ECLI:EU:C:2021:898

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

9 November 2021 (*)

(Reference for a preliminary ruling – Common policy on asylum and subsidiary protection – Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection – Directive 2011/95/EU – Articles 3 and 23 – More favourable standards capable of being retained or introduced by the Member States for the purposes of extending the refugee or subsidiary protection status of a beneficiary of international protection to family members – Grant of a parent's refugee status to his or her minor child as a derived right – Maintaining family unity – Best interests of the child)

In Case C-91/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 18 December 2019, received at the Court on 24 February 2020, in the proceedings

LW

v

Bundesrepublik Deutschland,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, K. Jürimäe, C. Lycourgos, E. Regan, N. Jääskinen and J. Passer, Presidents of Chambers, M. Ilešič (Rapporteur), J.-C. Bonichot, A. Kumin and N. Wahl, Judges,

Advocate General: J. Richard de la Tour,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 22 February 2021,

after considering the observations submitted on behalf of:

– LW, by F. Schleicher, Rechtsanwalt,

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

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

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by G. Wils and A. Azema, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 May 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3 and Article 23(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

2 The request has been made in proceedings between LW and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning a decision of the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) ('the Office') refusing to grant LW the right to asylum.

Legal context

International law

3 Article 1(A)(2) 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)) ('the Geneva Convention') states:

'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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

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

EU law

4 Directive 2011/95 'recast' 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).

5 Recitals 4, 12, 14, 16, 18, 19, 36 and 38 of Directive 2011/95 are worded as follows:

'(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.

…

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

…

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. 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.

…

(18) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the … United Nations Convention on the Rights of the Child [concluded in New York on 20 November 1989 (*United Nations Treaty Series*, Vol. 1577, p. 3)]. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity …

(19) It is necessary to broaden the notion of family members, taking into account … the special attention to be paid to the best interests of the child.

…

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

…

(38) When deciding on entitlements to the benefits included in this Directive, Member States should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary. In exceptional circumstances, where the close relative of the beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with his or her original family.'

6 Article 2 of that directive, entitled 'Definitions', states:

'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;

…

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

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

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

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

(k) "minor" means a third-country national or stateless person below the age of 18 years;

…

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

7 Article 3 of that directive, entitled 'More favourable standards', provides:

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

8 Article 4 of Directive 2011/95, entitled ‘Assessment of facts and circumstances’, provides in paragraph 3(e):

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

…

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.’

9 Article 12 of that directive, entitled ‘Exclusion’, is worded as follows:

‘1. A third-country national or a stateless person is excluded from being a refugee if:

(a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations [Refugee Agency (UNHCR)]. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of this Directive;

(b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.

2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.’

10 Article 23 of that directive, entitled ‘Maintaining family unity’, provides:

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

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

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.

5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.'

German law

11 Paragraph 3(1) of the Asylgesetz (Law on asylum) of 26 June 1992 (BGBl. 1992 I, p. 1126), as published on 2 September 2008 (BGBl. 2008 I, p. 1798), in the version applicable to the dispute in the main proceedings ('the AsylG'), provides:

'A foreign national is a refugee within the meaning of the [Geneva Convention] … where he or she

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

2. is outside the country (country of origin)

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

…'

12 Paragraph 26(2) of the AsylG provides:

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

13 Paragraph 26(4) of the AsylG excludes from the benefit of that paragraph, inter alia, persons coming under a ground for exclusion laid down in Article 12(2) of Directive 2011/95.

14 Paragraph 26(5) of the AsylG provides:

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

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

15 The applicant in the main proceedings was born in Germany in 2017 to a Tunisian mother and a Syrian father.

16 The applicant in the main proceedings is a Tunisian national. It has not been established whether she also holds Syrian nationality.

17 In October 2015, the Office granted refugee status to the father of the applicant in the main proceedings. The application for international protection lodged by the mother of the applicant in the main proceedings, who was born in Libya and who had stated that she had been habitually resident there until her departure from that State, was unsuccessful.

18 By decision of 15 September 2017, the Office rejected the application for asylum submitted on behalf of the applicant in the main proceedings after her birth ‘as manifestly unfounded’.

19 By judgment of 17 January 2019, the Verwaltungsgericht Cottbus (Administrative Court, Cottbus, Germany) annulled that decision in so far as it had rejected the asylum application brought by the applicant in the main proceedings as ‘manifestly unfounded’, rather than as ‘unfounded’, and dismissed the action as to the remainder. That court held that the applicant in the main proceedings did not qualify for refugee status, since she had no reason to fear persecution in Tunisia, the country or one of the countries of which she is a national. Furthermore, that court held that the appellant was also ineligible under Paragraph 26(2) and (5) of the AsylG for protection of the family on the basis of the refugee status granted to her father in Germany. That court held that it would be contrary to the principle of subsidiarity of international protection to extend international protection to persons who, as nationals of a State which is able to grant them protection, are excluded from the category of persons in need of protection.

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

21 In that appeal, the appellant in the main proceedings claims that minor children of parents with different nationalities should be granted refugee status on the basis of family protection under the combined provisions of Paragraph 26(2) and the first sentence of Paragraph 26(5) of the AsylG, even where that status has been granted to only one of those parents. This is not precluded by the principle of subsidiarity in relation to international protection for refugees. Article 3 of Directive 2011/95 allows a Member State, in cases where a family member is granted international protection, to provide for that protection to be extended to other members of that family, in so far as the latter are not caught by one of the grounds for exclusion laid down in Article 12 of that directive and in so far as their situation exhibits a connection with the rationale of international protection by virtue of the need to maintain family unity. In that legislation, particular attention should be paid to the protection of minors and the interests of the child.

22 The referring court states that the applicant in the main proceedings cannot claim refugee status in her own right. It is apparent from the second subparagraph of Article 1(A)(2) of the Geneva Convention, which sets out the principle of subsidiarity in relation to international protection for refugees, that persons who have two or more nationalities cannot be granted refugee status where they can avail themselves of the protection of one of the countries of which they are nationals. Article 2(d) and (n) of Directive 2011/95 should also be interpreted in that way. Only a person who is without protection, because he or she does not enjoy effective protection in a country of origin, within the meaning of Article 2(n) of that directive, is a refugee, within the meaning of Article 2(d) of that directive. The applicant in the main proceedings could enjoy effective protection in Tunisia, a country of which she is a national.

23 However, the applicant in the main proceedings satisfies the conditions under German law for recognition of refugee status as an unmarried minor child of a parent who has been granted refugee status. Under the combined provisions of Paragraph 26(2) and the first and second sentences of Paragraph 26(5) of the AsylG, refugee status, as a derived right and for the purposes of maintaining

family unity in the context of asylum, should also be granted to a child who was born in Germany and has, by his or her other parent, the nationality of a third country in whose territory he or she is not persecuted.

24 The referring court is uncertain, however, whether such an interpretation of German law is compatible with Directive 2011/95.

25 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

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

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

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

Consideration of the questions referred

26 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3 and Article 23(2) of Directive 2011/95 must be interpreted as precluding a Member State from granting, under more favourable national provisions, as a derived right and for the purposes of maintaining family unity, refugee status to the unmarried minor child of a third-country national who has been recognised as having that status under the system established by that directive, including in the case where that child was born in the territory of that Member State and, through that child’s other parent, has the nationality of another third country in which he or she would not be at risk of persecution. In that context, the referring court also asks whether, in order to answer that question, it is relevant to ascertain whether it is possible and reasonably acceptable for the child and the child’s parents to move to the territory of that third country.

27 As a preliminary point, it should be recalled that it is apparent from the settled case-law of the Court that the provisions of Directive 2011/95 must be interpreted in the light of its general scheme and purpose, in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 16, that directive must also be interpreted in a manner consistent with the rights recognised by the Charter of Fundamental Rights of the European Union (‘the Charter’) (see, to that effect, judgment of 13 January 2021, *Bundesrepublik Deutschland (Refugee status of a stateless person of Palestinian origin)*, C-507/19, EU:C:2021:3, paragraph 39).

28 In order to answer the questions referred, in the first place, it should be noted that a child in a situation such as that referred to in paragraph 26 above does not satisfy the conditions for being granted refugee status on an individual basis under the system established by Directive 2011/95.

29 In that regard, it should be recalled that, in accordance with Article 2(d) of Directive 2011/95, refugee means, inter alia, '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'.

30 It follows from that definition that the status of refugee requires the fulfilment of two conditions which are intrinsically linked and which relate, on the one hand, to the fear of persecution and, on the other, to the lack of protection from acts of persecution by third countries of which the person concerned is a national (see, to that effect, judgment of 20 January 2021, *Secretary of State for the Home Department*, C-255/19, EU:C:2021:36, paragraph 56).

31 That definition reproduces, in essence, the definition in Article 1(A)(2) of the Geneva Convention. That convention stipulates that 'in the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national' and that 'a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national'.

32 Although that clarification, which is an expression of the principle of subsidiarity of international protection, is not expressly included in Directive 2011/95, it nevertheless follows from Article 2(n) of that directive that each country of which an applicant is, as the case may be, a national must be regarded as his or her 'country of origin' for the purposes of that directive.

33 It thus follows from a combined reading of Article 2(d) and Article 2(n) of Directive 2011/95 that an applicant who is a national of more than one third country is considered to be deprived of protection only if he or she cannot or, because of the fear of being persecuted, does not wish to avail himself or herself of the protection of any of those countries. That reading is, moreover, confirmed by Article 4(3)(e) of that directive, under which, among the factors which must be taken into account in the individual assessment of an application for international protection, is the fact that it is reasonable to believe that the applicant could rely on the protection of another country where he or she could assert citizenship.

34 The referring court notes that the applicant in the main proceedings could enjoy effective protection in Tunisia, a third country of which she is, through her mother, a national. In that regard, that court states that there is nothing to suggest that the Republic of Tunisia is unwilling or unable to grant the applicant in the main proceedings the necessary protection against persecution and *refoulement* to Syria, the country of origin of her father, to whom the German authorities have granted refugee status, or to another third country.

35 In that context, it must be borne in mind that, under the system established by Directive 2011/95, an application for international protection cannot be granted, on an individual basis, solely on the ground that one of the applicant's family members has a well-founded fear of persecution or faces a real risk of suffering serious harm, where it is established that, despite his or her relation to that family member and the particular vulnerability which, as underlined in recital 36 of that directive, normally ensues, the applicant is not personally exposed to the threat of persecution or

serious harm (see, to that effect, judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 50).

36 In the second place, it should be noted that Directive 2011/95 does not provide for the extension, as a derived right, of refugee status or subsidiary protection status to the family members of a person to whom that status is granted and who, individually, do not satisfy the conditions for granting that status. It follows from Article 23 of that directive that it merely requires the Member States to amend their national laws so that those family members are entitled, in accordance with national procedures and in so far as that is compatible with the personal legal status of those family members, to certain advantages which include, inter alia, a residence permit, access to employment or to education, which are intended to maintain family unity (see, to that effect, judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 68).

37 Furthermore, it follows from a combined reading of Article 2(j) of Directive 2011/95, which defines the concept of 'family members' for the purposes of that directive, and from Article 23(2) thereof that the obligation on the Member States to provide for access to those advantages does not extend to the children of a beneficiary of international protection who were born in the host Member State to a family based in that Member State.

38 In the third place, in order to determine whether a Member State may nevertheless grant, as a derived right and for the purposes of maintaining family unity, refugee status to a child in a situation such as that at issue in the main proceedings, it must be borne in mind that Article 3 of Directive 2011/95 allows Member States to introduce or retain 'more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with [that] Directive'.

39 The Court has held that it is clear from that wording, read in conjunction with recital 14 of Directive 2011/95, that the more favourable standards referred to in Article 3 of that directive may, inter alia, consist in relaxing the conditions under which a third-country national or stateless person is granted refugee or subsidiary protection status (see, to that effect, judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 70).

40 As regards the clarification in Article 3, according to which any more favourable standard must be compatible with Directive 2011/95, the Court has held that this means that that standard must not undermine the general scheme or objectives of that directive. In particular, standards which are intended to grant refugee or subsidiary protection status to third-country nationals or stateless persons in situations which have no connection with the rationale of international protection are prohibited (judgment of 4 October 2018, *Ahmedbekova*, C-652/16, *EU:C:2018:801*, paragraph 71 and the case-law cited).

41 However, the automatic granting of refugee status, under national law, to the family members of a person to whom that status was granted under Directive 2011/95, is not, a priori, without connection to the rationale of international protection (judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 72).

42 First, by highlighting in the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons of 25 July 1951, which created the text of the Geneva Convention, that 'the unity of the family … is an essential right of the refugee' and by recommending to the signatory States 'to take the necessary measures for the protection of the refugee's family, especially with a view to … ensuring that the unity of the refugee's family is

maintained', the authors of that convention have created a close connection between those measures and the rationale of international protection. The existence of that connection has, moreover, been confirmed on numerous occasions by UNHCR bodies.

43 Second, Directive 2011/95 itself recognises the existence of such a connection by laying down, in general terms in Article 23(1), an obligation for Member States to ensure that the family unity of the beneficiary of international protection is maintained.

44 Accordingly, it must be held that the automatic extension, as a derived right, of refugee status to the minor child of a person to whom that status was granted, irrespective of whether or not that child individually satisfies the conditions for granting refugee status and including where that child was born in the host Member State, provided for by the national provision at issue in the main proceedings, which, as the referring court explains, pursues the objective of protecting the family and maintaining the family unity of beneficiaries of international protection, is consistent with the rationale of international protection.

45 However, it should be noted that there may be situations in which such an automatic extension, as a derived right and for the purposes of maintaining family unity, of refugee status to a minor child of a person to whom that status was granted would, despite the existence of that connection, be incompatible with Directive 2011/95.

46 First, in view of the purpose underlying the grounds for exclusion laid down in Directive 2011/95, which is to maintain the credibility of the system of protection provided for in that directive in accordance with the Geneva Convention, the reservation in Article 3 of that directive precludes a Member State from introducing or retaining provisions granting refugee status under that directive to a person who is excluded from it pursuant to Article 12(2) of that directive (judgment of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 115).

47 As the referring court points out, Paragraph 26(4) of the AsylG excludes such persons from benefiting from the extension of refugee status resulting from the application of the combined provisions of Paragraph 26(2) and (5).

48 Second, it follows from Article 23(2) of Directive 2011/95 that the EU legislature intended to exclude advantages granted to a beneficiary of international protection from being extended to a family member of that beneficiary where that would be incompatible with the personal legal status of the family member concerned.

49 It follows from the legislative history of that provision, and from the scope of the reservation which it provides for, that it also applies where a Member State decides that it is not appropriate merely to extend the benefits, but wishes, pursuant to Article 3 of that directive, to adopt more favourable standards under which the status granted to a beneficiary of international protection is automatically extended to members of his or her family, irrespective of whether or not they individually satisfy the conditions for granting that status.

50 It should be noted that the reservation now appearing in Article 23(2) of Directive 2011/95 had been proposed by the European Parliament during the legislative procedure which led to the adoption of Directive 2004/83, of which Directive 2011/95 is the 'recast', and Article 23 of which broadly corresponds to the same article in Directive 2011/95. That proposal related to the proposal of the Commission of the European Communities, which required Member States to ensure that 'accompanying family members are entitled to the same status as the applicant for international protection'. While proposing that that obligation be extended in order to include family members

who join the applicants subsequently, the Parliament considered that it was appropriate to introduce that reservation in order to take account of the fact that family members 'may hold a different legal status [from the applicant] in their own right, which may not be compatible with that of international protection' (see the European Parliament's report of 8 October 2002 on 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 and the content of the protection granted, COM(2001)510, A 5-0333/2002 final, Amendment 22 (OJ 2002 C 51 E, p. 325)).

51 The EU legislature ultimately did not adopt that obligation. However, it maintained the reservation of compatibility and merely required, in Article 23(1) and (2) of Directives 2004/83 and 2011/95, that the Member States ensure that family unity can be maintained and that the family members of a beneficiary of international protection who, individually, do not satisfy the necessary conditions for obtaining that protection can claim certain advantages, in accordance with national procedures.

52 It thus follows from the legislative history of Article 23 that a Member State which, when exercising the option provided for in Article 3 of those directives, wishes to introduce or retain more favourable standards, under which the status granted to such a beneficiary is automatically extended to members of his or her family irrespective of whether or not they individually satisfy the conditions for granting that status, must, when applying those standards, ensure compliance with the reservation in Article 23(2).

53 As regards the scope of that reservation, it must be determined in the light of the objective of Article 23 of Directive 2011/95 of ensuring that the family unity of beneficiaries of international protection is maintained and of the specific context of which that reservation forms part.

54 In that regard, it must be held that it would, in particular, be incompatible with the personal legal status of the child of a beneficiary of international protection who does not individually satisfy the conditions necessary to obtain that protection to extend to that child the advantages referred to in Article 23(2) of Directive 2011/95 or the status granted to that beneficiary, where that child has the nationality of the host Member State or another nationality which gives him or her, having regard to all the elements of his or her personal legal status, the right to better treatment in that Member State than that resulting from such an extension.

55 That interpretation of the reservation in Article 23(2) of Directive 2011/95 takes full account of the best interests of the child, in the light of which that provision must be interpreted and applied. Recital 16 of that directive expressly states that it respects the fundamental rights enshrined in the Charter and that it seeks to promote the application, in particular, of the right to respect for family life, guaranteed by Article 7 thereof, and the rights of the child, recognised by Article 24 of the Charter, which include, in paragraph 2 of the latter provision, the obligation to have regard to his or her best interests (see, to that effect, judgment of 9 September 2021, *Bundesrepublik Deutschland (Family member)*, C-768/19, EU:C:2021:709, paragraphs 36 to 38).

56 That interpretation corresponds, moreover, to that proposed by the UNHCR, whose documents are particularly relevant in the light of the role conferred on it by the Geneva Convention (judgment of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 57).

57 Thus, in its annotated comments on Directive 2004/83 concerning Article 23(1) and (2) of that directive, the UNHCR considers that 'members of the same family should be given the same status as the principal applicant (derivative status)' and states the following: 'The principle of

family unity derives from the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons and from human rights law. Most [European Union] Member States provide for a derivative status for family members of refugees. This is also, in UNHCR's experience, generally the most practical way to proceed. However, there are situations where this principle of derivative status is not to be followed, i.e. where family members wish to apply for asylum in their own right, or where the grant of derivative status would be incompatible with their personal status, e.g. because they are nationals of the host country, or because their nationality entitles them to a better standard.'

58 Subject to the verifications which it will be for the referring court to carry out, it does not appear that the applicant in the main proceedings, through her Tunisian nationality or any other element characterising her personal legal status, would be entitled to better treatment in Germany than that resulting from the extension, as a derived right, of the refugee status granted to her father, provided for by the provision at issue in the main proceedings.

59 Lastly, it must be held that the compatibility with Directive 2011/95, and in particular with the reservation in Article 23(2), of a more favourable national provision, such as that at issue in the main proceedings, or its application to a situation such as that of the applicant in the main proceedings, does not depend on whether it is possible and reasonably acceptable for her and her parents to move to Tunisia.

60 As the Advocate General observed in point 93 of his Opinion, the rationale of Article 23 of that directive is to enable the beneficiary of international protection to enjoy the rights which that protection confers on him or her while maintaining the unity of that person's family in the territory of the host Member State. The fact that it is possible for the family of the applicant in the main proceedings to move to Tunisia cannot therefore justify the reservation in paragraph 2 of that provision being understood as precluding her from being granted refugee status, since such an interpretation would involve her father waiving the right to asylum conferred on him in Germany.

61 Furthermore, in those circumstances, the application of legislation allowing refugee status to be granted to family members of a person to whom that status has been granted, when such a possibility for that family to settle in a third country exists, is not such as to call into question the finding made in paragraph 41 above that such legislation is not entirely unconnected with the rationale of international protection.

62 In the light of all the foregoing considerations, the answer to the questions referred is that Article 3 and Article 23(2) of Directive 2011/95 must be interpreted as not precluding a Member State from granting, under more favourable national provisions, as a derived right and for the purpose of maintaining family unity, refugee status to the minor child of a third-country national who has been recognised as having that status under the system established by that directive, including in the case where that child was born in the territory of that Member State and, through that child's other parent, has the nationality of another third country in which he or she would not be at risk of persecution, provided that the child is not caught by a ground for exclusion referred to in Article 12(2) of that directive and that the child is not, through his or her nationality or any other element characterising his or her personal legal status, entitled to better treatment in that Member State than that resulting from the grant of refugee status. It is not relevant in that regard to ascertain whether it is possible and reasonably acceptable for the child and the child's parents to move to that other third country.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Grand Chamber) hereby rules:

Article 3 and Article 23(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted must be interpreted as not precluding a Member State from granting, under more favourable national provisions, as a derived right and for the purpose of maintaining family unity, refugee status to the minor child of a third-country national who has been recognised as having that status under the system established by that directive, including in the case where that child was born in the territory of that Member State and, through that child's other parent, has the nationality of another third country in which he or she would not be at risk of persecution, provided that the child is not caught by a ground for exclusion referred to in Article 12(2) of that directive and that the child is not, through his or her nationality or any other element characterising his or her personal legal status, entitled to better treatment in that Member State than that resulting from the grant of refugee status. It is not relevant in that regard to ascertain whether it is possible and reasonably acceptable for the child and the child's parents to move to that other third country.

[Signatures]

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* Language of the case: German.