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International Protection of Refugees in the EU in Light of ECJ Judgment in Case C-753/22

Prof. Francesco Cherubini — Supervisor

Elisabetta Ingravallo (102582) — Candidate

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Introduction

The tumultuous and continuous change of the tides of migration and asylum as well as the continuous variation of policies on that matter is the subject of the following thesis, as this has put immense pressure on the European Union (EU) and its institutions, particularly in light of ongoing global crises such as the Syrian civil war.

The case *QY v. Germany* (C-753/22)**,** which constitutes the very heart of the thesis, sheds light on the intricate and often controversial conflict between national and European Union level procedures and standards concerning the recognition and management of international protection. This case, referred to the European Court of Justice (ECJ) for a preliminary ruling, underlines the challenges faced by EU Member states when confronted with complex asylum claims, particularly when the principle of mutual trust between states is questioned.

At the heart of the case lies the issue of whether Germany should shoulder the responsibility of recognising QY refugee status despite Greece having already granted it to her.

The case raises fundamental legal questions regarding the Dublin III Regulation, the Qualification Directive, and the Asylum Procedures Directive, which govern the allocation of responsibility for asylum applications and establish the standards for granting international protection.

Germany's refusal to automatically recognize the refugee status granted by Greece highlights the significant gaps in mutual trust and cooperation among EU Member states in the context of asylum law, especially when there are concerns of the applicant of receiving inhuman and degrading treatment in the first Member state.

This thesis will explore the legal and institutional framework governing asylum policies in the EU, analyzing the role of the ECJ in interpreting and applying EU law, particularly in the context of preliminary rulings. Furthermore, it will analyse the shortcomings of the CEAS and the dire situation for international protection in the Union.

Through this examination, this thesis seeks to provide a deeper understanding of how the interplay between national and supranational legal systems affects individuals seeking refuge in Europe and the role of the judiciary in resolving these tensions, as well as demonstrating the fundamental role of international protection in today's world and society.

Chapter 1 – Legal and Institutional Framework

1.1 An introduction to the sentence

The following thesis will deal with the C-753/22, *QY v Germany*, inserting it into the wider framework of the competences of the European Court of Justice and the European Union competences regarding asylum.
In order to handle the case at hand, C-753/22, *QY v Germany*, the European Court of Justice sat as a Grand Chamber of fifteen judges which is its second most important configuration after the plenary session in which all 27 judges sit. Ten States took part in the case against Germany: Austria, Belgium, Czech Republic, France, Germany itself, Greece, Ireland, Italy, Luxembourg, The Netherlands and with them also the European Commission.

1.2 The Court of Justice and its Competences

The Court of Justice of the European Union is one of the main institutions of the supranational organization and it embodies the EU's Judiciary branch. It has multiple powers and one of its most prominent features is the fact that the ECJ, like the European Central Bank, is an independent entity as its judges (27, one from each Member state) do not represent their state and they have to be impartial.
Another Court flanks the Court of Justice, and it is known as the General Court or Court of first instance. This Court has a smaller jurisdiction compared to the Court of Justice, but it shares some of its competences in specific situations and on specific matters.
The competences of the Court of Justice are plentiful, and they are all fundamental for the correct functioning of the European Union as it is the Court of Justice's responsibility and competence to oversee and ensure compliance with European Union Law in accordance and observance of the Treaties of the European Union (TEU and TFEU).
The Court of Justice in fact has quite a wide jurisdiction, which ranges from infringement procedures (Art. 258 TFEU) which consists in an action for failure to fulfil obligations under European law, to so-called actions for annulment under Art. 263 TFEU which deals with the requests for annulling certain measures (decision, directive, regulation) having binding effects.
One of the most important competences of the Court of Justice of the European Union is the preliminary ruling. This is fundamental for the exact interpretation and application of EU law. Since September 1st as the latest modifications to the statute of the Court of Justice and the General Court entered into force[1], it became possible also for the General Court to issue preliminary rulings in specific circumstances[2].

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[1] Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.
[2] The transfer to the General Court of part of the jurisdiction to give preliminary rulings should enable the Court of Justice to devote more time and resources to examining the most complex and sensitive requests for a preliminary ruling and, in that framework, to enhance the dialogue with national courts, inter alia by making greater use of the mechanism provided for in Art. 101

A preliminary ruling is an instrument of European Union law provided for in Art. 267 TFEU[3]. This is a very important point for the case at hand, in the context of the EU it is in fact one of the most relevant ways of understanding EU Law for the national courts. The preliminary ruling in fact consists of a request from a national court to the EU Court of Justice to interpret an unclear or ambiguous rule of Union law in the Treaties (in this case it will be called a preliminary ruling of interpretation) or to verify the validity and interpretation of acts of Union law (in the latter case it will be called a preliminary ruling of validity).
Another feature of the preliminary ruling is that it can be requested in two ways, either by a generic national court as clarification or as a necessity by a national court of last instance (e.g. Corte Suprema di Cassazione in Italy).
As stated in the Treaties, European Union Law always precedes national law except for rare cases, this is known as the principle of primacy of European Union Law[4], as such when a preliminary ruling is issued by the Court of Justice it is effective not only for the case for which it was requested but it's immediately applied "erga omnes" which means "for everyone" so every Member state court must follow what is stated in the preliminary ruling when applying European Union Law.

1.3. An introduction to international protection

The judgment QY v Germany originated from a request for preliminary ruling issued on the 7th of September 2022 by the German administrative federal Supreme Court "Bundesverwaltungsgericht" which, among the five German Supreme Courts, is the one which handles issues between the State and individuals. The Court in question raised a question about a request for international protection by a Syrian refugee who, at the time was in a proceeding against the Federal office for migration and refugee of Germany due to her refugee status application having been rejected as inadmissible by

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of the Rules of Procedure of the Court of Justice, which allows it to request clarification from a referring court or tribunal within a time limit prescribed by the Court of Justice, in addition to the statements of case or written observations submitted by interested persons referred to in Art. 23 of the Statute.

[3] Art. 267 TFEU: "The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union; Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay".

[4] It is not enshrined in the EU treaties, although there is a brief declaration annexed to the Treaty of Lisbon in regard to it. In *Van Gend en Loos v Nederlandse Administratie der Belastingen* (Case 26/62), the Court declared that the laws adopted by EU institutions were capable of creating legal rights which could be enforced by both natural and legal persons before the courts of the Member States. EU law therefore has direct effect.

said office on grounds of the fact that QY had already received the protection in Greece.

International protection is an important concept in modern international law as the issue of migrations is an especially crucial matter in the globalised world and it has been so for quite some time. International protection is quite a delicate matter, common policies on migration in the European Union are still taking on a shape, as there is not yet a set of common rules and procedures for granting international protection common to all Member States of the Union.

The concept of international protection was first codified as we know it today during the Geneva Convention of 28 July 1951 (entered into force on 22 April 1954) which is a multilateral treaty adopted in the context of the United Nations that defines the profile of "refugee" and sets out the rights and protection granted to asylum seekers as well as the responsibility of nations that grant said asylum. The Convention also includes the reasons why international protection should not be granted and the cases in which this could happen include war criminals, human traffickers and so on, these people are classified as "threats to security of the country" as well as "danger to the community of the country".

The concept of refugee status is also known as "the principle of non-refoulement"[5] which states the prohibition to deport any person to any country where their life or freedom would be threatened on account of race, religion, nationality, belonging to a particular social group, or have a different political opinion.

Non- refoulement applies in case of the possibility of the asylum seeker to be subjected to inhumane and degrading treatment in their country of origin, this was codified in the Geneva convention as well as in the 1967 Protocol[6] it is considered as being a part of customary international law as it applies to all states and not only the parties to the aforementioned treaties, there is also a thesis which suggests that the principle of non-refoulement is a norm of ius cogens or peremptory norm which means that it should be applied without derogation under any circumstances.

There are multiple types of international protection, aside from refugee status,[7]which is based on the principle of non-refoulement, the ones entitled

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[5] Art. 33 (Prohibition of expulsion or return, 'refoulement'): "1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country".

[6] The Protocol Relating to The Status of Refugees, adopted on the 31st of January 1967, is based on the 1951 Geneva Convention.

[7] The 1951 Refugee Convention defines a refugee as a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social

to this status cannot return to their country under any circumstance as they risk inhuman and degrading treatment upon returning, they may risk death due to their sexual identity, religion and so on.
In order to grant refugee status, whoever is conducting the investigation on the asylum seeker must start by looking for persecutory acts committed against them, by observing the severity and the frequency of such acts in order to determine whether they are actually to be taken into consideration as acts of persecution or not, e.g. a refugee status could be granted if the asylum seeker has a death sentence in their home country for being a political opposer or worshiping a different religion, opposers of the Al-Assad regime in Syria are eligible for refugee status.
The other ground for granting refugee status is a well-founded fear of being subjected to degrading and inhuman treatments and persecutory acts, in the EU investigations on well-founded fear are based on the EASO Practical Guide to assess evidence as well as COI[8] research which may confirm the reasons for the asylum seekers fear.
Refugee status lasts for ten years and the definition of "refugee" who can benefit from it is as disposed in the Geneva Convention of 1951 but it has been updated a few times since then there are other categories which are also entitled to refugee status this includes minors, human trafficking victims, while fragile categories such as mentally ill persons, pregnant women and disabled persons will sometimes get a Visa for medical attention.
Subsidiary protection[9] (EU law Directive 2011/95/EU) was also established by the Geneva Convention of 1951 and it consists of a five year long protection period, this protection is granted to any asylum seekers who come from their home country due to an inhospitable situation or due to real risk of serious harm or persecution based on reasons of race, sexuality, belonging to a certain social group, religion, political ideals so on.
The third type of international protection is actually a state only protection and not all countries have this type of protection, it has way less benefits and does not usually last as long.
All types of international protection are granted based on the Geneva Convention but for each country the procedures and standards for dealing with asylum seekers are radically different, in a way that may make a stateless

group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themself] of the protection of that country".
[8] The EUAA Country of Origin Information (COI) gathers relevant information and draws up reports providing for accurate, reliable and up to date information on third countries to support EU+ asylum and migration authorities in reaching accurate and fair decisions in asylum procedures, or support policy making. For that purpose, the Agency established Country Specialist Networks that collaborate to avoid duplication and create synergies with national COI production. COI refers to, inter alia, the political, religious and security situation and to violations of human rights, including torture and ill-treatment in the third countries concerned. The EUAA activities include general COI and medical COI (MedCOI).
[9] As the name suggests, subsidiary protection should serve as an additional form of international protection that is complementary to refugee status. It means that a person should only be granted subsidiary protection if the requirements for refugee status are not satisfied.

person less or more eligible depending on the country they request protection in, based on the interpretation of said country's national law, the European union has tried to create a cohesive interpretation and procedure to deal with asylum seekers but the attempt has been quite unsuccessful up to now.

1.4 The Area of Freedom, Security and Justice

One of the main European Union instruments to deal with asylum policies is the so called "Area of Freedom, Security and Justice" which was established with the Treaty of Lisbon in 2009.
Since the Treaty of Maastricht there had been talks of the creation of an area that would both protect European citizens while also abolishing border control at internal borders in the Union. After the abolition of the initial "pillar system" of the Union with the treaty of Lisbon Title V of the Treaty codified this in Articles 67-89 TFEU. The Area of Freedom, Security and Justice become a crucial part of the immigration and asylum policies but most importantly it became a central part of the free movement of peoples in the European Union, making it essential for the future of the EU.
The AFSJ is also codified as one of the objectives of the Union in Art. 3(2)[10] of the Treaty on the European Union, but it's important to note that not all Member states of the Union have actually adhered to this: Denmark has in fact opted out of the AFSJ but still applies some of its related policies, Ireland has also opted out of the Schengen travel area.
Even though the AFSJ mostly has to do with internal affairs such as border control and internal security it also deals with migration, the free movement of people as well as fundamental rights as it ensures they are observed as people move throughout Europe safely.
Of the many agencies under the jurisdiction of the Area of Freedom, Security and Justice is the EUAA, in other words the European Union Agency for Asylum which was established with Regulation 439/2010 with the name of EASO "European Asylum Support Office". It has as its main aim that of helping European Union Member states with handling cooperation for asylum as well as supporting Member States suffering from the pressure of mass migratory fluxes towards their territory and last but not least as a support system for the implementation of the Common European Asylum System.

1.5 The Common European Asylum System

The creation of the Common European asylum system CEAS is an extremely ambitious project, as to create common procedures and common standards for the recognition of international protection for the Union in accordance with the Charter of fundamental rights, the Member states of the European Union introduced this system, nowadays provided for in Art. 78 TFEU.

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[10] "The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime".

The Geneva Convention's equivalent for international protection in European Union law is Art. 78 TFEU[11] which encapsulates the meaning of the existence of the Common European asylum system by saying that the Union should seek to establish a "common policy on asylum" as well as for subsidiary protection and tertiary protection, the article states that this shall be done following the principle of non-refoulement and the Geneva Convention guidelines.
In the second paragraph the article actually mentions the creation of a common European asylum system in order to be able to achieve the goal of common Union rules on international protection, it then lists the objectives to be reached through this process: setting standards for a common standard for all three levels of international protection, setting common procedures for member states to deal with asylum seekers, creating partnerships and cooperation with third countries in order to handle migratory fluxes as easily as possible.
Despite the noble intentions in creating this system, the outcome did not live up to initial expectations as it does not really function how it is supposed to, as stated by many scholars of European Union Law. For instance, Georgios Anagnostratas writes on the European asylum system[12] and about how it should be based on the principle of mutual trust between the Member states in order to guarantee the possibility of a common standard for asylum seekers to receive international protection.
The principle of mutual trust is one of the fundamental principles of the European Union, this is an implied principle which deals with the relationship between member states it's based on the idea that in order to achieve the objectives of the European Union and to correctly follow laws and policies of the latter, a mutual trust and recognition must exist between the member states. This is a cornerstone of the area of freedom, security and justice as asylum procedures and movement of people through borders are very strictly linked and without the principle of mutual trust it would be impossible to even picture a Common European Asylum System.
The allocation of responsibility of a request of international protection on Member states creates very tense situations as some asylum seekers feel it's a violation of their fundamental rights to be transferred to the responsible state, but the limitations of the CEAS' jurisdiction due to the principle of mutual trust get in the way of the correct functioning of the system.
The Member state responsible, under the scrutiny of the first member state to receive the applicant, should respect the fundamental rights of the individual

[11] "1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties. 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising […]".
[12] Anagnostaras (2020), *The Common European Asylum System: Balancing Mutual Trust Against Fundamental Rights Protection*, in *German Law Journal*, 1180-1197.

according to the EU Charter, but this has created a lot of "tension between the protection of human rights of individuals and the principle of mutual trust between Member States". It emerged in the context of a few cases; the author mentions the *Jawo*[13] Case, which much like the one at hand is a request for preliminary ruling of interpretation on the so called "Dublin III" Regulation.
The Court disposed from then on, that asylum seekers should be treated like country nationals of the state granting them protection (both the responsible State and the State of arrival), and their living conditions should take priority, going against the mutual trust principle while also treating the fundamental rights as an impediment to the latter and disregarding the special needs of asylum seekers due to higher probability of them ending up in poverty.
The failure of the CEAS has been reported by many scholars, such as Salvatore Mario Nicolosi[14]. In his article on the matter he states that as the migratory crisis which hit a dire increase in 2015 in Europe has worsened, and affirms that there are three major factors that create problems for the CEAS, first off the fact that it should be devised to handle emergency situations while on the other hand, in real life, it does nothing but make the crisis much worse, as the Advocate General Sharpston stated that the system only covers costs and expenditures when they arise instead of devising better strategies to handle them.
The second problem he writes about is the issue with basic standards for the recognition of international protection as they vary widely in between Member states, and this is a problem as one of the main objectives of the CEAS was precisely that of creating common standards for the entirety of the Union in terms of the recognition of international protection.
For the last problem he talks of the statement of Advocate General Mengozzi who, after the case of the Humanitarian Visas, declared that the biggest flaw of the Common European Asylum System is the fact that it's inaccessible: there are no secure ways to access it.
In support of this another scholar, Chiara Favilli[15] wrote about how the European Union's approach to immigration and refugee-related issues is actually growing more and more "Intergovernmental" despite the existence of the European Asylum System, this creates the problem of difficulty of movement of immigrants.
According to the author in fact due to the faults of the CEAS in creating common policies to grant asylum rights while granting other fundamental rights such as the right to emigration is due to the fact that Member States are not willing to conform to a single set of norms for international protection.

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[13] Case C-163/17, Judgment of the Court (Grand Chamber) of 19 March 2019, *Abubacarr Jawo v Bundesrepublik Deutschland*.
[14] Nicolosi (2019), *La riforma del sistema europeo comune di asilo tra impasse negoziale e miopia normativa*, in *Rivista trimestrale di diritto pubblico*, 521-538.
[15] Favilli, *Le politiche di immigrazione e asilo: passato, presente e futuro di una sovranità europea incompiuta*, in *Quaderni AISDUE*, January 14th, 2022, available online.

The same concept was also observed by scholar Daniel Thym[16] who observed the differences between the approach of "Southern" European countries (who shoulder most of the burden of refugees) who complain about the migration related problems and the lack of solidarity from "Northern" European countries as opposed to the latter who pin the blame for the Southern countries' complaint on their own lack of organisation and good governance.
One concept which stems clearly from all of these scholarly points of view is that, when compared to the UN agencies for refugees (UNRWA, UNCHR) the CEAS is not only extremely weak and faulty but also unable to fulfil its most basic duties and fails almost completely at reaching the goals that were set for it in Art. 78 TFEU.

[16] Thym (2022), *Secondary Movements: Improving Compliance and Building Trust among the Member States?*, in *Reforming the Common European Asylum System*, Baden-Baden, 129-148.

Chapter 2 – The Sentence

2.1. The civil war in Syria and its consequences

This chapter will contain an in-depth analysis of the requested preliminary ruling and the implications of the requests from the national Court as well as the relevant content of the case itself.

The main point of this sentence is an issue of communication and mutual trust between states. The asylum seeker in this situation, QY, is a Syrian woman who fled her country. Syria is governed by an authoritarian regime led by President Al-Assad, this causes a lot of stir and especially a lot of migration away from this country, a vicious civil war has swept Syria since 2011 as President Al-Assad's brutality against his people and strong repression from the regime has been instilling fear and suffering throughout the country.

Syria has been going through a turmoil since 2011 and since 2014 there have been huge influxes of people running away from the situation which has been gradually deteriorating to the point that the European Council has started imposing sanctions on the country, as international humanitarian law in Syria is consistently violated by Assad's regime, even to the point of throwing chemical weapons on the population, the list of sanctions by the European Union has grown exponentially, causing prices to rise exponentially and making life almost impossible for people living in the country.

While poverty, violence and atmospheric catastrophe hitting the country as earthquakes shake Syria and force many people to be pushed back into the border with hostile Türkiye, making them refugees in their own country and beyond any hopes of a better life, desperate Syrians run away seeking shelter in countries such as Jordan or beginning a journey towards a different place to escape from the life that they would be condemned to if they stayed.

Usually a Syrian asylum seeker would be eligible for refugee status following the civil war in Syria 7.2 million are refugees in their own country and 5 million sought refuge in the neighbouring countries such as Türkiye, Lebanon, Jordan and Egypt.

That is exactly the case of QY who reached Greece from her home country in 2018, where she was granted refugee status.

2.2. The Case of QY

The issue arose when QY found herself in danger while she was in Greece, in fact QY felt her life was being threatened in Greece and that's why she left the country to reach Germany in hopes of finding safety, QY declared that in Greece she risked being subjected to inhuman and degrading treatment and that being the reason she fled.

When QY reached Germany, she filed a new request for international protection, more specifically for refugee status to the German authorities. The latter, knowing she had gotten refugee status in Greece, did not want to grant her that level of protection so they rejected her request for refugee status as inadmissible and suggested to give her subsidiary protection instead.

QY, upon receiving the inadmissibility of her refugee status request, was very unhappy with it and appealed against the decision of the German national court. Her appeal reached one of the five German courts of last instance, the Supreme Administrative Court, which, unsure about how to proceed in light of European Union Law, asked for a preliminary ruling by the European Court of Justice for the interpretation of the regulation and directives mentioned in chapter one.
QY comes from a country situation which is easily eligible for refugee status, but in Greece she found an unwelcoming situation which caused her to flee, as racism and Islamophobia have become a huge problem in Europe.
QY had a well-founded fear of receiving inhumane and degrading treatment in Greece and she hoped Germany's authorities would grant her the same status as Greece had.
When she reached Germany, she was instead proposed a subsidiary protection as Germany decided not to abide by the agreement between EU states formed through the Common European Asylum System to agree on one type of international protection for all states and instead referenced the so-called Qualification Directive, which stated that if another Member state has recognised refugee status, a new request for refugee status issued in a different country could be deemed inadmissible.

2.3. The request for preliminary ruling

The request for Preliminary ruling was a request of interpretation from the German Court which concerned the following rules of EU law:
1. the second sentence of Art. 3(1) of Regulation (EU) No. 604/2013 of the EU Parliament and of the Council of 26 June 2013, so-called Dublin Regulation III[17], 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. The current Dublin Regulation is based on Art. 78(2)(e) TFEU and has been preceded by two more legal documents, the Dublin Regulation II and the Dublin Convention.
2. the second sentence of Art. 4(1) and Art. 13 of Directive 2011/95/EU[18] of the EU Parliament and of the Council of 13 December 2011, so-called Qualification Directive, on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection for uniform status for refugees or for persons eligible for subsidiary protection,

[17] "Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible".
[18] "Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application. Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III".

and for the content of the protection granted. Based off of article 78(2) of TFEU.

3. Art. 10(2)(3)[19] and Art. 33(1)(2)(a)[20] of Directive 2013/32/EU of the EU Parliament and of the Council of 26 June 2013, so-called Asylum Procedures Directive, on common procedures for granting and withdrawing international protection. Based off of article 78(2)(d) of TFEU.

2.4. The Dublin III Regulation

The so-called Dublin III Regulation is one of the three provisions which were cited in the German Court's request for preliminary ruling. This Regulation has a long history starting with the Dublin Convention which was held in 1990 in the Irish capital which gives it its name.

In 2003 the new and improved Dublin II Regulation was implemented with the signatures of all European Union Member States except for Denmark which had already opted out of the Area of Freedom, Security and Justice, but soon the Union adopted a provision which made Denmark a party to this Regulation as well as extra European Union countries, Switzerland and Lichtenstein, with a treaty.

In 2008 the European Commission actually proposed some amendments to the Regulation resulting into Regulation Dublin III and this Regulation which replaced the second Dublin Regulation does not include Denmark.

All three of these regulations are based off the same principle, in order to decide which country is to be held responsible for an asylum seeker's request one should base themselves off the country in which the asylum seeker's fingerprints were first stored along with the first asylum claim being made is what grants said state the responsibility over that asylum seeker's asylum claim.

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[19] "When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection. 3. Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that: (a) applications are examined and decisions are taken individually, objectively and impartially; (b) precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions; (c) the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law; (d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues".

[20] "In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU 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".

After a long-lasting and complex negotiation, in May 2024 a new regulation set to substitute the Dublin III Regulation was finally adopted. It is the Regulation (EU) 2024/1351 of the EU Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013. Its aim is that of eliminating the limits of the current common European asylum system and create a system in which, instead of assigning asylum seekers to the responsibility of a specific Member state, should begin to share responsibility for all of the asylum seekers reaching the European Union territory.

This new Regulation will be called the Asylum and Migration Management Regulation or AMMR, as the Dublin III Regulation has been receiving countless criticisms and the European Commission feels there is a strong need to change it in order to access a new phase of the Common European Asylum System by removing the single state responsibility issue which has created countless issues as well as greatly reducing the functionality of the CEAS.

The issue of reduced functionality of the Dublin Regulation III impacting the CEAS as well has been going on for a very long time, since its creation the UNHCR has commented on this as well as many scholars[21]by expressing concrete concern due to this system creating a sort of "Fortress" around Europe and making it a lot harder for asylum seekers to reach Europe and move freely which goes directly against the principles that the Union funds itself on.

The concern due to the very precarious system that the EU had because of the Dublin III Regulation and its principle of single country responsibility allocation led to the decision to reform it completely.

With the new AMMR Regulation that will be implemented by 2026 as it was approved by the Union Legislator (Council and Parliament), a new set of rules will come into force: first of all, the responsibility for all asylum seekers should be shared between the Member states and second a system of solidarity between states will be implemented in order for Member States to support each other in times of need and when migration fluxes will be too much for them to withstand.

Another objective of this Regulation will be that of making it possible for asylum seekers and beneficiaries of international protection to move freely throughout the Union and be transferred in order for the states to share the burden of immigration fluxes.

2.5. The Qualifications Directive

The second directive that the German court asked about in the preliminary ruling is the so-called Qualifications Directive which as the name suggests

[21] Armstrong (2020), *You Shall Not Pass! How the Dublin System Fueled Fortress Europe*, in *Chicago Journal of International Law*, 332-383.

includes the standards and qualifications for third country nationals or stateless persons to receive international protection[22].
This Directive spells out each and every case to be taken into consideration when granting international protection, both in terms of the level of protection and on the grounds of inadmissibility, as well as every case in which international protection is to be granted with its limitations and all of its perks for beneficiaries.
In this Directive there are also of course all of the harmonised standards for recognising international protection in the Common European Asylum System, in particular it is the first instrument of European law that seeks to harmonise subsidiary protection[23].

2.6. The Asylum Procedures Directive

This is the last directive mentioned by the referring Court in the preliminary ruling, this Directive is the one that includes all of the harmonised common procedures and practices to recognise international protection or revoke it.[24]
This Directive is fundamental for the functioning of the CEAS, it follows the standards set by the UNHCR for the procedures for recognising internal protection but as it is a Directive it's important to remember that each Member state has its own interpretation of it in national law and its own procedures for implementing the Union set standards.

[22] Peers (2012), *Legislative update 2011, EU immigration and asylum law: The recast Qualification Directive*, in *European Journal of Migration and Law*, 199-221.
[23] Zwaan (2007), *The Qualification Directive: Central themes, problem issues, and implementation in selected Member states*, Nijmegen.
[24] McAdam (2005), *The European Union qualification Directive: The creation of a subsidiary protection regime*, in *International Journal of Refugee Law*, 461-516.

Chapter three – Position of the European Court of Justice and Advocate General

3.1 The position of Advocate General Laila Medina

An Advocate General (AG) is a high-ranking magistrate working alongside the judges in the CJEU, the AG plays a supporting role and helps the Court with fulfilling its duties and obligations.

There are eleven advocates general in the CJEU, and their role is codified in Art. 253 of TFEU[25] while in Art. 252[26] it states how the court may manage the number and the functions of the Advocate Generals, they must, like judges of the Court of Justice, be completely independent and impartial and their role is that of issuing opinions on cases and in general whenever their input is needed for the purpose of the situation.

Opinions given by advocates general are not really binding but the Court very rarely defies them, they are very important, and the judges tend to be in accordance with them.

The Advocate General Observations must be given before the CJEU, and the judges may decide to give a judgment with an opinion but at times the Court will just opt to give an opinion free judgement after hearing the advocate general.

In the Case C-753/22 Advocate General Laila Medina gave its Opinion on the 25th of January 2024, noting that the case focuses on the issue that arises where the conditions in the Member State originally granting refugee status are such that a person concerned cannot be returned there. It is necessary to consider what are the obligations of another Member state in which that person files a subsequent request for international protection and if the second Member state should process it and in what manner.

In her Opinion, Advocate General concludes that EU law does not provide for the principle of mutual recognition with regard to positive decisions granting refugee status. She considers that the concept of a single responsible Member state (Germany) under the Dublin III Regulation does not entail a requirement to recognise, without a substantive examination, the international protection that another Member state (Greece) has already granted.

However, in the Opinion of Laila Medina the Germany authorities examining the subsequent application cannot simply disregard the fact that the authorities of another Member state (Greece) have already granted refugee status. Indeed, this fact may constitute one of the elements substantiating the facts relied upon in support of the subsequent application.

Further, those authorities (the German ones) are to prioritise the examination of the subsequent application. They are also to consider the use of the

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[25] Article 252 of the Treaty on the Functioning of the European Union (TFEU): "the Court of Justice shall be assisted by eight Advocates-General" but, by request of the Court, "the Council acting unanimously, may increase the number of Advocates-General".

[26] "It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement".

information exchange mechanisms between the Member states provided for by the Dublin III Regulation, while the authorities in the first Member state (Greece) should respond to all requests for information within a markedly shorter time-frame than the deadline applicable under normal circumstances.
As we will soon consider, this Opinion has been useful for the Court, which for several elements accepted and followed the arguments and the reasoning of Advocate General.

3.2 The reasoning of the Court

The Court states that the administrative court was required to rule on the substance of QY's application for international protection. That application could not be declared inadmissible on grounds of Greece previously granting QY refugee status as QY runs a serious risk of facing, in that Member state, inhuman or degrading treatment, within the meaning of Art, 4 of the Charter.
One doubt of the referring court is about the legal value in Germany of the refugee status granted in Greece.
Is the principle of mutual recognition of decisions applicable also to those decisions granting refugee status? The referring court seems to not be convinced, because the mutual trust was broken in the case of QY due to the risks of inhuman or degrading treatment she would face in Greece.
Can the applicant be regarded as a "time applicant", or such an approach could entail a circumvention of the special rules provided for in the Qualification Directive? The very unusual nature of this case led the Court to the decision of handling such case as the Grand Chamber.
First of all, the Court rejects the Irish objection, granted on the *acte clair* doctrine[27], asking for the inadmissibility of the request for the preliminary ruling and so declares its admissibility.
As regards the substance of the preliminary ruling, the Grand Chamber recalls the mentioned pertinent articles of the Dublin Regulation, Qualification Directive and the Asylum Procedure Directive and efficiently synthesises the question a stake: Where the competent authority of a Member state cannot reject as inadmissible an application for international protection made by an applicant, to whom another Member state has already granted such protection, on account of a serious risk that the applicant will be subject in that other Member state, to inhuman or degrading treatment, within the meaning of Art. 4 of the Charter that authority is required to grant that applicant refugee status on the sole ground that he or she has already been granted that status by another Member state or whether it may carry out a new, independent examination of the substance of that application[28].

[27] This is a principle of European Union law which states that when a provision is clear enough a court of a Member state should not request a preliminary ruling for it.
[28] Para. 48.

The Court first of all recalls Art. 33(2) of the Asylum Procedures Directive which entails an exhaustive list of situations in which the Member states may consider an application for international protection as inadmissible[29].
The court qualifies this list as a derogation from the obligation on the part of the Member state to examine any application for international protection[30].
Point A of Art. 33(2) of the aforementioned Directive refers to a case in which international protection has already been granted by another Member state, this being one of the reasons for inadmissibility[31].
Despite this, the Court recalls its consolidated case law[32] which highlights an exception to the rule about inadmissibility: grounded on the substantial risk for the applicant of suffering inhumane or degrading treatments within the meaning of Art. 4 of the Charter[33].
The right given by Art. 4 of the Charter is referred to by the Court as one of the fundamental values of the EU and its Member states, a consequence of this is that it prevails over the principle of mutual trust and over the presumption that each Member state complies with the rules for the treatment of applicants for international protection[34].
The lack of mutual trust has to be fundamentally motivated by severe deficiencies in the living conditions of the applicant[35].
Having recalled its earlier case law the Grand Chamber considers the request by the referring court if it can assess the merit of the application of QY without being bound by the fact that Greece has already granted her refugee status[36].
Firstly, the Court recalls that EU law does not bind a Member state to automatically recognise decisions granting refugee status adopted by another Member state[37].
The Common European Asylum System provided for in Art. 78 TFEU could only possibly lead to a common procedure and a common refugee status valid throughout the EU, as of today the Qualification Directive limits itself to establishing common criteria in the examination of an application for international protection, each Member state should decide whether to grant international protection on its own[38].

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[29] Para. 49.
[30] Para. 50.
[31] Para. 51.
[32] Judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, para. 92; order of 13 November 2019, *Hamed and Omar*, C-540/17 and C-541/17, para. 35, and judgment of 22 February 2022, *Commissaire général aux réfugiés et aux apatrides (Family unity – Protection already granted)*, C-483/20, paras 32 and 34).
[33] Para. 52.
[34] Para. 53.
[35] Para. 54.
[36] Para. 55.
[37] Para. 56.
[38] Para. 2.

The Qualification Directive does not include an obligation for the Member state to accept another Member state decision granting international protection, as it follows Art. 78[39].
The purpose of the Asylum procedures Directive establishes the common procedures for granting and revoking international protection pursuant to the Qualification Directive[40].
This Directive follows the same principle as the previous one in stating that it is necessary to assess whether the applicant qualifies for refugee status or otherwise for international protection but the decision on this matter is in no way bound by the decision on the same matter of a different Member state.[41]
The same is true for the Dublin Regulation, which provides for the criteria and mechanisms for determining the Member state responsible for examining an application for international protection[42].
As of today the EU has not yet been able to fully achieve what is stated in Art. 78(2)(a) which is a uniform status, nor a mutual recognition of international protection in between Member states[43].
According to current EU law, there is a possibility for Member states to provide for automatic recognition of such decisions, but it must be considered that Germany did not avail itself of this option[44].
The Court recalls its case law[45] about the requirements for refugee status and the standards to be met for each evaluation of applications: they must be individual, objective and impartial in the light of up-to-date information.
If an applicant qualifies as a refugee, Member state have no discretion in granting he or she refugee status, if they classify as such, they have a right to be recognised refugee status.
Despite not being required to adopt the same decision of another Member state granting an applicant's international protection it should nevertheless consider the elements supporting that decision.
The common European Asylum System is based on the principle of mutual trust. The Court recalls this as well as the principle of sincere cooperation[46] to

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[39] Para. 63.
[40] Para. 64.
[41] Para. 65.
[42] Paras 66-67.
[43] Para. 69
[44] Para. 69
[45] Judgments of 24 June 2015, *T.*, C-373/13, para. 63; of 14 May 2019, *M and Others (Revocation of refugee status)*, C-391/16, C-77/17 and C-78/17, para. 89; and of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C-621/21, para. 72 and the case-law cited. Judgments of 25 January 2018, *F*, C-473/16, para. 41, and of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, para. 98.
[46] Article 4 of the Treaty on the European Union states: "1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.
2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of

suggest that a Member state that has received a request for international protection by a third country national or stateless person who has previously been granted international protection in a different Member state must initiate an exchange of information with the latter Member state.
The Court concludes that

> "where the competent authority of a Member state cannot exercise the option available to it under the last of those provisions to reject as inadmissible an application for international protection made by an applicant, to which another Member state has already granted such protection, on account of a serious risk that that applicant will be subjected, in that Member state, to inhuman and degrading treatment, within the meaning of Art. 4 of the Charter of Fundamental Rights of the European Union, that authority must carry out a new, individual, full and up to date examination of that application in a new international protection procedure conducted in accordance with Directives 2011/95 and 2013/32. Within the framework of that examination, that authority must never take full account of the decision of the other Member state to grant international protection to that applicant and of the elements on which that decision is based".

each Member State. 3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives".

Conclusions

On a personal level, this research has illuminated the stark contrast between the EU's lofty aspirations for solidarity and the practical realities of its implementation.

The *QY* case exemplifies the human cost of these inconsistencies. For asylum seekers like QY, legal uncertainty and prolonged vulnerability persist despite the promise of protection enshrined in EU law.

This situation underscores the urgent need for reform in the CEAS, particularly to ensure that asylum seekers are not forced into a precarious existence simply because of where they first arrived in Europe.

The role of the European Court of Justice (ECJ) has also emerged as a pivotal element in upholding fundamental rights. The Court's commitment to safeguarding the Charter of Fundamental Rights, even at the expense of mutual trust between Member states, reaffirms the importance of an independent judiciary in maintaining the balance between national sovereignty and supranational obligations.

In conclusion, while the *QY* case highlights the deficiencies in current EU asylum policy, it also offers hope for a more just and unified future.

The upcoming Asylum and Migration Management Regulation (AMMR) provides a potential pathway to overcoming the limitations of the Dublin system. However, for real change to occur, Member states must embrace greater cooperation and solidarity.

As the EU continues to evolve, it is essential to remember that behind every legal dispute there are individuals seeking safety, dignity, and a chance at a better life. This should be the guiding principle for future reforms in EU asylum law.

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