Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

29 February 2024*

(Reference for a preliminary ruling – Area of freedom, security and justice – Asylum policy – Directive 2011/95/EU – Standards for the qualification as beneficiaries of international protection – Content of that protection – Article 5 – International protection needs arising *sur place* – Subsequent application for recognition of refugee status – Article 5(3) – Concept of 'circumstances which the applicant has created by his or her own decision since leaving the country of origin' – Abusive intent and abuse of the applicable procedure – Activities in the host Member State not constituting the expression and continuation of convictions or orientations held in the country of origin – Religious conversion)

In Case C-222/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decision of 16 March 2022, received at the Court on 29 March 2022, in the proceedings

Bundesamt für Fremdenwesen und Asyl

v

JF,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, N. Piçarra (Rapporteur) and N. Jääskinen, 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:

– JF, by C. Schmaus, Rechtsanwalt,

– the Austrian Government, by A. Posch, J. Schmoll and V.-S. Strasser, acting as Agents,

* Language of the case: German.

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the European Commission, by A. Azéma and L. Hohenecker, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 June 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(3) 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 request has been made in proceedings between the Bundesamt für Fremdenwesen und Asyl (Federal Office for Immigration and Asylum, Austria) ('the BFA') and JF, a third-country national, concerning the lawfulness of a decision refusing to grant refugee status following a subsequent application for international protection submitted by him.

Legal context

International law

3 Article 1(A) of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), 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, which entered into force on 4 October 1967 ('the Geneva Convention'), provides:

'For the purposes of the present Convention, the term "refugee" shall apply to any person who:

…

(2) … 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 …, is unable or, owing to such fear, is unwilling to return to it.

…'

4 Article 2 of that convention, entitled 'General Obligations', provides:

'Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.'

5 Article 33 of that convention, entitled 'Prohibition of Expulsion or Return ("Refoulement")', provides in paragraph 1 that 'no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.

6 Under Article 42(1) of the same convention, 'at the time of signature, ratification or accession, any State may make reservations to articles of the [present] Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive'.

European Union law

Directive 2011/95

7 Recitals 4, 12, 24 and 25 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.

…

(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.

…

(24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

(25) In particular, it is necessary to introduce common concepts of protection needs arising *sur place* …'

8 Article 2 of that directive, entitled '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;

…'

9 Article 4 of that directive, included in Chapter II thereof and entitled 'Assessment of facts and circumstances', provides, in paragraph 3:

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

…

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

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

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

…'

10 Article 5 of the same directive, also found in Chapter II thereof and entitled 'International protection needs arising *sur place*', provides:

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

2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin.'

11 Article 10 of Directive 2011/95, found in Chapter III thereof and entitled 'Reasons for persecution', provides, in paragraph 1:

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

…

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

…'

12 Under Article 13 of that directive, 'Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III'.

Directive 2013/32/EU

13 Article 2(q) 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) defines 'subsequent application' as 'a further application for international protection made after a final decision has been taken on a previous application …'.

Austrian law

14 Paragraph 3 of the Bundesgesetz über die Gewährung von Asyl (Federal Law on the Granting of Asylum) of 16 August 2005 (BGBl. I, 100/2005), in the version thereof applicable to the dispute in the main proceedings ('the Asylgesetz 2005'), entitled 'Person entitled to asylum status', provides:

'(1) 'A foreign national who has filed an application for international protection in Austria shall, unless that application is to be rejected pursuant to Paragraph 4, 4a or 5, be granted asylum status if it is credible that he or she would be at risk of persecution as defined in Article 1(A)(2) of the [Geneva Convention] in the country of origin.

(2) Persecution may also be based on events which have taken place since the foreign national left his or her country of origin … or on activities engaged in by the foreign national since leaving the country of origin which in particular constitute the expression and continuation of convictions held in the country of origin … A foreign national who files a subsequent application … shall normally not be granted asylum status if the risk of persecution is based on circumstances which the foreign national has created by his or her own decision since leaving his or her country of origin, unless the activities in question are permitted in Austria and it is established that those activities constitute the expression and continuation of convictions held in the country of origin.

…'

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

15 On 3 October 2015, JF, an Iranian national, lodged an application for international protection with the BFA, claiming, first, that he had been questioned by the Iranian secret services in the course of exercising his activity as a driving school instructor and, secondly, that, as a student, he had been prosecuted for having criticised a Muslim cleric.

16 Taking the view that his claims lacked credibility, the BFA dismissed that application by a decision of 7 June 2017 and issued a return decision. By a judgment of 3 January 2018, which has become final, the Bundesverwaltungsgericht (Federal Administrative Court, Austria) dismissed as unfounded the complaint brought by JF against that decision.

17 On 26 June 2019, JF lodged a subsequent application within the meaning of Article 2(q) of Directive 2013/32 on the ground that he had in the meantime converted to Christianity and, on that ground, feared persecution in his country of origin. By a decision of 24 June 2020, the BFA refused to grant him refugee status on the basis of the second sentence of Paragraph 3(2) of the Asylgesetz 2005, since the risk of persecution relied on had arisen *sur place* and had been created by his own decision. However, the BFA found that JF had demonstrated credibly that he had converted to Christianity in Austria 'out of inner conviction' and that he actively practised his faith and that, for that reason, he risked being exposed to individual persecution in the event that he returned to Iran. In those circumstances, the BFA granted JF subsidiary protection status to JF and a fixed-period residence permit.

18 By a judgment of 29 September 2020, the Bundesverwaltungsgericht (Federal Administrative Court) allowed the complaint brought by JF against that decision. That court held that, although, in the examination of a subsequent application, the risk of persecution based on circumstances created by the applicant's own decision 'normally' precludes the grant of refugee status, such an adverb nevertheless indicates that, in certain cases, that status may be granted, without prejudice to the obligation imposed on the competent authority by the second sentence of Paragraph 3(2) of the Asylgesetz 2005, to verify whether there is abuse on the part of the applicant. That court considered that there was nothing in the BFA's decision of 24 June 2020 to suggest that JF's behaviour had any abusive intent. That same court further took the view that the lack of evidence demonstrating that JF's conversion was the expression and continuation of convictions held in his country of origin did not justify refusing to grant refugee status.

19 The BFA brought an appeal on a point of law (*revision*) against that decision before the referring court, the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), on the ground that the wording of the second sentence of Paragraph 3(2) of the Asylgesetz 2005 precludes an interpretation to the effect that, in the case of a subsequent application based on a risk of persecution arising from circumstances created *sur place* by the applicant's own decision, it need only be determined whether those circumstances have been relied on with abusive intent. According to the BFA, that provision introduces a general rule that refugee status is to be refused to applicants who have created through their own decision in the host Member State the circumstances which have given rise to the risk of persecution relied on. The only exception to that general rule concerns the case in which the activities in question are permitted in Austria and for which it has been established that they are the expression and continuation of convictions held by the applicant in the country of origin.

20 The referring court observes that, since the second sentence of Paragraph 3(2) of the Asylgesetz 2005 transposes Article 5(3) of Directive 2011/95 into Austrian law, the outcome of the dispute in the main proceedings depends on the interpretation given to the latter provision.

21 It observes, in that regard, first, that, as regards the wording 'without prejudice to the Geneva Convention' in that provision, the meaning in German of the term '*unbeschadet*' [without prejudice to] is ambiguous. If that term is construed in one way, the Geneva Convention should be observed without any limitation, including in situations coming within the scope of Article 5(3) of Directive 2011/95, whereas, on a different possible interpretation, Member States

may introduce a presumption of abuse in regard to subsequent applications based on 'circumstances which the applicant has created by his or her own decision since leaving the country of origin'. Secondly, the adverb 'normally' denotes an indeterminate concept, the specific meaning of which cannot be inferred from the text of that directive or its recitals.

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

'Must Article 5(3) of Directive [2011/95] be interpreted as precluding legislation of a Member State under which a foreign national who files a subsequent application is not normally to be granted asylum status if the risk of persecution is based on circumstances which the foreign national has created by his or her own decision since leaving his or her country of origin, unless the activities in question are permitted in Austria and it is established that those activities constitute the expression and continuation of convictions held in the country of origin?'

Consideration of the question referred

23 By its question, the referring court asks, in essence, whether Article 5(3) of Directive 2011/95 must be interpreted as precluding national legislation which makes the recognition of the status of refugee following a subsequent application, within the meaning of Article 2(q) of Directive 2013/32, based on a risk of persecution arising from circumstances which the applicant has created by his or her own decision since leaving his or her country of origin, subject to the twofold condition that those circumstances must come within activities permitted in the Member State concerned and constitute the expression and continuation of convictions held in the country of origin.

24 Article 5(3) of Directive 2011/95 provides that 'without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin'.

25 It follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard not only to its wording but also to the context of the provision and the objective pursued by the legislation in question (see, to that effect, judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11; of 19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111, paragraph 38; and of 25 June 2020, *Ministerio Fiscal (Authority likely to receive an application for international protection)*, C-36/20 PPU, EU:C:2020:495, paragraph 53).

26 As regards, first of all, the wording of Article 5(3) of Directive 2011/95, it is apparent, first, that Member States are not required to transpose that provision into their domestic law, but 'may' do so, as a mere option. Secondly, it is only when the risk of persecution relied on by the applicant in support of a subsequent application is based 'on circumstances which the applicant has created by

his or her own decision since leaving the country of origin' that that applicant is not 'normally' granted refugee status. Hence, that adverb does not exclude the possibility that, even in such circumstances, an applicant may, subject to certain conditions, be granted that status.

27 Next, as regards the context of Article 5(3) of Directive 2011/95, it should be noted, as stated inter alia in recital 4 of that directive, that the Geneva Convention is the cornerstone of the international legal regime for the protection of refugees. It follows that the provisions of that directive must be interpreted not only in the light of its general scheme, but also in a manner consistent with that convention (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, paragraphs 38 and 39, and of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraphs 36 and 37).

28 It should also be borne in mind that, as per its title, Article 5 of Directive 2011/95 concerns 'international protection needs arising *sur place*'. That concept must be included in common concepts, as advocated in recital 25 of that directive. In that regard, paragraphs 1 and 2 of Article 5 which, in contrast to paragraph 3, apply to any application for international protection, provide that a well-founded fear of persecution may be based not only on events which have taken place since the applicant left the country of origin, but also on activities which the applicant has engaged in since he or she left the country of origin. The use of the wording 'in particular' in Article 5(2), in reference to the scenario in which it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin, implies that activities not constituting such an expression and continuation may, in principle, also be relied on, either in an initial application for international protection or in a subsequent application.

29 It follows from the foregoing that Article 5(3) of Directive 2011/95 is an exception to the principle laid down in Article 5(1) and (2), in so far as it allows a risk of persecution, relied on in support of a subsequent application and based on circumstances which the applicant has created by his or her own decision since leaving the country of origin, 'normally' to lead to refusal to grant refugee status. As observed, in essence, by the Advocate General in point 54 of his Opinion, since the option granted to Member States by Article 5(3) is an exception, it must be interpreted restrictively.

30 That interpretation is corroborated by the definition of 'refugee' in Article 1(A)(2) of the Geneva Convention and reproduced in Article 2(d) of Directive 2011/95, which does not provide for any restriction to the effect that the well-founded fear of being persecuted for at least one of the reasons set out therein may be based on activities which the applicant has engaged in since he or she left the country of origin and which do not constitute the expression and continuation of convictions or orientations held in the country of origin.

31 That interpretation is also corroborated by the background to Article 5(3) of Directive 2011/95. It is apparent from the 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 (COM(2001) 510 final), presented by the European Commission on 30 October 2001, and which led to the adoption of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12), repealed and replaced by Directive 2011/95, that,

through the use of the verb 'to create' in the article of Directive 2004/83 corresponding to Article 5(3) of Directive 2011/95, the Commission intended to address the situation where the applicant's fear of persecution was 'manufactured' by him or her.

32 As observed, in essence, by the Advocate General in points 56 and 64 of his Opinion, it follows from the foregoing that, in the light of the element of intent inherent in the wording 'circumstances which the applicant has created by his or her own decision', the refusal to grant refugee status further to a subsequent application for international protection, on the basis of Article 5(3) of Directive 2011/95, tends to sanction an abusive intent on the part of an applicant who has 'manufactured' the circumstances on which the risk of persecution to which he or she would be exposed in the event of return to the country of origin and thus abused the applicable procedure for the grant of international protection.

33 Lastly, such an interpretation is supported by the principal objective of that directive which, as stated in recital 12 thereof, 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 (see, to that effect, judgment of 6 July 2023, *Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)*, C-402/22, EU:C:2023:543, paragraph 36).

34 The question whether the circumstances relied on in a subsequent application in order to substantiate the existence of a risk of persecution on the basis of a ground referred to in Article 10(1) of Directive 2011/95, liable to lead to the grant of refugee status, arise from abusive intent and abuse of the applicable procedure requires an individual assessment of that application, carried out by the competent authorities of the Member States in accordance with Article 4(3) of that directive, in the light of all of the circumstances at issue and with account taken of all relevant facts (see, to that effect, judgments of 21 September 2023, *Staatssecretaris van Veiligheid en Justitie (Political opinions in the host Member State)*, C-151/22, EU:C:2023:688, paragraph 42, and of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 60).

35 It should be emphasised in that regard that whether or not, since leaving the country of origin, the applicant has engaged in activities for the sole or main purpose of creating the necessary conditions for applying for international protection, as referred to in Article 4(3)(d) of that directive, is merely one factor to be taken into account by the competent national authorities for the purposes of that individual assessment. They must carry out a complete examination of all the circumstances specific to the applicant's individual case, taking into account all of the elements listed in Article 4(3)(a) to (e).

36 It follows that, contrary to the contentions of the Austrian and German Governments in their written observations, Article 5(3) of Directive 2011/95 cannot be interpreted as meaning that the optional transposition of that provision allows the Member States to opt out of providing for the obligation, for the competent national authorities, to carry out an individual assessment of every subsequent application for international protection. Nor can that provision be interpreted as meaning that such a transposition allows the Member States to introduce a legal presumption that any subsequent application based on circumstances which the applicant has created by his or her own decision since leaving the country of origin prima facie stems from abusive intent and abuse of the procedure for the grant of international protection, a presumption which the applicant must rebut.

37 Such interpretations would negate the effectiveness of Article 4 of Directive 2011/95, which is applicable to all applications for international protection, irrespective of the ground for persecution relied on in support of those applications (see, to that effect, judgments of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 36, and of 21 September 2023, *Staatssecretaris van Veiligheid en Justitie (Political opinions in the host Member State)*, C-151/22, EU:C:2023:688, paragraph 41). More specifically, Article 4(3) requires the competent national authority to carry out a complete examination of all the circumstances specific to the applicant's individual case, which precludes any kind of automaticity (see, by analogy, judgments of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraphs 48 and 49, and of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraphs 72 and 73).

38 In the present case, following an individual assessment of the subsequent application lodged by JF, the BFA, in accordance with Article 4(3) of Directive 2011/95, found that he had credibly demonstrated that he had converted to Christianity in Austria 'out of inner conviction' and that he actively practised his faith, which is why he ran the risk of individual persecution in the event that he returned to his country of origin. Such a finding, if accurate, which it is for the referring court to verify, is such as to rule out the existence of abusive intent or abuse of the applicable procedure by the applicant, which is liable to lead the competent national authority to refuse to grant him refugee status on the basis of Article 5(3) of that directive.

39 Moreover, if such an applicant fulfils the conditions laid down in Chapter III of Directive 2011/95 to qualify as a 'refugee' within the meaning of Article 2(d) of that directive, Article 13 thereof requires the Member State concerned to grant him or her refugee status within the meaning of Article 2(e) of that directive (see, to that effect, judgments of 24 June 2015, *T.*, C-373/13, EU:C:2015:413, paragraph 63, and of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, EU:C:2024:47, paragraph 72).

40 However, in all cases where the risk of persecution relied on in support of a subsequent application is based on the circumstances described in Article 5(3) of Directive 2011/95, but in respect of which, following an individual assessment of that application in accordance with Article 4(3) of that directive, it is found that those circumstances reveal an abusive intent and abuse of the applicable procedure by the applicant, Article 5(3) allows the Member State concerned to provide, in principle, for that applicant not to be granted refugee status within the meaning of Article 2(e) of Directive 2011/95, even when that applicant has justified fears of being persecuted in his or her country of origin as a result of such circumstances and should, therefore, qualify as a 'refugee' within the meaning of Article 1(A) the Geneva Convention and Article 2(d) of Directive 2011/95. Being a 'refugee' for the purposes of those provisions is not dependent on formal recognition thereof through the granting of 'refugee status' as defined in Article 2(e) of that directive (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 90).

41 It is in that context that the meaning and scope of the wording 'without prejudice to the Geneva Convention' in Article 5(3) of that directive must be examined. In that regard, the referring court observes that, in the German-language version of that provision, although the term '*unbeschadet*' can mean 'in agreement with', it can also denote the opposite, meaning 'without taking account of'. In its view, if the latter interpretation of the term '*unbeschadet*' were to prevail, that would suggest that Article 5(3) of Directive 2011/95 allows the Member States, in the scenarios to which it refers, not to take account of the provisions of that convention.

42 However, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions in that regard. The need, referred to in paragraph 25 of the present judgment, for uniform interpretation and application of each provision of EU law precludes one linguistic version of the text being considered in isolation, and requires that the measure be interpreted by reference to the general scheme and purpose of the rules of which it forms part (see, to that effect, judgments of 12 November 1969, *Stauder*, 29/69, EU:C:1969:57, paragraphs 2 and 3, and of 15 September 2022, Minister for Justice and Equality *(Third-country national cousin of a Union citizen)*, C-22/21, EU:C:2022:683, paragraph 20).

43 In the Spanish, Czech, English, Hungarian, Portuguese, Finnish and Swedish language versions in particular, the wording of Article 5(3) of Directive 2011/95 equivalent to '*unbeschadet*' in German must be construed as meaning that the Member States must take account of the provisions of the Geneva Convention in making use of the option granted to them by Article 5(3) not 'normally' to grant refugee status to an applicant in the circumstances referred to in paragraph 32 of the present judgment. It follows that the term '*unbeschadet*' in the German-language version of that provision must be construed to the same effect, in accordance with the general scheme and purpose of Directive 2011/95, as alluded to in paragraphs 27 and 33 of the present judgment respectively.

44 Accordingly, in all cases where the competent national authority with which a subsequent application has been lodged has found that the circumstances claimed by the applicant stem from an abusive intent and abuse of the applicable procedure, with the result that refugee status may be refused to that person on the basis of Article 5(3) of Directive 2011/95, the wording 'without prejudice to the Geneva Convention' requires, if that authority finds, in the light of those circumstances, that there is a probable risk of persecution in the event that the applicant is returned to the country of origin, that the applicant nevertheless be able to benefit, in the Member State concerned, from the rights guaranteed by the Geneva Convention against which no reservations may be made, as provided for in Article 42(1) of that convention. Those rights include the one guaranteed by Article 33(1) of that convention, under which no Contracting State is to expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of, inter alia, his or her religion.

45 Lastly, as regards the queries from the referring court concerning the compatibility with Directive 2011/95 of the condition imposed by the national legislation that transposed Article 5(3) of that directive, under which activities giving rise to the risk of persecution relied on by the applicant must be permitted in the host Member State, suffice it to recall that, under Article 2 of the Geneva Convention, 'every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order'. It follows that the wording 'without prejudice to the Geneva Convention' in Article 5(3) cannot be interpreted as precluding such a condition from being provided for in national law.

46 In the light of the foregoing, the answer to the question referred is that Article 5(3) of Directive 2011/95 must be interpreted as precluding national legislation which makes the recognition of the status of refugee following a subsequent application within the meaning of Article 2(q) of Directive 2013/32, based on a risk of persecution arising from circumstances which the applicant has created by his or her own decision since leaving his or her country of origin, subject to the condition that those circumstances must constitute the expression and continuation of convictions held by the applicant in that country.

Costs

47 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:

Article 5(3) 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 which makes the recognition of the status of refugee following a subsequent application within the meaning of Article 2(q) 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, based on a risk of persecution arising from circumstances which the applicant has created by his or her own decision since leaving his or her country of origin, subject to the condition that those circumstances must constitute the expression and continuation of convictions held by the applicant in that country.

[Signatures]