ECLI:EU:C:2022:708

Provisional text

JUDGMENT OF THE COURT (First Chamber)

22 September 2022 (*)

(Reference for a preliminary ruling – Common asylum and immigration policy – Directive 2011/95/EU – Standards for granting refugee status or subsidiary protection status – Withdrawal of the status – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Danger to national security – Position taken by a specialist authority – Access to the file)

In Case C-159/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Budapest High Court, Hungary), made by decision of 27 January 2021, received at the Court on 11 March 2021, in the proceedings

GM

v

Országos Idegenrendézeti Főigazgatóság,

Alkotmányvédelmi Hivatal,

Terrorelhárítási Központ,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, I. Ziemele, P.G. Xuereb and A. Kumin, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– GM, by B. Pohárnok, ügyvéd,

– the Hungarian Government, by M.Z. Fehér, R. Kissné Berta and M. Tátrai, acting as Agents,

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

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

– the European Commission, by A. Azéma, L. Grønfeldt and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 April 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 14 and 17 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9), Articles 4, 10, 11, 12, 23 and 45 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), and of Articles 41 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings brought by GM, a third-country national, against the decision of the Országos Idegenrendiszeti Főigazgatóság (National Directorate-General for Aliens Policing, Hungary; 'the Directorate-General') withdrawing his refugee status and refusing to grant him subsidiary protection status.

Legal context

European Union law

Directive 2011/95

3 Article 2(d) and (f) of Directive 2011/95 is worded as follows:

'For the purposes of this Directive the following definitions shall apply:

…

(d) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

…

(f) “person eligible for subsidiary protection” means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country’.

4 Article 12 of that directive defines cases of exclusion from being a refugee.

5 Article 14(4)(a) of that directive provides:

‘Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present’.

6 Article 17(1)(b) and (d) of that directive states:

‘A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

…

(b) he or she has committed a serious crime;

…

(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.’

Directive 2013/32

7 Recitals 16, 20, 34 and 49 of Directive 2013/32 state:

‘(16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.

…

(20) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant’s effective access to basic principles and guarantees provided for in this Directive.

…

(34) Procedures for examining international protection needs should be such as to enable the competent authorities to conduct a rigorous examination of applications for international protection.

…

(49) With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a reasoned decision to withdraw their status.'

8 Article 2(f) of that directive provides:

'For the purposes of this Directive:

…

(f) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases.'

9 Article 4(1) to (3) of that directive is worded as follows:

'1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.

2. Member States may provide that an authority other than that referred to in paragraph 1 shall be responsible for the purposes of:

(a) processing cases pursuant to 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)]; and

(b) granting or refusing permission to enter in the framework of the procedure provided for in Article 43, subject to the conditions as set out therein and on the basis of the reasoned opinion of the determining authority.

3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. To this end, Member States shall provide for relevant training … Member States shall also take into account the relevant training established and developed by the European Asylum Support Office (EASO). Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.'

10 Article 10(2) and (3) of that directive provides:

‘2. 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:

…

(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.’

11 Article 11 of Directive 2013/32, entitled ‘Requirements for a decision by the determining authority’, reads as follows in paragraph 2 thereof:

‘Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

…’

12 Article 12 of that directive establishes several guarantees granted to applicants.

13 Article 23(1) of that directive provides:

‘Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant’s file upon the basis of which a decision is or will be made.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised. In such cases, Member States shall:

(a) make access to such information or sources available to the authorities referred to in Chapter V; and

(b) establish in national law procedures guaranteeing that the applicant’s rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.’

14 Article 45 of that directive states:

‘1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person …, the person concerned enjoys the following guarantees:

(a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and

(b) to be given the opportunity to submit, in a personal interview …, reasons as to why his or her international protection should not be withdrawn.

…

3. Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

4. Once the competent authority has taken the decision to withdraw international protection, Article 20, Article 22, Article 23(1) and Article 29 are equally applicable.

5. By way of derogation from paragraphs 1 to 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State.’

15 Article 46(1) of Directive 2013/32, which is set out in Chapter V thereof entitled ‘Appeals procedures’, is worded as follows:

‘Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

…

(c) a decision to withdraw international protection pursuant to Article 45.’

Hungarian law

16 Article 57(1) and (3) of the menedékjogról szóló 2007. évi LXXX. törvény (Law No LXXX. of 2007 on the right to asylum) provides:

‘(1) In procedures governed by this Law, the national security authority shall issue a report on any technical matters it is competent to assess.

…

(3) The competent asylum authority may not depart from the report by the national security authority if decision-making on the matter stipulated in the report is not within its area of competence.

…'

17 Article 11 of the minősített adat védelméről szóló 2009. évi CLV. törvény (Law No CLV of 2009 on the protection of classified information) provides:

'(1) Data subjects shall be entitled to have access to their personal data classified as national classified information on the basis of a consultation authorisation issued by the classifier and shall not require personal security clearance. Before gaining access to national classified information, the data subject is required to make a written confidentiality declaration and comply with the provisions governing the protection of national classified information.

(2) On request by the data subject, the classifier shall decide within 15 days whether to grant the consultation authorisation. The classifier shall refuse the consultation authorisation if taking cognisance of the information harms the public interest on which the classification is based. The classifier shall state reasons for refusing consultation authorisation.

(3) Where consultation authorisation is refused, the data subject may appeal that decision in contentious administrative proceedings. …'

18 Article 12(1) of that law provides:

'The controller of the classified information may deny the data subject the right to access his or her personal data if the public interest on which the classification is based would be compromised by exercise of that right.'

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

19 In 2002, GM was given a custodial sentence by a Hungarian court for a drug trafficking offence.

20 While he was serving that sentence, he lodged an application for asylum in Hungary in 2005. Following that request, he was granted 'accepted person' status, which he then lost in 2010.

21 After submitting a fresh application for asylum, GM was granted refugee status by judgment of 29 June 2012 of the Fővárosi Törvényszék (Budapest High Court, Hungary).

22 By decision of 15 July 2019, the Directorate-General withdrew GM's refugee status and refused to grant him subsidiary protection status, while applying the principle of non-refoulement to GM. That decision was taken on the basis of a non-reasoned opinion issued by the Alkotmányvédelmi Hivatal (Constitutional Protection Office, Hungary) and by the Terrorelhárítási Központ (Counter-terrorism Centre, Hungary) (together, 'the specialist bodies'), in which those two authorities concluded that GM's stay constitutes a danger to national security.

23 GM brought an action before the referring court to challenge that decision.

24 That court is uncertain, first of all, as to whether the Hungarian legislation on access to classified information is compatible with Article 23 of Directive 2013/32 and with various provisions of the Charter.

25 The referring court observes that it is apparent from the case-law of the Kúria (Supreme Court, Hungary) that, in a situation such as that at issue in the main proceedings, the procedural rights of the person concerned are guaranteed by the option available to the court having jurisdiction, with a view to assessing the lawfulness of the decision on international protection, to consult the confidential information on which the opinion of the specialist bodies is based.

26 However, pursuant to Hungarian legislation, neither the person concerned nor his or her representative has a specific opportunity to express his or her views on the non-reasoned opinion of those bodies. While they admittedly have the right to submit a request for access to confidential information concerning that person, they cannot, in any case, make use, in the context of administrative or judicial proceedings, of the confidential information to which they have been granted access.

27 Next, the referring court is uncertain as to the compatibility with EU law of the rule laid down by Hungarian law that the Directorate-General is required to rely on a non-reasoned opinion given by the specialist bodies, and cannot itself examine the application of the ground for exclusion in the case before it, with the result that it can give reasons for its own decision only by making reference to that non-reasoned opinion. That court considers, first, that those specialist bodies do not meet the conditions imposed by Directive 2013/32 for carrying out such an examination and for taking such a decision and, second, that the national rule at issue may hinder the application of procedural guarantees under EU law.

28 Lastly, that court asks to what extent it is possible, when assessing the possible grant of subsidiary protection following the withdrawal of refugee status, to take into account a criminal conviction which was served 16 years previously and already known by the authorities that granted refugee status, but which was not taken into account by those authorities in refusing to grant refugee status.

29 In those circumstances, the Fővárosi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 11(2), Article 12(1)(d) and (2), Article 23(1)(b) and Article 45(1) and (3) to (5) of [Directive 2013/32] – in the light of Article 47 of [the Charter] – be interpreted as meaning that, where the exception for reasons of national security referred to in Article 23(1) of [Directive 2013/32] applies, the Member State authority that has adopted a decision to refuse or withdraw international protection based on a reason of national security and the national security authority that has determined that the reason is confidential must ensure that it is guaranteed that in all circumstances the applicant, a refugee or a foreign national beneficiary of subsidiary protection status, or that person’s legal representative, is entitled to have access to at least the essence of the confidential or classified information or data underpinning the decision based on that reason and to make use of that information or those data in proceedings relating to the decision, where the responsible authority alleges that their disclosure would conflict with the reason of national security?

(2) If the answer is in the affirmative, what precisely should be understood by the “essence” of the confidential reasons on which that decision is based, for the purposes of applying Article 23(1)(b) of [Directive 2013/32] in the light of Articles 41 and 47 of the Charter?

(3) Must Article 14(4)(a) and Article 17(1)(d) of [Directive 2011/95] and Article 45(1)(a) and (3) to (4) and recital 49 of [Directive 2013/32] be interpreted as meaning that they preclude national legislation according to which refugee or foreign national beneficiary of subsidiary protection status may be withdrawn or excluded by a non-reasoned decision which is based solely on automatic reference to the – likewise non-reasoned – binding and mandatory report of the national security authority and finds that there is a danger to national security?

(4) Must recitals 20 and 34, Article 4 and Article 10(2) and (3) – particularly subparagraph (d) – of [Directive 2013/32] and [Article] 14(4)(a) and [Article] 17(1)(d) of [Directive 2011/95] be interpreted as meaning that they preclude national legislation according to which that national security authority examines the ground for exclusion and takes a decision on the substance in a procedure that does not comply with the substantive and procedural provisions of [Directive 2013/32] and [Directive 2011/95]?

(5) Must Article 17(1)(b) of [Directive 2011/95] be interpreted as meaning that it precludes an exclusion based on a circumstance or crime that was already known before the judgment or final decision granting refugee status was adopted but which was not the basis of any ground for exclusion in relation to either the grant of refugee status or to subsidiary protection?'

Consideration of the questions referred

The first and second questions

30 By its first and second questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 11(2), Article 12(1) and (2), Article 23(1) and Article 45(1) and (3) to (5) of Directive 2013/32, read in the light of Articles 41 and 47 of the Charter, must be interpreted as precluding national legislation which provides that, where a decision rejecting an application for international protection or withdrawing such protection is based on information the disclosure of which would jeopardise the national security of the Member State in question, the person concerned or his or her adviser can access that information only after obtaining authorisation to that end, are not provided even with the substance of the grounds on which such decisions are based and cannot, in any case, use, for the purposes of administrative procedures or judicial proceedings, the information to which they may have had access.

31 As a preliminary point, it should be noted, in the first place, that, although the referring court refers, in its first two questions, to Article 11(2), Article 12(1) and (2) and Article 45(1), (3) and (5) of Directive 2013/32, those provisions are not of direct relevance to the answer to those questions, since those questions relate essentially to the arrangements for access to the information placed on the file, which arrangements are defined in Article 23(1) of that directive.

32 In the second place, Article 45(4) of Directive 2013/32, referred to in the first question, must, by contrast, be taken into consideration in order to answer the first and second questions, in so far as that provision states that Article 23(1) of that directive is to apply in procedures for the withdrawal of international protection once the competent authority has taken the decision to withdraw that protection.

33 It thus follows from Article 45(4) of that directive that the rules laid down in Article 23(1) thereof are binding not only in procedures for examining an application for international protection but also in procedures for withdrawing that protection.

34 In the third place, as regards Article 41 of the Charter, to which the referring court makes reference in its second question, it should be recalled that it is clear from the wording of that provision that it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union (see, to that effect, judgment of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 33 and the case-law cited).

35 However, Article 41 of the Charter reflects a general principle of EU law, which is intended to apply to Member States when they implement that law (see, to that effect, judgment of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 34 and the case-law cited).

36 That principle must therefore be taken into consideration with a view to clarifying the obligations imposed on the Member States when implementing Article 23(1) of Directive 2013/32.

37 In that connection, it should be observed that the first subparagraph of Article 23(1) of Directive 2013/32 provides that Member States are to ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, is to enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

38 The second subparagraph of Article 23(1) of that directive does, however, allow Member States to derogate from that rule where disclosure of information or the sources thereof would jeopardise, inter alia, national security or the security of those sources.

39 In such a case, the Member States must, first, in accordance with point (a) of the second subparagraph of Article 23(1) of that directive, make access to such information or sources available to the courts having jurisdiction to rule on the lawfulness of the decision on international protection and, second, pursuant to point (b) of the second subparagraph of Article 23(1) of that directive, to establish in national law procedures guaranteeing that the rights of defence of the person concerned are respected.

40 As the Advocate General observes in points 44 and 45 of his Opinion, the first and second questions relate not to the powers conferred on the courts having jurisdiction but to the respect for the rights of defence of the person concerned and are, consequently, aimed solely at the interpretation of the obligation laid down in point (b) of the second subparagraph of Article 23(1) of Directive 2013/32.

41 In that regard, it should admittedly be noted that the scope of that obligation is specified in the third subparagraph of Article 23(1) of that directive, according to which, having regard to point (b) of the second subparagraph of Article 23(1) thereof, the Member States may, in particular, grant access to the information on the file or the sources thereof, the disclosure of which would jeopardise national security, to a legal adviser or other counsellor who has undergone a security check, in so far as the information is relevant to examining the application or for taking a decision to withdraw international protection.

42 However, it is clear from the wording of the third subparagraph of Article 23(1), and particularly from the use of the phrase 'in particular', that the establishment of the procedure referred to in that provision is not the only option available to the Member States to comply with point (b) of the second subparagraph of Article 23(1) of Directive 2013/32 and that they are therefore not required to establish such a procedure.

43 Consequently, as Directive 2013/32 does not specify how the Member States are to guarantee respect for the rights of defence of the person concerned where his or her right of access to the file is restricted pursuant to the second subparagraph of Article 23(1) of that directive, the practical arrangements of the procedures established to that end are a matter for the domestic legal order of each Member State, in accordance with the principle of the procedural autonomy of the Member States, provided that these are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights of defence conferred by the European Union legal order (principle of effectiveness) (see, by analogy, judgments of 4 June 2020, *C. F. (Tax audit)*, C-430/19, EU:C:2020:429, paragraph 34, and of 9 September 2020, *Commissaire général aux réfugiés et aux apatrides (Rejection of a subsequent application – Time limit for bringing proceedings)*, C-651/19, EU:C:2020:681, paragraph 34 and the case-law cited).

44 It must also be borne in mind that the Member States are required, when they implement EU law, to ensure compliance both with the requirements of the right to sound administration – as has been observed in paragraph 35 of the present judgment – and the right to an effective remedy enshrined in the first paragraph of Article 47 of the Charter (see, to that effect, judgments of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, paragraph 34, and of 14 May 2020, *Agrobet CZ*, C-446/18, EU:C:2020:369, paragraph 43), which require respect for the rights of defence of the person concerned during the administrative procedure and any judicial proceedings, respectively (see, to that effect, judgments of 5 November 2014, *Mukarubega*, C-166/13, EU:C:2014:2336, paragraph 45, and of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, C-314/18, EU:C:2020:191, paragraph 58).

45 In that connection, as regards, in the first place, the administrative procedure, it is settled case-law of the Court that observance of the rights of the defence means that addressee of a decision which significantly affect his or her interests must be placed in a position, by the authorities of the Member States when they take decisions which come within the scope of EU law, in which he or she can effectively make known his or her views as regards the information on which the authorities intend to base their decision (see, to that effect, judgments of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraph 39, and of 3 June 2021, *Jumbocarry Trading*, C-39/20, EU:C:2021:435, paragraph 31).

46 In particular, the purpose of that requirement is, in the context of proceedings relating to international protection, to allow the authority responsible for making the determination to proceed, in full knowledge of the facts, with the individual assessment of all of the relevant facts and circumstances, which requires that the addressee of that decision be able to correct an error or submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, to that effect, judgments of 9 February 2017, *M*, C-560/14, EU:C:2017:101, paragraphs 32 and 37, and of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 35).

47 Since that requirement necessarily supposes that that addressee be afforded, if necessary though an adviser, a concrete possibility to be aware of the evidence on which the authorities intend to base their decision, respect for the rights of the defence has as a corollary the right of access to the file during the administrative procedure (see, to that effect, judgment of 16 October 2019, *Glencore Agriculture Hungary*, C-189/18, EU:C:2019:861, paragraphs 51 to 53 and the case-law cited).

48 As regards, in the second place, the judicial proceedings, respect for the rights of the defence, which is required in particular in the context of proceedings relating to appeals in international

protection cases (see, to that effect, judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 32), means that the applicant must be able to ascertain not only the reasons upon which the decision taken in relation to him or her is based, but also all of the elements on file on which the authority has based that decision, so as to be able to comment on those elements (see, to that effect, judgments of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 53, and of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraph 61 and the case-law cited).

49 Furthermore, the adversarial principle, which forms part of the rights of the defence, which are referred to in Article 47 of the Charter, means that the parties to a case must have the right to examine all the documents or observations submitted to the court for the purpose of influencing its decision, and to comment on them (judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 55 and the case-law cited), which presupposes that the person subject to a decision on international protection must be able to acquaint himself or herself with the elements of his or her file which are made available to the court or tribunal called upon to rule on the appeal against that decision.

50 That being so, since the obligation set out in point (b) of the second subparagraph of Article 23(1) of Directive 2013/32 is intended solely to apply where the right of access to the file of the person concerned has been restricted on one of the grounds mentioned in that provision, it must be borne in mind that the rights of the defence are not absolute rights, and the right of access to the file, which is the corollary thereto may therefore be limited, on the basis of a weighing up, on the one hand, of the right to sound administration and the right to an effective remedy of the person concerned and, on the other hand, the interests relied on in order to justify the non-disclosure of an element of the file to that person, in particular where those interests relate to national security (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraphs 54, 57 and 64 and the case-law cited).

51 That weighing up cannot, however, lead, in the light of the necessary observance of Article 47 of the Charter, to depriving the rights of defence of the person concerned of all effectiveness and to rendering meaningless the right to a remedy provided for in Article 45(3) of Directive 2013/32, in particular by not informing that person, or, as the case may be, his or her adviser, at the very least of the substance of the grounds on which the decision taken against him or her is based (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 65).

52 That weighing up may, however, result in certain information in the file not being disclosed to the person concerned, where disclosure of that information is likely to jeopardise the security of the Member State concerned in a direct and specific manner, in that it may, in particular, endanger the life, health or freedom of persons or reveal the methods of investigation specifically used by bodies entrusted with specialist functions relating to national security and thus seriously impede, or even prevent, future performance of the tasks of those authorities (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 66).

53 Therefore, although the second subparagraph of Article 23(1) of Directive 2013/32 allows the Member States, particularly where national security so requires, not to grant the person concerned direct access to all of his or her file, that provision cannot be interpreted, without infringing the principle of effectiveness, the right to sound administration and the right to an effective remedy, as allowing the competent authorities to place that person in a situation where neither he or she nor his or her representative would be able to gain effective knowledge, where applicable in the context of a specific procedure designed to protect national security, of the substance of the decisive elements contained in that file.

54 In that context, it must be held, first, that, where the disclosure of information placed on the file has been restricted on grounds of national security, respect for the rights of defence of the person concerned is not sufficiently guaranteed by the possibility for that person of obtaining, under certain conditions, authorisation to access that information, together with a complete prohibition on using the information thus obtained for the purposes of the administrative procedure or any judicial proceedings.

55 It is, in fact, apparent from the requirements stemming from the principle of respect for the rights of the defence, referred to in paragraphs 45 to 49 of the present judgment, that the aim of the right of access to information placed on the file is to enable the person concerned, where appropriate through an adviser, to put forward, before the competent authorities or the courts having jurisdiction, his or her point of view on that information and its relevance to the decision adopted or yet to be taken.

56 Accordingly, a procedure affording the person concerned or his or her adviser the possibility of accessing that information, while prohibiting them from using that information for the purposes of the administrative procedure or any judicial proceedings, is not sufficient to protect that person's rights of defence and cannot therefore be regarded as allowing a Member State to comply with the obligation laid down in point (b) of the second subparagraph of Article 23(1) of Directive 2013/32.

57 Second, given that it is apparent from the order for reference and the observations of the Hungarian Government that the legislation at issue in the main proceedings is based on the consideration that the rights of defence of the person concerned are sufficiently guaranteed by the power of the court having jurisdiction to have access to the file, it must be pointed out that such an option cannot replace access to the information placed on that file by the person concerned or his or her adviser.

58 Thus, aside from the fact that that option is not applicable during the administrative procedure, respect for the rights of the defence does not mean that the court having jurisdiction has available to it all relevant information in order to make its decision, but rather that the person concerned, where appropriate through an adviser, may defend his or her own interests by expressing his or her point of view on that information.

59 That assessment is, moreover, borne out by the fact that it is apparent from the very wording of the second subparagraph of Article 23(1) of Directive 2013/32 that the EU legislature considered that access to the information on the file by the courts having jurisdiction and the establishment of procedures ensuring that the rights of defence of the person concerned are respected are two separate and cumulative requirements.

60 In the light of the foregoing, the answer to the first and second questions is that Article 23(1) of Directive 2013/32, read in conjunction with Article 45(4) of that directive and in the light of the general principle of EU law relating to the right to sound administration and of Article 47 of the Charter, must be interpreted as precluding national legislation which provides that, where a decision rejecting an application for international protection or withdrawing such protection is based on information the disclosure of which would jeopardise the national security of the Member State in question, the person concerned or his or her legal adviser can access that information only after obtaining authorisation to that end, are not provided even with the substance of the grounds on which such decisions are based and cannot, in any event, use, for the purposes of administrative procedures or judicial proceedings, the information to which they may have had access.

The third and fourth questions

61 By its third and fourth questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 14(4)(a) and Article 17(1)(d) of Directive 2011/95 and Article 4, Article 10(2) and Article 45(1), (3) and (4) of Directive 2013/32 must be interpreted as precluding national legislation under which the determining authority is systematically required, where bodies entrusted with specialist functions connected to national security have established, by way of a non-reasoned opinion, that a person constitutes a danger to that security, to exclude the granting of subsidiary protection to that person, or to withdraw international protection previously granted to that person, on the basis of that opinion.

62 It should be noted, in the first place, that Directive 2013/32 provides that the Member States are to give a specific role to the 'determining authority', which phrase is defined in Article 2(f) of that directive as referring to any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases.

63 The first sentence of Article 4(1) of that directive thus provides that Member States are to designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with that directive.

64 Furthermore, it follows from Article 45 of Directive 2013/32 that it is for the determining authority to decide whether international protection should be withdrawn.

65 Recital 16 of that directive states, in that connection, that it is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.

66 To that end, the second sentence of Article 4(1) of that directive requires that Member States ensure that the determining authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with that directive. Article 4(3) thereof clarifies that obligation by laying down more detailed obligations in so far as concerns the training and knowledge of that personnel.

67 The EU legislature thus intended to ensure that the examination of the application for international protection by an administrative or quasi-judicial body with specific resources and specialised staff in this area is a vital stage of the common procedures applied by the Member States (see, to that effect, judgment of 16 July 2020, *Addis*, C-517/17, EU:C:2020:579, paragraph 61), since such a body is also called upon to decide whether to withdraw international protection.

68 While Article 4(2) of Directive 2013/32 admittedly allows the Member States to provide that an authority other than the determining authority may be entrusted with certain exhaustively listed functions in the field of international protection, it is clear that those functions cannot extend to the examination of applications for international protection or to the withdrawal of that protection, which must therefore necessarily be attributed to the determining authority.

69 Moreover, it is clear from Article 10(2) and (3) of Directive 2013/32 that the procedure for examining an application for international protection must be conducted by the determining authority and ends, after an appropriate examination, in a decision taken by that authority.

70 As regards, more specifically, the taking into account of a possible danger to national security, it should be noted that Article 14(4)(a) of Directive 2011/95 allows Member States to

revoke the status granted to a refugee where there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present.

71 Article 17(1)(d) of that directive provides that a third-country national is to be excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

72 The application of each of those provisions presupposes that the competent authority undertake, for each individual case, an assessment of the specific facts brought to its attention with a view to determining whether there are serious reasons for considering that the situation of the person in question, who otherwise satisfies the qualifying conditions for obtaining or retaining international protection, falls within the scope of one of the cases referred to in those provisions (see, to that effect, judgments of 31 January 2017, *Lounani*, C-573/14, EU:C:2017:71, paragraph 72, and of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 55).

73 That assessment is an integral part of the international protection procedure, since it must be conducted in accordance with Directives 2011/95 and 2013/32, which, contrary to what the Hungarian Government maintains, cannot be confined solely to the assessment of the international protection needs of the person concerned.

74 It is thus apparent from the definitions of the terms ‘refugee’ and ‘person eligible for subsidiary protection’, set out in Article 2(d) and (f) of Directive 2011/95, that these refer to a person who not only has international protection needs, but also does not fall within the scope of the grounds for exclusion set out in that directive.

75 It is, therefore, for the determining authority alone to carry out, acting under the supervision of the courts, the assessment of the relevant facts and circumstances, including those relating to the application of Articles 14 and 17 of Directive 2011/95, following which assessment that authority will give its decision (see, to that effect, judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraphs 40 and 41).

76 In the second place, it should be noted that, pursuant to Article 11(2) of Directive 2013/32, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are to be stated in the decision of the determining authority.

77 Similarly, Article 45(3) of that directive provides that the decision of the competent authority to withdraw international protection is to state the reasons in fact and in law on which that decision is based.

78 In such cases, the reasons which led the competent authority to adopt its decision must therefore be stated in that decision.

79 It follows from the foregoing considerations, relating both to the role of the determining authority and to the obligation to state reasons incumbent on it, that that authority cannot validly confine itself to giving effect to a decision, adopted by another authority, which is binding on the former authority under national legislation, and to take, on that basis alone, the decision not to grant subsidiary protection or to withdraw international protection previously granted.

80 The determining authority must, on the contrary, have available to it all the relevant information and, in the light of that information, carry out its own assessment of the facts and

circumstances with a view to determining the tenor of its decision and providing a full statement of reasons for that decision.

81 Moreover, it follows from the wording of Article 14(4)(a) of Directive 2011/95 that that authority must have discretion to decide whether or not considerations relating to the national security of the Member State concerned should give rise to the revocation of refugee status, which precludes a finding that there is a danger to that security automatically entailing such revocation.

82 Admittedly, the foregoing findings in no way preclude some of the information used by the competent authority in conducting its assessment from being provided by specialist bodies responsible for national security, on their own initiative or at the request of the determining authority. In addition, some of that information may, where appropriate, be subject to rules of confidentiality within the framework laid down in Article 23(1) of Directive 2013/32.

83 Nevertheless, in the light of the specific functions of the determining authority, the scope of that information and its relevance to the decision to be taken must be freely assessed by that authority, which cannot therefore be required to rely on a non-reasoned opinion given by bodies entrusted with specialist functions linked to national security, based on an assessment the factual basis of which has not been disclosed to that authority.

84 Further, inasmuch as the Hungarian Government claims that the role conferred on such bodies falls exclusively within the scope of the competences of the Member States under Articles 72 and 73 TFEU, it should be recalled that those provisions cannot be read in such a way as to confer on Member States the power not to apply a provision of EU law based on no more than reliance on their responsibilities in maintaining public order and safeguarding domestic security (see, to that effect, judgment of 2 July 2020, *Stadt Frankfurt am Main*, C-18/19, EU:C:2020:511, paragraph 29 and the case-law cited).

85 That government has confined itself, in that regard, to making general observations, without demonstrating that the specific situation in Hungary justifies restricting the role conferred on the determining authorities in certain cases.

86 Consequently, the answer to the third and fourth questions is that Article 4(1) and (2), Article 10(2) and (3), Article 11(2) and Article 45(3) of Directive 2013/32, read in conjunction with Article 14(4)(a) and Article 17(1)(d) of Directive 2011/95, must be interpreted as precluding national legislation under which the determining authority is systematically required, where bodies entrusted with specialist functions linked to national security have found, by way of a non-reasoned opinion, that a person constituted a danger to that security, to refuse to grant that person subsidiary protection, or to withdraw international protection previously granted to that person, on the basis of that opinion.

The fifth question

87 By its fifth question, the referring court is asking, in essence, whether Article 17(1)(b) of Directive 2011/95 must be interpreted as precluding an applicant from being excluded from being eligible for subsidiary protection, pursuant to that provision, on the basis of a criminal conviction of which the competent authorities were already aware, when they granted to that applicant, at the end of a previous procedure, refugee status which was subsequently withdrawn.

88 Article 17(1)(b) of Directive 2011/95 provides that a third-country national is to be excluded from being eligible for subsidiary protection if there are serious grounds for believing that he or she has committed a serious crime.

89 Since the ground for exclusion from subsidiary protection laid down in that provision thus refers more generally to a serious crime, it is therefore limited neither territorially nor temporally, or as to the nature of the crimes at issue (judgments of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 47, and of 2 April 2020, *Commission* v *Republic of Poland and Others (Temporary mechanism for the relocation of applicants for international protection)*, C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraph 155).

90 Accordingly, Article 17(1)(b) of Directive 2011/95 in no way provides that the serious crime to which it refers must have been committed within a recent period or that, where the applicant has initiated several international protection procedures in succession, a serious crime which has not been regarded as justifying the application of a ground for exclusion during an initial procedure can no longer be taken into account thereafter. On the contrary, the use, in that provision, of the phrase 'is excluded' means that the determining authority does not have discretion once it has found that the person concerned has committed a serious crime.

91 It is also not apparent from any other provisions of Directives 2011/95 or 2013/32 that the determining authority is bound for the future, after withdrawal of refugee status, by assessments made in relation to the application of a ground for exclusion during the procedure leading to the grant of that status.

92 However, the competent authority of the Member State concerned cannot rely on the ground for exclusion laid down in Article 17(1)(b) of Directive 2011/95, which relates to the commission by the applicant for international protection of a 'serious crime', until that authority has undertaken, for each individual case, an assessment of the specific facts within its knowledge. That is done with a view to determining whether there are serious reasons for considering that the acts committed by the person in question, who otherwise satisfies the qualifying conditions for the status applied for, come within the scope of that particular ground for exclusion, the assessment of the seriousness of the crime in question requiring a full investigation into all the circumstances of the individual case concerned (judgment of 2 April 2020, *Commission* v *Republic of Poland and Others (Temporary mechanism for the relocation of applicants for international protection)*, C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraph 154).

93 Consequently, the answer to the fifth question is that Article 17(1)(b) of Directive 2011/95 must be interpreted as not precluding an applicant from being excluded from being eligible for subsidiary protection, pursuant to that provision, on the basis of a criminal conviction of which the competent authorities were already aware when they granted to that applicant, at the end of a previous procedure, refugee status which was subsequently withdrawn.

Costs

94 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 (First Chamber) hereby rules:

1. **Article 23(1) 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 conjunction with Article 45(4) of that directive and in the light of the general principle of EU law relating to the right to sound administration and of Article 47 of the Charter,**

must be interpreted as:

precluding national legislation which provides that, where a decision rejecting an application for international protection or withdrawing such protection is based on information the disclosure of which would jeopardise the national security of the Member State in question, the person concerned or his or her legal adviser can access that information only after obtaining authorisation to that end, are not provided even with the substance of the grounds on which such decisions are based and cannot, in any event, use, for the purposes of administrative procedures or judicial proceedings, the information to which they may have had access.

2. **Article 4(1) and (2), Article 10(2) and (3), Article 11(2) and Article 45(3) of Directive 2013/32, read in conjunction with Article 14(4)(a) and Article 17(1)(d) of Directive 2011/95/EU 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,**

must be interpreted as:

precluding national legislation under which the determining authority is systematically required, where bodies entrusted with specialist functions linked to national security have found, by way of a non-reasoned opinion, that a person constituted a danger to that security, to refuse to grant that person subsidiary protection, or to withdraw international protection previously granted to that person, on the basis of that opinion.

3. **Article 17(1)(b) of Directive 2011/95**

must be interpreted as:

not precluding an applicant from being excluded from being eligible for subsidiary protection, pursuant to that provision, on the basis of a criminal conviction of which the competent authorities were already aware when they granted to that applicant, at the end of a previous procedure, refugee status which was subsequently withdrawn.

[Signatures]

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* Language of the case: Hungarian.