Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

12 September 2024 (*)

(Reference for a preliminary ruling – Asylum and immigration policy – Charter of Fundamental Rights of the European Union – Scope – Articles 1, 4 and 7 – Directive 2011/95/EU – Scope – Articles 2 and 3 – National protection on humanitarian grounds – Directive 2008/115/EC – Article 14 – No possibility of carrying out the removal – Certification – Rights of an illegally staying third-country national in the event of postponement of removal – Directive 2013/33/EU – Scope – Material Reception Conditions)

In Case C-352/23 [Changu], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria), made by decision of 29 May 2023, received at the Court on 7 June 2023, in the proceedings

LF

v

Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

THE COURT (Ninth Chamber),

composed of O. Spineanu-Matei, President of the Chamber, C. Lycourgos (Rapporteur), President of the Fourth Chamber, acting as Judge of the Ninth Chamber, and S. Rodin, Judge,

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:

– LF, by V.B. Ilareva and K. Stoyanov, advokati,

– the European Commission, by A. Azéma, J. Hottiaux, A. Katsimerou and E. Rousseva, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1, 4 and 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), Article 2(h) and Article 3 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), and Article 14(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

2 That request has been made in proceedings between LF and the Darzhavna agentsia za bezhantsite (State Agency for Refugees, Bulgaria) ('the DAB') concerning a decision refusing to grant him refugee status and 'humanitarian status'.

Legal context

European Union law

Directive 2008/115

3 Recital 12 of Directive 2008/115 states:

'The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.'

4 Article 2(2) of that directive provides:

'Member States may decide not to apply this Directive to third-country nationals who:

(a) are subject to a refusal of entry in accordance with Article 13 of [Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1)] or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State;

(b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures.'

5 Article 6(4) of that directive provides:

'Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued. Where a return

decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.'

6 Pursuant to Article 8(1) and (2) of that Directive:

'1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

2. If a Member State has granted a period for voluntary departure in accordance with Article 7, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 7(4) arises during that period.'

7 Article 9(1) and (2) of Directive 2008/115/EC provides:

'1. Member States shall postpone removal:

(a) when it would violate the principle of non-refoulement, or

(b) for as long as a suspensory effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:

(a) the third-country national's physical state or mental capacity;

(b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.'

8 Article 14 of that directive provides:

'1. Member States shall, with the exception of the situation covered in Articles 16 and 17, ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9:

(a) family unity with family members present in their territory is maintained;

(b) emergency health care and essential treatment of illness are provided;

(c) minors are granted access to the basic education system subject to the length of their stay;

(d) special needs of vulnerable persons are taken into account.

2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 7(2) or that the return decision will temporarily not be enforced.'

Directive 2011/95

9 Recitals 14 and 15 of Directive 2011/95 states:

'(14) Member States should have the power to introduce or maintain more favourable provisions than the standards laid down in this Directive for third-country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the [Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967], or a person eligible for subsidiary protection.

(15) Those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds fall outside the scope of this Directive.'

10 According to Article 2(h) of that directive, the concept of 'application for international protection' is understood, for the purposes of that directive, as follows:

'a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately'.

11 Article 3 of that directive provides:

'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.'

Directive 2013/32/EU

12 Article 2 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) is worded as follows:

'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;

…

(q) "subsequent application" means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).'

13 Article 9(1) of that directive provides:

'Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.'

14 Article 41(1) of that directive provides:

'Member States may make an exception from the right to remain in the territory where a person:

(a) has lodged a first subsequent application, which is not further examined pursuant to Article 40(5), merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State; or

(b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to Article 40(5) or after a final decision to reject that application as unfounded.

Member States may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect refoulement in violation of that Member State's international and Union obligations.'

15 Article 46(5) and (6) of that directive states:

'5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.

6. In the case of a decision:

(a) considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);

…

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting ex officio, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.'

Directive 2013/33

16 Article 20(1) and (5) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96) states:

'1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

…

(c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU.

…

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.'

Bulgarian law

The ZUB

17 Article 8(1) of the Zakon za ubezhichteto i bezhanitsite (Law on asylum and refugees; 'the ZUB') provides:

'Refugee status in the Republic of Bulgaria shall be granted to a foreign national who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his or her country of origin and who, for these reasons, is unable or unwilling to avail himself or herself of the protection of that country or to return to it.'

18 Article 9 of that law provides:

‘1. Humanitarian status is granted to foreign nationals who do not qualify for refugee status and who cannot or do not wish to obtain protection from their country of origin because they may be exposed to a real risk of serious harm, such as:

1. the death penalty or execution; or

2. torture, inhuman or degrading treatment or punishment; or

3. serious threats to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

…

8. Humanitarian status may also be granted for other humanitarian reasons as well as for the reasons indicated in the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees.’

The ZChRB

19 Article 44 of the Zakon za chuzhdenitsite v Republika Balgaria (Law on foreign nationals in the Republic of Bulgaria; ‘the ZChRB’) states:

‘1. Where the removal or immediate return of the foreign national is impossible or where the enforcement of such measures must be deferred for legal or technical reasons, the authority which took the coercive administrative measure shall suspend its enforcement until the obstacles to its enforcement are removed.

2. Where, at the end of the period of temporary protection provided for by the [ZUB], the expulsion or return of the foreign national is impossible or where the enforcement of those measures must be deferred on health or humanitarian grounds, the authority which took the coercive administrative measure shall suspend its enforcement until the obstacles to its enforcement are removed.’

20 According to paragraph 16(1) of the Supplementary Rules to the ZChRB, there are ‘humanitarian grounds’ where the non-admission or departure from the territory of the Republic of Bulgaria of the foreign national would pose a serious risk to his or her health or life due to objective circumstances or to the integrity of his or her family, or where the best interests of the family or child require the foreign national to be admitted or to remain in the territory of the country.

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

21 LF is an adult third-country national who has resided in Bulgaria since 1996. He has unsuccessfully lodged several applications for international protection and has been the subject of several return decisions, which have never been enforced.

22 On 13 April 2021, LF lodged an eleventh application for international protection, claiming, inter alia, that he had spent a large part of his life in Bulgaria and that, because of the legal vacuum surrounding his stay in that Member State, he had not had access to either health insurance or medical care. He also claimed that his particularly damaged state of health had prevented him from travelling normally and that long journeys could have endangered his life.

23 By decision of 29 April 2021, the DAB, the determining authority in Bulgaria rejected LF’s application. It was decided that the return of LF to his country of origin would be ensured by the national authority responsible for returns or the International Organisation for Migration (IOM).

24 That decision was annulled by a judgment of 25 November 2021, which has become final, on the ground, first, that LF had invoked the principle of non-refoulement, which was applicable to him in the light of his claims that long journeys would endanger his life, and, second, that the infringement of such a principle constitutes a ground for granting humanitarian status, laid down in Article 9(1)(2) of the ZUB.

25 Following that annulment, LF's application for international protection was registered on 30 December 2021. He expressed his wish to be accommodated in a DAB registration and reception centre because he was unable to support his basic needs.

26 On 10 August 2022, the DAB adopted the decision at issue, by which it refused to grant LF refugee status and humanitarian status.

27 That authority took the view that the reasons relied on by LF, first, did not justify a well-founded fear of persecution or a real risk of serious harm, within the meaning of Article 8(1) and Article 9(1) of the ZUB, and, second, could not constitute grounds for obtaining humanitarian status for the reasons covered in Article 9(8) of that law. In addition, the DAB indicated that the different criminal convictions which LF had received show his failure to integrate into Bulgarian society and his recidivist behaviour. Finally, the DAB took the view that LF's prolonged stay in Bulgaria and the impossibility of returning to his country of origin did not constitute a ground of protection under the ZUB, but was only able to justify an application for an administrative status under the ZChRB.

28 LF brought an action against that decision before the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria), the referring court.

29 That court considers, in the first place, that LF does not satisfy the conditions for refugee status under Article 8(1) of the ZUB or humanitarian status under Article 9(1) of that law. That said, in view of the considerable length of LF's stay in Bulgaria, that is to say, more than 26 years, during which he did not have any identity document and was often deprived of the necessary safeguards to ensure that he had a dignified standard of living, in breach of Article 14 of Directive 2008/115, his situation is comparable to those at issue in the judgments of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, and of 19 March 2019, *Ibrahim and Others* (C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219), and in the judgment of the European Court of Human Rights of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609).

30 The referring court notes, more specifically, that the Bulgarian authorities have not complied with their obligation under Article 8 of Directive 2008/115 to remove LF as soon as possible.

31 That court asks whether, in the absence of a provision of the ZChRB allowing LF to be granted a right to stay on humanitarian grounds and in the absence of any obligation on the Member States to introduce such a provision under Article 6(4) of Directive 2008/115, the fact that the Bulgarian authorities did not recognise the particular situation of LF, assuming that it constitutes an infringement of Articles 1, 4 and 7 of the Charter, is one of the 'compelling humanitarian grounds' which would justify interpreting Article 9(8) of the ZUB in accordance with recital 15 and Article 2(h) of Directive 2011/95.

32 If the answer is in the affirmative, that court also asks whether subsidiary protection within the meaning of Directive 2011/95 should be granted on the basis of Article 9(8) of the ZUB, or a right to stay on humanitarian grounds within the meaning of Article 6(4) of Directive 2008/115.

33 In the second place, the referring court points out that, contrary to what is stated in recital 12 of Directive 2008/115 and what is laid down in Article 14(2) thereof, no provision of the ZChRB sets out the right for LF to be provided with written confirmation of his situation.

34 In the present case, the application of the ZChRB and Directive 2008/115 to LF was limited to imposing two return decisions on him, dated 26 September 2005 and 9 August 2017, which were not enforced. There is no indication that this failure to enforce is due to obstacles to their execution or on health or humanitarian grounds.

35 According to the referring court, Directive 2008/115 does not determine the consequences arising from the fact that the enforcement of the removal would infringe the third-country national's right to respect for his private life. Therefore, in the absence of a national humanitarian clause adopted in accordance with Article 6(4) of that directive, an infringement of Article 14(2) of that directive, read in the light of recital 12 thereof, could not have the effect of imposing on a Member State the obligation to grant a right to stay to a third-country national.

36 In the third place, the referring court considers that only Article 9(8) of the ZUB governs the grant to a third-country national of a residence permit on humanitarian grounds. However, that court harbours doubts as to the interpretation of that provision in the light of EU law, since the Bulgarian legislature was wrong to consider that the grant of a residence permit on 'humanitarian grounds' had to be regulated by the ZUB, the main purpose of which is to transpose Directive 2011/95 into Bulgarian law.

37 The referring court considers that, first, even though under Bulgarian law subsidiary protection is also referred to as 'humanitarian status', the 'humanitarian grounds' referred to in Article 9(8) of the ZUB do not appear to be relevant for assessing whether it is appropriate to grant subsidiary protection, as governed by Article 15 of Directive 2011/95 and Article 9(1) of the ZUB. Second, according to recital 12 and Article 2(h) of that directive, the grant of a residence permit on such humanitarian grounds is excluded from the scope of the directive.

38 The referring court considers that LF's situation requires a broad interpretation of the sole possibility of applying, in national law, a 'humanitarian provision' that is consistent with the fundamental rights referred to in Articles 1, 4 and 7 of the Charter.

39 If Article 9(8) of the ZUB were interpreted as not falling within the scope of Directive 2011/95, LF's legal position could be assessed not in the light of his potential return to his country of origin, but in the light of his situation in Bulgaria, including taking into account the length of his stay in that Member State and respect for his fundamental rights.

40 The referring court therefore asks whether, notwithstanding the reservation relating to the adoption by the Member States of more favourable standards contained in Article 3 of Directive 2011/95, Article 2(2)(h) of that directive allows protection to be granted 'on compelling humanitarian grounds', unrelated to the nature and grounds of that directive, to a third-country national who, like LF, has resided in a Member State for more than 26 years, without written confirmation of his legal status and without the possibility of obtaining a residence permit 'on humanitarian grounds'.

41 According to that court, the rights to respect for human dignity, life, integrity and health care, enshrined respectively in Articles 1, 2, 3 and 35 of the Charter, and the prohibition of inhuman or degrading treatment, referred to in Article 4 thereof, preclude, in a situation such as that at issue in the main proceedings, an illegally staying third-country national whose removal has been de facto suspended from being deprived, pending the examination of his action, of cover for his basic needs.

42 In those circumstances, the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must recital 15, Article 2(h) and Article 3 of Directive [2011/95] be interpreted as allowing a Member State to introduce national legislation on the grant of international protection on the basis of

compassionate or humanitarian grounds which bears no relation to the logic and spirit of Directive 2011/95 in accordance with recital 15 and Article 2(h) of Directive 2011/95 (another kind of protection), or must, in that case also, the possibility provided for in national law of granting protection on 'humanitarian grounds' be compatible with the standards of international protection under Article 3 of Directive 2011/95?

(2) Do recital 12 and Article 14(2) of Directive [2008/115], in conjunction with Articles 1 and 4 of the [Charter], categorically compel a Member State to provide third-country nationals with written confirmation attesting that they are staying illegally but cannot yet be removed?

(3) In the case of a national legal framework whose only provision on regularising the status of a third-country national on 'humanitarian grounds' is contained in Article 9(8) of [the ZUB], is an interpretation of that national provision which bears no relation to the character and grounds of Directive 2011/95 compatible with recital 15 and Article 2(h) and Article 3 of [that] Directive?

(4) Do Articles 1, 4 and 7 of the Charter require, for the purposes of the application of Directive 2011/95, an assessment of whether the fact that a third-country national has been staying in a Member State for a long time without a regularised status constitutes an independent reason for granting international protection on 'compelling humanitarian grounds'?

(5) Does the positive obligation of a Member State to ensure compliance with Articles 1 and 4 of the [Charter] allow a broad interpretation of the national measure, namely Article 9(8) of the ZUB that goes beyond the logic and standards of international protection as provided for in Directive 2011/95, and does it call for an interpretation that is consistent exclusively with the observance of the absolute fundamental rights enshrined in [those] Articles of the [Charter]?

(6) Is the fact of not granting the protection provided for in Article 9(8) of the ZUB to a third-country national in the situation of the applicant [in the main proceedings] capable of constituting a failure by the Member State to fulfil its obligations under Articles 1, 4 and 7 of the [Charter]?'

Consideration of the questions referred

The first, third and fifth questions

43 By its first, third and fifth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(h) of Directive 2011/95, read in conjunction with recital 15 and Article 3 of that directive and with Articles 1 and 4 of the Charter, must be interpreted as not precluding a Member State from granting to a third-country national a right to stay on humanitarian grounds which are unrelated to the nature, foundations and purposes of the international protection referred to in that directive.

44 In the first place, it should be recalled that, in accordance with Article 3 of Directive 2011/95, read in conjunction with recital 14 thereof, Member States may introduce or retain standards relaxing the requirements for granting a third-country national or a stateless person refugee or subsidiary protection status, provided that those standards are compatible with that directive. Therefore, such standards must not undermine the general scheme or objectives of that directive. In particular, standards which are intended to grant refugee or subsidiary protection status to third-country nationals or stateless persons in situations which have no connection with the rationale of international protection are prohibited (see, to that effect, judgment of 9 November 2021, *Bundesrepublik Deutschland (Maintaining family unity)*, C-91/20, EU:C:2021:898, paragraph 40).

45 Thus, the Court has already held, as regards Article 3 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12), the wording of which is identical to Article 3 of Directive 2011/95, that that

provision precluded a Member State from granting refugee or subsidiary protection status to a third-country national or stateless person for inhuman or degrading treatment, within the meaning of Article 4 of the Charter, taking place on the territory of that Member State, since such a situation has no connection with the rational of international protection (see, to that effect, judgment of 18 December 2014, *M'Bodj*, C-542/13, EU:C:2014:2452, paragraphs 33, 43 and 44).

46 Accordingly, the grant to a third-country national of a right to stay cannot be based on the provisions of Directive 2011/95 where such a right to stay is justified by the situation of material poverty of that national in the territory of the host Member State, even if that situation is so serious that it could be deemed to amount to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

47 In the second place, it must, however, be pointed out that Article 2(h) of Directive 2011/95 defines an 'application for international protection' as a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection. That provision must be read in conjunction with recital 15 of that directive, which provides that third-country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of that Directive.

48 It follows that, notwithstanding Article 3 thereof, Directive 2011/95 does not prohibit a Member State from granting national protection which includes rights enabling persons who do not have refugee status or subsidiary protection status to remain in its territory, it being understood that the grant of such protection falls outside the scope of that directive (see, to that effect, judgments of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 116 to 118, and of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 61). Accordingly, it is thus open to a Member State to grant, solely by virtue of its national law, a right to stay on humanitarian grounds to third-country nationals who are in a state of extreme material poverty in its territory.

49 However, if the system established by Directive 2011/95 is not to be infringed, that national protection must not be confused with refugee status or subsidiary protection status within the meaning of that directive. The rules granting such national protection should therefore permit a clear distinction to be drawn between that protection and the protection under that directive (see, to that effect, judgment of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 119 and 120).

50 It is for the referring court to determine whether the national legislation, on the basis of which a right to stay for humanitarian purposes could, where appropriate, be granted to a third-country national in a situation such as that of the applicant in the main proceedings, makes it possible to distinguish clearly the status arising from such a right to stay from the status granted under Directive 2011/95.

51 In that regard, the fact that national law treats in the same way the regime resulting from the grant of subsidiary protection, on the one hand, and the regime resulting from that national protection, on the other, does not, in itself, permit the inference that those two regimes cannot be sufficiently distinguished (see, to that effect, judgment of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 119 and 120). Nor does the fact that the rules relating to such national protection are included among the provisions of national law relating, in principle, to the protection deriving from Directive 2011/95 mean that those regimes cannot be sufficiently distinguished.

52 However, where, as appears to be the case here, the regime resulting from national protection is laid down in the same legislation as that transposing Directive 2011/95 and that regime is, moreover, treated by the national legislature in the same way as the regime resulting from subsidiary protection, the rules granting such national protection cannot be regarded as enabling that protection to be clearly distinguished

from that granted under that directive if the status arising from that national regime is, moreover, substantially the same as subsidiary protection status, as established by that directive.

53 Lastly, Article 2(h) of Directive 2011/95 provides only that a request by which a third-country national or stateless person explicitly requests another kind of protection does not constitute an application for international protection where national law allows for such other type of protection to be applied for by means of a separate request. By contrast, contrary to what the European Commission maintains, that provision in no way prevents a national authority, after having rejected an application for international protection, from granting a right to stay on the basis of protection based exclusively on national law.

54 In the light of the foregoing, the answer to the first, third and fifth questions is that Directive 2011/95 must be interpreted as not precluding a Member State from granting a right to stay to a third-country national for reasons which have no connection with the general scheme and objectives of that directive, provided that that right to stay can be clearly differentiated from the international protection granted under that directive.

The second question

55 By its second question, the referring court asks, in essence, whether Article 14(2) of Directive 2008/115, read in conjunction with recital 12 of that directive and with Articles 1 and 4 of the Charter, must be interpreted as meaning that a Member State which is unable to remove a third-country national within the periods laid down in accordance with Article 8 of that directive must provide that national with written confirmation that, although he is staying illegally in the territory of that Member State, the return decision concerning him will temporarily not be enforced.

56 In the first place, it should be noted that, first, subject to the exceptions laid down in Article 2(2) of Directive 2008/115, that directive applies to any third-country national staying illegally on the territory of a Member State. Moreover, where a third-country national falls within the scope of that directive, he or she must therefore, in principle, be subject to the common standards and procedures laid down by that directive for the purpose of his or her removal, as long as his or her stay has not, as the case may be, been regularised (judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 52 and the case-law cited).

57 Thus, provided that a return decision has been adopted in respect of a third-country national in compliance with the substantive and procedural safeguards established by Directive 2008/115, the Member State concerned is required to remove that third-country national, pursuant to Article 8 of that directive (see, to that effect, judgment of 14 January 2021, *Staatssecretaris van Justitie en Veiligheid (Return of an unaccompanied minor)*, C-441/19, EU:C:2021:9, paragraphs 79 and 80, and of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 54 and the case-law cited).

58 In the second place, by way of derogation from the obligation to carry out the removal of a third-country national who has been the subject of a return decision within the periods laid down in accordance with Article 8 of Directive 2008/115, Article 9 of that directive authorises the Member State concerned, even requires it, to postpone that removal in certain cases.

59 As confirmed by recital 12 of Directive 2008/115, an illegally staying third-country national whose removal is delayed therefore continues to fall within the scope of that directive. It also follows from Article 14 thereof that that national enjoys certain rights pending his or her removal.

60 On that basis, Article 14(2) of Directive 2008/115 requires the Member State in whose territory that national is staying illegally to provide him or her, in accordance with national legislation, with a written confirmation that the return decision to which he or she is subject will temporarily not be enforced.

61 Account being taken of the foregoing considerations, the answer to the second question is that Article 14(2) of Directive 2008/115 must be interpreted as meaning that a Member State which is unable to remove a third-country national within the periods laid down in accordance with Article 8 of that directive must provide that national with written confirmation that, although he or she is staying illegally on the territory of that Member State, the return decision concerning him or her will temporarily not be enforced.

The fourth and sixth questions

62 By its fourth and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 1, 4 and 7 of the Charter, read in conjunction with Directive 2008/115, must be interpreted as meaning that a Member State may be required to grant, on compelling humanitarian grounds, a right to stay, where appropriate by virtue of international protection, to a third-country national who has resided for an extended period in its territory without an established status and who is currently staying there illegally.

63 In the first place, it should be noted that the scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law. That provision confirms the Court's case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations. Where, on the other hand, a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 78, and of 25 January 2024, *Parchetul de pe lângă Curtea de Apel Craiova*, C-58/22, EU:C:2024:70, paragraph 40).

64 It is therefore necessary to examine, first of all, the extent to which the situation of a third-country national such as that of the applicant in the main proceedings is capable of falling within the scope of EU law, within the meaning of Article 51(1) of the Charter, and then to determine whether such a situation entails, pursuant to Articles 1, 4 or 7 of the Charter, the grant of a right to stay to that third-country national.

65 In that regard, it is apparent, first, from the information provided by the referring court, that the applicant in the main proceedings does not satisfy the conditions in order to obtain international protection within the meaning of Directive 2011/95, so that that directive is not applicable to the situation at issue in the main proceedings.

66 Second, unless he can rely on another residence permit in Bulgaria, the applicant in the main proceedings falls, by contrast, within the scope of Directive 2008/115 as he has been staying illegally in that territory since the adoption of the decision rejecting his application for international protection, against which he brought an action before the referring court (see, to that effect, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraphs 209 and 210). It follows that the situation of the applicant in the main proceedings is governed by EU law.

67 That said, no provision of Directive 2008/115 can be interpreted as requiring a Member State to grant a residence permit to a third-country national staying illegally on its territory. As regards, in particular, Article 6(4) of that directive, that provision does no more than permit Member States to grant, for compassionate or humanitarian reasons, a right of residence, on the basis of their national law, and not EU law, to third-country nationals who are staying illegally on their territory (see, to that effect, judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraphs 85 and 86).

68 In accordance with Article 51(2) of the Charter, the provisions of the Charter do not extend the scope of EU law. Consequently, it cannot be held that, under Articles 1, 4 or 7 of the Charter, a Member State can be required to grant a right to stay to a third-country national who falls within the scope of that directive (see, to that effect, judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 87). The length of residence of that national in the territory of the Member State concerned is irrelevant in that regard.

69 Third, even though he or she is staying illegally on the territory of the Member State concerned, a third-country national placed in a situation such as the applicant in the main proceedings also falls within the scope of Directives 2013/32 and 2013/33 until the referring court has ruled on the action he brought against the rejection of his application for international protection (judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraphs 207 and 208).

70 Under Article 46(5) of Directive 2013/32, applicants for international protection are authorised, subject to the cases provided for in Article 41(1) and Article 46(6) of that directive, to remain in the territory of the Member State concerned pending the outcome of the remedy which they have lodged against the rejection of their application (see, to that effect, judgment of 17 December 2020, *Commission* v *Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraph 282).

71 It cannot therefore be ruled out that, in the present case, despite the fact that the application for international protection made by the applicant in the main proceedings constitutes a subsequent application, he has the right to remain in Bulgaria pending the outcome of the appeal pending before the referring court.

72 That said, as Article 9(1) of Directive 2013/32 expressly states, such a right to remain in the territory of the Member State concerned does not constitute an entitlement to a residence permit. Therefore, and for reasons similar to those set out in paragraph 68 of the present judgment, no provision of the Charter can compel a Member State to grant a right of residence to an applicant for international protection which exceeds the scope of the authorisation to remain in the territory stemming from Article 46(5) of that directive.

73 In the second place, however, it should be added, first, that, under Article 14(1)(b) and (d) of Directive 2008/115, Member States must ensure that, as far as possible, as long as the removal of the third-country national concerned is postponed, emergency health care and essential treatment of illness are provided and the special needs of vulnerable persons are taken into account.

74 Moreover, Member States are required to comply with the prohibition of inhuman or degrading treatment, as laid down in Article 4 of the Charter, when implementing Directive 2008/115. It follows that Member States must also ensure that a third-country national staying illegally in their territory is not, as long as he has not been removed from that territory, in a situation prohibited by Article 4 of the Charter.

75 The Court has already held that that Article 4 would be infringed in the case where the indifference of the authorities of a Member State would result in a person wholly dependent on State support finding him or herself, irrespective of his or her wishes and his or her personal choices, in a situation of extreme material poverty that does not allow him to meet his most basic needs, such as, inter alia, food, personal hygiene and a place to live, and that undermines his physical or mental health or puts him in a state of degradation incompatible with human dignity (see, to that effect, judgments of 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218, paragraph 92, and of 16 July 2020, *Addis*, C-517/17, EU:C:2020:579, paragraph 51).

76 Second, an applicant for international protection, who is authorised to remain on the territory of the Member State concerned in that capacity, is to enjoy the reception conditions laid down in Directive 2013/33, for as long as a final decision has not been taken on his or her application (see, to that effect, judgment of 17 December 2020, *Commission* v *Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraphs 284 to 286).

77 In the present case, in the situation where LF would have such a right to remain in Bulgaria until the outcome of his action pending before the referring court, which it is for that court to ascertain, he should therefore also enjoy the reception conditions laid down in that directive, as long as no final decision has been delivered on that action.

78 Furthermore, even if material reception conditions were reduced or withdrawn on the basis of Article 20(1)(c) of that directive, on the ground that the application for international protection giving rise to the dispute in the main proceedings is a subsequent application, Article 20(5) of that same directive would, in any event, guarantee that applicant minimum reception conditions enabling him or her to lead a dignified life.

79 Account being taken of the foregoing considerations, the answer to the fourth and sixth questions is that Articles 1, 4 and 7 of the Charter, read in conjunction with Directive 2008/115, must be interpreted as meaning that a Member State is not required to grant, on compelling humanitarian grounds, a right to stay to a third-country national who currently resides illegally in its territory, irrespective of the duration of that national's stay in that territory. As long as he or she has not been removed, that national may, however, rely on the rights guaranteed to him or her by both the Charter and Article 14(1) of that directive. Furthermore, if that national also has the status of applicant for international protection, who is authorised to remain in the territory of that Member State, he or she may also rely on the rights enshrined in Directive 2013/33.

Costs

80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Ninth Chamber) hereby rules:

1. **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,**

must be interpreted as not precluding a Member State from granting a right to stay to a third-country national for reasons which have no connection with the general scheme and objectives of that directive, provided that that right to stay can be clearly differentiated from the international protection granted under that directive.

2. **Article 14(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals**

must be interpreted as meaning that a Member State which is unable to remove a third-country national within the periods laid down in accordance with Article 8 of that directive must provide that national with written confirmation that, although he or she is staying illegally on the territory of that Member State, the return decision concerning him or her will temporarily not be enforced.

3. **Articles 1, 4 and 7 of the Charter of Fundamental Rights of the European Union, read in conjunction with Directive 2008/115,**

must be interpreted as meaning that a Member State is not required to grant, on compelling humanitarian grounds, a right to stay to a third-country national who currently resides illegally in its territory, irrespective of the duration of that national's stay in that territory. As long as he or she has not been removed, that national may, however, rely on the rights guaranteed to him or her by both the Charter and Article 14(1) of that directive. Furthermore, if that national also has the status of applicant for international protection, who is authorised to remain in the territory of that Member State, he or she may also rely on the rights enshrined in Directive 2013/33 of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

[Signatures]

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* Language of the case: Bulgarian.

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i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.