Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 12 May 2021 [1] [i]

Case C-91/20

LW
v
Bundesrepublik Deutschland

(Request for a preliminary ruling
from the Bundesverwaltungsgericht (Federal Administrative Court, Germany))

(Reference for a preliminary ruling – Area of freedom, security and justice – Directive 2011/95/EU – Standards for granting international protection and the content of such protection – Article 23(2) – Maintenance of the family unity of the beneficiary of international protection – Benefits granted to family members who do not qualify for international protection – Article 3 – More favourable standards – National provision extending international protection to the minor child of a beneficiary of international protection – Child with the nationality of another country whose protection he or she can claim – Principle of subsidiarity of international protection)

I. Introduction

1. In recent years, the issue of refugees and their reception has been the source of tensions – sometimes heated – between Member States. The sudden massive influx of refugees into the European Union has seriously undermined some of the values on which the Union is based and may have caused Member States to turn in on themselves.

2. However, at the European Council in Tampere on 15 and 16 October 1999, the Member States agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951. [2] Among the instruments necessary for the implementation of that programme, the European Parliament and the Council of the European Union adopted Directive 2011/95/EU, [3] one of the main objectives of which is 'to ensure that all Member States apply common criteria

[1] Original language: French.

[2] Convention which entered into force on 22 April 1954 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)) ('the Geneva Convention'). It was supplemented 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 1967 Protocol').

[3] Directive 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).

for the identification of persons genuinely in need of international protection',[4] in particular in order to 'help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in [the] legal frameworks [thereof]'.[5]

3. The question for the Court in this case is whether EU law, and, more specifically, Directive 2011/95, allows a Member State, in order to ensure the maintenance of a refugee's family unity, to adopt legislation under which the competent national authority grants the same international protection to the minor child of that refugee, without that authority carrying out an individual assessment of that minor's situation and irrespective of whether he or she needs international protection within the meaning of that directive.

4. That question has arisen in a dispute between LW, a child of Tunisian nationality, and the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany; 'the Office') concerning a decision by which the Office refused to grant LW the refugee status granted to her father of Syrian origin. The Office found, first, that LW did not fulfil the substantive conditions for the grant of that status and, secondly, that she could claim the national protection of her country of origin.

5. This case invites the Court to determine the extent to which a Member State may exercise its discretion under Article 3 of Directive 2011/95 to extend the scope of beneficiaries of international protection to the family members of a refugee or beneficiary of subsidiary protection in order to ensure that the family unity of such persons is maintained. The case therefore concerns the classic difficulty of weighing different fundamental objectives (that of guaranteeing the right to asylum and that of ensuring respect for the family life of the beneficiary of international protection), the necessity of attaining those objectives, and the possibility of doing so without infringing the fields specific to each of the systems established for that purpose by the EU legislature.

6. The clarification which the Court must provide here is essential to a consistent and uniform application in all the Member States, first, of the criteria for obtaining international protection as they are defined in EU law and in the scheme of the Geneva Convention and, secondly, the rights and benefits attaching to the grant of such protection. It is therefore necessary to set out a clear interpretation of Article 3 of Directive 2011/95 in such a way that the Member States do not have too much leeway either to grant or refuse international protection.[6]

7. In this Opinion, I shall propose that the Court rule that neither Article 3 nor Article 23(2) of Directive 2011/95 allow a Member State to adopt legislation under which the competent national authority is to seek to ensure the maintenance of the family unity of the beneficiary of international protection by extending that protection to his or her minor child, without that authority carrying out an individual assessment of the application, irrespective of whether that child's situation demonstrates a need for international protection or is consistent with the rationale thereof.

4 Recital 12 of that directive.

5 Recital 13 of that directive.

6 See, inter alia, judgment of 17 December 2020, *Commission* v *Hungary (Reception of applicants for international protection)* (C-808/18, EU:C:2020:1029).

8. I believe that the EU legislature has endowed the Common European Asylum System with a legal arsenal that makes it possible to protect the family life of refugees and beneficiaries of subsidiary protection and to guarantee the defence of a child's best interests without it being necessary to undermine the uniformity of the status conferred by international protection and, in particular, the harmonisation carried out by the EU legislature with regard to the conditions for the grant of international protection and the content thereof.

II. Legal framework

A. International law

9. Article 1(A)(2) of the Geneva Convention provides that the term 'refugee' is to apply to any person:

'Who … owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.'

B. EU law

10. Under Article 78(1) TFEU and Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter'), the Common European Asylum System, which includes Directive 2011/95, is based on the full and inclusive application of the Geneva Convention.

11. Recitals 4, 5, 9, 12, 14 and 36 of Directive 2011/95 are worded as follows:

'(4) The Geneva Convention and the Protocol [of 1967] provide the cornerstone of the international legal regime for the protection of refugees.

(5) The Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.

…

(9) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78 [TFEU], for those granted international protection …

…

(12) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

…

(14) Member States should have the power to introduce or maintain more favourable provisions than the standards laid down in this Directive for third-country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person eligible for subsidiary protection.

…

(36) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.'

12. In Chapter I of Directive 2011/95, entitled 'General provisions', Article 1 provides:

'The purpose of this Directive is to lay down 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.'

13. Article 2 of Directive 2011/95 defines the following concepts as follows:

'…

(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;

…

(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;

…

(j) "family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

– the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship …,

– the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

– the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned …;

…'

14. Article 3 of that directive reads as follows:

'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.'

15. In Chapter VII of that directive, entitled 'Content of international protection', Article 23(1) and (2) provides:

'1. Member States shall ensure that family unity can be maintained.

2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.'

16. Articles 24 to 35 of Directive 2011/95 set out the various rights and benefits granted to the beneficiary of international protection and to his or her family members, pursuant to Article 23(2) of that directive.

C. German law

17. Paragraph 3(1) of the Asylgesetz (Law on the right to asylum), in the version published on 2 September 2008 [7] and last amended by Article 48 of the Law of 20 November 2019, [8] provides:

'(1) A foreign national is a refugee within the meaning of the [Geneva Convention] if he or she:

1. owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group,

7 BGBl. 2008 I, p. 1798.

8 BGBl. 2019 I, p. 1626; 'the AsylG'.

2. is outside the country (country of origin)

(a) of which he or she is a national and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country,

…'

18. Paragraph 26(2) and (5) of the AsylG provides:

'(2) A child of a person entitled to asylum who is unmarried and a minor at the time when the asylum application is filed shall, on request, be recognised as being entitled to asylum if the recognition of the foreign national as being entitled to asylum is incontestable and not amenable to revocation or withdrawal.

…

(5) The provisions of subparagraphs 1 to 4 shall apply *mutatis mutandis* to family members, within the meaning of subparagraphs 1 to 3, of persons entitled to international protection. "Entitlement to asylum" shall be replaced by "refugee status" or subsidiary protection …'

III. The case in the main proceedings, the questions referred and the procedure before the Court

19. The applicant in the main proceedings was born in Germany in 2017 to a Tunisian mother and a Syrian father (who was granted refugee status in Germany in 2015); she is a Tunisian national.

A. Examination of the application

20. By decision of 15 September 2017, the Office rejected the application for international protection submitted on behalf of the applicant in the main proceedings after her birth as manifestly unfounded. Although by judgment of 17 January 2019, the Verwaltungsgericht Cottbus (Administrative Court, Cottbus, Germany) annulled that decision on the ground that it should have been rejected not as manifestly unfounded but as unfounded, that court nevertheless dismissed the applicant's action. It held, first of all, that she did not qualify for refugee status, since there was no fear of persecution in Tunisia. It then rejected the argument that there was a well-founded fear of persecution in Syria, considering, in accordance with the principle of the subsidiarity of international protection, that the applicant could avail herself of the protection of the Tunisian State. Lastly, it considered that the applicant could not be granted refugee status under Paragraph 26(2) and the first sentence of Paragraph 26(5) of the AsylG, holding that it would be contrary to EU law and the principle of the subsidiarity of international protection to extend international protection to persons who, because of their personal status, were entitled to the protection of a State of which they were nationals, and were excluded from the category of persons in need of such protection.

21. The applicant in the main proceedings brought an appeal on a point of law against that judgment before the Bundesverwaltungsgericht (Federal Administrative Court, Germany).

B. The appeal before the referring court

22. In her appeal on a point of law, the applicant in the main proceedings submits that the principle of the subsidiarity of international protection does not preclude a minor from obtaining refugee status pursuant to the provisions of Paragraph 26(2) and the first sentence of Paragraph 26(5) of the AsylG, even where his or her parents have different nationalities and refugee status has been granted to only one of them. In addition, she contends that Article 3 of Directive 2011/95 authorises a Member State to extend the international protection obtained by a person to other family members, provided that they are not caught by one of the grounds for exclusion laid down in Article 12 of that directive and that their situation exhibits a connection with the rationale of international protection by virtue of the need to maintain family unity. In her opinion, particular attention should be paid to the protection of minors and the interests of the child.

23. The Bundesverwaltungsgericht (Federal Administrative Court) states that the applicant in the main proceedings satisfies the conditions laid down in Paragraph 26(2) and the first and second sentences of Paragraph 26(5) of the AsylG to be granted refugee status. However, it doubts whether that legislation is compatible with EU law and, more specifically, Directive 2011/95. Under that legislation, the competent national authority is obliged automatically to grant 'derived' refugee status to a minor child of a refugee, irrespective of whether there is a well-founded fear of persecution, including where that child is eligible for the protection of his or her own country of origin. It follows that that legislation may be contrary to the principle of subsidiarity of international protection on which various provisions of Directive 2011/95 and the scheme of the Geneva Convention are based. Thus, the applicant in the main proceedings cannot claim refugee status in her own right since she is eligible for effective protection in Tunisia.

24. The Bundesverwaltungsgericht (Federal Administrative Court) states, however, that the national legislation, in so far as it results in the grant of 'derived refugee status', does not require the substantive conditions for the grant of refugee status set out in Directive 2011/95 to be satisfied. In those circumstances, the fact that the family member is eligible for national protection is not a ground for exclusion from international protection within the meaning of that directive.

C. The questions referred for a preliminary ruling

25. In view of the foregoing considerations, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 3 of Directive [2011/95] to be interpreted as meaning that it precludes a provision enacted by a Member State to the effect that the unmarried minor child of a person who has been granted refugee status must be granted refugee status derived from that person (that is to say, protection as a family member of a refugee) even in the case where that child – by virtue of the other parent – is, in any event, also a national of another country which is not the same as the refugee's country of origin and the protection of which that child is able to avail itself of?

(2) Is Article 23(2) of Directive [2011/95] to be interpreted as meaning that, in the circumstances set out in Question 1, the restriction whereby the entitlement of family members to claim the benefits referred to in Articles 24 to 35 of that directive is to be granted only as far as is compatible with the personal legal status of the family member prohibits the minor child from being granted refugee status derived from the person recognised as a refugee?

(3) In providing an answer to Questions 1 and 2, is it material whether or not it is possible and reasonable for the child and its parents to take up residence in the country of which the child and the mother are nationals, the protection of which they are able to avail themselves of and which is not the same as the refugee's (father's) country of origin, or is it sufficient that family unity in Germany can be maintained on the basis of the rules governing the right of residence?'

26. The applicant, the German, Belgian and Polish Governments and the European Commission submitted written observations or oral observations at the hearing held on 22 February 2021 and further answered questions for an oral answer put by the Court.

IV. Analysis

27. Before analysing the questions referred for a preliminary ruling, I think it necessary to make a preliminary observation on the subject matter of those questions and the order in which, in my view, they should be dealt with.

28. Those questions arise from the fact that the national legislation at issue seeks to ensure the maintenance of family unity referred to by the EU legislature in Article 23 of Directive 2011/95 by using methods different from those set out in paragraph 2 of that article. As the referring court notes and as was confirmed by the German Government at the hearing, the German legislature chose to grant the minor child of the beneficiary of international protection who, individually, does not qualify for such protection, the benefits referred to in Articles 24 to 35 of that directive not by adopting a series of ad hoc provisions, but by granting that person derivative refugee status or subsidiary protection status.

29. It follows from the wording of Paragraph 26(2) and (5) of the AsylG that the competent national authority is thus to recognise the minor child of a refugee or of a beneficiary of subsidiary protection as a beneficiary of international protection without any condition other than that of the finality of the status obtained by his or her parent. It is apparent from the order for reference that that recognition is automatic and does not involve any verification that the child has a well-founded fear of persecution or serious harm. That legislation is also applicable irrespective of whether the child is a national of a different country to the parent and whether he or she is entitled to national protection, which, however, the German Government appears to have disputed at the hearing.

30. By its first question, the Bundesverwaltungsgericht (Federal Administrative Court) wishes to know, first of all, whether such legislation constitutes a more favourable standard which the Member States may adopt under Article 3 of Directive 2011/95.

31. Next, by its second question, the referring court asks the Court whether the provisions laid down for the purpose of maintaining family unity in Article 23(2) of that directive preclude that legislation, given that those provisions restrict the grant of the benefits which the host Member State must grant to family members of a beneficiary of international protection on condition that that grant is compatible with their personal legal status.

32. Lastly, by its third and final question, the referring court enquires whether it is appropriate, for the purposes of examining the first and second questions, to take account of whether it is possible for the family to take up residence in the country of which the child and the mother of the family are nationals, or whether it is sufficient that the unity of family life be ensured by the application of the rules concerning the right of residence.

33. First, in order to examine the issue raised by the referring court, it is necessary, in my view, to reverse the order of the first and second questions. The extent to which the Member States may exercise the discretion conferred on them by Article 3 of Directive 2011/95 in order to introduce or retain more favourable standards than those set out in Article 23(2) of that directive must, prima facie, be assessed in the light of the rules laid down in that article.

34. Secondly, in order to examine that issue it is necessary to analyse the third question not in isolation but, as the referring court requests the Court of Justice, in the context of the first and second questions.

A. Second question, concerning the interpretation of Article 23(2) of Directive 2011/95

35. By its second question, the referring court enquires, in essence, whether the condition laid down in Article 23(2) of Directive 2011/95, under which the family members of a beneficiary of international protection may claim the benefits provided for in Articles 24 to 35 of that directive only in so far as that is compatible with their 'personal legal status', precludes national legislation from granting derivative refugee status to the unmarried minor child of a person who has been granted refugee status where that child is a national of a country other than the country of origin of the refugee.

36. That question seems to be based on the premiss that Article 23(2) of that directive authorises, in principle, such an extension of international protection to the family members of a refugee or beneficiary of subsidiary protection. I consider that that premiss is incorrect in the light of a literal, schematic and teleological interpretation of that provision.

1. Literal interpretation of Article 23(2) of Directive 2011/95

37. Article 23 of Directive 2011/95 is included in Chapter VII thereof. That chapter, entitled 'Content of international protection', seeks to define the rights and benefits that the host Member State must grant to refugees and beneficiaries of subsidiary protection [9] following an individual assessment of their situation.

38. In that context, Article 23 of that directive concerns 'maintaining the family unity' of the beneficiary of international protection. [10]

[9] See, in that regard, judgment of 24 June 2015, *T.* (C-373/13, EU:C:2015:413, paragraph 68).

[10] See the title and paragraph 1 of that article.

39. The use of the expression 'maintaining family unity' implies that the beneficiary of international protection is a member of a family whose unity is likely to be compromised on account of his or her departure from the country of origin and settlement in the host Member State. Unlike Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification,[11] Directive 2011/95 is therefore not intended to establish a family life for the beneficiary of international protection.[12]

40. More specifically, it follows from the very wording of Article 23(2) of Directive 2011/95 that the purpose of that provision is to ensure that the family unity of the beneficiary of international protection is maintained specifically where his or her family members do not individually 'qualify' for such protection. A distinction must therefore be made between the scenario covered by that provision and that referred to in recital 36 of that directive, which refers to the refugee's family members inasmuch as they are, or are liable to be, personally vulnerable to acts of persecution in the country of origin, merely due to their relation to the refugee, and may therefore be granted refugee status.[13] The same status is thus granted to them because of the risk of persecution that they personally face.

41. Article 23(2) of Directive 2011/95 determines the conditions under which the family unity of the beneficiary of international protection is to be maintained in the host Member State by establishing the nature of the benefits granted for that purpose and the persons to whom these benefits are granted.

(a) Benefits

42. Article 23(2) of Directive 2011/95 lays down the principle that the family members of the beneficiary of international protection who do not individually qualify for such protection may claim the economic and social benefits referred to in Articles 24 to 35 of that directive. A 'minimum level of benefits' is concerned.[14] The beneficiary of international protection remains the decisive factor without whom it is not possible for a member of his or her family who is ineligible for such protection to obtain those benefits.

43. The host Member State must thus ensure that it is possible for the family members of the beneficiary of international protection to obtain a residence permit, valid for less than three years and renewable, in the territory of that State. The host Member State must, in particular, ensure that family members have travel documents, that they can travel outside their territory, that they have freedom of movement within the territory of that State, that they can obtain accommodation and that they enjoy full access to the education system and healthcare. Family members must also have access to employment and vocational training and be granted social assistance.[15] Those rights and benefits must be granted under conditions equivalent to those applicable to nationals. It is apparent from recitals 41 to 48 and Articles 24 to 35 of Directive 2011/95 that those benefits must enable the family members of the beneficiary of international protection to meet their specific needs and integrate into the host Member State.

11 OJ 2003 L 251, p. 12.

12 See recital 6 of Directive 2003/86, according to which that directive seeks to 'protect the family and establish or preserve family life'.

13 Recital 36 of Directive 2011/95 refers only to a refugee's family members, excluding the family members of a beneficiary of subsidiary protection.

14 See recital 12 of that directive.

15 However, Article 29(2) of Directive 2011/95 provides for a limitation to core benefits for beneficiaries of subsidiary protection.

44. The benefits thus granted to family members are, in essence, the same as those granted to the beneficiary of international protection.

45. As the Court pointed out in the judgment of 4 October 2018, *Ahmedbekova*,[16] the EU legislature did not provide for the extension of refugee status or subsidiary protection status to family members of the beneficiary of international protection, as proposed by the Commission in its Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.[17] The Commission wished to ensure such an extension to dependent family members *accompanying* the applicant for international protection,[18] with the exception of persons excluded from such protection. That initiative was not adopted, since the Parliament took the view that it was necessary to take into account cases in which family members 'may hold a different legal status [from the applicant] in their own right, which may not be compatible with that of international protection'.[19] The Commission did not renew that initiative in the travaux préparatoires for Directive 2011/95, although the purpose of that directive is to establish 'higher standards' than the minimum standards previously laid down in Directive 2004/83/EC.[20]

46. In the light of those considerations, it is not apparent from the wording of Article 23(2) of Directive 2011/95 that that provision allows the host Member State to grant derivative refugee status or subsidiary protection status to the family members of the beneficiary of international protection for the purposes of maintaining family unity.

(b) Recipients of the benefits

47. Article 23(2) of Directive 2011/95 makes entitlement to the benefits provided for in Articles 24 to 35 thereof subject to three conditions being met. First of all, the family member of the beneficiary of international protection must be covered by the concept defined in Article 2(j) of that directive. Next, he or she must not personally satisfy the substantive conditions for the grant of international protection. Lastly, his or her personal legal status must be compatible with the grant of those benefits.

48. Although those conditions are cumulative, they may prove to be insufficient where the family member is caught by one of the clauses providing for exclusion from international protection set out in Chapters III and V of that directive[21] or where he or she represents a danger to national security or public order.[22]

16 C-652/16, EU:C:2018:801, paragraph 68.

17 COM(2001) 510 final.

18 See, in that regard, former Article 6(1) of that proposal.

19 See amendment 22 of the report of 8 October 2002 on that proposal for a directive (A5-0333/2002 Final).

20 Council Directive 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). See recital 10 of Directive 2011/95.

21 Article 23(3) of Directive 2011/95 states that 'paragraphs 1 and 2 [of that article] are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V [of that directive]'.

22 Article 23(4) of Directive 2011/95 states that 'notwithstanding paragraphs 1 and 2 [of that article], Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order'.

(1) Qualification as a 'family member'

49. It follows from the definition set out in Article 2(j) of Directive 2011/95 that a member of a family which 'already existed in the country of origin [of the beneficiary of international protection]' and who is present in the same Member State as the latter in relation to the application for international protection is a family member within the meaning of that provision.

50. The EU legislature therefore sets out two criteria for the purposes of qualification as a 'family member' and, by implication, for the purposes of the applicability of the standards relating to maintaining family unity.

51. The first criterion relates to the place and time at which the family relationship arose.

52. Although it is commonly accepted that the family is not defined either by the place or time at which it was established, the EU legislature nevertheless restricts the benefit of maintaining family unity to family relationships which the beneficiary of international protection formed in his or her country of origin, before the grant of that protection, whether those relationships are biological, such as the birth of a child, or legal, such as adoption or marriage. As noted by the European Asylum Support Office (EASO), in its guide to qualification for international protection, the family needs to have already existed in the country of origin. [23]

53. The existence of a connection between the family member and the country of origin of the beneficiary of international protection is a decisive factor, as is also shown by the wording of Article 23(5) of Directive 2011/95. While that provision allows Member States to extend the scope of Article 23(2) of that directive to other 'close relatives' of the beneficiary of international protection, the relatives in question must have 'lived together as part of the family at the time of leaving the country of origin'. It is therefore necessary to demonstrate that a family unit existed prior to departure.

54. Consequently, the maintenance of family unity referred to in Article 23(2) of Directive 2011/95 concerns family members who lived with the beneficiary of international protection in his or her country of origin. That provision is therefore not intended to protect the family established by the beneficiary of international protection in the territory of the host Member State. This distinguishes the system of Directive 2011/95 from that established by Directive 2003/86, which applies whether the family relationships were formed before or after the sponsor [24] entered the territory of the host Member State. [25]

55. The second criterion laid down by the EU legislature relates to the presence of family members on the territory of the host Member State 'in relation to the application for international protection'. Such a condition implies that they accompanied the beneficiary of international protection from the country of origin to the host Member State for the purposes of submitting his or her application, thereby demonstrating their wish to remain united. This is set out in recital 16 of Directive 2011/95, which states that the EU legislature must ensure full respect for the rights of 'applicants for asylum and their *accompanying* family members'. [26]

[23] EASO *Qualification for international protection (Directive 2011/95/EU), a judicial analysis*, 2016, (p. 98).

[24] The term 'sponsor' is defined in Article 2(c) of Directive 2003/86 as a third-country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him or her.

[25] See Article 2(d) of Directive 2003/86.

[26] Emphasis added.

56. That second criterion distinguishes once again between Directive 2011/95 and Directive 2003/86, under which the application for family reunification is to be submitted when family members are, as a rule, outside the territory of the Member State in which the sponsor resides. [27]

57. It follows from the foregoing that, from a literal point of view, Article 23(2) of Directive 2011/95 is not intended to cover the situation of family members where that situation was established outside the country of origin and after the grant of international protection to one of its members.

(2) The family member does not satisfy the substantive conditions for the grant of international protection

58. The second condition laid down in Article 23(2) of Directive 2011/95 relates to the ineligibility of family members for international protection within the meaning of Article 2(a) of that directive, that is to say, to refugee status or subsidiary protection status. Article 23(2) of that directive does not cover family members who themselves satisfy the substantive conditions for the grant of international protection on account of the risks they incur personally in the country of origin.

(3) The family member has a personal legal status which does not preclude the grant of the benefits provided for by Directive 2011/95

59. The third condition laid down by the EU legislature in Article 23(2) of Directive 2011/95 concerns the 'personal legal status of the family member'. It is specified that that status must be compatible with the grant of the benefits referred to in Articles 24 to 35 of that directive.

60. The concept of 'personal legal status' is not defined by Directive 2011/95. Its meaning, however, is commonly accepted. In the case of a natural person, it refers to all the legal provisions governing that person's legal position and the various statuses granted to him or her on account, in particular, of his or her age (status of minor or adult, for example), place of birth (nationality acquired by place of birth), parentage (natural or adoptive parentage), nationality or nationalities and also marital arrangements (marriage, cohabitation and so forth), situation of dependency (arrangements for tutorship, guardianship and so on), history or residence on the territory of a Member State. A natural person's legal status is thus likely to regulate all aspects of his or her life.

61. In the context of Article 23(2) of Directive 2011/95, the extent to which the family member of the beneficiary of international protection is entitled to the benefits provided for by that directive will depend on his personal legal status. The host Member State cannot therefore be required to issue a residence permit or travel documents to a family member who proves to be an EU citizen, or even a national of the host Member State, for example.

62. It is now appropriate to examine the context of Article 23(2) of that directive and the scheme of which it forms part.

[27] See Article 5(3) of Directive 2003/86.

2. Context of Article 23(2) of Directive 2011/95

63. An examination of the context of Article 23(2) of Directive 2011/95 shows that the scheme of the Geneva Convention does not require that international protection be extended to family members of a refugee who are in a situation such as that at issue.

64. It should be noted, as a preliminary point, that the provisions of Directive 2011/95 must be interpreted not only in the light of the general scheme and purpose of that directive, but also in a manner consistent with the Geneva Convention.[28] Although, according to the Court, that directive establishes a system of rules including concepts and criteria common to the Member States and thus peculiar to the European Union, it is based on the full and inclusive application of that convention and its purpose is, inter alia, to ensure that Article 1 of that convention is complied with in full.[29] In that regard, consultations provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) are particularly relevant in the light of the role conferred on it by that convention.[30]

65. It is therefore necessary to examine the content of the Geneva Convention. Articles 3 to 34 of that convention lay down the rights and fundamental freedoms associated with the recognition of refugee status. Those political, economic and social rights are essentially intended to ensure the integration of the refugee into the host country by allowing him or her to participate in the life of that country without suffering, on account of his or her race, religion or country of origin, discrimination or treatment less favourable than that accorded to nationals of that country.

66. However, neither the Geneva Convention nor the 1967 Protocol lays down any specific provision relating to the unity of the refugee's family.[31] Reference must be made, for that purpose, to a diplomatic act annexed to that convention, namely the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons of 25 July 1951. As academic writers point out, it is in that text that the drafters of that convention 'linked' an international protection regime premised on the refugee's fear of persecution to the refugee's family.[32] Considering that 'the unity of the family … is an essential right of the refugee and that such unity is constantly threatened', that act 'recommends [the signatory States] to take the necessary measures for the protection of the refugee's family, especially with a view to … [e]nsuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country'.[33]

67. It was in that context that the EU legislature adopted Directive 2004/83 and then its successor, Directive 2011/95.[34]

[28] See judgments of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)* (C-238/19, EU:C:2020:945, paragraphs 19 and 20), and of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19, EU:C:2021:3, paragraphs 38 and 39 and the case-law cited).

[29] See Article 78(1) TFEU and Article 18 of the Charter. See also recitals 4, 23 and 24 of Directive 2011/95, and judgment of 14 May 2019, *M and Others (Revocation of refugee status)* (C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraphs 80 to 83 and the case-law cited).

[30] See recital 22 of Directive 2011/95 and judgment of 23 May 2019, *Bilali* (C-720/17, EU:C:2019:448, paragraph 57 and the case-law cited).

[31] See, in that regard, Feller, E., Türk, V., and Nicholson, R., *Refugee protection in international law*, Larcier, Brussels, in particular Part 9 entitled 'Family unity (Final Act, 1951 UN Conference)', p. 678.

[32] See Feller, E., Türk, V., and Nicholson, R., op. cit., p. 624.

[33] Recommendation B, (1). See also UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, 1992, paragraph 183.

[34] It was also in that context that the EU legislature adopted Directive 2003/86, the purpose of which, in accordance with recitals 2, 6 and 8 thereof, is to protect the refugee's family and establish or preserve his or her family life by regulating the exercise of the right to family reunification.

68. In accordance with Article 78(2) TFEU, on which it is based, Directive 2011/95 seeks to establish a 'uniform asylum status' for third-country nationals based on the Geneva Convention as well as a 'uniform subsidiary protection status'.[35] That directive defines, in Chapters I, III, IV, V and VI, the common criteria for identifying persons 'genuinely in need of international protection'[36] and to whom one of the two statuses must be granted before determining, in Chapter VII, the content of the protection conferred by those statuses. Like the Geneva Convention, the EU legislature did not provide for the extension of international protection to family members of a refugee or a beneficiary of subsidiary protection for the purposes of maintaining family unity.

69. However, some of the UNHCR's recommendations tended in that direction. In its annotated comments on Directive 2004/83,[37] the UNHCR had stated, concerning Article 23(1) and (2) of that directive, that members of the same family should be granted the same status as the principal applicant (derivative status), provided that that was compatible with their personal status. In the questions relating to the protection of the family of 4 June 1999,[38] the UNHCR Standing Committee had also already stated that 'it follows from the principle of family unity that, if the head of a family meets the criteria for recognition of refugee status, the dependent members of his or her family should *normally* be recognised as refugees',[39] provided that such status is compatible with their personal legal status.

70. Similarly, as I have already stated, the Commission had formulated the same proposal during the preparation of Directive 2004/83, without that proposal being adopted.

3. The scheme of which Article 23(2) of Directive 2011/95 forms part

71. It is apparent from an examination of the scheme of Directive 2011/95 that the application of the rules relating to the maintenance of the family unity of the beneficiary of international protection by the grant of certain benefits requires an individual assessment of the situation of each family member.[40] That assessment must make it possible to vary the grant of rights and benefits according to their situation and legal status.

72. First of all, that requirement to carry out an individual examination is laid down for beneficiaries of international protection and follows from recitals 41, 45 and 47 of Directive 2011/95 and from the 'general rules' relating to the content of that protection set out in Article 20 thereof.

73. Article 20(3) and (4) of Directive 2011/95 states that, when deciding on entitlement to the benefits included in that directive for beneficiaries of international protection, Member States are required to carry out an individual assessment of the situation of vulnerable persons, such as minors, unaccompanied minors, elderly people or persons who have been subjected to torture, in

35 See recitals 5, 6 and 9 of Directive 2011/95, and judgment of 8 May 2014, *N* (C-604/12, EU:C:2014:302, paragraph 31 and the case-law cited).

36 See recital 12 of Directive 2011/95.

37 Available at: https://www.unhcr.org/uk/protection/operations/43661eee2/unhcr-annotated-comments-ec-council-directive-200483ec-29-april-2004-minimum.html

38 Available at: https://www.unhcr.org/uk/excom/standcom/3cc414164/family protection-issues.html

39 *Family Protection Issues* (paragraph 9). Emphasis added.

40 Like the assessment to determine the need for international protection, which requires, pursuant to Article 4 of Directive 2011/95, that all facts and circumstances be taken into account, and also 'the individual position … of the applicant' (Article 4(3)(c)) and the existence of national protection (Article 4(3)(e)).

order that their special needs be taken into account.[41] Recital 41 of Directive 2011/95 states that Member States may thus adopt more favourable standards 'in order to enhance the effective exercise of the rights and benefits laid down in [that directive]', taking into account, in particular, the specific needs of beneficiaries of international protection and the particular integration challenges with which they are confronted.

74. In that regard, Article 20(5) of Directive 2011/95 states, inter alia, that the best interests of the child are to be a primary consideration. As the Court pointed out in the judgment of 14 January 2021, *Staatssecretaris van Justitie en Veiligheid (Return of an unaccompanied minor)*,[42] only by carrying out a general and in-depth assessment of the situation of the minor – who, in this case, is unaccompanied – is it possible to determine the 'best interests of the child'.[43]

75. Next, the need for an individual assessment of situations arises from the specific rules relating to maintaining family unity laid down in Article 23 of Directive 2011/95[44] and, in particular, from the assessment of the status of 'family member', within the meaning of Article 2(j) of that directive, from the condition relating to the legal status of the family member and from the need to take into account the interests of the child and individual situations of dependency.[45]

76. Lastly, the exclusion clause set out in Article 23(3) of Directive 2011/95 requires the Member States to ascertain whether the family member is or would be excluded from international protection for one of the reasons referred to in Articles 12 and 17 of that directive, for example, on account of a crime he or she has allegedly committed,[46] which deprives him or her of the benefits to which he or she may be entitled owing to his or her family relationships. In the judgment of 13 September 2018, *Ahmed*,[47] the Court thus held that the application of that exclusion clause cannot be automatic and requires a full investigation into all the circumstances of the individual case.[48] As regards the exclusion clause set out in Article 23(4) of that directive, the Court has ruled that it requires that the Member States assess on a case-by-case basis whether the personal conduct of the family member is liable to represent a threat to national security and public policy.[49]

41 See also recital 38 of Directive 2011/95, according to which, 'when deciding on entitlements to the benefits included in [that directive], Member States should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary'.

42 C-441/19, EU:C:2021:9.

43 See judgment of 14 January 2021, *Staatssecretaris van Justitie en Veiligheid* (Return of an unaccompanied minor) (C-441/19, EU:C:2021:9, paragraph 46).

44 See also *UNHCR Resettlement Handbook*, 2011 (available at https://www.unhcr.org/46f7c0ee2.pdf), in particular, Section 3.1.5, 'Derivative status related to family reunification', which states that 'claims for derivative refugee status should be assessed by protection or eligibility staff, as they involve a detailed examination of all available documents and other information regarding the applicant's identity and dependency', p. 79.

45 See recital 19 of that directive, according to which the notion of 'family members' may be broadened 'taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child'. See also EASO, *Judicial Analysis. Evidence and Credibility Assessment in the Context of the Common European Asylum System*, 2018, p. 62 ('Individual assessment'), p. 126 ('The best interests of the child') and p. 136 ('Family relationships and evidence assessment').

46 See judgment of 2 May 2018, *K. and H. F. (Right of residence and alleged war crimes)* (C-331/16 and C-366/16, EU:C:2018:296, paragraph 52 and the case-law cited).

47 C-369/17, EU:C:2018:713.

48 See judgment of 13 September 2018, *Ahmed* (C-369/17, EU:C:2018:713, paragraphs 48 and 49). See also judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19, EU:C:2021:3, paragraph 51).

49 See judgment of 2 May 2018, *K. and H. F. (Right of residence and alleged war crimes)* (C-331/16 and C-366/16, EU:C:2018:296, paragraphs 53 and 54).

77. In the light of those considerations, only by carrying out an individual assessment of the family situation of the beneficiary of international protection is it possible to determine the extent to which he or she must be able to exercise the right to maintain family unity and, where appropriate, the extent to which his or her family members must have access to the benefits set out in Directive 2011/95 – such as access to education or employment – or, on the contrary, may be deprived of them on account of their personal legal situation or their history. Even if the EU legislature had allowed Member States to extend international protection to the minor child of a beneficiary of international protection, such a benefit could not be granted under a procedure which does not allow the individual situation of that child to be assessed.

4. Teleological analysis of Directive 2011/95

78. Directive 2011/95 is based on Article 78(2)(a) and (b) TFEU, which envisages the adoption of measures for a common European asylum system comprising a uniform status, valid throughout the European Union, for beneficiaries of international protection.

79. In the first place, that directive clearly expresses the intention of the EU legislature to ensure that all Member States identify persons 'genuinely in need of international protection' and grant that international protection on the basis of common criteria by assessing individually the situation of each applicant.[50] Two statuses are established: refugee status and subsidiary protection status. Although the EU legislature chose to supplement the protection of refugees established in the Geneva Convention by introducing a subsidiary form of protection, it must be noted that it did not prescribe the addition to those systems of supplementary protection to be granted to the family members of a beneficiary of international protection on a derivative basis.

80. It is apparent from Articles 13 and 18 of Directive 2011/95, read in conjunction with Article 2(d) and (f) thereof, that the grant of refugee status or subsidiary protection status requires two essential criteria to be satisfied. First, there must be a risk of persecution that the person concerned would face on account of his or her race, religion, nationality, political opinion or membership of a particular social group (refugee) or of serious harm (subsidiary protection) if returned to his or her country of origin. Secondly, that country must be directly or indirectly responsible for there being such a risk. Refugee or subsidiary protection status may be granted, therefore, only in cases where the public authorities in the country of origin have not ensured protection against the risks of persecution or serious harm, either because they are responsible for the persecution, or because they encourage or tolerate persecution by militia or other private groups. According to EASO, assessment of the protection measures available in the country of origin is thus a mandatory step in the analysis of the need for international protection, which is secondary and relevant only if no protection is provided by that country.[51]

81. It is essential, in order for international protection to be granted, for those two criteria to be fulfilled, as they form the basis of the fear of the person concerned and justify his or her inability or unwillingness to avail himself or herself of the protection of his or her country of origin. They are, in that context, guiding principles of the international protection regime.

[50] See recital 12 of that directive. See also judgments of 13 September 2018, *Ahmed* (C-369/17, EU:C:2018:713, paragraph 37), and of 14 May 2019, *M and Others (Revocation of refugee status)* (C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraph 79).

[51] See *EASO Practical Guide*: *Qualification for international protection*, April 2018, in particular pp. 11, 12 and 36.

82. In view of the subject matter of this case, particular attention must be paid to the second of those criteria. It reflects the principle of the subsidiarity of international protection mentioned several times by the referring court and by the Belgian Government in its observations. According to that principle, international protection is a surrogate protection which is granted to an applicant where, and so long as, his or her country of origin is unable to protect him against the risk of persecution or serious harm to which he or she is exposed.[52] Like Article 1 of the Geneva Convention, Directive 2011/95 incorporates that principle into both the grant of refugee status and the cessation[53] or exclusion thereof.[54] In the judgment of 20 January 2021, *Secretary of State for the Home Department*,[55] the Court thus pointed out that the circumstances which demonstrate the country of origin's inability or, conversely, its ability to provide protection from acts of persecution constitute a crucial element in the assessment which leads to the grant of refugee status, or, correspondingly, when appropriate, to the cessation of that status.[56]

83. In those circumstances, any grant of international protection should be excluded where the family member enjoys the rights attaching to his or her own nationality and, in particular, the protection of his or her country of origin.

84. In the second place, Directive 2011/95 also clearly expresses the EU legislature's intention to establish a refugee status and subsidiary protection status that are uniform and in connection with which the same rights and benefits must be conferred.[57] The purpose of such uniformity is to ensure that beneficiaries of international protection are treated in an equivalent manner with regard to their living conditions regardless of the host Member State and thus to reduce the likelihood of secondary movement of applicants for international protection owing to the diversity of those conditions.[58] By implication, and subject to individual assessment, family members should therefore enjoy the same rights and benefits irrespective of the host Member State.[59]

85. As I shall explain, while the Member States have discretion to provide for more favourable treatment, that discretion cannot result in an obvious breach of the equal treatment sought here by the EU legislature.

[52] See, in that regard, paragraph 90 of the UNHCR handbook cited in footnote 33 of this Opinion, in which the UNHCR states that 'an applicant's well-founded fear of persecution must be in relation to the country of his nationality. As long as he has no fear in relation to the country of his nationality, he can be expected to avail himself of that country's protection. He is not in need of international protection and is therefore not a refugee' (see also paragraphs 106 and 107 of that handbook). In legal literature, see, in particular, Hathaway, J. C., and Foster, M., *The law of refugee status*, 2nd ed., Cambridge University Press, Cambridge, 2014, p. 55: 'It is an underlying assumption of refugee law that, wherever available, national protection takes precedence over surrogate international protection. In the drafting of the Convention, delegates clearly expressed their view that no person should be recognised as a refugee unless she is either unable or legitimately unwilling to avail herself of the protection of *all* countries of which she is a national', and p. 462: 'the purpose of refugee law is to afford surrogate protection pending the resumption or establishment of meaningful national protection', and pp. 494 and 495. See also Goodwin-Gill, G.S., and McAdam, J., *The refugee in international law*, 3rd ed., Oxford University Press, Oxford, 2007, p. 421: 'The lack or denial of protection is a principal feature of refugee character, and it is for international law, in turn, to substitute its own protection for that which the country of origin cannot or will not provide'; and p. 72: 'Those who possess the nationality of another State will, in normal circumstances, be entitled to its protection and so fall outside the refugee definition'.

[53] See Article 11 of Directive 2011/95.

[54] See Article 12(1) of Directive 2011/95.

[55] C-255/19, EU:C:2021:36.

[56] See judgment of 20 January 2021, *Secretary of State for the Home Department* (C-255/19, EU:C:2021:36, paragraph 36 and the case-law cited).

[57] See recitals 5, 9 and 10 of Directive 2011/95.

[58] See recital 13 of Directive 2011/95.

[59] With the exception of the rights arising from the principle of non-refoulement.

86. Lastly, in the third place, Directive 2011/95 clearly expresses the intention of the EU legislature to guarantee to beneficiaries of international protection respect for their fundamental rights as established, inter alia, in the Charter, the Geneva Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms. [60]

87. Article 7 of the Charter thus recognises the right to respect for private and family life. According to settled case-law, that article must be read in conjunction with the obligation to take into consideration the best interests of the child, recognised in Article 24(2) of the Charter, and with account being taken of the need, expressed in Article 24(3), for a child to maintain on a regular basis a personal relationship with his or her parents. [61] There is a universal consensus regarding the fact that, as the fundamental unit of society, the family is entitled to respect and protection, the State must do everything to preserve the ties between a child and his or her family and family ties may only be severed in exceptional circumstances. [62]

88. In that context, the maintenance of family unity is a right which is recognised as being an essential right of the refugee. [63]

89. That right is rooted in, and based on, the material and psychological support that family members can provide to each other, thereby contributing to each other's well-being and protection. [64] While forced exile exposes the beneficiary of international protection to a real risk of being permanently separated from his or her family, such exile exposes family members who remain in the country of origin and are deprived of his or her support not only to the risk of persecution, but also to the risk of economic and social insecurity and to the risk of violence and exploitation, even desertion, as the flight often constitutes a point of no return to the country of origin for a long time. [65] While the risk of persecution or serious harm to which family members are personally vulnerable justify the grant of international protection to them, by contrast, the risk of economic and social insecurity from which they might suffer are not sufficient to justify such recognition.

90. The mechanism provided for in Article 23(2) of Directive 2011/95 is intended to ensure that family unity is maintained in the latter scenario. Although that objective is not one of the main objectives of that directive stated in recital 12 thereof, Article 23(2) of that directive lays down particularly clear and precise obligations for the host Member State. The host Member State must enable the beneficiary of international protection to lead a normal family life in its territory by granting to his or her family members the economic and social benefits necessary to satisfy their basic needs and allow them to integrate into that State. [66]

[60] Signed in Rome on 4 November 1950. See recitals 4, 16 and 17 of Directive 2011/95, and judgments of 21 December 2011, *N.S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 78), and of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19, EU:C:2021:3, paragraph 39 and the case-law cited).

[61] See judgments of 26 March 2019, *SM (Child placed under Algerian kafala)* (C-129/18, EU:C:2019:248, paragraph 67 and the case-law cited), and of 16 July 2020, *Belgian State (Family reunification – minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 34 and the case-law cited).

[62] See Articles 3 and 9 of the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations in Resolution 44/25 of 20 November 1989, which entered into force on 2 September 1990. See also ECtHR, 6 July 2010, *Neulinger and Shuruk v. Switzerland*, CE:ECHR:2010:0706JUD004161507, §§ 49 to 64.

[63] This is reflected in its position in Chapter VII of Directive 2011/95.

[64] See Feller, E., Türk, V., and Nicholson, R., op. cit.: 'Respecting the principle of unity of the family is one of the primary means of protecting the refugee family', p. 624.

[65] See Feller, E., Türk, V., and Nicholson, R., op. cit., pp. 626 and 627.

[66] See, in particular, recitals 41 to 48 of Directive 2011/95.

91. According to the UNHCR, the maintenance of family unity must thus be 'one means of ensuring a semblance of normality in an … uprooted life'. [67]

92. Without wishing to compromise the conditions for granting international protection, the essential aim thus pursued by the EU legislature is to maintain family unity, the essential component of which, namely the couple and the children, is already present in the host Member State. By enabling the spouse to earn his or her own living in that State and the children to attend school and by making it possible for them to receive a renewable residence permit, obtain decent accommodation and enjoy access to healthcare, Article 23(2) of Directive 2011/95 strengthens the family's economic and social position, thereby protecting each of its members. It is through that mechanism, designed to promote family unity and the integration of each of its members, that the family is to achieve a stable and independent position in the host Member State.

93. It follows – and here I aim to answer the third question referred – that the implementation of Article 23(2) of Directive 2011/95 cannot depend on whether it is possible for the family to take up residence in a third country, even if some of its members are nationals of that country. The purpose of that article is to enable the beneficiary of international protection to enjoy the rights conferred by that protection while maintaining the unity of his or her family life in the territory of the host Member State. To take such a possibility into account would result in the provisions laid down in Article 23(2) of that directive being rendered redundant, since it would involve the beneficiary of international protection waiving the right to asylum conferred on him or her in that State.

94. In conclusion, it seems to me that, in Article 23(2) of Directive 2011/95, the EU legislature did not intend to ensure that the maintenance of the family unity of the beneficiary of international protection by allowing the competent national authorities to grant the same international protection to his or her family members and, in particular, to his or her minor child, without those authorities conducting an individual assessment of the application, irrespective of whether the situation of the family member demonstrates a need for international protection within the meaning of that directive.

95. In the light of all the foregoing, I therefore propose that the Court rule that Article 23(2) of Directive 2011/95 precludes national legislation under which the competent national authority seeks to ensure the maintenance of family unity of the beneficiary of international protection, by granting such protection to his or her family members – in particular, his or her minor child – who do not qualify individually for international protection.

B. First question, concerning the interpretation of Article 3 of Directive 2011/95

96. By its first question, the referring court asks the Court of Justice, in essence, whether Article 3 of Directive 2011/95 must be interpreted as precluding national legislation under which the competent national authority may, for the purposes of ensuring the maintenance of family unity, grant to the minor child of a beneficiary of international protection refugee status or subsidiary protection status, where that child holds the nationality of a country different to the country of nationality of his or her parent, whose protection he or she can theoretically claim.

[67] *Family protection issues*, 4 June 1999, paragraph 15 (see footnote 38 of this Opinion).

1. Scope of the discretion conferred on Member States by Article 3 of Directive 2011/95

97. Under Article 3 of Directive 2011/95, 'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with [that directive]'. [68]

98. In the first place, it follows from Article 3 of Directive 2011/95, read in the light of recital 14 thereof, that Member States may introduce or retain more favourable standards for assessing an application for international protection, in order to identify persons who qualify for such protection.

99. First, the concept of an 'application for international protection' is defined in Article 2(h) of Directive 2011/95 as a 'request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status'. That provision specifies that the applicant does not explicitly request another kind of protection outside the scope of that directive.

100. Secondly, when referring to 'qualification' for refugee status or subsidiary protection status, the EU legislature refers only to the conditions for granting those statuses expressly set out in Chapters II to VI of that directive.

101. In the second place, it follows from the reservation expressed by the EU legislature regarding the necessary compatibility of those more favourable standards with Directive 2011/95 that the Member States' margin of discretion must be determined in the light of the substantive and procedural rules laid down by that directive and the objectives which it pursues. [69]

102. I would point out that, in accordance with Article 78(2) TFEU, Directive 2011/95 seeks to ensure the uniformity of asylum status and subsidiary protection status by granting international protection on the basis of criteria common to the Member States following an individual assessment of the applicant's situation.

103. Unlike Directive 2004/83, which set out minimum standards, Directive 2011/95 is part of a comprehensive body of rules harmonised at EU level, the Common European Asylum System, which is intended to achieve a higher level of standards. While, in Chapter I of that directive, that legislature defines its scope and the concepts fundamental to its implementation, in Chapters II to VI it determines the substantive and procedural conditions for granting international protection. In the judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, [70] the Court held that Directive 2011/95 sets out common concepts and criteria that are particular to the European Union. [71]

[68] See, to that effect, judgment of 18 December 2014, *M'Bodj* (C-542/13, EU:C:2014:2452, paragraph 42 and the case-law cited).

[69] In so far as the standards in question must be more favourable, it is understood that that discretion must be exercised in compliance with the fundamental rights of the persons concerned.

[70] C-391/16, C-77/17 and C-78/17, EU:C:2019:403.

[71] See judgment of 14 May 2019, *M and Others (Revocation of refugee status)* (C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraph 83).

104. In those circumstances, it does not seem to me that a Member State may use its discretion to define those common concepts and criteria differently and to adopt legislation under which refugee status or subsidiary protection status may be granted on grounds other than those expressly referred to in Directive 2011/95 and on the basis of an assessment of an application which is not individual.

105. That interpretation does not render Article 3 of the Directive redundant.

106. Indeed, the freedom enjoyed by the Member States pursuant to Article 3 of Directive 2011/95 remains sufficiently broad to enable them to adopt more favourable standards, in a manner consistent with the rules laid down in that directive.

107. First, Directive 2011/95 contains numerous optional provisions which each Member State is free to implement. [72]

108. Secondly, certain concepts which are fundamental to the implementation of that directive are not defined *stricto sensu*. That is the case, for example, with regard to the concept of 'persecution'. As EASO observes, that concept is 'flexible, adaptable and sufficiently open in order to reflect ever-changing forms of persecution'. [73] Thus, the EU legislature does not exhaustively list the forms which persecution may take, and the grounds on which it is based may be assessed differently by the Member States, as illustrated by the case before the Court.

109. I would point out that the determination of the need for international protection forms part of an individual assessment of the application. Each Member State is free to assess the extent to which the common concepts and criteria defined in Directive 2011/95 must be implemented in order to make their application more effective following that assessment. In the context of that individual assessment, Member States may lay down more flexible requirements for the purposes of assessing the risk of persecution or serious harm to which the applicant is exposed. [74] They may also adopt more favourable standards when assessing the international protection needs of members of the same family and, in particular, children, by lowering, for example, the threshold of persecution or serious harm required by the legislation. The assessment of international protection needs must thus take account of the particular vulnerability of family members. The grant of international protection to the head of family exposes them, for example, to a greater risk of persecution or serious harm on grounds that are specific to them or solely because of their family relationship. [75] Thus, the UNHCR has recommended that the parents of potential victims of female genital mutilation be granted derivative refugee status [76] where they are exposed to the risk of persecution on account of their opposition to that practice.

[72] See, for example, the provisions of Directive 2011/95 in Article 5(3) (subsequent application), Article 14(4) and (5) (revocation of refugee status), Article 17(3) (exclusion from subsidiary protection status), Article 19(2) (revocation of subsidiary protection status), Article 21(2) and (3) (protection from refoulement), Article 23(4) and (5) (maintaining family unity), Article 29(2) (social welfare) and Article 35 (repatriation).

[73] See *EASO Practical Guide*: *Qualification for international protection*, April 2018, p. 16.

[74] I am thinking, for example, of the degree of seriousness of the act of persecution, its repetition, the perpetrators of the persecution and the grounds therefor. See, inter alia, judgment of 5 September 2012, *Y and Z* (C-71/11 and C-99/11, EU:C:2012:518), relating to the interpretation of the concept of 'freedom of religion'.

[75] See recital 36 of Directive 2011/95.

[76] See UNHCR's *Guidance note on refugee claims relating to female genital mutilation*, May 2009, available at: https://www.unhcr.org/fr/publications/legal/4fd737379/note-dorientation-demandes-dasile-relatives-mutilations-genitales-feminines.html, paragraph 11.

110. The assessment of international protection needs must also take account of the particular vulnerability of children. Acts or threats that for an adult might be considered insufficient to meet the threshold of persecution may meet that threshold when a child is involved.

111. These are all parameters that Directive 2011/95 does not set and leaves to the discretion of each Member State.

112. It is in that sense that the judgment of 4 October 2018, *Ahmedbekova*,[77] must, in my view, be interpreted. In the particular context of the case which gave rise to that judgment, the Court held that a Member State may, on the basis of Article 3 of Directive 2011/95, extend the international protection granted to a family member to other family members, provided, however, that the family member concerned is not caught by one of the exclusion clauses set out in Article 12 of that directive and that his or her situation is, due to the need to maintain family unity, consistent with the rationale of international protection.

113. In that case, the three family members were from Azerbaijan, where both the father and the mother of the family considered themselves to be at risk of persecution, and all the family members had travelled to Bulgaria in order to apply for international protection individually at the same time, the mother also applying for protection for her son, who was Azerbaijani. All of them met the definition of 'family members' within the meaning of Article 2(j) of Directive 2011/95, and none had a personal legal status that would prevent international protection from being granted. That identical nature, both factually and legally, of the situation of the family members was, in my view, decisive for the interpretation of Article 3 of Directive 2011/95 in that case.

114. The Court was, however, careful to circumscribe the exercise of that discretion.

115. First, by referring to the grounds for exclusion set out in Article 12 of Directive 2011/95, the Court demonstrated its intention not to allow international protection to be granted to a family member who clearly is not in need of such status – because he or she is entitled to the protection of a United Nations organ or because he or she is regarded by the competent authorities of the host Member State as having the rights and obligations which are attached to the possession of the nationality of that State or rights and obligations which are equivalent to those[78] – or who would be considered not to deserve the resulting protection.[79]

116. The Court adhered here to the judgment of 9 November 2010, *B and D*,[80] in which it held that the provisions laid down in Article 3 of Directive 2004/83 do not allow refugee status to be granted to a person who is excluded from that status under Article 12(2) of that directive because of the commission of a non-political crime, in order to 'maintain the credibility of the protection system' provided for in that directive.[81]

77 C-652/16, EU:C:2018:801.

78 See Article 12(1) of Directive 2011/95, which incorporates the grounds set out in Article 1(D) and (E) of the Geneva Convention. See, by way of illustration, judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)* (C-507/19, EU:C:2021:3, paragraphs 49 and 50).

79 See Article 12(2) of Directive 2011/95, which precludes the grant of refugee status to a person who has committed a crime against peace or humanity, a war crime or a serious non-political crime or has been guilty of acts contrary to the purposes and principles of the United Nations. That article includes the grounds set out in Article 1(F) of the Geneva Convention.

80 C-57/09 and C-101/09, EU:C:2010:661. In *B* (C-57/09), the competent national authority found that B should be excluded from refugee status because he had committed a serious non-political crime. In *D* (C-101/09), D was granted refugee status before revocation proceedings were initiated on account of the alleged commission of a serious crime and the existence of acts contrary to the purposes and principles of the United Nations.

81 See judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661, paragraphs 114 and 115).

117. If the extension of international protection is excluded on the basis of Article 12 of Directive 2011/95 on the grounds, inter alia, that the family member is considered to enjoy the rights attached to the nationality of the country of residence, then such an extension must not, a fortiori, be possible when that member enjoys the rights attached to his or her own nationality and, in particular, the protection of his or her country of origin.

118. Secondly, by requiring the situation of the family member to be, 'due to the need to maintain family unity, consistent with the rationale of international protection',[82] the Court, in my view, referred to Article 23 of Directive 2011/95 and demonstrated its intention to limit such an extension to the family members referred to in Article 2(j) of that directive. For the reasons set out in point 49 et seq. of this Opinion, that directive seeks to maintain the unity of the family unit of the beneficiary of international protection when he or she is forced to leave his or her country of origin because of the persecution or serious harm to which he or she is subject in that country, resulting in the risk of family relationships being severed.

119. The criterion according to which the situation of the family member must be, 'due to the need to maintain family unity, consistent with the rationale of international protection' is in line, this time, with the judgment of 18 December 2014, *M'Bodj*.[83]

120. It is in the light of the rationale for international protection that, in the judgment of 18 December 2014, *M'Bodj*,[84] the Court held that Article 3 of Directive 2004/83 precluded national legislation under which subsidiary protection status could be granted to a third-country national who was the victim of an assault in the host Member State and whose state of health was likely to deteriorate owing to the lack of appropriate treatment in his country of origin. According to the Court, it was 'contrary to the general scheme and objectives of Directive 2004/83 to grant refugee status and subsidiary protection status to third country nationals in situations which have no connection with the rationale of international protection'.[85]

121. It is in the light of that analytical framework that it is appropriate to examine whether the provisions laid down in Paragraph 26(2) of the AsylG fall within the discretion which Article 3 of Directive 2011/95 confers on the Member States.

2. Examination of the legislation at issue

122. In the light of the foregoing, I consider that, by adopting legislation such as Paragraph 26(2) of the AsylG, the German legislature has exceeded the discretion conferred on it by Article 3 of Directive 2011/95.[86]

123. Where the minor child of the beneficiary of international protection does not satisfy the substantive conditions for such protection to be granted, the application which he or she submits on the basis of that legislation may lead to the grant of that protection for purposes – in this case, protection of the family – and in accordance with substantive and procedural conditions different to those referred to in Directive 2011/95.

[82] Judgment of 4 October 2018, *Ahmedbekova* (C-652/16, EU:C:2018:801, paragraph 74).

[83] C-542/13, EU:C:2014:2452.

[84] C-542/13, EU:C:2014:2452.

[85] Judgment of 18 December 2014, *M'Bodj* (C-542/13, EU:C:2014:2452, paragraph 44).

[86] I therefore agree with the referring court that the German legislature 'overtransposed' the obligation laid down in Article 23(2) of Directive 2011/95 concerning the 'protection' of family members who do not individually qualify for that protection.

124. I consider that such an application, submitted with a view to maintaining family unity, cannot be classified as an 'application for international protection' within the meaning of Article 2(h) of Directive 2011/95 [87] and is an application by which that child seeks another type of protection outside the scope of that directive.

125. In his Opinion in *Ahmedbekova*, [88] Advocate General Mengozzi stated that 'an application by which a member of the family of a person who meets the criteria for the grant of refugee status requests recognition for himself as a refugee, whether or not he personally has a well-founded fear of being persecuted, cannot be considered, *strictu sensu*, as being based on Article 1(A) of the Geneva Convention, as is required by Article 3 of Directive 2011/95, read in the light of recital 14 thereof'. [89]

126. First, that application seeks the grant of refugee status or subsidiary protection status to a child, even though the child does not need international protection within the meaning of Article 2(a) of Directive 2011/95.

127. In the light of the objective of protection of the family pursued by the national legislation at issue, that legislation substitutes another condition concerning the existence of a parent-child relationship between the applicant and the beneficiary of international protection for the substantive conditions for granting international protection set out in Directive 2011/95. That legislation therefore allows international protection to be granted, although the applicant does not satisfy any of the essential criteria for that purpose, namely the identification of persecution or serious harm by a perpetrator and against which protection is required owing to a failure to act by the country of origin.

128. The consequence of such a substitution is to render ineffective the provisions on cessation of or exclusion from international protection, which are closely linked to the conditions for granting that protection. A child could therefore be granted refugee status or subsidiary protection status in a situation in which he or she may not be in need of international protection, but also in a situation in which he or she would in principle be excluded from it, for example because of his or her personal legal status, because he or she enjoys the rights attached to the nationality of the host Member State or simply because he or she is in a position to claim, as in the main proceedings, the national protection of his or her own country of origin.

129. Secondly, an application submitted on the basis of Paragraph 26(2) of the AsylG may lead to the grant of international protection, even though the child's situation is not, due to the need to maintain family unity, consistent with the rationale of international protection within the meaning of the judgment of 4 October 2018, *Ahmedbekova*. [90]

130. Unlike Paragraph 26(1) (derivative right of the spouse or unmarried partner) and (3) (derivative right for relatives in the direct ascending line) of the AsylG, Paragraph 26(2) of that law appears to apply irrespective of whether the child was part of the family when the beneficiary of international protection was forced to leave the country of origin.

87 Under German law, that status is classified as 'family asylum'. The title of Paragraph 26 is as follows: 'Familienasyl und internationaler Schutz für Familienangehörige' (family asylum and international protection for family members).

88 Opinion of Advocate General Mengozzi in *Ahmedbekova* (C-652/16, EU:C:2018:514, point 55).

89 C-652/16, EU:C:2018:514.

90 C-652/16, EU:C:2018:801.

131. Thirdly, such an application may lead to the grant of international protection by a kind of 'collective effect' without the competent national authority having carried out an individual assessment of the child's situation.

132. While, as the German Government stated at the hearing, the automatic grant of such protection simplifies and lightens the burden placed on the competent national authority by the assessment, I consider that such an automatic grant does not allow due consideration to be given to the child's individual situation. The obligation to find a solution in the best interests of that child requires the host Member State to carry out a careful assessment of the facts and circumstances pertaining to that child and to take due account of his or her personal situation. That shortcoming is compounded by the fact that, as the German Government acknowledged at the hearing, the 'derivative' nature of the status granted to the child has the consequence that if, for whatever reason, the father loses refugee status, the child automatically loses it too.

133. Furthermore, I am not convinced that it is in the best interests of the child to grant him or her automatically refugee or subsidiary protection status, particularly in a situation such as the one at issue where he or she is not in need of international protection. I would point out that the right to asylum, as laid down in Article 18 of the Charter, is neither intended nor designed to ensure the maintenance of family unity, but to meet a need for international protection. The grant of such status does not therefore necessarily afford greater protection to the rights of the family and the child than the grant of the rights specifically provided for that purpose in Article 23(2) of Directive 2011/95 or in Directive 2003/86.

134. I would point out, first, that refugee status or subsidiary protection status is specific and results in the application of a body of specific rules and obligations. In some Member States, the grant of international protection means that the beneficiary no longer has any contact with his or her country of origin, including with its consular authorities, and does not travel to that country, under penalty of withdrawal or cessation of such protection. While that rule is entirely justified in order to secure the protection of those who, because of their flight, are at risk of being exposed to acts of retaliation, I believe that, conversely, its application makes no sense in a situation such as the one at issue, where the child would be deprived of links with the country of his or her nationality without legitimate cause. Similarly, it would seem to me to be unjustified in such a situation for the host Member State to substitute international protection for the national protection enjoyed by that child and to fulfil the obligations of the country of origin in his or her regard.

135. Secondly, it must not be forgotten that, apart from the provisions of Article 23(2) of Directive 2011/95, the Common European Asylum System allows the refugee's family life to be protected and the best interests of the child to be defended through other secondary legislation, which distinguishes the European Union from other legal systems.

136. In line with the case-law of the European Court of Human Rights, Directive 2003/86 thus prescribes a specific system and more favourable conditions for family reunification of beneficiaries of international protection.[91] Family reunification is conceived of here as the corollary of the refugee's right to family unity and the maintenance thereof. In the judgment of 12 April 2018, *A and S*,[92] the Court described the link as 'intrinsic … between the right to family reunification laid down in Article 10(3) of Directive 2003/86 and refugee status'.[93] The existence of that link does not imply a confusion between the rules specific to the grant of international protection and those concerning respect for the family life of the beneficiary of international protection, but rather a linkage between those two sets of rules, ensuring the meaningfulness and effectiveness of each.

137. As is apparent from recital 6 thereof, Directive 2003/86 concerns not only the preservation of family life, but also its establishment, since family relationships may be formed before or after the sponsor's entry into the territory of the host Member State.[94] It is also apparent from settled case-law that the provisions of Directive 2003/86 must be interpreted and applied in the light of Article 7 and Article 24(2) and (3) of the Charter, which require Member States to examine applications for family reunification in the interests of the children concerned and with a view to promoting family life.[95]

138. In that context and in answer to the third question referred, I believe that in a situation such as the one at issue, which appears to fall within the scope of Directive 2003/86, it is inappropriate to take into account whether it is possible for the family to take up residence in a third country in order to ensure respect for the family life of the beneficiary of international protection. That beneficiary cannot be required, or even reasonably expected, to decide, to that end, to waive the international protection afforded him or her by the host Member State by establishing himself or herself in a third country, without the rationale of that directive being misconstrued.

139. Fourthly, Paragraph 26(2) of the AsylG seems to me to be contrary to the intention of the EU legislature to confer the same rights and benefits on all beneficiaries of international protection so that they enjoy equivalent treatment and living conditions irrespective of the host Member State. By providing, almost automatically, for the grant of international protection to the minor child of the beneficiary of such protection, irrespective of that child's situation, that legislation is liable to increase the risk of secondary movement of applicants for international protection.

[91] See recital 8 of Directive 2003/86 and judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248, paragraph 32). See also Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification (COM(2014) 210 final) (paragraph 6). See also judgment of the ECtHR of 10 July 2014, *Tanda-Muzinga v. France*, CE:ECHR:2014:0710JUD000226010, § 76. Directive 2003/86 concerns only the family reunification of refugees. However, beneficiaries of subsidiary protection should enjoy the right to respect for family life under the same conditions as those granted to refugees in view of the objectives pursued by Directive 2011/95 (adopted after Directive 2003/86) and the recommendations made by the UNHCR in its response to the European Commission Green Paper on the right to family reunification of third country nationals living in the European Union (Directive 2003/86/EC) (COM(2011) 735 final) (available at: https://www.unhcr.org/protection/operations/4f54e3fb13/refugee-family reunification-unhcrs-response-european-commission-green.html).

[92] C-550/16, EU:C:2018:248.

[93] Judgment of 12 April 2018, *A and S* (C-550/16, EU:C:2018:248, paragraph 62).

[94] See, in that regard, judgment of 4 March 2010, *Chakroun* (C-578/08, EU:C:2010:117, paragraph 59). See also the Commission Green Paper cited in footnote 91 to this Opinion, in particular paragraph 4.2, 'Other asylum related questions' (p. 6). See, also to that effect, ECtHR, 10 July 2014, *Mugenzi v. France*, CE:ECHR:2014:0710JUD005270109, § 54.

[95] See judgment of 16 July 2020, *Belgian State (Family reunification – minor child)* (C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 35 and the case-law cited).

140. In the light of those considerations, Paragraph 26(2) of the AsylG would, in a situation such as that at issue, result in the applicant in the main proceedings being granted international protection, even though, first, she was born in German territory two years after her father, a Syrian national, was granted refugee status; secondly, she has a different nationality from her father and is, in principle, eligible for the protection of her country of nationality (Tunisia); thirdly, she is not claiming international protection on account of the risk of persecution in her country of nationality; fourthly, she has, in principle, a residence permit because she was born in Germany; [96] and, lastly, fifthly, she can exercise the right to family reunification laid down in Directive 2003/86 precisely because of her father's refugee status in Germany.

141. In the light of those considerations, it would therefore be contrary to the general scheme and objectives of Directive 2011/95 to grant the statuses for which it provides to a child who is in a situation such as that at issue, which, in my view, is inconsistent with the rationale of international protection as referred to in the judgment of 4 October 2018, *Ahmedbekova*. [97]

142. In the light of all those considerations, I propose that the Court rule that Article 3 of Directive 2011/95 must be interpreted as precluding national legislation such as that at issue in the main proceedings, under which the competent national authority is to seek to ensure the maintenance of the family unity of the refugee or beneficiary of subsidiary protection by granting his or her minor child international protection without that authority carrying out an individual assessment of the application, irrespective of whether the child's situation demonstrates a need for international protection within the meaning of Directive 2011/95 or is consistent with the rationale of international protection.

143. In view of the answers which I propose should be given to the first and second questions referred, there is no need, in my view, to answer the third question referred in isolation.

V. Conclusion

144. In the light of all the foregoing considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Bundesverwaltungsgericht (Federal Administrative Court, Germany) as follows:

(1) Article 23(2) 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, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the competent national authority is to seek to ensure the maintenance of the family unity of the beneficiary of international protection by granting such protection to his or her family members – in particular, his or her minor child – who, individually, do not qualify for international protection.

[96] See, in that regard, Paragraph 33 of the Gesetz über den Aufenhalt, die Erwerbstätigung und die Integration von Ausländern in Bundesgebiet (Law on the residence, employment and integration of foreign nationals in the Federal Territory) of 30 July 2004 (BGBl. 2004 I, p. 1950). In this case, it is not apparent from the documents before the Court that there is any threat to the residence in Germany of the family or a family member.

[97] C-652/16, EU:C:2018:801.

(2) Article 3 of Directive 2011/95 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the competent national authority is to seek to ensure the maintenance of the family unity of the refugee or beneficiary of subsidiary protection by granting his or her minor child international protection without that authority carrying out an individual assessment of the application, irrespective of whether that child's situation demonstrates a need for international protection within the meaning of that directive or is consistent with the rationale of international protection.

[i] — The title of this document has been amended since it was first put online.