ECLI:EU:C:2021:478

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

10 June 2021 (*)

(Reference for a preliminary ruling – Border controls, asylum and immigration – Asylum policy – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 40(2) – Subsequent application – New elements or findings – Concept – Documents the authenticity of which cannot be established or the source of which cannot be objectively verified – Directive 2011/95/EU – Article 4(1) and (2) – Assessment of the evidence – Obligation of the Member State concerned to cooperate)

In Case C-921/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Den Haag, zittingsplaats's-Hertogenbosch (District Court, The Hague, sitting in 's-Hertogenbosch, Netherlands), made by decision of 16 December 2019, received at the Court on the same day, in the proceedings

LH

v

Staatssecretaris van Justitie en Veiligheid,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, N. Wahl, F. Biltgen, L.S. Rossi (Rapporteur) and J. Passer, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– LH, by I.M. van Kuilenburg, advocaat,

– the Netherlands Government, by M.K. Bulterman and H.S. Gijzen, acting as Agents,

– the European Commission, by G. Wils, J. Tomkin and M. Condou-Durande, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 February 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 40(2) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), read in conjunction with Article 4(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) and Articles 47 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between LH and the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands; 'the State Secretary') concerning the latter's rejection of a subsequent application for international protection lodged by LH.

Legal context

EU law

Directive 2011/95

3 Article 4 of Directive 2011/95, headed 'Assessment of facts and circumstances', provides:

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

2. The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

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

…

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

…

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.'

4 Article 14(3) of that directive provides:

'Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

…

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.'

Directive 2013/32

5 Recitals 3, 18, 25 and 36 of Directive 2013/32 state:

'(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951 [*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)], as amended by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

…

(18) 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.

…

(25) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. …

…

(36) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In those cases, Member States should be able to dismiss an application as inadmissible in accordance with the *res judicata* principle.'

6 Article 2 of that directive states as follows:

'For the purposes of this Directive:

…

(b) "application for international protection" or "application" means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU, that can be applied for separately;

…

(q) "subsequent application" means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).'

7 Chapter II of that directive, entitled 'Basic principles and guarantees', contains Articles 6 to 30 of that directive. Article 10(3) of Directive 2013/32 provides:

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

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

…'

8 Article 31 of that directive provides:

'1. Member States shall process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

…

8. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

…

(e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of [Directive 2011/95]; …

…'

9 Article 33(2) of Directive 2013/32 reads as follows:

'Member States may consider an application for international protection as inadmissible only if:

…

(d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of [Directive 2011/95] have arisen or have been presented by the applicant; …

…'

10 Article 40 of that directive, headed 'Subsequent application', provides:

'1. Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive [2011/95].

3. If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive [2011/95], the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

…

5. When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

…'

11 Article 42 of that directive provides:

'1. Member States shall ensure that applicants whose application is subject to a preliminary examination pursuant to Article 40 enjoy the guarantees provided for in Article 12(1).

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 40. Those rules may, inter alia:

(a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;

(b) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview, with the exception of the cases referred to in Article 40(6).

Those rules shall not render impossible the access of applicants to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.'

Netherlands law

12 Article 30a(1) of the Vreemdelingenwet 2000 (Law on Foreign Nationals 2000) of 23 November 2000 (Stb. 2000, No 495), in the version applicable to the dispute in the main proceedings, provides:

'An application for the issue of a residence permit on grounds of asylum for a fixed period under Article 28 may be declared inadmissible within the meaning of Article 33 of [Directive 2013/32], if:

…

d. the foreign national has lodged a subsequent asylum application which he or she has not based on any new elements or findings or in which no new elements or findings have been indicated which could be relevant for the assessment of the application;

…'

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

13 LH, an Afghan national, worked for approximately three and a half years as a driver for the director of an Afghan administration. In autumn 2015, the car driven by LH was subjected to several ambushes, which that director and LH himself always managed to escape. Subsequently, the Taliban allegedly contacted LH on several occasions, threatening to kill him if he did not deliver that director to them. LH then left Afghanistan.

14 On 8 December 2015, LH lodged an application for international protection in the Netherlands. The State Secretary, while taking the view that LH's statements concerning the activities he carried out as a driver and the Taliban's ambushes he faced were credible, considered, by contrast, that LH's statements concerning the individual threats to which he was subjected by the Taliban were not credible.

15 By decision of 8 June 2017, the State Secretary rejected LH's application. That decision became final when the final appeal brought by LH was dismissed by the decision of the Raad van State (Council of State, Netherlands) of 23 March 2018.

16 On 26 September 2018, LH submitted a subsequent request, in which he attempted to substantiate the statements concerning the personal threats that he claims he faced. To that end, he submitted new documents, including the originals of documents of which he had produced copies in the previous proceedings, namely a statement from the fire services in support of his statement that his house in Afghanistan had been set on fire, accompanied by fingerprints of witnesses, a statement from his employer and a copy of his employment contract.

17 Having found, inter alia, that the authenticity of those original documents could not be established on the basis of a desk review, the State Secretary, by decision of 30 August 2019, declared LH's subsequent application inadmissible on the ground that the inability to establish the authenticity of those documents was sufficient in itself for them not to be regarded as new elements or findings.

18 On 4 September 2019, LH appealed, before the referring court, the Rechtbank Den Haag, zittingsplaats's-Hertogenbosch (District Court, The Hague, sitting in 's-Hertogenbosch, Netherlands), against that decision, the enforcement of which was suspended by way of an interlocutory order.

19 In that appeal, LH provides explanations as to the circumstances in which he obtained the original documents in question and the reasons he had been unable to produce them earlier, in the context of the procedure relating to the first application for international protection. However, he claims it is impossible for him to prove the authenticity of those documents since he does not have the necessary means to obtain an expert report to that effect. That said, most of those documents came from the Afghan authorities, namely the Afghan fire service and the Afghan administration for which LH worked. According to LH, it is unreasonable to place the burden of proving the authenticity of such documents on the applicant for international protection alone, when the State Secretary is better placed to carry out the necessary investigations to that end by contacting those Afghan authorities.

20 The referring court notes that the examination carried out by the State Secretary does not in any way suggest that the documents produced by LH in support of his subsequent application for international protection are not authentic, do not come from a competent authority, are false or are inaccurate in terms of content. Thus, the State Secretary does not have any specific doubts as to the authenticity of the documents, but simply considers himself unable to confirm their authenticity. In addition, the State Secretary refused to grant LH a personal interview before finding his subsequent application inadmissible.

21 The referring court states that, according to national case-law, there is no new element or finding if the authenticity of the documents – by which the applicant for international protection intends to demonstrate the existence of such an element or finding – has not been established. According to that case-law, it is for the applicant to demonstrate the authenticity of the documents

by which he supports his subsequent application, although that does not prevent the State Secretary from assisting the applicant to that end by himself carrying out an examination of that authenticity. Nevertheless, that in no way detracts from the applicant's own responsibility.

22 In those circumstances, the referring court considers that, in order to examine whether Netherlands legislation and case-law are consistent with EU law, it is necessary to interpret the concept of 'new elements or findings' within the meaning of Article 40(2) of Directive 2013/32.

23 The concept of 'element', despite appearing in several provisions of that directive, is not defined therein. Thus, in order to interpret that concept, it is necessary also to refer to Article 4 of Directive 2011/95, which makes no distinction between the elements submitted in support of a first application for international protection and those submitted in support of subsequent applications. It is not even a requirement that the authenticity of the documents be demonstrated in order for them to be regarded as constituting a 'new element or finding'. Article 4(2) of Directive 2011/95 simply states that 'all the documentation' at the applicant's disposal are covered by the concept of 'element'.

24 Furthermore, if the taking into consideration and substantive examination of original documents had to be excluded solely because their authenticity cannot be established, that could run counter to the right to asylum, the prohibition on *refoulement* and the right to an effective remedy, as provided for in Articles 18, 19 and 47 of the Charter, respectively.

25 Lastly, the referring court notes that, in the current Netherlands administrative practice, in the case of a first application for international protection, when assessing the credibility of the applicant's account in support of his or her application for asylum, the competent authority takes into consideration documents the authenticity of which is not established. It is only when doubts as to the authenticity of those documents arise in the context of a subsequent application that those doubts constitute a ground for that authority to conclude from the outset that there are no new elements or findings, thereby rendering that application inadmissible.

26 In those circumstances, the Rechtbank Den Haag, zittingsplaats's-Hertogenbosch (District Court of the Hague, sitting in 's-Hertogenbosch) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the determination by a determining authority of a Member State that original documents can never constitute new elements or findings if the authenticity of those documents cannot be established compatible with Article 40(2) of [Directive 2013/32], read in conjunction with Article 4(2) of [Directive 2011/95] and Articles 47 and 52 of the [Charter]? If not, does it make any difference if, in a subsequent application, copies of documents or documents originating from a non-objectively verifiable source are submitted by the applicant?

(2) Must Article 40 of [Directive 2013/32], read in conjunction with Article 4(2) of [Directive 2011/95], be interpreted as allowing the determining authority of a Member State, when assessing documents and assigning probative value to documents, to distinguish between documents submitted in an initial application and those submitted in a subsequent application? Is it permissible for a Member State, upon the production of documents in a subsequent application, no longer to comply with the obligation to cooperate if the authenticity of those documents cannot be established?'

Consideration of the questions referred

The first question

27 By its first question, the referring court asks, in essence, whether Article 40(2) of Directive 2013/32, read in conjunction with Article 4(2) of Directive 2011/95, must be interpreted as precluding national legislation under which any document submitted by an applicant for international protection in support of a subsequent application is automatically regarded as not constituting a 'new element or finding', within the meaning of that provision, where the authenticity of that document cannot be established or the source of such a document cannot be objectively verified.

28 In order to answer that question, it must be borne in mind that, in accordance with the Court's settled case-law, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard not only to its wording but also to the context of the provision and the objective pursued by the legislation in question (judgments of 25 June 2020, *Ministerio Fiscal (Authority likely to receive an application for international protection)*, C-36/20 PPU, EU:C:2020:495, paragraph 53 and the case-law cited, and of 14 January 2021, *The International Protection Appeals Tribunal and Others*, C-322/19 and C-385/19, EU:C:2021:11, paragraph 57).

29 Accordingly, it must, in the first place, be held that the wording of Article 40 of Directive 2013/32 does not define the concept of 'new elements or findings' capable of substantiating a subsequent application.

30 As regards, in the second place, the context of that provision, it should be noted that Article 40 of Directive 2013/32, together with Articles 41 and 42 thereof, forms Section IV of Chapter III, entitled 'Procedures at first instance', of that directive. That chapter also includes Article 31 of that directive, headed 'Examination procedure', paragraphs 1 and 2 of which provide that Member States are (i) to process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II of that directive and, (ii) to ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

31 Within the meaning of Article 2(q) of Directive 2013/32, a subsequent application is an application for international protection characterised by the fact that it was made after a final decision has been taken on a previous application.

32 As a result, pursuant to Article 31(1) of that directive, Member States are to deal with a subsequent application constituting, in itself, an application for international protection in accordance with the basic principles and guarantees of Chapter II of that directive.

33 That said, where an applicant submits a subsequent application for international protection without adducing new evidence or arguments, Member States may, as stated in recital 36 of Directive 2013/32 and as follows from Article 33(2) thereof, dismiss such an application as inadmissible in accordance with the *res judicata* principle. In such a case, it would be disproportionate to oblige those States to carry out a new full examination procedure.

34 Article 40(2) and (3) of Directive 2013/32 thus provides for the processing of subsequent applications in two stages. The purpose of the first stage, which is preliminary in nature, is to verify

the admissibility of those applications, whereas the second stage relates to the examination of the substance of those applications.

35 The first stage also consists of two steps, each step giving rise to verification of the distinct conditions of admissibility laid down by those provisions.

36 Thus, first, Article 40(2) of Directive 2013/32 provides that, for the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d) of that directive, a subsequent application for international protection will be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95.

37 It is only if such new elements or findings exist as compared to the first application for international protection that, in the second place, the examination of the admissibility of the subsequent application continues, pursuant to Article 40(3) of that directive, in order to ascertain whether those new elements and findings add significantly to the likelihood of the applicant qualifying for that status.

38 Consequently, although those two conditions for admissibility must both be satisfied in order for the examination of a subsequent application to continue, in accordance with Article 40(3) of that directive, the fact remains that they are distinct and must not be conflated.

39 In the present case, the referring court wishes to know whether a document, the authenticity and veracity of which cannot be excluded, may constitute a 'new element or finding' within the meaning of Article 40(2) of Directive 2013/32, even though its authenticity cannot be established or its source verified objectively.

40 It should be noted, in that regard, that since Article 40(2) of Directive 2013/32 does not draw any distinction between a first application for international protection and a subsequent application as regards the nature of the elements or findings capable of demonstrating that the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95, the assessment of the facts and circumstances in support of those applications must, in both cases, be carried out in accordance with Article 4 of Directive 2011/95.

41 First of all, Article 4(2) of Directive 2011/95 defines relevant elements to support an application for international protection as those consisting of 'the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection'.

42 Next, Article 4(3)(b) of Directive 2011/95 requires an individual assessment of the application, taking into account, inter alia, the relevant documents submitted by the applicant, without requiring that those documents necessarily be authenticated.

43 Lastly, in accordance with Article 4(5) of Directive 2011/95, where aspects of the applicant's statements contained in the application are not supported by documentary or other evidence, those aspects do not require confirmation where, first, the applicant has made a genuine effort to substantiate his or her application, second, all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant

elements, third, the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case and, fourth, the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and the general credibility of the applicant has been established.

44 It follows that any document submitted by the applicant in support of his or her application for international protection must be regarded as an element of that application to be taken into account, in accordance with Article 4(1) of Directive 2011/95, and that, consequently, the inability to authenticate that document or the absence of any objectively verifiable source cannot, in itself, justify the exclusion of such a document from the examination which the determining authority is required to carry out, pursuant to Article 31 of Directive 2013/32.

45 In the case of a subsequent application, the fact that a document has not been authenticated cannot therefore lead to the conclusion from the outset that that application is inadmissible, without an assessment having been carried out as to whether that document constitutes a new finding or element and, if so, whether it significantly increases the likelihood of the applicant qualifying for international protection status under Directive 2011/95.

46 As the Advocate General observed, in essence, in point 62 of his Opinion, such an interpretation is confirmed by the fact that, according to Article 31(8)(e) of Directive 2013/32, even false representations justify the rejection of an application for international protection only if they render that application unconvincing, which implies that they were previously considered admissible and were examined by the competent authority.

47 In the third place, the interpretation of Article 40(2) of Directive 2013/32, which is thus apparent from the context of that provision, is also confirmed by the objectives of that directive.

48 It follows from recitals 3, 18 and 25 of Directive 2013/32 that that directive seeks to establish a Common European Asylum System, in which, first, every applicant should have effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure and, second, a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

49 Furthermore, as regards the procedure for verifying the admissibility of a subsequent application, that procedure seeks, as is apparent from recital 36 of Directive 2013/32, to allow Member States to dismiss as inadmissible any subsequent application made in the absence of any new element or finding in order to comply with the principle of *res judicata* which applies to an earlier decision.

50 It follows that the examination of whether a subsequent application is based on new elements or findings which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95 should be confined to ascertaining whether, in support of that application, there are elements or findings which were not examined in the context of the decision taken on the previous application and on which that decision, having the force of *res judicata*, could not be based.

51 A different interpretation of Article 40(2) of Directive 2013/32 that implies that the determining authority would, at the stage of verifying the presence of new elements or findings in

support of the subsequent application, carry out an assessment of those elements and findings – aside from the fact that it would confuse the various stages of the procedure for examining such an application – would run counter to the objective of Directive 2013/32 of ensuring that applications for international protection are examined as soon as possible.

52 Similarly, an interpretation of that provision to the effect that any document submitted in support of a subsequent application is admissible only in so far as that document is authenticated would fail to have regard to that directive's objective of ensuring an adequate and complete examination of such an application.

53 Therefore, it is only in the context of the second stage of the verification of the admissibility of a subsequent application, as described in paragraph 37 above, that the assessment of the determining authority must relate to the verification of whether the new elements and findings which have arisen or been submitted by the applicant are capable of significantly increasing the likelihood that the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95.

54 In the light of the foregoing considerations, the answer to the first question is that Article 40(2) of Directive 2013/32, read in conjunction with Article 4(2) of Directive 2011/95, must be interpreted as precluding national legislation under which any document submitted by an applicant for international protection in support of a subsequent application is automatically considered not to constitute a 'new element or finding', within the meaning of that provision, when the authenticity of that document cannot be established or its source objectively verified.

The second question

55 By its second question, the referring court asks, in essence, whether Article 40 of Directive 2013/32, read in conjunction with Article 4(1) and (2) of Directive 2011/95, must be interpreted as meaning, first, that the assessment of the evidence submitted in support of an application for international protection may vary according to whether it is a first application or a subsequent application and, second, whether a Member State is permitted not to cooperate with an applicant for the purpose of assessing the relevant elements of his or her subsequent application, when that applicant submits, in support of that application, documents the authenticity of which cannot be established.

56 The referring court asks that question in the light of the current Netherlands administrative practice, referred to in paragraph 25 above, according to which, when making a first application, the competent authority takes into consideration, when assessing the credibility of the applicant's account in support of his or her application for asylum, documents the authenticity of which has not been established, whereas, in a subsequent application, the uncertainty as to the authenticity of those documents constitutes, in itself, a ground for that authority to conclude that there are no new elements or findings, which automatically renders that latter application inadmissible.

57 In order to answer this question, it should be noted, first, that it is in no way apparent from Articles 40 to 42 of Directive 2013/32, concerning subsequent applications, that the EU legislature intended to allow Member States to provide that the assessment of the evidence submitted in support of an application for international protection may vary depending on whether it is a first application or a subsequent application.

58 On the contrary, as is apparent from paragraph 40 above, Article 40(2) of Directive 2013/32 does not draw any distinction between a first application and a subsequent application as regards the

elements or findings capable of demonstrating that the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95; the assessment of the facts and circumstances in support of those applications must, in both cases, be carried out in accordance with Article 4 of Directive 2011/95.

59 Thus, while the fact that a first application has already been the subject of an exhaustive examination justifies the Member States first examining, as a preliminary matter, the admissibility of a subsequent application in the light of, in particular, the existence, in support of that application, of new elements or findings which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95, that fact cannot, by contrast, also justify that an assessment of those elements or findings is not carried out, as part of that preliminary assessment, in accordance with Article 10(3)(a) of Directive 2013/32 and, as the Advocate General also stated in points 65 and 66 of his Opinion, Article 4 of Directive 2011/95.

60 Second, in accordance with Article 4(1) of Directive 2011/95, it is the duty of the Member State concerned to assess, in cooperation with the applicant, the relevant elements of the application for international protection.

61 Thus, as is apparent from paragraph 44 above, in so far as a document constitutes evidence produced in support of the application, even if its authenticity cannot be established or its source cannot be objectively verified, the Member State concerned is required, in accordance with that provision, to assess that document in cooperation with the applicant.

62 Moreover, it should be noted in that context that, in order for the submission of such a document to lead, under Article 40(3) of Directive 2013/32, to the substantive examination being carried out in accordance with Chapter II thereof, it is not necessary for the Member State to be convinced that that new document adequately supports the subsequent application; it is sufficient that that document significantly adds to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive 2011/95.

63 In the light of the foregoing, the answer to the second question is that Article 40 of Directive 2013/32, read in conjunction with Article 4(1) and (2) of Directive 2011/95, must be interpreted as meaning, first, that the assessment of the evidence submitted in support of an application for international protection cannot vary according to whether the application is a first application or a subsequent application and, second, that a Member State is required to cooperate with an applicant for the purpose of assessing the relevant elements of his or her subsequent application, when that applicant submits, in support of that application, documents the authenticity of which cannot be established.

Costs

64 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 (Third Chamber) hereby rules:

1. **Article 40(2) 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, read in conjunction with Article 4(2) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country**

nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as precluding national legislation under which any document submitted by an applicant for international protection in support of a subsequent application is automatically considered not to constitute a 'new element or finding', within the meaning of that provision, when the authenticity of that document cannot be established or its source objectively verified.

2. **Article 40 of Directive 2013/32, read in conjunction with Article 4(1) and (2) of Directive 2011/95, must be interpreted as meaning, first, that the assessment of the evidence submitted in support of an application for international protection cannot vary according to whether the application is a first application or a subsequent application and, second, that a Member State is required to cooperate with an applicant for the purpose of assessing the relevant elements of his or her subsequent application, when that applicant submits, in support of that application, documents the authenticity of which cannot be established.**

[Signatures]

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* Language of the case: Dutch.