

Granting of refugee status in Bulgaria

By decision of 23 March 2017 - 1 C 20.16 - the Bundesverwaltungsgericht (BVerwG) stayed proceedings and sought a preliminary ruling from the CJEU on questions concerning the interpretation of, inter alia, Article 33(2)(a), Article 52(1) of Directive 2013/32/EU and Article 4 CFR (Charter of Fundamental Rights of the European Union). The CJEU ruled on these questions by judgment of 19 March 2019 in Cases C-297/17, C-318/17, C-319/17 and C-438/17. In a further ruling issued in two other preliminary ruling proceedings, the CJEU provided clarification on the interpretation of Article 33(2)(a) of Directive 2013/32/EU, which is also important in the present proceedings.

The plaintiff was successful in the continued appeal proceedings. The assumption of the Oberverwaltungsgericht that the decision of the Federal Office based on national third-country regulations is lawful because the Republic of Austria, through which the plaintiffs entered, is a safe third country within the meaning of Article 16a(2), first sentence of the Basic Law, Section 26a(1), first sentence of the Asylum Act (AsylG), infringes federal law. As a Member State of the European Union, Austria is already not a third country within the meaning of the above regulations.

Whether the contested decision can be reinterpreted as an inadmissibility decision under Section 29(1)(2) AsylG could not be conclusively decided by the BVerwG in the absence of factual findings concerning the living conditions of recognised persons entitled to protection in Bulgaria. The BVerwG has therefore referred the case back to the Court of Appeal for further clarification.