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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

4 June 2026 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Border controls, asylum and immigration – Asylum policy – Directive 2013/33/EU – Standards for the reception of applicants for international protection – Article 2(g) – Material reception conditions – Article 17(2) – Requirement as to a guaranteed adequate standard of living – Applicant for international protection subject to a transfer decision – Provision of the material reception conditions excluding benefits in kind covering clothing, everyday items and consumables, and without payment of the financial allowance intended to cover basic personal needs – Article 20(1)(c) – Reduction or withdrawal of material reception conditions due to the lodging of a subsequent application – Directive 2013/32/EU – Article 2(q) – Concept of 'subsequent application' – Applicability – Regulation (EU) No 604/2013 – Procedure for determining the responsible Member State)

In Case C621/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundessozialgericht (Federal Social Court, Germany), made by decision of 25 July 2024, received at the Court on 24 September 2024, in the proceedings

Landkreis Schweinfurt

v

FB,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, J. Passer, E. Regan, D. Gratsias (Rapporteur) and B. Smulders, 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 4 September 2025,

after considering the observations submitted on behalf of:

– FB, by K. Schank, Rechtsanwalt,

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

– the Belgian Government, by L. Jans and M. Van Regemorter, acting as Agents, and A. Detheux, advocaat,

– the European Commission, by A. Azéma, F. Blanc, M. Debieuvre, E. Garello, A. Katsimerou and N. Schaeffer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(q), and Articles 27 and 28 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), of Article 17(2) and (5), Article 20(1)(c) and Article 20(5) and (6) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 20q13 L 180, p. 96), and Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

2 The request has been made in proceedings between FB, an applicant for international protection, and the Landkreis Schweinfurt (District of Schweinfurt, Germany) concerning the lawfulness of the latter's decision to withdraw from FB the benefits in kind covering clothing, everyday items and consumables, and a financial allowance intended to cover his basic personal needs other than those provided in kind, following the rejection of his application for international protection as inadmissible and the decision ordering his removal to Romania.

Legal context

European Union law

Directive 2013/32

3 Recital 53 of Directive 2013/32 states:

'This Directive does not deal with procedures between Member States governed by Regulation [No 604/2013].'

4 Article 2(q) of that directive, entitled 'Definitions', provides:

'For the purposes of this Directive:

…

(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).'

5 Article 27 of that directive, entitled 'Procedure in the event of withdrawal of the application', provides, in paragraph 1 thereof:

‘In so far as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his or her application for international protection, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application.’

6 Article 28 of that directive, entitled ‘Procedure in the event of implicit withdrawal or abandonment of the application’, is worded as follows:

‘1. When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 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)], to reject the application.

…

3. This Article shall be without prejudice to Regulation [No 604/2013].’

7 Under Article 33 of Directive 2013/32, entitled ‘Inadmissible applications’:

‘1. In addition to cases in which an application is not examined in accordance with Regulation [No 604/2013], Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive [2011/95] where an application is considered inadmissible pursuant to this Article.

2. 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; …

…’

8 Article 40 of that directive, entitled ‘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, in so far 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].

…

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).

…'

Directive 2013/33

9 Pursuant to recitals 5, 7, 8, 11 and 35 of Directive 2013/33:

'(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.

…

(7) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying [Council] Directive 2003/9/EC [of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18)] with a view to ensuring improved reception conditions for applicants for international protection …

(8) In order to ensure equal treatment of applicants throughout the [European] Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants.

…

(11) Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

…

(35) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union [('the Charter')]. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of [Article 1] … of the Charter and has to be implemented accordingly.'

10 Article 2 of that directive, entitled 'Definitions', provides:

'For the purposes of this Directive:

…

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

…

(f) "reception conditions": means the full set of measures that Member States grant to applicants in accordance with this Directive;

(g) “material reception conditions”: means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;

…’

11 Article 3 of that directive, entitled ‘Scope’, provides, in paragraph 1 thereof:

‘This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.’

12 Article 17 of that directive, entitled ‘General rules on material reception conditions and health care’, states, in paragraphs 2 to 5 thereof:

‘2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. …

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time. …

5. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.’

13 Article 20 of Directive 2013/33, entitled ‘Reduction or withdrawal of material reception conditions’, is worded as follows:

‘1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

…

(c) has lodged a subsequent application as defined in Article 2(q) of Directive [2013/32].

…

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.'

Regulation No 604/2013

14 Recital 11 of Regulation No 604/2013 states:

'Directive [2013/33] should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.'

15 Article 2 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation:

…

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

(d) "examination of an application for international protection" means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive [2013/32] and Directive [2011/95], except for procedures for determining the Member State responsible in accordance with this Regulation;

…'

16 Article 27 of that regulation, entitled 'Remedies', provides, in paragraphs 3 and 4 thereof:

'3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or

(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or

(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.'

17 Article 29 of that regulation, entitled 'Modalities and time limits', states, in paragraph 2 thereof:

'Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. …'

German law

The Law on asylum

18 Paragraph 29(1)(1)(a) of the Asylgesetz (Law on asylum) of 26 June 1992 (BGBl. 1992 I, p. 1126), as amended on 2 September 2008 (BGBl. 2008 I, p. 1798), entitled 'Inadmissible applications', provides:

'An application for asylum shall be inadmissible where:

1. another State

(a) in accordance with Regulation [No 604/2013]

…

is responsible for processing the asylum application …'

19 Paragraph 34a of the Law on asylum is worded as follows in subparagraph 1 thereof:

'Where a foreign national is to be removed … to a country responsible for processing the asylum application …, the Federal Office for Migration and Refugees shall order the removal to that country as soon as it has been ascertained that the removal can be carried out. This shall also apply where the foreign national lodged the asylum application in another State which is responsible for processing the asylum application based on the provisions of EU law … or an international treaty, or where that foreign national withdrew the application before the Federal Office for Migration and Refugees has made a decision. …'

The law on benefits for asylum seekers

20 Under Paragraph 1(1) of the Asylbewerberleistungsgesetz (Law on benefits for asylum seekers) of 30 June 1993 (BGBl. 1993 I, p. 1074), as amended on 5 August 1997 (BGBl. 1997 I, p. 2022):

'Those entitled to benefits under this Law are foreign nationals who actually reside within the federal territory and who

…

5. are under a duty to leave the country, even if a notice of intention to deport is not yet or is no longer enforceable …'

21 Paragraph 1a(1) and (7) of that law is worded as follows:

'(1) Those entitled to benefits under Paragraph 1(1)(5) for whom a departure date and an opportunity to leave the country have been determined shall have no claim to benefits granted pursuant to Paragraphs 2, 3 and 6 from the day following the departure date, unless the departure could not be carried out for reasons not attributable to them. Until their departure or until the implementation of their removal, they shall be granted only benefits covering their food and housing needs, including heating, as well as personal and health care. The other benefits set out in the first sentence of Paragraph 3(1) may be granted only in special circumstances. The benefits shall be provided in kind.

…

(7) Those entitled to benefits under Paragraph 1(1)(1) or (5) whose asylum applications have been rejected as inadmissible by a decision of the Federal Office for Migration and Refugees pursuant to Paragraph 29(1) of the Law on asylum, read in conjunction with Paragraph 31(6) of that law, and for whom a removal order has been issued under the second alternative of the first sentence in Paragraph 34a(1) of that law, shall receive benefits only in accordance with subparagraph 1, even if that decision has not yet become final. The first sentence shall not apply where a court has ordered the suspensive effect of the appeal against the removal order.'

22 Paragraph 3 of that law provides, in subparagraph 1 thereof:

‘Those entitled to benefits under Paragraph 1 shall receive benefits to cover their needs for food, housing, heating, clothing, health care and everyday items and consumables (basic needs). In addition, they shall be granted benefits to cover personal needs in daily life (basic personal needs).’

23 Paragraph 6(1) of that law provides:

‘Other benefits may in particular be granted if they are necessary in individual cases to ensure subsistence or health, to meet the special needs of children or to fulfil an administrative duty to cooperate. …’

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

24 FB, an Afghan national, entered Germany for the first time on 25 August 2021 and made an application for international protection, which was registered on 6 September 2021.

25 After having consulted the Eurodac database, which showed that the person concerned had already submitted an application for international protection in Romania on 6 August 2021 and had later implicitly withdrawn it, the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) (‘the Federal Office’) requested the Romanian authorities to take charge of him, a request which was accepted.

26 By decision of 25 October 2021, the Federal Office set the time limit for FB’s transfer to Romania as 22 April 2022 and rejected his application for international protection as inadmissible. It also ordered his removal to Romania. The application for interim relief against that decision and the appeal proceedings which followed were unsuccessful. However, FB’s transfer to Romania could not take place due to, in particular, the decision of the Romanian authorities to no longer accept such transfers from 1 March 2022 because of the war in Ukraine.

27 Since the beginning of September 2021, FB had been housed in a reception centre in the District of Schweinfurt, where, on the basis of Paragraphs 3 and 3a of the Law on benefits for asylum seekers, he received food, housing and heating, housing maintenance, household energy, clothing, and bodycare and hygiene products, as well as Wi-Fi access. In addition, from the same date, FB received from that district a financial allowance intended to cover his basic personal needs.

28 However, with respect to the period from 1 January 2022 to 23 February 2022, the date on which FB moved into another district (‘the period at issue in the main proceedings’), the District of Schweinfurt, relying on Paragraph 1a(7) of the Law on benefits for asylum seekers, read in conjunction with Paragraph 1a(1) of that law, decided to no longer grant him the benefits intended to cover his basic needs for clothing, everyday items and consumables, and the financial allowance intended to cover his basic personal needs. Thus, that district granted him only certain benefits in kind, namely food, housing and heating, personal and health care, and medical assistance in case of illness since, according to that district, there was no justification for granting reception conditions beyond those benefits.

29 By judgment of 20 January 2023, the Sozialgericht Würzburg (Social Court, Würzburg, Germany) dismissed FB’s action against the decision of the District of Schweinfurt referred to in the preceding paragraph of the present judgment. By judgment of 31 May 2023, the Bayerisches Landessozialgericht (Higher Social Court, Bavaria, Germany) upheld the action on the ground that a reduction pursuant to Paragraph 1a(7) of the Law on benefits for asylum seekers required conduct in breach of an obligation, which was not the case here.

30 The District of Schweinfurt brought an appeal on a point of law (*Revision*) against that judgment before the Bundessozialgericht (Federal Social Court, Germany), which is the referring court.

31 That court is uncertain as to whether the provisions of the Law on benefits for asylum seekers, in particular Paragraph 1a(7), read in conjunction with Paragraph 1a(1), pursuant to which an asylum seeker who is under an obligation to leave the country may, for the period at issue in the main proceedings, claim only material reception conditions reduced to food and housing needs, including heating, and personal and health care, are compatible with EU law.

32 In that regard, in the first place, the referring court explains that Paragraph 3 of the Law on benefits for asylum seekers differentiates between, first, material reception conditions relating to basic needs, namely food, housing, heating, clothing, healthcare, and everyday items and consumables, and, second, basic personal needs, namely expenses for transport, communication, leisure, entertainment, culture, accommodation and food services, and other goods and services. The latter are paid for by means of a flat-rate sum calculated by reference to the corresponding flat-rate social assistance benefits for nationals residing on national territory who have no income or assets of their own. Moreover, that court states that Paragraph 6 of that law sets out other material reception conditions in certain specific cases.

33 In the second place, the referring court observes that, in the present case, in accordance with Paragraph 1a(7) of the Law on benefits for asylum seekers, read in conjunction with Paragraph 1a(1) of that law, some of the material reception conditions covering FB's basic needs, namely clothing, everyday items and consumables, and all of the financial allowance covering his basic personal needs, were withdrawn from FB during the period at issue in the main proceedings. During that period, the transfer time limit laid down in Regulation No 604/2013 was running, so that the conditions for the application of the abovementioned provisions were satisfied.

34 In the third place, that court reiterates that, pursuant to Article 17(2) of Directive 2013/33, material reception conditions must ensure an adequate standard of living for applicants for international protection, which guarantees their subsistence and protects their physical and mental health. Furthermore, in accordance with Article 2(g) of that directive, Member States must take charge of housing, food and clothing, provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance.

35 In that context, the referring court states that, according to the case-law of the Court of Justice, the amount of the financial aid granted must be sufficient to ensure a standard of living adequate for the health of applicants for international protection and capable of ensuring their subsistence (judgment of 27 February 2014, *Saciri and Others*, C79/13, EU:C:2014:103, paragraph 37) and that, as it follows from recital 35 of Directive 2013/33, respect for human dignity must be fully ensured. The referring court also states that it follows from the above case-law that, in the context of Article 20 of Directive 2013/33, respect for human dignity requires the person concerned not finding himself or herself in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity and that, in any event, even in the case of punishment, material reception conditions, namely housing, food and clothing, must be ensured at any time (see, to that effect, judgment of 12 November 2019, *Haqbin*, C233/18, EU:C:2019:956, paragraphs 46 and 56).

36 However, the referring court observes that the Court has not yet clarified whether an adequate standard of living within the meaning of Article 17(2) and (5) of that directive guarantees the satisfaction of needs that are more extensive than the minimum level referred to in Article 20 of that directive. If that question were to be answered in the affirmative, the question also arises as to whether national legislation that makes provision for housing, food, personal and health care, treatment in the event of illness and, in certain cases and depending on the circumstances, clothing and everyday items and consumables, meets the minimum level prescribed in Article 17(2) and (5) of that directive.

37 Moreover, that court is of the view that the main proceedings also raise the question whether the second sentence in Article 17(5) of Directive 2013/33 allows, with regard to the second option contained therein, a further differentiation to be made for benefits granted to applicants for international protection depending on the probable length of their short-term stay or their status as persons obliged to leave the country, given the lower level of material reception conditions compared to benefits granted to nationals. According to that court, that would allow the Member State to grant those applicants, during the transfer period provided for in Regulation No 604/2013, only the level of benefits described in the context of the first question referred for a preliminary ruling, and only for a period of six months, while other applicants would receive more favourable benefits, albeit still at a lower level than the benefits received by nationals.

38 In the fourth place, by relying on paragraph 57 of the judgment of 27 September 2012, *Cimade and GISTI* (C179/11, EU:C:2012:594), the referring court takes the view that, should the national level of the material reception conditions at issue be lower than the level which must be ensured pursuant to Article 17(2) and (5) of Directive 2013/33, the restriction of the right to those conditions, as provided for by the national legislation at issue, may be justified only if the conditions set out in Article 20(l)(c) of that directive are satisfied. However, that provision requires a 'subsequent application' within the meaning of Article 2(q) of Directive 2013/32.

39 In that regard, that court observes that none of those provisions specify whether the concept of 'subsequent application' refers exclusively to a situation where two applications for international protection are made and assessed by the same Member State, or whether that concept also covers a situation where a number of Member States are involved, and in which the previous international protection procedure was conducted by a Member State other than the one where the subsequent application is lodged. Furthermore, the question whether the same conditions apply in the context of procedures under Regulation No 604/2013 has likewise not been clarified.

40 Should it be appropriate to accept that there is a subsequent application, even where the previous international protection procedure was conducted by a first Member State, other than the one in which that application is lodged, the referring court observes that it has not yet been clarified whether the fact that the applicant had previously lodged an application for international protection in that first Member State and that the procedure was discontinued by that Member State on the ground that the applicant did not pursue the procedure in that Member State, or that the application was implicitly or formally withdrawn, precludes a finding that a 'subsequent application' exists. According to that court, the question also arises as to how to determine the relevant time for assessing such an application and, in particular, whether the application made in the second Member State, in the present case Germany, prior to the formal conclusion of the procedure under Article 27 or Article 28 of Directive 2013/32, in the present case Romania, may be regarded as a 'subsequent application' within the meaning of Article 20(1)(c) of Directive 2013/33.

41 Should the latter provision be applicable to the dispute in the main proceedings, the referring court takes the view that a reduction of the material reception conditions, such as the one in the case of FB during the period at issue in the main proceedings, meets the requirements set out in Article 20(5) and (6) of that directive. In that regard, that court states that, in order to assess the scope of such a reduction in response to a subsequent application, the fact that the person concerned has the possibility to shorten significantly the duration of that reduction by voluntarily leaving the country, which can reasonably be expected under the Common European Asylum System, should be taken into account.

42 In those circumstances, the Bundessozialgericht (Federal Social Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does [the legislation] of a Member State that only grants applicants for international protection, depending on their status as persons obliged to leave the country within the time limit for transfers under

Regulation [No 604/2013], a right to accommodation, food, personal care and health and treatment in the event of illness, and, depending on the circumstances of the individual case, clothing, [everyday items] and consumables, meet the minimum level described in Article 17(2) and (5) of Directive [2013/33]?

If [Q]uestion 1 is answered in the negative:

(2)(a) Is [Article 20(1)(c)] of Directive [2013/33] in conjunction with Article 2(q) of Directive [2013/32] to be interpreted as meaning that a subsequent application also covers cases in which the applicant has already previously lodged an application for international protection in another Member State and, on that basis, the [Federal Office] has rejected the application as inadmissible under Regulation No 604/2013 and ordered the applicant's removal?

(b) Is the question of whether there is a "subsequent application" within the meaning of Article 2(q) of Directive [2013/32] in this situation dependent on the time of a withdrawal or the time of a decision of the other Member State under Article 27 or Article 28 of [that directive]?

(c) Is [Article 20(1)(c)] in conjunction with Article 20(5) and (6) of Directive [2013/33] [and the Charter] to be interpreted as meaning that it is permissible to [reduce] reception conditions to benefits covering food and accommodation, including heating, as well as personal [and health care] and benefits in the event of illness and, depending on the individual case, clothing, [everyday items] and consumables?'

Consideration of the questions referred

Admissibility

43 At the outset, it should be noted that the questions put by the referring court are based on the premiss that Directive 2013/33 was applicable to FB's situation during the period at issue in the main proceedings even though the decision of the Federal Office rejecting his application for international protection as inadmissible and setting the time limit for his transfer to Romania as 22 April 2022 had become final.

44 Without expressly calling into question the admissibility of those questions, the German Government disputed the merits of that premiss at the hearing by submitting, in essence, that, pursuant to Article 3(1) of Directive 2013/33, that directive does not apply to applicants for international protection 'allowed to remain on the territory as applicants' within the meaning of that provision. However, according to that government, that was not FB's situation during the period at issue in the main proceedings, since, under Article 27(3)(a) of Regulation No 604/2013, an appeal against a transfer decision or a review of such a decision confers upon the person concerned only the right to remain in the Member State concerned pending the outcome of the appeal or request for review.

45 However, it is clear that that line of argument of the German Government is based on a misinterpretation of Article 27(3)(a) of Regulation No 604/2013.

46 Suffice it to state, in that regard, that that provision sets out only one of the options for Member States to provide the persons concerned with a remedy which may lead to the suspension of the implementation of the transfer decision taken against them, the other options being set out in Article 27(3)(b), Article 27(3)(c) and Article 27(4) of that regulation respectively. Article 27 seeks to ensure effective judicial protection for those persons in the context of such decisions, so that, where the implementation of the transfer decision has been suspended under one of those provisions, the transfer time limit begins to run only from the time when the transfer decision at issue has become final (see, to that effect, judgment of 30 March 2023, *Staatssecretaris van Justitie en Veiligheid (Suspension of the transfer time limit on appeal)*, C556/21, EU:C:2023:272, paragraphs 19 to 24 and the case-law cited).

47 Consequently, contrary to what the German Government appears to claim, Article 27(3)(a) of that regulation, which aims merely to allow the person concerned to remain on the territory of the Member State which adopted a transfer decision against that person until conclusion of the appeal or request for review, does not mean that, in the event that the appeal or the request for review is rejected, that person automatically ceases to be allowed to stay on the territory of that Member State as an 'applicant' within the meaning of Article 3(1) of Directive 2013/33.

48 As the Court has repeatedly observed, that directive governs the reception conditions of applicants for international protection, including those subject to an enforceable transfer decision. In that regard, it is expressly stated in recital 11 of Regulation No 604/2013 that Directive 2013/33 applies to the procedure for determining the Member State responsible for examining an application for international protection, as regulated under that regulation. It follows that the obligation for the Member State which adopted a transfer decision against an applicant to grant material reception conditions to that applicant ceases only when the applicant has actually been transferred to the requested Member State (see, to that effect, judgment of 14 January 2021, *The International Protection Appeals Tribunal and Others*, C322/19 and C385/19, EU:C:2021:11, paragraphs 66 to 68 and the case-law cited, and order of 26 March 2021, *Fedasil*, C134/21, EU:C:2021:257, paragraph 41 and the case-law cited).

49 Therefore, the referring court was right to find that Directive 2013/33 was applicable to FB's situation during the period at issue in the main proceedings, with the result that the questions that it has put to the Court are admissible.

Question 1

50 As a preliminary point, it should be borne in mind that, according to settled case-law, 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 determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 4 October 2024, *Bouskoura*, C387/24 PPU, EU:C:2024:868, paragraph 36 and the case-law cited).

51 Thus, it is apparent from the request for a preliminary ruling that, by its first question, the referring court seeks clarification as to the interpretation of Article 17(2) and (5) and Article 20(1)(c) of Directive 2013/33 in view of national legislation which provides that, where an application for international protection was rejected as inadmissible because of the applicant's transfer to the Member State responsible for examining that application, the material reception conditions granted to that applicant are reduced, so that they no longer include the benefits in kind covering clothing, everyday items and consumables, or all of the financial allowance intended to cover the basic personal needs of that applicant, except in special cases.

52 As regards Article 17(5) of that directive, it should be observed that, as is clear from its wording, that provision intends merely to lay down the criteria for determining the amount of financial allowances or vouchers granted to applicants for international protection. Therefore, even though the first sentence of that paragraph states that the amount of those financial allowances or those vouchers 'shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals', the second sentence of that paragraph specifies that that treatment may be less favourable 'where those levels, applied for nationals [of that Member State], aim to ensure a standard of living higher than that prescribed for applicants under this Directive'. Furthermore, among the circumstances that may justify a less favourable treatment compared to nationals of the Member State concerned, that provision mentions the case where 'material support is partially

provided in kind'. It follows that Article 17(5) of that directive does not regulate whether an applicant for international protection, due to an enforceable transfer decision, may be deprived of certain benefits in kind and all of the financial allowance which would normally be paid to that applicant without such a decision.

53 By contrast, first, as is apparent from the definitions in Article 2(f) and (g) of Directive 2013/33, 'material reception conditions' in Article 2(g) of that directive means the full set of measures that Member States, in accordance with the directive, grant to applicants for international protection, which include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance (judgment of 12 November 2019, *Haqbin*, C233/18, EU:C:2019:956, paragraph 32).

54 Second, Article 17(2) of that directive provides, in the first subparagraph thereof, that Member States are to ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

55 It must therefore be considered that, by its first question, the referring court asks, in essence, whether Article 17(2) of Directive 2013/33, read in conjunction with Article 2(g) of that directive, must be interpreted as precluding national legislation which provides that, where an application for international protection has been rejected as inadmissible, because another Member State is responsible for examining that application within the meaning of Regulation No 604/2013, and the decision concerning the transfer to that other Member State is enforceable, the material reception conditions granted to that applicant are reduced so that they no longer include, in particular, the benefits in kind covering clothing, everyday items and consumables, except in special cases, or the financial allowance intended to cover the basic personal needs of that applicant.

56 In accordance with settled case-law, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 12 February 2026, *Stichting Koskea*, C490/24, EU:C:2026:89, paragraph 23).

57 In the first place, it follows from the wording of Article 2(g) of Directive 2013/33 that material reception conditions granted by Member States to applicants for international protection in accordance with that directive must necessarily include measures relating to housing, food and clothing, provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance.

58 It follows from the wording of Article 17(2) of that directive that 'Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health'.

59 Accordingly, inasmuch as it lays down a requirement to guarantee an 'adequate' standard of living for applicants for international protection, which is linked to 'material reception conditions' within the meaning of Article 2(g) of Directive 2013/33, Article 17(2) of that directive implies that any measures in that regard must include, at the very least, provision of housing, food and clothing, either in kind or, in an equivalent way, as financial allowances or in vouchers, and a daily expenses allowance, without prejudice to the application of Article 17(3) and (4) of that directive. That requirement thus concerns the minimal threshold that those conditions must satisfy in order to ensure the subsistence of applicants and to protect their physical and mental health.

60 Moreover, it must be observed that an 'adequate' standard of living, within the meaning of Article 17(2) of Directive 2013/33, cannot be achieved in the absence of one of those conditions and, in

particular, given the characteristics of the national legislation with which the present question for a preliminary ruling is concerned, in the absence of any measures concerning clothing and payment of a daily expenses allowance.

61 First, as regards clothing, alongside housing, food and personal care, it is one of the most basic needs, so that an applicant for international protection cannot be deprived of the possibility of meeting such a need.

62 Second, as regards payment of a daily expenses allowance, as the Advocate General highlighted, in essence, in point 67 of his Opinion, such an allowance is necessary to confer on the applicant for international protection a minimum degree of autonomy, by allowing that applicant, in particular, to obtain, in addition to housing, food and clothing, other everyday items and consumables which are necessary to meet the applicant's basic needs, such as travel tickets, means of communication or hygiene products, and to ensure a minimum level of participation in the social and cultural life of the Member State on whose territory the applicant resides. That allowance contributes therefore to ensuring the subsistence of the applicant and to protecting the applicant's physical and mental health.

63 It follows that the lack of any measures to cover the clothing needs of applicants for international protection and the lack of a daily expenses allowance, cannot, in any case, be compatible with the requirement of an 'adequate' standard of living within the meaning of Article 17(2) of that directive.

64 Therefore, a failure to make such provision cannot be justified by the fact that the applicant for international protection concerned is subject to an enforceable transfer decision.

65 That interpretation is consistent with the context of Article 2(g) and Article 17(2) of Directive 2013/33.

66 First, as follows from paragraph 48 of the present judgment, given that the provisions of Directive 2013/33 apply to applicants for international protection, including where there is an enforceable transfer decision, the obligations on the Member State on whose territory those applicants reside under that directive cease only when the applicants have actually been transferred to the requested Member State.

67 Second, Article 17 of Directive 2013/33, which sets out the general rules on material reception conditions and health care, does not contain any provision capable of being interpreted as authorising Member States to introduce, merely because of the adoption of an enforceable transfer decision against the applicant for international protection, differences between that applicant and other applicants with regard to the existence or the level of the material reception conditions referred to in Article 2(g) of that directive.

68 Under Article 17(3) and (4) of that directive, Member States are only authorised, on the one hand, to make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence and, on the other, where applicants have sufficient resources, for example if they have been working for a reasonable period of time, to require those applicants to cover or contribute to the cost of the material reception conditions and of health care provided for by this directive.

69 Article 17(5) of that directive, also mentioned by the referring court in its first question, merely specifies, as has been observed in paragraph 52 of the present judgment, the conditions under which Member States may provide, as regards the amount of the financial allowances or vouchers granted to applicants for international protection, less favourable treatment compared with nationals, while leaving unchanged the obligation for those States to ensure an adequate standard of living for those applicants, including where material aid is partially provided in kind to the applicant concerned.

70 Third, Article 20 of Directive 2013/33, entitled ‘Reduction or withdrawal of material reception conditions’, lists the circumstances under which the benefit of such conditions may be reduced or withdrawn, with the result that, apart from those circumstances, and without prejudice to the application, by the Member States, of Article 17(3) and (4) of that directive, as stated in paragraph 68 of the present judgment, Member States may not reduce or cancel material reception conditions. None of the circumstances stated in that article concern the fact that an applicant for international protection is subject to an enforceable transfer decision.

71 That interpretation is supported by the objectives pursued by Directive 2013/33. As highlighted, in essence, by the Advocate General in point 44 of his Opinion, it follows from recitals 11 and 35 of that directive that the adoption of standards for the reception of applicants for international protection aims to ensure that they have a dignified standard of living and comparable living conditions in all Member States and respect for their fundamental rights. National legislation which cancels benefits concerning, in particular, clothing, on the sole ground that the applicant concerned is subject to an enforceable transfer decision, cannot be compatible with those objectives.

72 In the light of all the foregoing considerations, the answer to Question 1 is that Article17(2) of Directive 2013/33, read in conjunction with Article 2(g) of that directive, must be interpreted as precluding national legislation which provides that, where an application for international protection has been rejected as inadmissible, because another Member State is responsible for examining that application within the meaning of Regulation No 604/2013, and the decision concerning the transfer to that other Member State is enforceable, the material reception conditions granted to that applicant are reduced so that they no longer include, in particular, the benefits in kind covering clothing, everyday items and consumables, except in special cases, or the financial allowance intended to cover the basic personal needs of that applicant.

Question 2(a)

73 By Question 2(a), the referring court asks, in essence, whether Article 20(1)(c) of Directive 2013/33, read in conjunction with Article 2(q) of Directive 2013/32, must be interpreted as meaning that the concept of ‘subsequent application’, within the meaning of those provisions, also covers a situation where a Member State has, first, rejected an application for international protection as inadmissible on the ground that the applicant has already made such an application in another Member State which is responsible for examining that application, within the meaning of Regulation No 604/2013, and, second, orders, on that basis, the removal of that applicant in order to transfer him or her to that other Member State, in accordance with that regulation.

74 As provided in Article 20(1)(c) of Directive 2013/33, ‘Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant has lodged a subsequent application as defined in Article 2(q) of Directive [2013/32]’.

75 Under that provision, ‘subsequent application’ must be understood as 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) of Directive 2013/32.

76 It should also be noted that, pursuant to Article 33(2)(d) of that directive, Member States may consider an application for international protection to be inadmissible where that application is a ‘subsequent application’ in which 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.

77 Moreover, in order to take a decision on the admissibility of such a ‘subsequent application’, Article 40 of Directive 2013/32 provides for a specific procedure in which the Member State concerned must determine whether the new elements or findings that have arisen or been presented by the applicant justify a further examination of the application, in conformity with the general rules set out in that regard in Chapter II of that directive, or whether the application should be rejected as inadmissible.

78 As regards the scope of that concept of ‘subsequent application’, the Court has held, first, in paragraph 62 of the judgment of 19 December 2024, *Khan Yunis and Baabda* (C123/23 and C202/23, EU:C:2024:1042), that Article 33(2)(d) of Directive 2013/32, read in conjunction with Article 2(q) of that directive, does not preclude legislation of a Member State which provides for the possibility of rejecting as inadmissible an application for international protection made to that Member State by a third-country national or a stateless person whose previous application for international protection, made to another Member State to which Directive 2011/95 applies, has been rejected by a final decision taken by the latter Member State. Second, in paragraph 80 of that judgment, the Court considered that those provisions preclude national legislation which makes provision for rejecting such an application as inadmissible where that application was made before the other Member State had taken the decision to discontinue the examination of the previous application on account of its implicit withdrawal.

79 That being said, even though, in that judgment, the Court ruled on the possibility for a Member State to treat applications for international protection as ‘subsequent application[s]’ due to existing previous applications made in other Member States and rejected by those Member States, that relates to a situation in which, owing to the impossibility of transferring the person concerned to other Member States, the first Member State concerned was or became responsible for examining those applications (see, to that effect, judgment of 19 December 2024, *Khan Yunis and Baabda*, C123/23 and C202/23, EU:C:2024:1042, paragraphs 25 to 29, and 31 to 34).

80 Consequently, in such a situation, in accordance with Article 29(2) of Regulation No 604/2013, the responsibility for examining the ‘subsequent application’ within the meaning of Article 2(q) of Directive 2013/32 falls on the Member State in which that subsequent application was made.

81 However, part (a) of the second question does not concern a situation in which a Member State finds that the applicant for international protection had already lodged a previous application in another Member State and, after having examined the applicant’s new application, rejects it as inadmissible on the ground set out in Article 33(2)(d) of Directive 2013/32, according to which that application constitutes a ‘subsequent application’ within the meaning of Article 2(q) of that directive.

82 That question concerns a situation in which, first, the Member State concerned rejects the further application for international protection as inadmissible on the basis of Regulation No 604/2013, on the ground that the other Member State, with which the previous application was lodged, is responsible for examining that application in accordance with the criteria set out in Chapter III of that regulation and, second, at the same time orders the removal of that applicant in view of his or her transfer to that other Member State.

83 That situation is not comparable to the one in the judgment of 19 December 2024, *Khan Yunis and Baabda* (C123/23 and C202/23, EU:C:2024:1042). In such a situation, the Member State concerned is not or, at the very least, has not yet become responsible for examining that further application for international protection.

84 Consequently, in that situation, a Member State may not logically treat an application for international protection which was made to it as a ‘subsequent application’ within the meaning of Article 2(q) of Directive 2013/32 or apply the procedures provided for by that directive for examining such a ‘subsequent application’.

85 That assessment is corroborated by Article 33(1) of Directive 2013/32, which states that the grounds for inadmissibility listed in Article 33(2)(a) to (e) of that directive enable Member States to declare applications for international protection to be inadmissible in certain cases, which are in addition to those 'in which an application is not examined in accordance with Regulation [No 604/2013]'.

86 Similarly, as the Court has already observed, first, recital 53 of Directive 2013/32 expressly indicates that that directive is not applicable to procedures between Member States governed by that regulation. Second, Article 2(d) of Regulation No 604/2013 provides that, for the purposes of that regulation, the examination of an application for international protection means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32 and Directive 2011/95, except for procedures for determining the Member State responsible in accordance with that regulation (judgment of 4 October 2018, *Fathi*, C56/17, EU:C:2018:803, paragraphs 69 and 70).

87 It follows from the foregoing that Article 2(q) of Directive 2013/32, to which Article 20(1)(c) of Directive 2013/33 refers, must be interpreted as meaning that the concept of 'subsequent application' does not cover a situation in which a Member State has, first, rejected an application for international protection as inadmissible on the ground that the applicant has already made such an application in another Member State and, second, orders, on that basis, the removal of that applicant in order to transfer him or her to the Member State responsible for examining that application, in accordance with Regulation No 604/2013.

88 It follows that, in such a situation, the Member State within whose territory the applicant for international protection resides while awaiting his or her possible transfer to the Member State responsible for examining his or her application, may not rely on Article 20(1)(c) of Directive 2013/33 to withdraw or reduce material reception conditions granted to that applicant.

89 It follows from all the foregoing considerations that the answer to Question 2(a) is that Article 20(1)(c) of Directive 2013/33, read in conjunction with Article 2(q) of Directive 2013/32, must be interpreted as meaning that the concept of 'subsequent application', within the meaning of those provisions, does not cover a situation in which a Member State has, first, rejected an application for international protection as inadmissible on the ground that the applicant has already made such an application in another Member State which is responsible for examining that application, within the meaning of Regulation No 604/2013, and, second, orders, on that basis, the removal of that applicant in order to transfer him or her to that other Member State, in accordance with that regulation.

Question 2(b) and (c)

90 In the light of the answer to Question 2(a), there is no need to answer Question 2(b) and (c), since those parts of that question are based on the premiss that the concept of 'subsequent application', within the meaning of Article 20(1)(c) of Directive 2013/33, read in conjunction with Article 2(q) of Directive 2013/32, could apply in a situation such as the one referred to in the preceding paragraph of the present judgment.

Costs

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

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

1. **Article 17(2)(a) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, read in conjunction with Article 2(g) thereof,**

must be interpreted as precluding national legislation which provides that, where an application for international protection has been rejected as inadmissible, because another Member State is responsible for examining that application within the meaning of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, and the decision concerning the transfer to that other Member State is enforceable, the material reception conditions granted to that applicant are reduced so that they no longer include, in particular, the benefits in kind covering clothing, everyday items and consumables, except in special cases, or the financial allowance intended to cover the basic personal needs of that applicant.

2. **Article 20(1)(c) of Directive 2013/33, read in conjunction with Article 2(q) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing of international protection,**

must be interpreted as meaning that the concept of 'subsequent application', within the meaning of those provisions, does not cover a situation in which a Member State has, first, rejected an application for international protection as inadmissible on the ground that the applicant has already made such an application in another Member State which is responsible for examining that application, within the meaning of Regulation No 604/2013, and, second, orders, on that basis, the removal of that applicant in order to transfer him or her to that other Member State, in accordance with that regulation.

[Signatures]

* Language of the case: German.