Reports of Cases

OPINION OF ADVOCATE GENERAL
PIKAMÄE
delivered on 13 June 2024[1]

Case C-134/23

Somateio 'Elliniko Symvoulio gia tous Prosfyges',
Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio'
v
Ypourgos Exoterikon,
Ypourgos Metanastefsis kai Asylou

(Request for a preliminary ruling from the Simvoulio tis Epikrateias (Council of State, Greece))

(Reference for a preliminary ruling – Granting and withdrawing international protection – Directive 2013/32/EU – Article 38 – Concept of 'safe third country' – Classification of Türkiye as a 'safe third country' – EU-Türkiye Agreement on the readmission of persons residing without authorisation – De facto suspension of the readmission of applicants for international protection)

I. Introduction

1. In the present case, the Court has been asked by the Simvoulio tis Epikrateias (Council of State, Greece) to give a preliminary ruling on the interpretation of Article 38 of Directive 2013/32/EU.[2]

2. The three questions raised by the referring court arise in the context of an action for annulment of national legislation designating Türkiye as a generally safe country for certain categories of applicants for international protection, even though, notwithstanding a readmission agreement concluded with the European Union, that country has generally suspended the readmission to its territory of those applicants and there is no foreseeable prospect of a change in that position.

3. The present case gives the Court the opportunity to clarify, first, the relationship between the conditions for designating a country as generally safe and the application of the 'safe third country' concept to a particular applicant for international protection and, second, the scope of the requirement that the applicant must be admitted or readmitted laid down in Article 38 of Directive 2013/32.

[1] Original language: French.

[2] Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ 2013 L 180, p. 60).

II. Legal framework

A. European Union law

1. EU-Türkiye Agreement on readmission

4. On 16 December 2013, the European Union and the Republic of Türkiye concluded an Agreement on the readmission of persons residing without authorisation ('the EU-Türkiye Agreement on readmission'). [3] That agreement was ratified on behalf of the European Union by Council Decision of 14 April 2014. [4]

5. Article 4 of the EU-Türkiye Agreement on readmission provides:

'1. [Türkiye] shall readmit, upon application by a Member State and without further formalities to be undertaken by that Member State other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that in accordance with Article 10 it is established that such persons:

…

(c) illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of [Türkiye].

2. The readmission obligation in Paragraph 1 of this Article shall not apply if:

…'

6. Under Council Decision (EU) 2016/551 of 23 March 2016, [5] the obligation set out in Article 4 of the EU-Türkiye Agreement on readmission applies from 1 June 2016.

2. Directive 2013/32

7. Articles 31, 33, 35 and 38 of Directive 2013/32 are relevant to the present case.

[3] OJ 2014 L 134, p. 3, corrigendum OJ 2014 L 331, p. 40.

[4] OJ 2014 L 134, p. 1.

[5] Decision establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the [EU-Türkiye Agreement on readmission] from 1 June 2016 (OJ 2016 L 95, p. 9).

B. Greek law

1. The Greek Law on international protection

8. Nomos 4636/2019 peri diethnous prostasias kai alles diatakseis, as amended by Nomos 4686/2020 (Law on international protection and other provisions, as amended, FEK A' 169/01.11.2019 and FEK A' 96/12.05.2020; 'the Greek Law on international protection') transposes Directive 2013/32 into Greek law.

9. Article 86 of the Greek Law on international protection is worded as follows:

'1. A country is considered as a safe third country for a particular applicant where the following cumulative criteria are met:

(a) the life and liberty of the applicant are not threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion;

(b) that country respects the principle of non-refoulement, in accordance with the Geneva Convention;

(c) there is no risk to the applicant of serious harm as defined in Article 15 of this Law;

(d) that country prohibits, in accordance with international law, the removal of an individual to a country where he or she would be at risk of torture or other cruel, inhuman or degrading treatment or punishment;

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention; and

(f) there is a connection between the applicant and that third country, on the basis of which it would be reasonable for that person to go to that country. The fact that the applicant transited through a third country may … be regarded as a connection between the applicant and the third country, on the basis of which it would be reasonable for that person to go to that country.

2. Fulfilment of the above criteria shall be examined on a case-by-case basis for each applicant taken individually, unless the third country has been designated as generally safe and is on the national list of 'safe third countries'. If that is the case, the applicant for international protection may challenge the application of the safe third country concept on the ground that the third country is not safe in his or her particular circumstances.

3. A joint ministerial order of the Minister for Protection of the Citizen and the Minister for Foreign Affairs, adopted on a proposal from the Director of the Asylum Service, shall determine which third countries are designated as safe, within the meaning of this Article, for certain categories of asylum seekers, having regard to their specific characteristics (with respect to race, religion and other matters), for the purpose of the examination of applications for international protection. The elements taken into account for the purpose of adopting the aforementioned joint ministerial order (the third country's domestic legal system, bilateral or multi-party international agreements, or agreements concluded between the third country and the European Union and national practice) must be up to date and originate from reliable information sources,

in particular official diplomatic sources in Greece and abroad, the European Asylum Support Office, the legislation of other Member States relating to the concept of 'safe third countries', the Council of Europe and the United Nations High Commissioner for Refugees. That list is subject to a mandatory review in November each year. Where significant changes in the human rights situation of a country designated as a safe third country are identified, that designation shall be reviewed as soon as possible and before the annual deadline referred to in the preceding sentence. Any designation decision shall be notified to the European Commission.

…

5. Where the abovementioned third country does not permit the applicant to enter its territory, his or her application shall be examined as to its substance by the authorities which are competent to adopt a decision.

…'

2. The joint ministerial orders

10. Pursuant to the power provided for in Article 86 of the Greek Law on international protection, Koini Ypourgiki Apofasi 42799/3.6.2021, entitled 'Kathorismos triton choron pou charaktirizontai os asfaleis kai katartisi ethnikou katalogou, kata ta orizomena sto arthro 86 tou nomou 4636/2019 (A'169)' (Joint Ministerial Order 42799/3.6.2021, entitled 'Determination of third countries designated as safe and establishment of a national list in accordance with the provisions of Article 86 of Law 4636/2019 (A'169)', FEK B 2425/7.6.2021; 'the First Ministerial Order') was adopted. That ministerial order provides that Türkiye is a safe third country for applicants for international protection whose country of origin is Syria, Afghanistan, Pakistan, Bangladesh or Somalia.

11. The First Joint Ministerial Order was replaced by Koini Ypourgiki Apofasi 458568/15.12.2021, entitled 'Tropopoiisi tis yp.ar. 42799/3.6.2021 koinis apofasis ton Ypourgon Exoterikon kai Metanastefsis kai Asylou "Kathorismos triton choron pou charaktirizontai os asfaleis kai katartisi ethnikou katalogou, kata ta orizomena sto arthro 86 tou nomou 4636/2019 (A'169)"' (Joint Ministerial Order 458568/15.12.2021 amending Joint Ministerial Order 42799/3.6.2021 of the Ministers for Foreign Affairs and for Immigration and Asylum, entitled 'Determination of third countries designated as safe and establishment of a national list in accordance with Article 86 of Law 4636/2019 (A'169)', FEK B' 5949/16.12.2021; 'the Second Ministerial Order').

12. The Second Joint Ministerial Order once again designates Türkiye as a safe third country for applicants for international protection whose country of origin is Syria, Afghanistan, Pakistan, Bangladesh or Somalia.

III. Factual background to the dispute, procedure in the main proceedings and the questions referred for a preliminary ruling

13. The Somateio 'Elliniko Symvoulio gia tous Prosfyges' and the Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio' ('the applicants in the main proceedings'), which support refugees, brought an action before the Symvoulio tis Epikrateias (Council of State) against the

First Ministerial Order and then against the Second Ministerial Order, on the ground, inter alia, that those orders were contrary to Article 86 of the Greek Law on international protection and Article 38 of Directive 2013/32.

14. In particular, the applicants in the main proceedings argue, first, that the possibility of the applicants for international protection covered by those orders being re-admitted to Türkiye is not safeguarded 'by international agreements' and, secondly, that there is no reasonable prospect of the applicants for international protection being readmitted to that third country because Türkiye has, since March 2020 and the Covid-19 pandemic, frozen readmissions to its territory.

15. It is apparent from the order for reference that, after finding that only the action for annulment brought against the Second Ministerial Order was admissible, the referring court held that that complaint had to be rejected, in so far as the applicants in the main proceedings complained that Türkiye had no legal obligation to readmit applicants for international protection from Greece. Having regard in particular to the EU-Türkiye Agreement on readmission, the referring court found that Türkiye had assumed such an obligation.

16. However, the referring court raises the question of Türkiye's effective compliance with that obligation, in view of the fact, also acknowledged by the Greek authorities, that that third country has ceased to readmit to its territory, since March 2020 and without this being likely to change in the near future, applicants for international protection whose applications were considered inadmissible in Greece on the basis of the concept of 'safe third country'.

17. In that regard, the referring court points to the various opinions expressed within that court on that issue.

18. In the opinion of the majority of the members of that court, the possibility that the applicant for international protection might be readmitted to the third country concerned is a precondition for the designation of that country as a 'safe third country' within the meaning of Article 38 of Directive 2013/32, in the light, in particular, of the aim, recalled inter alia in recital 18 and also expressed in Article 31(2) thereof, of ensuring that applications for international protection are processed as rapidly as possible. A different interpretation would merely prolong the time taken to examine the application for international protection and the uncertainty as to the applicant's stay in the country in which he or she has submitted that application, without eliminating the risk that that applicant might be returned to a country in which he or she is at risk of persecution or the possibility of disruption to international relations. It follows that a Member State could not establish a national list of generally safe third countries, as permitted by Article 38(2) of Directive 2013/32, if the third country in question does not guarantee effective compliance with the legal obligation which it has assumed. Accordingly, the opinion of the majority of the members of the referring court is that the action for annulment of the Second Joint Ministerial Order should be upheld.

19. However, the referring court indicates that its other members support a different interpretation of the provisions of Directive 2013/32. According to those members, examination of the condition that applicants for international protection are accepted in practice is not an element of the validity of the regulatory act designating a country as generally safe but must be carried out at subsequent stages of the administrative procedure. It is a condition governing the validity either of the individual decision by which a specific application for international protection is considered to be inadmissible pursuant to the concept of 'safe third country' or of

enforcement of the associated enforcement decision. In the opinion of those members of the referring court, the action for annulment brought against the Second Joint Ministerial Order should therefore be dismissed as unfounded.

20. It was in those circumstances that the Symvoulio tis Epikrateias (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 38 of [Directive 2013/32], read in conjunction with Article 18 of the Charter of Fundamental Rights of the European Union, be interpreted as precluding national (regulatory) legislation classifying a third country as generally safe for certain categories of applicants for international protection where, although that country has made a legal commitment to permit readmission to its territory of those categories of applicants for international protection, it is clear that it has refused readmission for a long period of time (in this case, more than 20 months) and the possibility of its changing its position in the near future does not appear to have been investigated? Or

(2) must it be interpreted as meaning that readmission to the third country is not one of the cumulative conditions for the adoption of the national (regulatory) decision classifying a third country as generally safe for certain categories of applicants for international protection, but is one of the cumulative conditions for the adoption of an individual decision rejecting a particular application for international protection as inadmissible on the "safe third country" ground? Or

(3) must it be interpreted as meaning that, where the decision rejecting the application for international protection is based on the "safe third country" ground, readmission to the "safe third country" need be verified only at the time of enforcement of that decision?'

IV. Procedure before the Court

21. The referring court requested that the present case be dealt with under the expedited procedure, provided for in Article 105(1) of the Rules of Procedure of the Court of Justice. On 31 March 2023, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, that it was not appropriate to grant that request.

22. Written observations were submitted by the applicants in the main proceedings, the Greek, Czech, German, Cypriot, Hungarian and Netherlands Governments and the European Commission.

23. At the hearing on 14 March 2024, the applicants in the main proceedings, the Greek Government and the European Commission made oral submissions.

V. Analysis

A. Preliminary considerations

24. By its first question referred, the referring court asks whether the provisions of Article 38 of Directive 2013/32 preclude a Member State from designating, by a measure of general application, a third country as a 'safe third country' where, prior to that designation, that country, notwithstanding the legal commitment it had made, has decided to suspend de facto the readmission to its territory of applicants for international protection.

25. By its second and third questions, raised in the alternative to the first question, the referring court seeks to ascertain whether the adoption of an individual decision finding an application for international protection to be inadmissible pursuant to the concept of 'safe third country' is dependent on the applicant's admission or readmission to the territory of that country, or whether that condition must be verified only at the time of enforcement of that decision.

26. It should be pointed out that the referring court is seised solely of an action for annulment of national legislation which includes Türkiye on a national list of safe third countries, with the result that the dispute in the main proceedings does not concern the validity of individual decisions finding an application to be inadmissible taken on the basis of Article 33(2)(c) of Directive 2013/32. From that perspective, the view may be taken that the answer which the Court will give to the first question referred is sufficient to enable the referring court to rule on the dispute in the main proceedings [6] and that the second and third questions referred are inadmissible.

27. That being said, it should be borne in mind that, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. [7]

28. In the present case, it is apparent from the grounds of the order for reference that the referring court raises the question, more fundamentally, of the legal consequences of the refusal by a third country designated as generally safe to permit applicants for international protection to enter its territory. From that point of view, the referring court seeks to ascertain the moment at which that refusal must be taken into consideration and contemplates, in that regard, three stages, that is to say, the stage of the designation by a measure of general application of a third country as safe, the stage of the adoption of an individual inadmissibility decision pursuant to that concept and the stage of the enforcement of that decision.

29. In the light of those questions, in order to decide the case before it in full knowledge of the facts, the referring court requires comprehensive guidance as to the interpretation of Article 38 of Directive 2013/32, enabling it to identify precisely the consequences of the refusal by the third country concerned and the stage of the procedure at which that refusal must be taken into account.

[6] On that point, it should be recalled that, according to settled case-law, it is not the Court's task to deliver advisory opinions on general or hypothetical questions. See, to that effect, judgment of 20 October 2022, *Staatssecretaris van Justitie en Veiligheid (Removal of a victim of trafficking in human beings)* (C-66/21, EU:C:2022:809, paragraph 82 and the case-law cited).

[7] Judgment of 18 January 2024, *Hewlett Packard Development Company* (C-367/21, EU:C:2024:61, paragraph 44 and the case-law cited).

30. In the light of that requirement, it seems to me that the need to provide the referring court with an answer which will be of use to it entails an examination of not only the first question referred concerning the validity of a measure of general application but also, in the event that EU law does not preclude the adoption of such a measure, the second and third questions referred concerning the individual decision adopted on the basis of the concept of 'safe third country'.

B. The questions referred

31. At the outset, I would point out that, in my Opinion in Joined Cases *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*,[8] I had maintained that *the fact that it is not certain* that the applicants will be admitted or readmitted to the third country does not prevent the adoption of an inadmissibility decision based on the provisions of Article 38 of Directive 2013/32 and that entry to that country need be verified only at the time of enforcement of that decision.

32. However, it should first of all be noted that, in its judgment of 14 May 2020, the Court did not rule on the interpretation of the provisions of that article relating to the admission or readmission of applicants for international protection, on the ground that the questions raised by the referring court on that point were inadmissible.[9]

33. Next, it is apparent from the information provided by the referring court and the explanations given by the Greek Government at the hearing that, since March 2020, the enforcement of inadmissibility decisions based on Türkiye's designation as a generally safe country has conflicted with that country's general and absolute refusal, for an indefinite period and without any foreseeable prospect of a change in that position, to readmit applicants for international protection.[10] That fact, in that it excludes, *ab initio*, the entry of an applicant into the territory of the country designated as generally safe, leads me to preclude the transposition of the analysis which I had previously proposed that the Court should endorse.

34. Nevertheless, I consider that that element alone cannot have the *legal* consequence of calling into question the designation of a country as generally safe. It follows from the wording and structure of Article 38 of Directive 2013/32 that a requirement relating to the admission or readmission of an applicant for international protection does not constitute a condition for the validity of such a measure. I therefore propose that the Court should answer the first question referred in the negative (Section 1).

35. By contrast, I consider, for the same reasons, that that article precludes the competent authorities of a Member State from adopting an individual inadmissibility decision based on the concept of 'safe third country' where they are *certain*, from the individual examination of the application for international protection, that the applicant will not be admitted or readmitted to that country (Section 2).

8 C-924/19 PPU and C-925/19 PPU, EU:C:2020:294, points 111 to 114 and 127.

9 Judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 172 to 174).

10 The Turkish Government's position is set out in the Sixth Annual Report on the Facility for Refugees in [Türkiye] [COM (2022) 243 final]. In that communication addressed to the Council and the European Parliament, the Commission states in particular: 'Responding to repeated requests from the Greek authorities and the European Commission regarding the resumption of return operations, [the Republic of Türkiye] has stated that no return operation would take place unless the alleged pushbacks along the Turkish-Greek border stop and [the Hellenic Republic] revokes its decision to consider [the Republic of Türkiye] a Safe Third Country.'

1. The first question referred

36. Article 33(2) of Directive 2013/32 sets out an exhaustive list of situations in which the Member States may consider an application for international protection to be inadmissible.[11] Those grounds include, in Article 33(2)(c) of Directive 2013/32, one that allows a Member State to consider an application to be inadmissible where a country, which is not a Member State, is considered as a 'safe third country', pursuant to Article 38 of that directive.

37. By its judgment of 19 March 2020, the Court held that the application of the concept of 'safe third country' is subject to compliance with the conditions laid down in Article 38(1) to (4) of that directive.[12] As Advocate General Bobek pointed out, those conditions can essentially be described as *principles*, *rules* and *guarantees*.[13]

38. First of all, under Article 38(1) of Directive 2013/32, Member States may apply the 'safe third country' concept only where the competent authorities are satisfied that, in the third country concerned, the following principles listed in points (a) to (e) of that paragraph are respected: (a) the life and liberty of the applicant for international protection are not threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion; (b) there is no risk, for the applicant for international protection, of serious harm as defined in Directive 2011/95/EU;[14] (c) the principle of non-refoulement in accordance with the Geneva Convention is respected;[15] (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (e) the possibility exists for the applicant for international protection to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

39. Next, the rules are set out in Article 38(2) of Directive 2013/32. On that basis, the application of the 'safe third country' concept is to be subject to rules laid down in national law. Those rules include, inter alia, (a) those requiring such a connection between the applicant for international protection and the third country concerned that it would be reasonable to return that person to that country; (b) those on the methodology by which the competent authorities satisfy themselves that the concept of 'safe third country' may be applied to a particular country or to a particular applicant for international protection; (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant for international protection and, in that context, allowing that applicant to challenge both the application of the concept of 'safe third country' on the grounds that the third country is not safe in his or her particular circumstances and the existence of a connection between him or her and the third country.

[11] Judgment of 8 February 2024, *Bundesrepublik Deutschland (Admissibility of a subsequent application)* (C-216/22, EU:C:2024:122, paragraph 26 and the case-law cited).

[12] Judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)* (C-564/18, EU:C:2020:218, paragraph 36). Moreover, it should be pointed out that the EU-Türkiye Agreement on readmission lays down the conditions under which certain categories of migrants may be readmitted to Turkish territory. That agreement establishes only a general legal framework distinct from the common procedural rules for granting and withdrawing international protection governed by Directive 2013/32. It follows that that agreement has no bearing on the application of the 'safe third country' concept, which depends solely on fulfilment of the conditions set out in Article 38(1) to (4) of that directive.

[13] Opinion of Advocate General Bobek in *LH (Tompa)* (C-564/18, EU:C:2019:1056, point 42).

[14] 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).

[15] The Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 137, No 2545 (1954)).

40. Finally, as regards those guarantees and in addition to that possibility of making a challenge, Article 38(3) of Directive 2013/32 requires that Member States which implement a decision solely based on that 'safe third country' concept should inform the applicant accordingly and provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance. Moreover, Article 38(4) of that directive provides that, where the third country does not permit the applicant to enter its territory, Member States are to ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II of that directive.

41. It seems to me that two inferences can be drawn from the wording and structure of Article 38 of Directive 2013/32.

42. In the first place, there is little doubt that the provisions of that article allow a Member State to designate, by a measure of general application, a country as a 'safe third country'. In that regard, I note that the methodology referred to in Article 38(2)(b) of that directive expressly includes 'case-by-case consideration of the safety of the country for a particular applicant and/*or national designation of countries considered to be generally safe*'. [16]

43. To the same effect, Article 38(2)(c) of that directive requires Member States to lay down rules permitting the applicant to challenge the application of the 'safe third country' concept *on the grounds that the third country is not safe in his or her particular circumstances*, from which it may be inferred that an examination of the individual situation of the person concerned may form part of a measure of general application adopted by a Member State beforehand.

44. Such an interpretation is, moreover, supported by a reading of recital 44 of Directive 2013/32, which refers to the establishment of 'common principles … for the consideration or designation by Member States of third countries as safe'. Even more explicitly, recital 46 of that directive states that 'where Member States … designate countries as safe by adopting lists to that effect', they should rely on relevant information and data. [17]

45. In the second place, I consider that the validity of a measure of general application designating a third country as safe is not subject to a requirement relating to the admission or readmission of an applicant for international protection.

46. On that point, it seems necessary to draw a distinction between, on the one hand, the requirements necessary for the *application* of the concept of 'safe third country' to a particular applicant for international protection, which presuppose compliance with the conditions set out in Article 38(1) to (4) of Directive 2013/32, and, on the other hand, the conditions necessary for the *designation* of a third country as being generally safe for all or certain categories of applicants for international protection. In my view, that distinction results from the very structure of that article, which calls for the differentiation of several stages.

47. In that regard, in order to be satisfied that the applicant will be treated in accordance with the principles set out in Article 38(1) of that directive in the third country concerned, Member States must, within the framework of the methodology which national law must lay down pursuant to

[16] Italics added.

[17] It should be noted that Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348, 22.5.2024 expressly provides in Articles 60 and 64 for the possibility of designating a third country as a safe third country both at EU and at national level.

Article 38(2)(b) of that directive, carry out an examination of the situation in the country concerned. As is clear from the wording of recital 46 of that directive, the verification of those standards cannot be based solely on a formal examination of a particular legal system, but must also be based on an up-to-date, specific analysis of the effective application by that country of the principles set out in that article. [18]

48. I do not deny that, with regard to that requirement, whether a particular applicant for international protection is actually admitted or readmitted plays a key role, since that applicant will be able to benefit from treatment in accordance with the principles listed in Article 38(1) of Directive 2013/32 only in so far as he or she is permitted to enter the third country concerned. However, I consider that the verification required at that stage relates to the certainty that the applicant will be treated in accordance with those principles in the event that he or she in fact *subsequently* enters the territory of the third country.

49. It is clear that the applicant's entry into the third country is not, in itself, among the principles set out in that article and is taken into consideration only when examining the individual situation of the applicant for international protection. In my view, that interpretation is supported by an analysis of the other provisions of Article 38 of Directive 2013/32.

50. First, Article 38(2)(a) of that directive requires Member States to lay down national rules concerning the existence of a connection between a particular applicant and the third country concerned such that it would be reasonable for that applicant to go to that country. Logically, the individual assessment of a connection capable of justifying the entry of an applicant for international protection into the country concerned can take place only once the Member State is satisfied, in accordance with the methodology for designation laid down by national law, that the cumulative conditions laid down in Article 38(1) of that article for designation of that country as generally safe have been fulfilled.

51. Second, Article 38(4) of Directive 2013/32 sets out the consequences of a third country's refusal of entry to a particular applicant for international protection. Such a situation therefore arises at the stage when, notwithstanding the existence of grounds for considering that the applicant will be admitted or readmitted to the safe third country, that country's refusal to allow the applicant to enter its territory prevents that decision from being enforced. In such circumstances, the Member State must ensure that the applicant has access to a procedure for examining his or her application in accordance with the basic principles and guarantees provided for by that directive. It follows that actual admission or readmission is not an element necessary for classification as a 'safe third country', but only a condition, to be verified at the time of enforcement, necessary for the application of that concept to a particular applicant.

52. That interpretation is supported by an examination of the provisions relating to the concept of 'first country of asylum', which is, according to Article 33(2)(b) of Directive 2013/32, a ground for inadmissibility of an application for international protection. On that point, it is apparent from Article 35(1) of that directive that that concept applies if the applicant has already been recognised in that country as a refugee and can still avail himself or herself of that protection or otherwise enjoys sufficient protection, including benefiting from the principle of non-refoulement, provided that that applicant will be readmitted.

[18] See, also, HCR, 'UNHCR Statement on safe country concepts and the right to an effective remedy in admissibility procedures', September 2019.

53. The common feature of the concepts of 'first country of asylum' and of 'safe third country' is therefore that their application is subject to the admission or readmission of an applicant for international protection. However, it is clear from the wording of Article 35 of Directive 2013/32 that that condition must be verified *ab initio*, so that classification as 'first country of asylum' cannot be made in the absence of the applicant's admission or readmission. As a corollary, it is clear from Article 38 of that directive, which refers to the applicant's actual entry only in paragraph 4 thereof, that the actual admission or readmission of applicants is not among the preconditions for the designation of a country as generally safe and need be verified only at the stage of the individual processing of the application for international protection.

54. I infer from all those considerations that the fact that a country de facto and generally opposes the readmission to its territory of applicants for international protection does not preclude a Member State from adopting national legislation designating that country as generally safe.

55. The solution which I propose that the Court should adopt requires it, as requested by the second and third questions referred, to determine to what extent, and at which stage of the procedure brought by a particular applicant for international protection, it is necessary to take into account the refusal of the third country concerned.

2. The second and third questions referred

56. By its second and third questions, the referring court seeks, in essence, to ascertain whether the general and absolute refusal by the third country designated as generally safe precludes the adoption of an individual decision finding that an application for international protection is inadmissible pursuant to Article 33(2)(c) and Article 38 of Directive 2013/32 or whether the condition relating to admission or readmission need only be verified at the time of enforcement of that decision.

57. In order to answer that question, it is necessary to point out that, where the concept of 'safe third country' is applied to a particular applicant for international protection, the examination of the condition relating to that applicant's admission or readmission must, in principle, be carried out in two stages, the first concerning the adoption of the inadmissibility decision and the second concerning the enforcement of that decision.

58. As regards the first of those stages, it follows from Article 38(2)(a) of Directive 2013/32 that an inadmissibility decision based on the concept of 'safe third country' may be adopted only in the context of national rules requiring a connection between the applicant and the third country concerned *on the basis of which it would be reasonable for that person to go to that country*. Moreover, recital 44 of that directive, which covers that concept, exempts Member States from their obligation to assess the substance of an application for international protection only in so far as 'there are grounds for considering that the applicant will be admitted or readmitted to that country'. Accordingly, it clearly follows from those provisions that the adoption of a decision rejecting an application for international protection pursuant to the concept of 'safe third country' presupposes that the applicant's admission or readmission by that country is likely or, at the very least, plausible.

59. It is only subsequent to that first stage that Member States must verify whether the applicant is admitted or readmitted in practice. If it is established that, despite there being such a likelihood, the third country concerned does not permit the applicant's entry to its territory, Member States

may not enforce the inadmissibility decision and must, in accordance with Article 38(4) of that directive, allow that person to initiate a procedure in which the application for international protection is examined.

60. Consequently, where the Member States are certain, from the first stage, that the applicant will not be able to go to the 'safe third country', verification, in the second of those stages, of actual admission or readmission is devoid of purpose. In such a situation, I consider that, because it has been established at the first stage that it is not possible for the applicant for international protection to be admitted or readmitted, Member States cannot adopt in respect of that applicant an inadmissibility decision based on the concept of 'safe third country'.

61. In my view, that conclusion cannot be called into question by the fact that the country concerned has previously been designated by national legislation as generally safe. That designation, which is conditional only on the certainty that the principles set out in Article 38(1) of Directive 2013/32 have been respected, does not depend on it being established that there are grounds for considering that a particular applicant will be admitted or readmitted to that country.

62. Moreover, two elements seem to me to support that analysis.

63. In the first place, it should be recalled that, according to recital 18 of Directive 2013/32, 'it is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out'. [19] I consider that, in a situation such as that in the main proceedings, it would be contrary to the obligation to act expeditiously arising from that article to wait until a decision rejecting an application as inadmissible has been enforced before drawing the appropriate conclusions from a state of affairs which was known when the application for international protection was examined.

64. In the second place, that solution is expressly set out by the EU legislature in Regulation (EU) 2024/1348. [20] Accordingly, it follows from recital 53 and Article 38(1)(b) of that regulation that the competent authorities of a Member State may not reject an application for international protection as inadmissible on the basis of the concept of 'safe third country' where it is clear at the stage of the admissibility examination that the applicant will not be admitted or readmitted to the third country concerned.

65. At this point in my reasoning, it seems to me important to describe, on the basis of the information provided by the Greek Government at the hearing, the procedure followed by the Greek authorities, since it illustrates so well the difficulties raised by the practice of waiting for an inadmissibility decision to be enforced when it is already certain that the applicant for international protection will not be permitted to enter the third country concerned on account of the general suspension of readmissions.

[19] That obligation is, inter alia, given expression in Article 31(2) of Directive 2013/32, which requires Member States to ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

[20] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348, 22.5.2024). By virtue of Article 79(3) thereof, that new regulation applies to the procedure for granting international protection in relation to applications lodged as from 12 June 2026, with applications for international protection lodged before that date continuing to be governed by Directive 2013/32.

66. Broadly speaking, that procedure may be described as follows. First, the Greek authorities adopt a decision rejecting the application for international protection as inadmissible on the ground that, by a measure of general application, Türkiye has been designated, for certain categories of applicants, as a safe third country.

67. Next, at the stage of enforcing that decision, Greece approaches Türkiye to ascertain whether it is prepared to permit the applicant to enter its territory. Since the Turkish authorities refuse to respond to all requests made to that effect, the Greek authorities allow a period of time to elapse, which was described as 'reasonable'[21] at the hearing, before making a finding that the applicant's readmission is impossible.

68. Finally, once that finding has been made, the Greek Government has stated that it is for the person concerned to submit a new application for international protection since, under the Greek legislation, the competent authorities are not required to resume *ex officio* the examination of the application for international protection.[22]

69. That description prompts me to make further observations, in support of my analysis, concerning the scope of the obligation imposed on Member States to examine the substance of an application for international protection in the event that the applicant is not permitted to enter the territory of the safe third country.

70. On that point, it must be recalled that, under Article 2(c) of Directive 2013/32, 'applicant' means a 'third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken', final decision being defined in Article 2(e) of that directive as 'a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of [Directive 2011/95] …'. It follows, as I argued in my Opinion in Joined Cases *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*,[23] that migrants only cease to be applicants at the time a decision is taken not to recognise them as refugees or persons needing subsidiary protection or, put differently, at the time of a decision on the substance.

71. The purpose of applying the 'safe third country' concept is to enable the authorities of a Member State to transfer responsibility for examining an application for international protection to another country which, the Member State is satisfied, will treat the migrant in accordance with the principles set out in Article 38(1) of Directive 2013/32. From that point of view, that concept guarantees that the person concerned will have his or her application for international protection examined as to its substance either in the Member State in which he or she submitted the application or, in the event of actual admission or readmission, in the third country concerned.

72. On the basis of those considerations, it seems to me that a distinction must be drawn between two situations.

[21] I note that, leaving aside that term, the Greek Government stated at the hearing that that period is several months but was unable to provide more accurate data on its exact length. In any event, I consider that such a period is purely artificial since it is certain that the applicant will not be readmitted to Türkiye. In my view, such a finding indicates a failure to comply with the obligation to act expeditiously imposed by Directive 2013/32.

[22] According to the explanations provided by the Greek Government, that new application must be treated as admissible and must therefore be examined as to its substance. Such an obligation appears to derive from Article 86(5) of the Greek law on international protection, according to which 'where the abovementioned third country does not permit the applicant to enter its territory, his or her application shall be examined as to its substance by the authorities which are competent to adopt a decision.

[23] C-924/19 PPU and C-925/19 PPU, EU:C:2020:294, point 118.

73. The first situation is that in which a Member State, having established that there are grounds for considering that the applicant will go to the country classified as a 'safe third country', adopts an inadmissibility decision. If, when that decision is enforced, it turns out that the country in question does not permit the person to enter its territory, that person remains an applicant, so that the Member State must resume *ex officio* the examination of the application for international protection.

74. The second situation is that at issue in the dispute in the main proceedings. In that situation, the Member State must, without adopting an inadmissibility decision pursuant to the concept of 'safe third country', further examine the application for international protection. [24]

75. In the light of all those considerations, I suggest that the Court should hold that, where a Member State is certain, from the time when the application for international protection is examined, that the applicant will not be permitted to go to the territory of a country designated as generally safe, Article 38 of Directive 2013/32 precludes the adoption of an inadmissibility decision based on the concept of 'safe third country'.

VI. Conclusion

76. In the light of all those considerations, I propose that the answer to the questions referred for a preliminary ruling by the Symvoulio tis Epikrateias (Council of State, Greece) should be that:

Article 38 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

– must be interpreted as meaning that it does not preclude national legislation designating a third country as generally safe for certain categories of applicants for international protection where, notwithstanding its legal obligation, that country has generally suspended the admission or readmission of those applicants and there is no foreseeable prospect of a change in that position;

– precludes national legislation providing for the adoption of a decision that an application for international protection is inadmissible pursuant to the concept of 'safe third country' where, from the time when the application is examined, the Member State is certain that the third country concerned will not permit the applicant to enter its territory.

[24] In my view, save in the case of more favourable national provisions, there is nothing to prevent a Member State which further examines the application for international protection from relying on another of the grounds of inadmissibility listed in Article 33(2) of Directive 2013/32.