Uniformity of refugee status in EU law and secondary movements: insights from *QY v Germany* and *A., v Generalstaatsanwaltschaft Hamm*

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# 1. Introduction and facts of the case

The legal questions triggered by the movement of beneficiaries of international protection and by applicants for international protection between Member States, can be quite complicated. These secondary movements have exposed problems with the reception conditions in some Member States,[[1]](#footnote-1) which has prevented Dublin transfers from one Member State to another.[[2]](#footnote-2) These secondary movements also raise questions about the role positive decisions of granting refugee status in EU law. It has been already clarified that Member States are obliged under EU law to mutually recognize *negative* protection decisions (i.e. refusal to grant refugee status).[[3]](#footnote-3) How about *positive* decisions to grant refugee status? If an applicant is granted refugee status in one Member State, what implicants does this have if the beneficiary moves to another Member States (for the sake of clarity, referred to as new Member State)? These implications might reverberate into different areas, such as when new applications and new procedures for international protection are initiated, in the determination of the reception conditions or the content of the international protection.[[4]](#footnote-4)

In *QY v Bundesrepublik Deutschland* *(Effect of a decision granting refugee status)* the Court of Justice held that Member State are *not* required under EU to automatically recognize the positive decision issued by another Member State.[[5]](#footnote-5) Such a positive decision *does have some significance*, but very far from being anything close to automatically binding as to the positive conclusion that the applicant is eligible for refugee status. In this article, after briefly describing the facts, I explain the Court’s arguments in *QY* and their justifications. I also make relevant comparative references to the new EU asylum regulations adopted in 2024 (i.e. the 2024 Qualification Regulation and the 2024 Procedures Regulation).[[6]](#footnote-6) More specifically, Section 2 explains that there is no uniform refugee status in the EU. Section 3 clarifies that in *QY* the Court reasoned in favour of procedural obligation upon Member States to take ‘full account’ of positive decisions made by other Member States. Finally, Section 4 explores the link between, on the one hand, the effects of positive decisions for Member States and, on the other, the content of the refugee status. To proceed with this exploration, *A., v Generalstaatsanwaltschaft Hamm* delivered on the same day as *QY* is taken into account.

QY, a Syrian national, was granted refugee status in Greece in 2018. She left Greece and went to Germany, where she again applied for international protection. The German administrative court held that she cannot be returned to Greece since she faced the risk of suffering inhuman or degrading treatment. She was granted subsidiary protection status; but contrary to the Greek authorises, the German did not consider her eligible for refugee status.[[7]](#footnote-7) QY challenged the refusal of refugee status before the German Federal Administrative Court with the argument that the German authorities were obliged the recognize the positive refugee status decision made by the Greek authorities. In its reference for a preliminary ruling, the Federal Administrative Court asked the Court of Justice whether the German authorities were required to grant refugee status *on the sole* ground that such status had been granted in another Member State. Relatedly, the national court also asked whether the German authorities may conduct their own new independent procedure to assess eligibility for refugee status. The first question received a negative answer. The second question was answered in affirmative by the Court of Justice.

# 2. No uniform refugee status and no automatic recognition of positive decisions

To explain these answers, it is first relevant to note that it was clear that the application for protection could not be declared as inadmissible under the terms of Article 33(2) of Directive 2013/32. This provision allows Member States not to examine an application for international protection, where *inter alia* another Member State has granted such protection or where no new elements are invoked in a subsequent application. Article 33(2) of Directive 2013/32 could not be applied since the German authorities had already determined that QY faced a substantial risk of suffering inhuman or degrading treatment in Greece.[[8]](#footnote-8)

In its answer, the Court of Justice took note of Article 78(2) TFEU that envisions the adoption of ‘a uniform status of asylum for nationals of third countries, valid throughout the Union.’ It held that progressively with time uniform refugee status was envisioned by EU law. However, EU law has not reached this stage yet. Consequently, Member States are not required to automatically recognize positive decisions. The Court added: ‘On the contrary, certain provisions of that directive [Directive 2011/95], such as Article 29(1) relating to social welfare, limit certain rights relating to refugee status to the Member State that has granted that status.’[[9]](#footnote-9) This addition reveals how the status is a conduit for certain rights, including social welfare, and how these rights are ultimately ensured at the level of each Member State.[[10]](#footnote-10) As a consequence, once a Member States takes a positive decision, it is *this* Member State that has to bear the burden of guaranteeing the ensuing rights (i.e. the content of the international protection).

Here it is relevant to observe that this idea is made even more powerful with the 2024 revisions. One can, for example, compare Article 27 (Access to education) of the 2011 Qualification Directive with Article 29 of the 2024 Qualification Regulation. Explicit references to ‘the Member State that granted them international protection’ have been added in the latter provision. Note should be also taken of Article 27 of the 2024 Qualification Regulation that contains a rule to the effect that beneficiaries of international protection have no right to reside in a Member State other than the Member State that granted them protection. Such a rule is absent from the 2011 Qualification Directive.

Not only does the 2024 Qualification Regulation strongly expresses the idea that a positive decision bounds only the Member State that has taken it. Article 40 of this Regulation further intends to punish the beneficiary of international protection if found in a Member States other than the one that granted the protection, in relationship to the possibility of receiving long-terms residence status.[[11]](#footnote-11)

In *QY* the Court clarified that another Member State might *choose to take the burden*: ‘it is open to them [the Member States] to provide for automatic recognition of such decisions adopted by another Member States.’ According to the Court’s reasoning, this is possible due to Article 3 of 2011 Qualification Directive and Article 5 of the Procedures Directive. These allow Member States to have more favourable standards.[[12]](#footnote-12)

Importantly, a provision similar to Article 3 of the 2011 Qualification Directive has been removed from the 2024 Qualification Regulation. The same removal can be observed regarding the 2024 Procedures Regulation. Yet, Recital 6 from the preamble of the latter Regulation says that ‘[t]his harmonisation and convergence of national asylum systems should be achieved without preventing Member States from introducing or retaining more favourable provisions where provided for by this Regulation.’ The flexibility for a Member State to make a choice for automatic recognition of a positive decision has been therefore preserved. This finds further support in Recital 45 from the Preamble of the 2024 Procedures Regulation:

the fact that another Member State has already granted international protection is, *as a rule,* a reason for rejecting an application by the same applicant as inadmissible. Therefore, Member States should *have the possibility* to reject an application as inadmissible where an applicant has already been granted international protection in another Member State. In addition, an application should be considered to be inadmissible when it is a subsequent application without new relevant elements.[[13]](#footnote-13)

Crucially, such a flexibility is maintained in light of the text of Article 38 of the 2024 Procedures Directive that regulates decisions on the admissibility of applications for international protection. The latter stipulates that the determining authority *may* be authorised under national law to reject an application as inadmissible where a Member State other than the Member State examining the application has granted international protection. Notably, the determining authority is not obliged under EU law to declare the application as inadmissible.

# 3. Procedural obligation to take ‘full account’ of a positive decision

Although Member States are not obliged under EU law to automatically recognize a positive refugee status decision, the Court held that they ‘must nevertheless *take full account* of that decision and of the elements supporting it.’[[14]](#footnote-14) This can be viewed as a procedural requirement imposed upon the Member States. The Court justified this requirement with the principle of mutual trust. More specifically, the positive decision must be assumed as being taken in accordance with the requirements of EU law.

This justification comes as controversial since the whole problem about the role of the positive decision taken by another Member State, would not arise in the first place, if EU law had been actually followed by this State. Admittedly, the relevant EU law pertains to the reception conditions, which explained why the applicant could not be transferred back to Greece. Yet, it might be difficult to assume that although the latter had not been complied with (i.e. the Reception Conditions Directive), the EU law pertaining to the procedure for granting refugee status has been.[[15]](#footnote-15) Admittedly, while the presumption of mutual trust might be undermined in some specific respects (i.e. inhumane reception conditions that prevent transfer back), the presumption might still operate in other respects (i.e. the procedure for making protection-related decisions). Yet, a presumption does it remain. Despite any high thresholds,[[16]](#footnote-16) it might still be possible to rebut it in light of the actual reality.

What might be however the implications from such a fragmented approach to mutual trust? If the presumption of mutual trust and therefore trust in the positive outcomes (i.e. positive protection decisions) of the national procedures stands, could this lead to a situation where EU Member States such as Greece are encouraged to issue positive decisions, knowing that the beneficiaries will anyway move on to other Member States (and cannot be sent back)? Another scenario that can arise from the procedural requirement to ‘take full account’ of the positive decision is the following: Member States will start reviewing (or at least making some form of an assessment) of positive decisions taken by other Member States. This might be an interesting situation of a judicial dialogue between national authorities and courts on the matter.

In *QY* the Court added another related procedural requirement upon the Member State that has to make a new assessment of the application: ‘the competent authority of the Member State called upon to decide on the new application must, as soon as possible, initiate *an exchange of information* with the competent authority of the Member State which previously granted refugee status of the same applicant.’[[17]](#footnote-17) The requirement to exchange information was justified with the principle of sincere cooperation. The objective of such an exchange is to enable the Member State to ‘proceed on a fully informed basis with the checks which it is required to carry out under the international protection procedure.’[[18]](#footnote-18)

# 4. The link between a positive decision on refugee status and the content of the status

It has been clarified that, in the *QY* case, the Court held that a positive decision taken in one Member State carries limited procedural legal effects for another Member State. In section 2 above, it was also mentioned how the limitations of these effects were justified with the argument that a positive decision leads to certain rights meant to be exercised in the Member States that has taken this decision. Put it otherwise, a positive decision comes with a certain package of burdens (i.e. the content of international protection rights/the content of the refugee status). When this logic is followed, it comes as unfair for a Member State to take the burden without having the possibility to assess the basis on which it takes the burden (i.e. the grounds for international protection).

As this point it is therefore relevant to further explore the link between, on the one hand, the effects of a positive decision for the new Member State and, on the other, the content of the refugee status. To proceed with this exploration, *A., v Generalstaatsanwaltschaft Hamm* delivered on the same day as *QY* needs to be taken into consideration.[[19]](#footnote-19) The request for preliminary ruling in this case was made in relationship to proceedings related to A. He was a Turkish national with refugee status granted by Italy in 2010 on the ground that he was at risk of political persecution by the Turkish authorities because of his support for the PKK. He, however, had resided in Germany since 2019. In 2020 Turkey requested Germany to extradite A. for the purpose of his criminal prosecution. In its reference for a preliminary ruling the German court asked whether the positive refugee status decision taken by Italy was binding upon Germany to the effect that Germany would not be allowed to extradite him.

After reiterating that as EU law currently stands, there is no uniform status for asylum,[[20]](#footnote-20) the Court noted that Member State are free to make a new decision: ‘Member States are thus, as EU law currently stands, *free to make recognition of all of the rights relating to refugee status on their territory subject to the adoption*, by their competent authorities, of a new decision granting refugee status’[[21]](#footnote-21) Then, however, it assessed a positive decision as not linked to all the rights, but as only linked to removal from the territory for the purpose of extradition. In this respect, the Court clarified that

[…] as long as that individual qualifies as a refugee, Article 18 of the Charter precludes the extradition of that individual to the third country which he or she fled and in which he or she risks being persecuted.

In the present case, this means that *as long as there is a risk* that A. may suffer political persecution - because of which he was granted refugee status by the Italian authorities – in his third State of origin which submitted the extradition request, A.’s extradition to that third State must be ruled out under Article 18 of the Charter.[[22]](#footnote-22)

In these paragraphs the following conceptual move is performed in the reasoning – it is not the positive decision *as such* that seems to matter, but the factual reality as to whether there is risk for the person. Along the same lines, the Court added that

where the person whose extradition is sought invokes a real risk of inhuman or degrading treatment if extradited, the requested Member State must verify, before carrying out that extradition, that the extradition will not prejudice the rights referred to in Article 19(2) of the Charter

This reasoning also suggests a departure from the already made positive decision as such. Yet, then the Court’s reasoning returned to this decision’s role:

For the purposes of assessing the risk of infringement of Article 21(1) of Directive 2011/95 and of Article 18 and Article 19(2) of the Charter, the fact that another Member State granted the requested individual refugee status, in accordance with Directives 2011/95 and 2013/32, *is a particularly substantial piece of evidence* which the competent authority of the requested Member State must take into account. Thus, a decision granting refugee status *must lead that authority to refuse extradition*, in accordance with those provisions, provided that that refugee status has not been revoked or withdrawn by the Member State that granted it.[[23]](#footnote-23)

Notably, the standard of ‘substantial piece of evidence’ was not invoked in *QY*. This means that when it comes to the non-removal (as one of the rights that attached to refugee status), the evidential value of the positive refugee decision is much higher. The last sentence in the above quotation implies that such a decision does not simply have an evidential value, but it should automatically preclude the removal. The formal automatic value of the positive decision is further supported by the Court’s statement that ‘the requested Member State [i.e. Germany] cannot authorise extradition unless it has initiated an exchange of information with the authority that granted the requested individual refugee status and *where that status has not been revoked* by that authority.’[[24]](#footnote-24)

Overall, then although the Court’s reasoning oscillates between the factual reality of risk and the formal automatic role of the positive decision, the latter trumps. This means that the new Member States has to *automatically give effect to the most fundamental minimum right* (i.e. *non-refoulement*) attached to the refugee status provided that this status is not withdrawn (by the Member State that has granted it). Importantly, when *A., v Generalstaatsanwaltschaft Hamm* is juxtaposed against *QY,* it follows that the role of the positive decision taken by one Member States depends on the rights at issue that attach to this decision. The effects of a positive decision taken by one Member State upon any decision-making procedures or actual decisions in a new Member State, depend on which rights of refugee are at issue. These rights form the content of international protection (i.e. the content of the refugee status). As Chapter VII of the 2011 Qualification Directive has outlined them, these rights range from the very minimum guarantee of *non-refoulement* to much far-reaching benefits such as residence permits, access to the national labour market and social welfare. If the right forming the content of the refugee status pertains to the most fundamental minimum core principle of *non-refoulement*, the positive decision taken by the first Member States holds overriding role. This follows from *A., v Generalstaatsanwaltschaft Hamm* that was about possible *refoulement* to a third country. The further we move from the minimum core of the rights attached to the status and enter the area of e.g. residence permits, employment, education etc, the more diminished is the formal role of the decision. If we follow *QY,* it simply has an evidentiary value.

# 5. Conclusion

Movements of beneficiaries of international protection between Member States pose a challenge to the very idea of a common asylum system. It cannot be truly common, if the positive decision to grant refugee status ultimately remains a national decision. *QY* clarified that it has an evidential role since the new Member State is under the procedural obligation to take ‘full account’ of the positive decision taken by another Member State. *QY,* as also compared with *A., v Generalstaatsanwaltschaft Hamm,* lays bare the following logic: the more burdens (i.e. the content of international protection rights/the content of the refugee status) the Member States has, the more unfair it can be to undertake these burdens without having the possibility to assess the basis on which it takes the burdens (i.e. the grounds for international protection). This logic, underpinned by the idea that a positive protection decision is a national decision that allows access to the benefit of belonging to the specific *national* community,[[25]](#footnote-25) continues to be reflected in the 2024 amendments to the EU asylum legislation.

1. *N.S. and Others* C-411/10. [↑](#footnote-ref-1)
2. Regulation No 604/2013 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 (recast). [↑](#footnote-ref-2)
3. C-288, C-254/21, C-297/21, C-315/21 and C-328. See Jointed Cases C-123/23 and C-202/23. [↑](#footnote-ref-3)
4. For pending cases at the Court of Justice concerning questions about the role of positive protection decision, see also *El Baheer*[C-288/23](https://curia.europa.eu/juris/fiche.jsf?id=C%3B288%3B23%3BRP%3B1%3BP%3B1%3BC2023%2F0288%2FP&nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=C-288%252F23&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lgrec=en&lg=&cid=437949" \t "_blank), *Cassen* [C-551/23](https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=C-551%252F23&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lg=&page=1&cid=437949" \t "_blank). See also *Generalstaatsanwaltschaft Hamm* [C-352/22](https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=C-352%252F22&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&oqp=&td=%3BALL&avg=&lg=&page=1&cid=437949). [↑](#footnote-ref-4)
5. *QY v Bundesrepublik Deutschland*  C-753/22, 18 June 2024. [↑](#footnote-ref-5)
6. Regulation 2024/1348 of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU; Regulation 2024/1347 of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council. [↑](#footnote-ref-6)
7. Eligibility for refugee status and subsidiary protection status is defined in Directive 2011/95/EU 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 (recast) OJ L 337. While the first one implies risk of persecution individually targeted at the applicant; subsidiary protection status is granted upon risk of ‘serious harm’ of a more general nature. Once refugee status or subsidiary protection status granted, the beneficiaries are entitled to the same benefits in many respects. However, there are also important ways in which the benefits different: while refugee status entities the beneficiary to three-year residence permit, subsidiary protection status entitles the beneficiary to only one year permit. [↑](#footnote-ref-7)
8. For prevention of Dublin transfers due to risk of inhuman or degrading treatment in the receiving Member States, see *N.S. and M.E.* C-411 and C-493/10, 21 December 2011; *CK and Others v Slovenia* Case C-578/16, 16 February 2017. [↑](#footnote-ref-8)
9. C-753/22, para 63. [↑](#footnote-ref-9)
10. Vladislava Stoyanova, ‘Temporariness of Refugee Protection: For What and in Whose Interest? Cessation of Status as Related to Revocation of Residence Permits’ (2022) 29 (5) Maastricht Journal of European and Comparative Law 527. [↑](#footnote-ref-10)
11. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. [↑](#footnote-ref-11)
12. See also *A. v Generalstaatsanwaltschaft Hamm*, C‑352/22, 18 June 2024, para 44: ‘Member States are thus, as EU law currently stands, free to make recognition of all of the rights relating to refugee status on their territory subject to the adoption, by their competent authorities, of a new decision granting refugee status.’ [↑](#footnote-ref-12)
13. Emphasis added. [↑](#footnote-ref-13)
14. C-753/22, para 76 (emphasis added). [↑](#footnote-ref-14)
15. Admittedly, in light of 2024 Procedures Regulation, the procedures in Members States are expected to become more harmonized. This supports the idea that when one Member States takes a positive refugee status decision, the same outcome/conclusion (i.e. the positive decision) should be reached by following the procedure in another Member States. Yet, the reception conditions have not been harmonized to the same level. See Directive 2024/1346 of 14 May 2024 laying down standards for the reception of applicants for international protection. [↑](#footnote-ref-15)
16. *CK and Others v Slovenia* Case C-578/16, 16 February 2017, para 96: ‘systemic flaws’. [↑](#footnote-ref-16)
17. Para 78. [↑](#footnote-ref-17)
18. Para 79. [↑](#footnote-ref-18)
19. A*., v Generalstaatsanwaltschaft Hamm*, Case C‑352/22, 18 June 2024. [↑](#footnote-ref-19)
20. Case C‑352/22, para 43. [↑](#footnote-ref-20)
21. Case C‑352/22, para 44 (emphasis added). [↑](#footnote-ref-21)
22. Case C‑352/22, para 58 and 59. [↑](#footnote-ref-22)
23. Case C‑352/22, para 64. [↑](#footnote-ref-23)
24. Case C‑352/22, para 72. [↑](#footnote-ref-24)
25. See Gregor Noll, ‘Salvation by the Grace of State? Explaining Credibility Assessment in the Asylum Procedure’ in Gregor Noll (eds), [*Proof, Evidentiary Assessment and Credibility in Asylum Procedures*](https://lubcat.lub.lu.se/cgi-bin/koha/opac-detail.pl?biblionumber=5724794) (Nijhoff Publishers, 2005) 197, 198 where in more theoretical terms, it is explained how the positive asylum decision is a constitutional nature since it concerns inclusion into the protective community of the host state. Noll also adds that ‘[a]sylum procedures are, too, about membership. At a minimalist level, *nonrefoulement* allows for a limited form of membership. At the other extreme of the scale, we encounter a recognised refugee with a permanent residence permit, perhaps aspiring for naturalisation.’ 205 [↑](#footnote-ref-25)