Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 18 November 2016 — Serin Alheto v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

(Case C-585/16)

(2017/C 046/17)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Serin Alheto

Defendant: Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

Questions referred

1. Does it follow from Article 12(1)(a) of Directive 2011/95 ([1]) in conjunction with Article 10(2) of Directive 2013/32 ([2]) 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 the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and, 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 1951 Geneva Convention rather than as an application for international protection under the second sentence of Article 1(D) of that convention, on condition that responsibility for examining the application was assumed on a basis 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 not to be examined in the light of 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 of the European Union is not applied?

2. Is Article 12(1)(a) of Directive 2011/95 in conjunction with Article 5 thereof to be interpreted as precluding provisions of national law such as those at issue in the main proceedings, contained in Article 12(1)(4) of the Zakon za ubezhishteto i bezhantsite (Law on asylum and refugees, 'ZUB'), which, in the version applicable at the relevant time, do not contain an express clause on *ipso facto* protection for Palestinian refugees and do not lay down the condition that the assistance must have ceased for any 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 to be examined as an application under the second sentence of Article 1(D) of the Geneva Convention?

3. Does it follow from Article 46(3) of Directive 2013/32 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 which was adopted in accordance with Article 10(2) of Directive 2013/32, it is permissible for the court or tribunal of first instance, taking into account the facts of the main proceedings, to treat the application for international protection as an application under the second sentence of Article 1(D) of the Geneva Convention and to carry out the assessment provided for in Article 12(1)(a) of Directive 2011/95, where an application for international protection has been made by a stateless person of Palestinian origin who is registered as a refugee with the UNRWA and, before making that application, was resident within that agency's area of operations (the Gaza Strip), and, in the decision refusing international protection, that application was not examined in the light of the aforementioned 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 Articles 33, 34 and the second paragraph of Article 35 of that directive and Article 21(1) of Directive 2011/95, in conjunction with Articles 18, 19 and 47 of the Charter of Fundamental Rights of the European Union, that, in an appeal before a court or tribunal against a decision refusing international protection which was adopted in accordance with Article 10(2) of Directive 2013/32, they allow 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 was resident before making the application for international protection, after requiring the asylum authority to produce the evidence necessary for that purpose and giving the person in question the opportunity to present his views on the admissibility of the application; or

   B) to annul the decision for breach of an essential procedural requirement and to require the asylum authority, taking into account the instructions on the interpretation and application of the law, to reconsider 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 was resident before making the application for international protection;

   C) to assess the security status of the country in which the person was resident at the time of the hearing or, if the situation has been the subject of fundamental changes which must be taken into account in the person's favour in the decision to be taken, at the time when the judgment is given?

5. Does the assistance granted by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) constitute otherwise sufficient protection, within the meaning of point (b) of the first paragraph of Article 35 of Directive 2013/32, in the relevant country within the relief agency's area of operations, where that country applies the principle of non-refoulement, within the meaning of the 1951 Geneva Convention, in relation to persons supported by the relief agency?

6. Does it follow from Article 46(3) of Directive 2013/32 in conjunction with Article 47 of the Charter of Fundamental Rights that the right to an effective remedy incorporating the requirement, 'where applicable, [of] an examination of the international protection needs pursuant to Directive 2011/95' compels the court or tribunal of first instance, in an appeal against the decision examining the substance of an application for international protection and refusing to grant that 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 to grant international protection, by carrying out a proper examination of the application for international protection, notwithstanding the breaches of procedural requirements committed by the asylum authority when assessing the application?

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

([2]) 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).