Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

4 October 2024*

(References for a preliminary ruling – Area of freedom, security and justice – Common asylum policy – Directive 2011/95/EU – Conditions that must be fulfilled by third-country nationals in order to be granted refugee status – Article 2(d) and (e) – Concept of 'act of persecution' – Level of seriousness required – Article 9 – Sufficiently severe accumulation of measures that discriminate against women – Article 9(1)(b) – Types of acts of persecution – Article 9(2) – Assessment of applications for international protection – Article 4(3) – Obligation to carry out an individual assessment – Scope)

In Joined Cases C-608/22 and C-609/22,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decisions of 14 September 2022, received at the Court on 22 September 2022, in the proceedings

AH (C-608/22),

FN (C-609/22),

v

Bundesamt für Fremdenwesen und Asyl,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Piçarra (Rapporteur), N. Jääskinen and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– AH, by N. Lorenz, Rechtsanwältin,

– FN, by S. Moschitz-Kumar, Rechtsanwältin,

* Language of the case: German.

– the Austrian Government, by A. Posch, J. Schmoll and M. Kopetzki, acting as Agents,

– the Belgian Government, by M. Jacobs, A. Van Baelen M. Van Regemorter, acting as Agents,

– the Spanish Government, by A. Gavela Llopis and A. Pérez-Zurita Gutiérrez, acting as Agents,

– the French Government, by B. Fodda and J. Illouz, acting as Agents,

– the European Commission, by A. Azéma, J. Hottiaux and H. Leupold, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 November 2023,

gives the following

Judgment

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

2 The requests have been made in disputes between AH and FN, respectively, and the Bundesamt für Fremdenwesen und Asyl (Federal Office for Immigration and Asylum, Austria) regarding the lawfulness of that office's decisions refusing their applications for recognition of refugee status.

Legal context

International law

The Geneva Convention

3 Article 1(A)(2) of the Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951 (*United Nations, Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), which entered into force on 22 April 1954 and was supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967 and entered into force on 4 October 1967 ('the Geneva Convention'), provides that:

'for the purposes of the present Convention, the term "refugee" shall 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; …'

The CEDAW

4 Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women ('the CEDAW'), which was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981 (*United Nations Treaty Series*, Vol. 1249, No 1-20378, p. 13) and to which all Member States are party, provides that:

'for the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'

5 Article 3 of that convention provides that States that are parties to the convention are to take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.

6 Under Article 5 of that convention, States that are parties to the convention are to take all appropriate measures to, inter alia, modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

7 Under Articles 7, 10 and 16 of that convention, States that are parties to the convention are to take all appropriate measures to eliminate discrimination against women in the political and public life of the country, in the field of education and in all matters relating to marriage and family relations.

The Istanbul Convention

8 In accordance with Article 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence, concluded in Istanbul on 11 May 2011 and signed by the European Union on 13 June 2017, approved on behalf of the European Union by Council Decision (EU) 2023/1076 of 1 June 2023 (OJ 2023 L 143 I, p. 4) ('the Istanbul Convention'), and entered into force, so far as the European Union is concerned, on 1 October 2023, the purposes of the convention are to, inter alia, protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence, and contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women.

9 Article 3 of that convention specifies that, for the purpose of its application, 'violence against women' is to be understood as a violation of human rights and a form of discrimination against women and means all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

10 Article 4(2) of that convention provides:

‘Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:

– embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;

– prohibiting discrimination against women, including through the use of sanctions, where appropriate;

– abolishing laws and practices which discriminate against women.’

11 Article 60(1) of the Istanbul Convention is worded as follows:

‘Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of [Article 1(A)(2) of the Geneva Convention] and as a form of serious harm giving rise to complementary/subsidiary protection.’

European Union law

Directive 2011/95

12 Recitals 4 and 16 of Directive 2011/95 state:

‘(4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

…

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union [(“the Charter”)]. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.’

13 Article 2 of that directive, headed ‘Definitions’, is worded as follows:

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

…

(d) “refugee” means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless

person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

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

…

(h) "application for international protection" means 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, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

(i) "applicant" means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…

(n) "country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence.'

14 Article 4 of that directive, entitled 'Assessment of facts and circumstances', provides:

'1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.

…

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

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

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

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

…'

15 Article 6 of that directive, headed ‘Actors of persecution or serious harm’, provides:

‘Actors of persecution or serious harm include:

(a) the State;

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

(c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.’

16 Chapter III of Directive 2011/95, entitled ‘Qualification for being a refugee’, contains Article 9 thereof, entitled ‘Acts of persecution’, which provides:

‘1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed in Rome on 4 November 1950 (‘the ECHR’)]; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

…

(f) acts of a gender-specific or child-specific nature.

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.’

17 Article 10 of the directive, entitled ‘Reasons for persecution’, provides, in paragraph 1(d):

‘Member States shall take the following elements into account when assessing the reasons for persecution:

…

(d) a group shall be considered to form a particular social group where in particular:

– members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

– that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

…'

Directive 2013/32/EU

18 Article 10 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), entitled 'Requirements for the examination of applications', provides, in paragraph 3:

'Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

(a) applications are examined and decisions are taken individually, objectively and impartially;

(b) precise and up-to-date information is obtained from various sources, such as [the European Asylum Support Office (EASO)] and [the United Nations High Commissioner for Refugees (UNHCR)] and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants … and that such information is made available to the personnel responsible for examining applications and taking decisions;

…

(d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.'

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

19 AH is an Afghan national and was born in 1995. After her father wanted to sell her, she claims to have fled with her mother to Iran. After a period of residence in Greece, during which time she married, she entered Austria in 2015 and lodged an application for international protection in that Member State, where her husband lived.

20 FN is an Afghan national born in 2007, who has never lived in Afghanistan. She applied for international protection in Austria in 2020. Her brother, also from Afghanistan, had previously been granted subsidiary protection in Austria. She claimed in her application to have fled Iran, where she had been living with her mother and two sisters, that none of them had a residence permit, which meant that she could not attend school and their mother could not work, and that she wanted to live freely and have the same rights as men.

21 By decisions of 26 March 2018 and 14 October 2020, the Federal Office for Immigration and Asylum considered, respectively, that AH's account was not credible and that FN did not face a real risk of persecution in Afghanistan and refused, in both cases, to recognise their refugee status within the meaning of Article 2(e) of Directive 2011/95. However, it granted AH and FN subsidiary protection status on the ground, in essence, that, in the absence of any social support in Afghanistan, they would face economic and social difficulties if they returned there.

22 AH and FN each brought an action against those decisions before the Bundesverwaltungsgericht (Federal Administrative Court, Austria), claiming, inter alia, that they had adopted Western values and a Western-inspired lifestyle and, moreover, that, after the Taliban seized power in the summer of 2021, the situation in Afghanistan had changed in such a way that women now faced widespread persecution.

23 That court dismissed those actions as unfounded, finding, inter alia, that, in view of AH and FN's living conditions in Austria, they had not adopted a 'Western' lifestyle that had become such an essential part of their identity that it was impossible for them to renounce it in order to escape the threat of persecution in their country of origin.

24 AH and FN each brought an appeal on a point of law before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), the referring court, again arguing that the situation of women under the new Taliban regime alone justified their being granted refugee status.

25 In that connection, that court observes that woman who are nationals of Afghanistan belong to 'a particular social group' within the meaning of Article 10(1)(d) of Directive 2011/95, and that there is a link between the reason for persecution referred to in that provision and the 'acts of persecution' to which those women may be exposed, as required by Article 9(3) of that directive.

26 That court recalls that, at the time of the Taliban regime between 1996 and 2001, it held that the overall situation of those women in Afghanistan had to be deemed sufficiently serious to find that the discriminatory measures targeting them constituted, in themselves, persecution under the Geneva Convention. Therefore, at that time, an applicant for international protection was granted refugee status on the sole ground of being an Afghan woman.

27 After the fall of that Taliban regime, that court states that it amended its case-law to the effect that only women who were in danger of being persecuted because of the adoption of a 'Western-inspired lifestyle', which had become so essential to their identity that they could not be expected to renounce it in order to escape a threat of persecution, could qualify for refugee status, such an assessment being based on a specific examination of the circumstances of the case. It considers, however, that the measures adopted against women by the Taliban since its return to power, including various forms of discrimination, sexual violence and even executions, are on a scale comparable to those applied by the previous regime.

28 In that new context, the referring court seeks, in the first place, to establish whether the measures taken by the Taliban in respect of women are sufficiently serious to be classified as an 'act of persecution' for the purposes of Article 9(1) of Directive 2011/95. It observes that those measures, taken separately, do not, admittedly, constitute a serious breach of fundamental rights, particularly of those from which no derogation can be made, in accordance with Article 15(2) ECHR, and therefore are not covered by Article 9(1)(a) of the directive. It is however uncertain whether those measures, taken as a whole, are sufficiently severe within the meaning of Article 9(1)(b) of the directive.

29 In the second place, the referring court seeks to ascertain whether an Afghan woman may be granted refugee status within the meaning of Article 2(e) of Directive 2011/95 without an individual assessment of her situation being carried out.

30 In those circumstances, the Verwaltungsgerichtshof (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the accumulation of measures taken, supported or tolerated in a State by a de facto government actor and consisting, in particular, of the fact that women

– are denied participation in political office and political decision-making processes,

– are provided with no legal means to be able to obtain protection from gender-based and domestic violence,

– are generally at risk of forced marriages; even though they have been prohibited by the de facto government actor, women are not afforded effective protection against forced marriages and such marriages are sometimes performed with the participation of de facto government actors in the knowledge that it is a forced marriage,

– are not allowed to engage in gainful employment or are allowed to do so only to a limited extent, mainly at home,

– have difficulties in accessing health facilities,

– are fully or largely denied access to education (for example by allowing girls only a primary school education),

– are not allowed to be or move about in public without being accompanied by a man (who must be of a certain family relationship) or, at most, are permitted to do so only a certain distance from home,

– must completely cover their bodies and veil their faces in public,

– may not take part in any sports,

to be regarded[, for the purpose of Article 9(1)(b) of Directive 2011/95/EU,] as sufficiently severe as to affect a woman in a similar manner as described in Article 9(1)(a) of that directive?

(2) Is it sufficient, for the granting of [refugee] status, that a woman is affected by those measures in the country of origin merely on the basis of her gender, or is it necessary to assess a woman’s individual situation in order to determine whether she is affected by those measures – to be considered in their entirety – within the meaning of Article 9(1)(b) of Directive [2011/95]?’

Consideration of the questions referred

The first question

31 By its first question, the referring court asks, in essence, whether Article 9(1)(b) of Directive 2011/95 must be interpreted as meaning that an accumulation of discriminatory measures in respect of women – consisting, inter alia, in depriving them of any legal protection against gender-based and domestic violence and forced marriage, requiring them to cover their entire body and face, restricting their access to healthcare and freedom of movement, prohibiting them from engaging in gainful employment or limiting the extent to which they can do so, prohibiting their access to education, prohibiting them from taking part in sports and excluding them from political life – adopted or tolerated by an 'actor of persecution' within the meaning of Article 6 of that directive comes within the concept of 'act of persecution'.

32 In the first place, Article 2(d) of Directive 2011/95, which reproduces Article 1(A)(2) of the Geneva Convention, defines a 'refugee' as 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. Article 2(e) of that directive defines 'refugee status' as the recognition by a Member State of a third-country national or a stateless person as a refugee.

33 Directive 2011/95 must be interpreted not only in the light of its general scheme and purpose, but also in a manner consistent with the Geneva Convention – which, as set out in recital 4 of that directive, constitutes 'the cornerstone of the international legal regime for the protection of refugees' – and the other relevant treaties referred to in Article 78(1) TFEU. Those treaties include, inter alia, the Istanbul Convention and the CEDAW (judgments of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraphs 37 and 44 to 47, and of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)*, C-646/21, EU:C:2024:487, paragraph 36).

34 As confirmed by Articles 1 and 3 and Article 4(2) of the Istanbul Convention, equality between women and men entails, inter alia, the right of every woman to be protected against all gender-based violence, the right not to be forced into marriage, the right to subscribe or not to a belief, the right to have her own political opinions and to express them and the right to make her own life choices freely in relation to, inter alia, education, career or activities in the public sphere. The same is confirmed by Articles 3, 5, 7, 10 and 16 of the CEDAW (judgment of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)*, C-646/21, EU:C:2024:487, paragraph 37).

35 In addition, Article 60(1) of the Istanbul Convention provides that gender-based violence against women – which is to be understood as a violation of human rights and a form of discrimination against women under Article 3 of that convention – is to be recognised as a form of persecution within the meaning of Article 1(A)(2) of the Geneva Convention (judgment of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)*, C-646/21, EU:C:2024:487, paragraph 55).

36 The provisions of Directive 2011/95 must also be interpreted, as stated in recital 16 thereof, in a manner consistent with the rights recognised by the Charter, the application of which that directive seeks to promote, and Article 21(1) of which prohibits any discrimination based on, inter alia, gender (see, to that effect, judgments of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 39; of 9 November 2023, *Staatssecretaris van Justitie en Veiligheid (Concept of serious harm)*, C-125/22, EU:C:2023:843, paragraph 60; and of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)*, C-646/21, EU:C:2024:487, paragraph 38).

37 In the second place, Article 9 of Directive 2011/95 sets out the factors which support a finding that acts constitute persecution within the meaning of Article 1(A) of the Geneva Convention. Article 9(1)(a) of that directive states that the relevant act must be sufficiently serious by its nature or repetition as to constitute a severe breach of basic human rights, in particular the rights from which there can be no derogation, in accordance with Article 15(2) ECHR, that is, the right to life (Article 2), the right not to be subjected to torture or to inhuman or degrading treatment or punishment (Article 3), to slavery (Article 4(1)) or to any punishment without law (Article 7).

38 The use, in Article 9(1)(a) of the directive, of the adverbial phrase 'in particular', shows that the reference to Article 15(2) ECHR is made by way of guidance and illustrates the level of seriousness required for an act to be classified as an 'act of persecution' within the meaning of Article 1(A) of the Geneva Convention (see, to that effect, judgment of 5 September 2012, *Y and Z*, C-71/11 and C-99/11, EU:C:2012:518, paragraph 57).

39 Article 9(1)(b) of Directive 2011/95, to which the national court refers, states that an 'act of persecution' may also be an accumulation of various measures, including breaches of human rights, which 'is sufficiently severe' as to affect an individual in a manner 'similar' to that referred to in Article 9(1)(a) of that directive.

40 It is clear from those provisions that, for an infringement of human rights to constitute persecution within the meaning of Article 1(A) of the Geneva Convention, it must be sufficiently serious (judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, C-238/19, EU:C:2020:945, paragraph 22 and the case-law cited). That level of seriousness is comparable for each of the situations referred to in Article 9(1)(a) and (b) of Directive 2011/95.

41 Regarding Article 9(1)(b) of that directive specifically, such a level of seriousness must be regarded as having being reached where, taken as a whole, several breaches of rights which are not necessarily rights from which there can be no derogation in accordance with Article 15(2) ECHR, undermine full respect for human dignity as enshrined in Article 1 of the Charter, which Directive 2011/95 seeks to ensure, as is apparent from recital 16 thereof.

42 In the present case, as observed, in essence, by the Advocate General in point 54 of his Opinion, there is no doubt that, regardless of the repression that Afghan women face if they do not comply with the restrictions imposed by the Taliban regime – which alone could amount to acts of persecution within the meaning of Article 9(1) of Directive 2011/95 – the discriminatory acts referred to by the national court attain the required level of seriousness, both in their intensity and cumulative effect and in the consequences they have for the woman affected.

43 First, some of those measures must be classified by themselves as 'acts of persecution' within the meaning of Article 9(1)(a) of Directive 2011/95. This is true of, inter alia, forced marriage, which is comparable to a form of slavery, prohibited under Article 4 ECHR, and the lack of protection against gender-based violence and domestic violence, which constitute forms of inhuman and degrading treatment prohibited by Article 3 ECHR.

44 Second, even if, taken separately, the discriminatory measures against women that restrict access to healthcare, political life and education and the exercise of a professional or sporting activity, restrict freedom of movement or infringe the freedom to choose one's clothing do not constitute a sufficiently serious breach of a fundamental right for the purposes of Article 9(1)(a) of Directive 2011/95, those measures, taken as a whole, affect women to an extent that they attain the level of severity required to constitute acts of persecution for the purposes of Article 9(1)(b) of the directive. As observed, in essence, by the Advocate General in points 56 to 58 of his Opinion, given that those measures have a cumulative effect and are applied deliberately and systematically, they blatantly and relentlessly deny Afghan women fundamental rights related to human dignity on account of their gender. Those measures reflect the establishment of a social structure based on a regime of segregation and oppression in which women are excluded from civil society and deprived of the right to lead a dignified daily life in their country of origin.

45 That interpretation is borne out by Article 9(2) of Directive 2011/95, which contains an indicative list of acts of persecution within the meaning of Article 9(1) of the directive, which include, inter alia, in subparagraphs (a) to (c) and (f) of that paragraph, acts of physical or mental violence, including acts of sexual violence; legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; prosecution or punishment which is disproportionate or discriminatory, and acts of a gender-specific nature.

46 Having regard to all the foregoing considerations, the answer to the first question is that Article 9(1)(b) of Directive 2011/95 must be interpreted as meaning that an accumulation of discriminatory measures in respect of women – consisting, inter alia, in depriving them of any legal protection against gender-based and domestic violence and forced marriage, requiring them to cover their entire body and face, restricting their access to healthcare and freedom of movement, prohibiting them from engaging in gainful employment or limiting the extent to which they can do so, prohibiting their access to education, prohibiting them from taking part in sports and excluding them from political life – adopted or tolerated by an 'actor of persecution' within the meaning of Article 6 of that directive comes within the concept of 'act of persecution', since those measures, by their cumulative effect, undermine human dignity as guaranteed by Article 1 of the Charter.

The second question

47 By its second question, the referring court asks, in essence, whether Article 4(3) of Directive 2011/95 must be interpreted as requiring the competent national authority – in order to determine whether, having regard to the conditions in a woman's country of origin at the time of the assessment of her application for international protection, the discriminatory measures to which she has been or could be exposed to in that country amount to acts of persecution within the meaning of Article 9(1) of that directive – to take into consideration, in the individual assessment of her application for the purposes of Article 2(h) of that directive, factors particular to her personal circumstances other than those relating to her gender or nationality.

48 In accordance with Article 4 of Directive 2011/95, any application for international protection must, in principle, be subject to an individual assessment (see, inter alia, judgments of 7 November 2013, *X and Others*, C-199/12 to C-201/12, EU:C:2013:720, paragraph 73; of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 41; and of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, C-238/19, EU:C:2020:945, paragraph 23).

49 In accordance with Article 4(3) of the directive, the individual assessment by the competent national authorities of whether an applicant's fear of being persecuted is well founded must be carried out on a case-by-case basis with vigilance and care, solely on the basis of a specific assessment of the facts and circumstances, in order to determine whether the established facts and circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be the victim of acts of persecution if returned to his or her country of origin (see, to that effect, judgments of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 60, and of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)*, C-646/21, EU:C:2024:487, paragraph 59).

50 That provision lists the elements that competent national authorities must take into consideration when carrying out an individual assessment of an application for international protection. Those elements include the relevant facts as they relate to the country of origin at the time of taking a decision on the application for international protection and the individual position and personal circumstances of the applicant, including factors such as background, gender and age.

51 Even though Article 4 of Directive 2011/95 is applicable to all applications for international protection, whatever the reasons for persecution relied on in support of those applications, it is nevertheless for the competent authorities to adapt methods of assessing statements and documentary or other evidence having regard to the specific features of each category of application for international protection, in observance of the rights guaranteed by the Charter (judgments of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 54, and of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 36).

52 In addition, Article 10(3)(b) of Directive 2013/32 requires Member States to ensure that decisions on applications for international protection are taken after an appropriate examination, during which precise and up-to-date information is obtained from various sources, such as the European Union Agency for Asylum (EUAA), which replaced EASO, and the UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants. Moreover, that provision requires that such information is made available to the personnel responsible for examining applications and taking decisions (judgment of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)*, C-646/21, EU:C:2024:487, paragraph 60).

53 To that end, as is clear from point x of paragraph 36 of the UNHCR Guidelines on International Protection No. 1, concerning gender-related persecution within the context of Article 1(A)(2) of the Geneva Convention, the competent national authorities must collect country of origin information that has relevance for the examination of applications made by women, such as the position of women before the law, their political rights, their social and economic rights, the cultural and social mores of the country and consequences for non-adherence, the prevalence of harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and

the risks that a woman might face on her return to her country of origin after making such a claim (judgments of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 61, and of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)*, C-646/21, EU:C:2024:487, paragraph 61).

54 It follows from the foregoing that the requirement to carry out an individual assessment of the application for international protection presupposes that the competent national authorities adapt the methods of assessing the facts and evidence according to the specific circumstances and characteristics of each application.

55 Further, it must be borne in mind that, in accordance with Article 3 of Directive 2011/95, Member States may introduce or retain more favourable standards consisting in, inter alia, relaxing the conditions under which refugee status is granted, on condition that those standards do not undermine the general scheme or objectives of that directive (see, to that effect, judgments of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraphs 70 and 71, and of 9 November 2021, *Bundesrepublik Deutschland (Retention of family unity)*, C-91/20, EU:C:2021:898, paragraphs 39 and 40).

56 In the present case, the EUAA concludes, in paragraph 3.15 of its report entitled 'Country guidance: Afghanistan' dated January 2023, that a well-founded fear of being subject to acts of persecution, within the meaning of Article 9 of Directive 2011/95, will in general be substantiated for Afghan women and girls in view of the measures adopted by the Taliban regime since 2021. Similarly, in the context of the present cases, the UNHCR states, in its statement issued on 25 May 2023 on the concept of persecution on cumulative grounds in the light of the current situation for women and girls in Afghanistan, that there is a presumption of recognition of refugee status for Afghan women and girls, given the acts of persecution carried out against them by the Taliban solely on account of their gender.

57 In those circumstances, regarding applications for international protection lodged by women who are Afghan nationals, the competent national authorities are entitled to consider that it is currently unnecessary to establish, in the individual assessment of the situation of an application for international protection, that there is a risk that she will actually and specifically be subject to acts of persecution if she returns to her country of origin, where the factors relating to her individual status, such as her nationality or gender, are established.

58 Having regard to the foregoing considerations, the answer to the second question is that Article 4(3) of Directive 2011/95 must be interpreted as not requiring the competent national authority – in order to determine whether, having regard to the conditions in a woman's country of origin at the time of the assessment of her application for international protection, the discriminatory measures to which she has been or could be exposed to in that country amount to acts of persecution within the meaning of Article 9(1) of that directive – to take into consideration, in the individual assessment of her application for the purposes of Article 2(h) of that directive, factors particular to her personal circumstances other than those relating to her gender or nationality.

Costs

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

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

1. **Article 9(1)(b) 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 meaning that an accumulation of discriminatory measures in respect of women – consisting, inter alia, in depriving them of any legal protection against gender-based and domestic violence and forced marriage, requiring them to cover their entire body and face, restricting their access to healthcare and freedom of movement, prohibiting them from engaging in gainful employment or limiting the extent to which they can do so, prohibiting their access to education, prohibiting them from taking part in sports and excluding them from political life – adopted or tolerated by an 'actor of persecution' within the meaning of Article 6 of that directive comes within the concept of 'act of persecution', since those measures, by their cumulative effect, undermine human dignity as guaranteed by Article 1 of the Charter of Fundamental Rights of the European Union.

2. **Article 4(3) of Directive 2011/95**

   must be interpreted as not requiring the competent national authority – in order to determine whether, having regard to the conditions in a woman's country of origin at the time of the assessment of her application for international protection, the discriminatory measures to which she has been or could be exposed to in that country amount to acts of persecution within the meaning of Article 9(1) of that directive – to take into consideration, in the individual assessment of her application for the purposes of Article 2(h) of that directive, factors particular to her personal circumstances other than those relating to her gender or nationality.

[Signatures]