Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

4 October 2024*

(Reference for a preliminary ruling – Granting of international protection – Directive 2013/32/EU – Article 38 – Article 18 of the Charter of Fundamental Rights of the European Union – Concept of 'safe third country' – Classification of the Republic of Türkiye as a 'safe third country' – Readmission of applicants for international protection in third countries – Refusal)

In Case C-134/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Symvoulio tis Epikrateias (Council of State, Greece), made by decision of 3 February 2023, received at the Court on 7 March 2023, in the proceedings

Somateio 'Elliniko Symvoulio gia tous Prosfyges',

Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio'

v

Ypourgos Exoterikon,

Ypourgos Metanastefsis kai Asylou,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin and L.S. Rossi (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2024,

after considering the observations submitted on behalf of:

– Somateio 'Elliniko Symvoulio gia tous Prosfyges', by V. Papadopoulos, dikigoros,

– Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio', by E. Spathana, dikigoros,

* Language of the case: Greek.

– the Greek Government, by Z. Chatzipavlou, K. Georgiadis, G. Karipsiadis, T. Papadopoulou and S. Spyropoulos, acting as Agents,

– the Czech Government, by A. Edelmannová, M. Smolek and J. Vláčil, acting as Agents,

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

– the Cypriot Government, by I. Neophytou and F. Sotiriou, acting as Agents,

– the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and A. Hanje, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 13 June 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 38 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), read in the light of Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between, on the one hand, Somateio 'Elliniko Symvoulio gia tous Prosfyges' (the association 'Greek Council for Refugees', Greece) and Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio' (the non-profit organisation 'Refugee Support in the Aegean', Greece), which both work to support refugees, and, on the other, the Ypourgos Exoterikon (Minister for Foreign Affairs, Greece) and the Ypourgos Metanastefsis kai Asylou (Minister for Immigration and Asylum, Greece) concerning the validity of ministerial orders, which those ministers adopted jointly, designating the Republic of Türkiye as a 'safe third country' for certain categories of applicants for international protection.

Legal context

European Union law

The EU-Türkiye readmission agreement

3 On 16 December 2013, the European Union and the Republic of Türkiye concluded an Agreement on the readmission of persons residing without authorisation (OJ 2014 L 134, p. 3; 'the EU-Türkiye readmission agreement'). That agreement was ratified on behalf of the European Union by Council Decision 2014/252/EU of 14 April 2014 (OJ 2014 L 134, p. 1, and corrigendum OJ 2014 L 331, p. 40).

4 Article 4(1) of the EU-Türkiye readmission agreement provides:

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

…

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

5 Under Council Decision (EU) 2016/551 of 23 March 2016 establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation from 1 June 2016 (OJ 2016 L 95, p. 9), the obligation set out in Article 4 of the EU-Türkiye readmission agreement is applicable from 1 June 2016.

Directive 2013/32

6 Recitals 18, 43, 44 and 46 of Directive 2013/32 are worded as follows:

‘(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.

…

(43) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with 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)], except where this Directive provides otherwise, in particular where it can reasonably be assumed that another country would do the examination or provide sufficient protection. …

(44) Member States should not be obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should only proceed on that basis where that particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles should be established for the consideration or designation by Member States of third countries as safe.

…

(46) Where Member States apply safe country concepts on a case-by-case basis or designate countries as safe by adopting lists to that effect, they should take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including [European Asylum Support Office (EASO)] Country of Origin Information report methodology, referred to in Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [(OJ 2010 L 132, p. 11)], as well as relevant [United Nations High Commissioner for Refugees (UNHCR)] guidelines.'

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

'For the purposes of this Directive:

(a) "Geneva Convention" means the Convention of 28 July 1951 Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967;

…

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

…

(e) "final decision" means a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive [2011/95] and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;

…'

8 Chapter II of that directive, entitled 'Basic principles and guarantees', contains Articles 6 to 30.

9 The provisions of Chapter III of that directive, entitled 'Procedures at first instance', include, inter alia, Articles 31, 33, 35 and 38.

10 Article 31 of Directive 2013/32, entitled 'Examination procedure', provides in paragraphs 1 to 2 thereof:

'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.'

11 Article 33 of that directive, entitled 'Inadmissible applications', provides:

'1. In addition to cases in which an application is not examined in accordance with 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)], 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:

(a) another Member State has granted international protection;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;

…'

12 Article 35 of that directive, entitled 'The concept of first country of asylum', provides:

'A country can be considered to be a first country of asylum for a particular applicant if:

(a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or

(b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*,

provided that he or she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.'

13 Article 38 of the directive states, under the heading 'The concept of safe third country':

'1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

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

(b) there is no risk of serious harm as defined in Directive [2011/95];

(c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected;

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

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

2. The application of the safe third country concept shall be subject to rules laid down in national law, including:

(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

3. When implementing a decision solely based on this Article, the Member States concerned shall:

(a) inform the applicant accordingly; and

(b) provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

5. Member States shall inform the [European] Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.'

Regulation (EU) 2024/1348

14 Directive 2013/32 was repealed by Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L 2024/1348), with effect from 12 June 2026, pursuant to Article 79(2) of that regulation.

Greek law

Law on international protection

15 Nomos 4636/2019 peri diethnous prostasias kai alles diatakseis (Law 4636/2019 on international protection and other provisions) (FEK A' 169/1.11.2019), in the version applicable to the dispute in the main proceedings ('Law on international protection'), transposes Directive 2013/32 into Greek law.

16 In accordance with Article 84(1)(d) of the Law on international protection, the competent authorities are to reject an application for international protection as inadmissible if a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 86 of that law.

17 Article 86(1) of the Law on international protection sets out the cumulative conditions for a third country to be classified as a 'safe third country'.

18 Pursuant to paragraph 2 of Article 86 of that law, compliance with the requirements laid down in paragraph 1 of that article is to be examined on a case-by-case basis for each individual applicant, unless the third country in question has been designated as generally safe and is on the national list of safe third countries. If that is the case, the applicant for international protection may challenge the application of the 'safe third country' concept on the grounds that the third country in question is not safe in that applicant's particular circumstances. In accordance with Article 86(3) of that law, a joint ministerial order is to determine the third countries designated as safe for certain categories of asylum seekers, on the basis of their specific characteristics, for the purposes of examining applications for international protection.

19 In accordance with Article 86(5) of that law, where the third country in question does not permit the applicant to enter its territory, his or her application is to be examined as to its substance by the authorities which are competent to adopt a decision.

First joint ministerial order and second joint ministerial order

20 Koini Ypourgiki Apofasi 42799/3.6.2021 'Kathorismos triton choron pou charaktirizontai os asfaleis kai katartisi ethnikou katalogou, kata ta orizomena sto arthro 86 tou nomou 4636/2019 (A'169)' (Joint Ministerial Order 42799/3.6.2021, 'Determination of third countries designated as safe and establishment of a national list, in accordance with Article 86 of Law 4636/2019 (A'169)') (FEK B 2425/7.6.2021) ('the first joint ministerial order'), was adopted on the basis of Article 86(3) of the Law on international protection.

21 The second joint ministerial order classifies the Republic of Türkiye as a 'safe third country' for applicants for international protection whose country of origin is Syria, Afghanistan, Pakistan, Bangladesh or Somalia.

22 The first joint ministerial order was replaced by Koini Ypourgiki Apofasi 458568/15.12.2021 'Tropopoiisi tis yp.ar. 42799/03.06.2021 koinis apofasis ton Ypourgon Exoterikon kai Metanastefsis kai Asylou "Kathorismos triton choron pou charaktirizontai os asfaleis kai katartisi ethnikou katalogou, kata ta orizomena sto arthro 86 tou nomou 4636/2019 (A'169)" (B' 2425)' (joint ministerial order 458568/15.12.2021, 'Amendment to joint order 42799/03.06.2021 of the

Minister for Foreign Affairs and the Minister for Immigration and Asylum, entitled "Determination of third countries designated as safe and establishment of a national list, in accordance with Article 86 of Law 4636/2019 (A'169)" (B' 2425)') (FEK B' 5949/16.12.2021) ('the second joint ministerial order').

23 That joint ministerial order once again designates the Republic of Türkiye as a 'safe third country' for applicants for international protection whose country of origin is Syria, Afghanistan, Pakistan, Bangladesh or Somalia.

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

24 The applicants in the main proceedings brought an action for annulment before the Symvoulio tis Epikrateias (Council of State, Greece), which is the referring court, against the first joint ministerial order and against the second joint ministerial order, on the ground, inter alia, that they were incompatible with Article 86 of the Law on international protection and with Article 38 of Directive 2013/32.

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

26 It is apparent from the request for a preliminary ruling that, after finding that the action for annulment was only admissible in so far as it was directed against the second joint ministerial order, the referring court held that that complaint had to be rejected in so far as the applicants in the main proceedings complained that the Republic of Türkiye had no legal obligation to readmit applicants for international protection from Greece. Having regard in particular to the EU-Türkiye readmission agreement, the referring court found that the Republic of Türkiye was subject to such a legal obligation.

27 However, the referring court questions whether the Republic of Türkiye has in fact complied with that legal obligation, having regard to the fact, recognised by the Greek authorities, that since March 2020 that third country has no longer readmitted to its territory applicants for international protection whose applications have been rejected as being inadmissible in Greece on the basis of the 'safe third country' concept and that that situation is not likely to change in the near future.

28 In that regard, the referring court has identified two different interpretations of Article 38 of Directive 2013/32 in relation to that issue.

29 According to the first interpretation, which is shared by the majority of the members of the referring court, the possibility for the applicant for international protection to be readmitted to the third country concerned is a precondition for that country to be designated as a 'safe third country' within the meaning of Article 38 of that directive, in particular in view of the objective mentioned, inter alia, in recital 18 thereof and also expressed in Article 31(2) of that directive, of ensuring that applications for international protection are processed as soon as possible. Any other interpretation would merely increase the time it takes to examine the application for

international protection and the uncertainty surrounding the applicant's stay in the country where he or she has made the application, without eliminating the risk that the applicant will be returned to a country where he or she may be persecuted or the possibility of a disruption in international relations. It follows that a Member State cannot, by an act of general application, designate a third country as generally safe, as permitted by Article 38(2) of Directive 2013/32, where that third country does not ensure that it actually complies with its obligation to admit or readmit the applicants for international protection concerned to its territory. In those circumstances, the action for annulment brought against the second joint ministerial order would have to be upheld.

30 However, the referring court notes that, according to a second interpretation of the provisions of Directive 2013/32, the condition relating to the actual admission or readmission of applicants for international protection does not determine the validity of the regulatory act designating a country as generally safe, but rather the validity of either the individual decision rejecting a particular application for international protection as inadmissible on the 'safe third country' ground, or of the enforcement of such an individual decision. In those circumstances, the action for annulment brought against the second joint ministerial order would have to be dismissed as unfounded.

31 In those circumstances, the Symvoulio tis Epikrateias (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

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

or

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

or

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

Procedure before the Court

32 In its request for a preliminary ruling, the referring court has requested that the Court deal with the present case under the expedited procedure, pursuant to Article 105(1) of the Rules of Procedure of the Court of Justice, on the basis that the Court's decision will affect a large number of persons and that the area in question is particularly sensitive.

33 On 31 March 2023, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, that that request should not be granted.

34 The expedited procedure is a procedural instrument intended to respond to a situation of extraordinary urgency. The large number of persons or legal situations potentially concerned by the questions referred does not, as such, constitute an exceptional circumstance capable of justifying the application of the expedited procedure (see, to that effect, judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraphs 33 to 35). Furthermore, the referring court has not referred to any evidence showing that the present case involves an exceptional crisis situation which prevents, inter alia, the competent national authorities from taking the measures necessary to ensure the examination of applications for international protection, or which significantly impedes, in particular, the functioning of the Common European Asylum System pending the Court's response (see, to that effect, order of the President of the Court of 19 September 2017, *Magamadov*, C-438/17, EU:C:2017:723, paragraph 18, and judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 36).

Consideration of the questions referred

The first question

35 By its first question, the referring court asks, in essence, whether Article 38 of Directive 2013/32, read in the light of Article 18 of the Charter, must be interpreted as precluding legislation of a Member State classifying a third country as generally safe for certain categories of applicants for international protection where, despite the legal obligation to which it is subject, that third country has generally suspended the admission or readmission of those applicants to its territory and there is no foreseeable prospect of a change in that position.

36 As a preliminary point, it should be borne in mind that Article 33(2) of Directive 2013/32 sets out an exhaustive list of situations in which the Member States may consider an application for international protection to be inadmissible (judgment of 8 February 2024, *Bundesrepublik Deutschland (Admissibility of a subsequent application)*, C-216/22, EU:C:2024:122, paragraph 26 and the case-law cited).

37 Accordingly, Article 33(2)(c) of that directive provides for the possibility for a Member State to consider such an application inadmissible where a country which is not a Member State is considered to be a 'safe third country' for the applicant, pursuant to Article 38 of that directive. According to the information provided by the referring court, that possibility was transposed into national law by Article 84(1)(d) of the Greek Law on international protection.

38 It is clear from Article 38 of Directive 2013/32 that the application of the 'safe third country' concept is subject to compliance with the cumulative conditions laid down in paragraphs 1 to 4 thereof (judgments of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 36, and of 16 November 2021, *Commission* v *Hungary (Criminalisation of assistance to asylum seekers)*, C-821/19, EU:C:2021:930, paragraph 36 and the case-law cited).

39 First, Article 38(1) of that directive provides that Member States may apply the 'safe third country' concept only where they are satisfied that the applicant for international protection will be treated in the third country concerned in accordance with the principles expressly set out in points (a) to (e) of that provision.

40 In the present case, it is apparent from the statement of grounds for the request for a preliminary ruling that the referring court definitively rejected the plea put forward by the applicants in the main proceedings, alleging that the Republic of Türkiye failed to comply with those principles, with the result that that court is not asking the Court of Justice to interpret those principles.

41 Secondly, under Article 38(2) of that directive, the application of the 'safe third country' concept is subject to rules laid down in national law. Those rules must include, inter alia, (i) rules requiring a connection between the applicant for international protection and the third country concerned such that it would be reasonable to move that person to that country; (ii) rules on the methodology by which the competent authorities satisfy themselves that the 'safe third country' concept may be applied to a particular country or to a particular applicant for international protection, while specifying that such methodology is to include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe; and (iii) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant for international protection and, in that context, permitting that applicant to challenge both the application of the 'safe third country' concept on the grounds that the third country is not safe in his or her particular circumstances and the existence of a connection between him or her and the third country.

42 Thirdly, Article 38(3) of Directive 2013/32 requires Member States, when implementing a decision based solely on the 'safe third country' concept, to inform the applicant accordingly and to provide him or her with a document informing the authorities of that country, in the language of that country, that the application has not been examined in substance. Furthermore, pursuant to Article 38(4) of that directive, where the third country concerned does not permit the applicant for international protection to enter its territory, the Member States are to ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II of that directive.

43 It thus follows, in the first place, from the wording of Article 38 of Directive 2013/32 that that article authorises a Member State to designate, by an act of general application, such as the second joint ministerial order, a country as a generally safe third country for specific applicants for international protection.

44 First, it should be noted that the methodology which Member States must employ to ensure that the 'safe third country' concept can be applied to a particular country and to which Article 38(2)(b) of that directive refers provides for a case-by-case assessment of the safety of the country for a particular applicant 'and/or national designation of [third] countries considered to be generally safe.' Moreover, the fact that Article 38(2)(c) of that directive requires Member States to lay down rules allowing an individual examination of whether the third country concerned is safe for a particular applicant, ensuring, inter alia, the possibility of challenging the application of the 'safe third country' concept on the ground that the third country concerned is not safe in his or her particular circumstances, necessarily implies that a Member State may, by an act of general application, designate such a third country as generally safe.

45 Secondly, that interpretation is borne out by recitals 44 and 46 of Directive 2013/32, which expressly refer, respectively, to the establishment of 'common principles … for the … designation by Member States of third countries as safe' and to the taking into account of certain information and documents where Member States 'designate countries as safe by adopting lists to that effect'.

46 Thirdly, it should be noted that Article 38 of Directive 2013/32 does not make the validity of an act of general application by which a Member State designates a third country as generally safe subject to the condition that it be proved that the applicants for international protection concerned will actually be admitted or readmitted to the territory of that third country.

47 The proven admission or readmission of those applicants to that third country is not among the rules listed in Article 38(2) of that directive to which the application of the 'safe third country' concept is subject in the Member States. Moreover, it follows by implication from Article 38(4) of that directive, which provides that, 'where the [safe] third country [concerned] does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II [of Directive 2013/32]', that the classification of such a third country as a 'safe third country' is compatible with that country's refusal to admit or readmit applicants for international protection on its territory.

48 Accordingly, it follows from that provision that, where a Member State has, by an act of general application, designated a third country as generally safe, despite the suspension by that country of the possibility for applicants for international protection to enter its territory, that Member State must ensure that each of the applicants concerned has the right to access a procedure for the examination of his or her application for international protection.

49 As regards, in the second place, the context of Article 38 of Directive 2013/32, it is necessary to take into consideration Article 35 of that directive, which refers to a ground for considering an application for international protection inadmissible other than that referred to in paragraph 37 above.

50 As stated in Article 35, a country can be considered to be a 'first country of asylum' for a particular applicant if he or she has either been recognised as a refugee in that country and is still able to avail himself or herself of that protection, or otherwise enjoys sufficient protection in that country, including the benefit of the principle of *non-refoulement*, 'provided [in both those cases] that [that applicant] will be readmitted to that country.'

51 Therefore, unlike what follows from Article 38(4) of Directive 2013/32 in relation to the concept of 'safe third country', Article 35 of that directive makes the application, in the Member States, of the concept of 'first country of asylum' subject to the condition that the applicant will actually be readmitted to the country thus designated.

52 In the third place, the interpretation of Article 38 of Directive 2013/32, according to which that article does not make the designation of a third country as generally safe subject to the condition that the third country concerned in fact admits or readmits the applicants for international protection to its territory, which may be inferred from its wording and context, does not, contrary to what is stated by the referring court, conflict with the objectives of Directive 2013/32. In particular, it does not conflict with the objective, highlighted in recital 18 of that directive, that, in the interests, in particular, of applicants for international protection, applications for such

protection should be made as soon as possible, without prejudice to an adequate and complete examination being carried out (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 53 and the case-law cited).

53 As stated in paragraph 48 above, it is apparent from Article 38(4) of Directive 2013/32 that the suspension of the admission or readmission of applicants for international protection to the territory of a third country designated as generally safe by a Member State has the consequence that that Member State must ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Articles 6 to 30 of Directive 2013/32, set out in Chapter II thereof.

54 It follows that, where it is established that the third country designated as generally safe by a Member State does not in fact admit or readmit the applicants for international protection concerned, that Member State cannot reject their applications for international protection as inadmissible on the basis of Article 33(2)(c) of Directive 2013/32. Furthermore, that Member State may not unjustifiably postpone the examination of those applications and must, inter alia, ensure that that examination is conducted on an individual basis, in accordance with Article 10(3)(a) of that directive and in compliance with the time limits set out in Article 31 thereof.

55 In the light of the foregoing considerations, the interpretation of Article 38 of Directive 2013/32 adopted in paragraph 52 above is likewise not such as to deprive of any practical effect the right of an applicant for international protection, as enshrined in Article 18 of the Charter and given specific expression by that directive, to obtain the status of beneficiary of international protection, provided that the conditions required by EU law are met (see, to that effect, judgment of 8 February 2024, *Bundesrepublik Deutschland (Admissibility of a subsequent application)*, C-216/22, EU:C:2024:122, paragraph 39).

56 Consequently, the answer to the first question is that Article 38 of Directive 2013/32, read in the light of Article 18 of the Charter, must be interpreted as not precluding legislation of a Member State classifying a third country as generally safe for certain categories of applicants for international protection where, despite the legal obligation to which it is subject, that third country has generally suspended the admission or readmission of those applicants to its territory and there is no foreseeable prospect of a change in that position.

The second and third questions

57 In view of the answer given to the first question, in the light of which the referring court will be able to decide the dispute in the main proceedings, which concerns only the validity of a legislative provision designating the Republic of Türkiye as a ‘safe third country’ for certain categories of applicants for international protection, there is no need to answer the second and third questions.

Costs

58 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 (Fourth Chamber) hereby rules:

Article 38 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in the light of Article 18 of the Charter of Fundamental Rights of the European Union,

must be interpreted as not precluding legislation of a Member State classifying a third country as generally safe for certain categories of applicants for international protection where, despite the legal obligation to which it is subject, that third country has generally suspended the admission or readmission of those applicants to its territory and there is no foreseeable prospect of a change in that position.

[Signatures]