, that body could take a decision that ran counter to that assessment or could allow a considerable period of time to elapse, which could increase the risk that evidence requiring a new up-to-date assessment might arise.

148 Consequently, even though the purpose of Directive 2013/32 is not to establish a common standard in respect of the power to adopt a new decision on an application for international protection after the annulment of the initial decision, it nevertheless follows from its purpose of ensuring the fastest possible processing of applications of that nature, from the obligation to ensure that Article 46(3) is

effective, and from the need, arising from Article 47 of the Charter, to ensure an effective remedy, that each Member State bound by that directive must order its national law in such a way that, following annulment of the initial decision and in the event of the file being referred back to the quasi-judicial or administrative body referred to in Article 2(f) of that directive, a new decision is adopted within a short period of time and complies with the assessment contained in the judgment annulling the initial decision.

149 It follows that the answer to the sixth question is that Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that it does not establish common procedural standards in respect of the power to adopt a new decision concerning an application for international protection following the annulment, by the court hearing the appeal, of the initial decision taken on that application. However, the need to ensure that Article 46(3) of that directive has a practical effect and to ensure an effective remedy in accordance with Article 47 of the Charter requires that, in the event that the file is referred back to the quasi-judicial or administrative body referred to in Article 2(f) of that directive, a new decision must be adopted within a short period of time and must comply with the assessment contained in the judgment annulling the initial decision.

Costs

150 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 (Grand Chamber) hereby rules:

1. **Article 12(1)(a) of Directive 2011/95/EU 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, read in conjunction with Article 10(2) 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 meaning that the processing of an application for international protection lodged by a person registered with the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) requires an examination of the question whether that person receives effective protection or assistance from that agency, provided that that application has not been previously rejected on the basis of a ground of inadmissibility or on the basis of a ground for exclusion other than that laid down in the first sentence of Article 12(1)(a) of Directive 2011/95.**

2. **The second sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and the second sentence of Article 12(1)(a) of Directive 2011/95 must be interpreted as:**

   – **precluding national legislation which does not lay down or which incorrectly transposes the ground for no longer applying the ground for exclusion from being a refugee contained therein;**

   – **having direct effect; and**

   – **being applicable even if the applicant for international protection has not expressly referred to them.**

3. **Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a court or tribunal of a Member State seised at first instance of an appeal against a decision relating to an application for international protection must examine both facts and points of law, such as the applicability of Article 12(1)(a) of Directive 2011/95 to the applicant's circumstances, which the body that took that decision took into account or could have taken into account, and those which arose after the adoption of that decision.**

4. **Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as meaning that the requirement for a full and *ex nunc* examination of the facts and points of law may also concern the grounds of inadmissibility of the application for international protection referred to in Article 33(2) of that directive, where permitted under national law, and that, in the event that the court or tribunal hearing the appeal plans to examine a ground of inadmissibility which has not been examined by the determining authority, it must conduct a hearing of the applicant in order to allow that individual to express his or her point of view in person concerning the applicability of that ground to his or her particular circumstances.**

5. **Point (b) of the first paragraph of Article 35 of Directive 2013/32 must be interpreted as meaning that a person registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) must, if he or she is a beneficiary of effective protection or assistance from that agency in a third country that is not the territory in which he or she habitually resides but which forms part of the area of operations of that agency, be considered as enjoying sufficient protection in that third country, within the meaning of that provision, when it:**

   – **agrees to readmit the person concerned after he or she has left its territory in order to apply for international protection in the European Union; and**

   – **recognises that protection or assistance from UNRWA and supports the principle of non-refoulement, thus enabling the person concerned to stay in its territory in safety under dignified living conditions for as long as necessary in view of the risks in the territory of habitual residence.**

6. **Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as meaning that it does not establish common procedural standards in respect of the power to adopt a new decision concerning an application for international protection following the annulment, by the court hearing the appeal, of the initial decision taken on that application. However, the need to ensure that Article 46(3) of that directive has a practical effect and to ensure an effective remedy in accordance with Article 47 of the Charter of Fundamental Rights requires that, in the event that the file is referred back to the quasi-judicial or administrative body referred to in Article 2(f) of that directive, a new decision must be adopted within a short period of time and must comply with the assessment contained in the judgment annulling the initial decision.**

[Signatures]