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JUDGMENT OF THE COURT (First Chamber)

6 July 2023 (*)

(Reference for a preliminary ruling – Directive 2011/95/EU – Standards for granting refugee status or subsidiary protection status – Article 14(4)(b) – Revocation of refugee status – Third-country national convicted by a final judgment of a particularly serious crime – Danger to the community – Proportionality test)

In Case C-402/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 15 June 2022, received at the Court on 20 June 2022, in the proceedings

Staatssecretaris van Justitie en Veiligheid

v

M.A.,

THE COURT (First Chamber),

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

– M.A., by R.C. van den Berg, advocaat,

– the Netherlands Government, by M.K. Bulterman and H.S. Gijzen, acting as Agents,

– the Hungarian Government, by Z. Biró-Tóth and M.Z. Fehér, acting as Agents,

– the European Commission, by J. Hottiaux and F. Wilman, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 May 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14(4)(b) 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).

2 The request has been made in proceedings between M.A., a third-country national, and the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands; 'the State Secretary') concerning the rejection of M.A.'s application for international protection.

Legal context

3 Recital 12 of Directive 2011/95 is worded as follows:

'The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.'

4 Article 1 of that directive states:

'The purpose of this Directive is to lay down 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.'

5 Under Article 12(2) of that directive:

'A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status …'

6 Article 13 of that directive provides:

'Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.'

7 Article 14(4) and (5) of Directive 2011/95 provides:

‘4. 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:

…

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.’

8 Article 17(1) and (3) of that directive states:

‘1. 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;

…

3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.’

9 Article 21(2)(b) of that directive is worded as follows:

‘Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:

…

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.’

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

10 On 5 July 2018, M.A. lodged an application for international protection in the Netherlands.

11 The State Secretary rejected that application by decision of 12 June 2020. In that decision, he stated that M.A. had a reasonable fear of persecution in his country of origin, but that he had been convicted of a particularly serious crime by a final judgment and consequently represented a danger to the community.

12 The State Secretary based that view on the fact that, in 2018, M.A. had been sentenced by a Netherlands criminal court to a term of imprisonment of 24 months for three sexual assaults, an attempted sexual assault and the theft of a mobile telephone, all committed on the same evening.

13 M.A. appealed against the decision of 12 June 2020.

14 By a judgment of 13 July 2020, a first-instance court annulled that decision, on the ground that the State Secretary had not given an adequate statement of reasons for considering, first, that M.A.'s misconduct was so serious that it justified the refusal of refugee status and, secondly, that M.A. represented a genuine, present and sufficiently serious danger to a fundamental interest of society.

15 The State Secretary brought an appeal against that judgment before the Raad van State (Council of State, Netherlands), which is the referring court.

16 In support of that appeal, the State Secretary submits, first, that the acts of which M.A. was convicted should be regarded as a single offence constituting a particularly serious crime, having regard to the nature of those acts, the sentence imposed and the disruptive effect of those acts on the community of the Netherlands. He submits, secondly, that the fact that M.A. has been convicted of a particularly serious crime demonstrates in principle that he represents a danger to the community.

17 The referring court is uncertain as to the factors to be taken into account to determine whether a crime of which a third-country national has been convicted by a final judgment must be regarded as being particularly serious, within the meaning of Article 14(4)(b) of Directive 2011/95. Moreover, having regard to the disagreement between the parties in the main proceedings as to the scope of the concept of 'danger to the community', the referring court adopts and repeats the questions put by the Conseil d'État (Council of State, Belgium) in Case C-8/22.

18 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) When is a crime so "particularly serious" within the meaning of Article 14(4)(b) of Directive [2011/95] that a Member State may refuse to grant refugee status to a person in need of international protection?

Are the criteria for a "serious crime" in Article 17(1)(b) of Directive [2011/95], as set out in paragraph 56 of the judgment of the Court of Justice of 13 September 2018, *Ahmed*, [(C-369/17, EU:C:2018:713)], relevant for the purposes of assessing whether a "particularly serious crime" has been committed? If so, are there further criteria which render a crime "particularly" serious?

(2) Must Article 14(4)(b) of Directive [2011/95] be interpreted as providing that danger to the community is established by the mere fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime or must it be interpreted as providing that a conviction by a final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community?

(3) If a conviction by final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community, must Article 14(4)(b) of Directive [2011/95] be interpreted as requiring the Member State to establish that, since his or her conviction, the applicant continues to constitute a danger to the community? Must the Member State establish that the danger is genuine and present or is the existence of a potential threat sufficient? Must

Article 14(4)(b) [of Directive 2011/95], taken alone or in conjunction with the principle of proportionality, be interpreted as allowing revocation of refugee status only if that revocation is proportionate and the danger represented by the beneficiary of that status sufficiently serious to justify that revocation?

(4) If the Member State does not have to establish that, since his or her conviction, the applicant continues to constitute a danger to the community and that the threat is genuine, present and sufficiently serious to justify the revocation of refugee status, must Article 14(4)(b) of Directive [2011/95] be interpreted as meaning that danger to the community is established, in principle, by the fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime, but that he or she may establish that he or she does not constitute, or no longer constitutes, such a danger?'

Consideration of the questions referred

The first question

19 By its first question, the referring court asks, in essence, on the basis of which criteria a crime may be regarded as constituting a 'particularly serious crime' within the meaning of Article 14(4)(b) of Directive 2011/95.

20 Article 14(4)(b) of Directive 2011/95 provides that Member States may revoke the status granted to a refugee when he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he or she is present.

21 Article 14(5) of that directive provides that, in situations described in Article 14(4) thereof, Member States may decide not to grant refugee status to a third-country national, where the decision on his or her application for international protection has not yet been taken.

22 It follows from paragraphs 27 to 42 of today's judgment, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)* (C-8/22), that the application of Article 14(4)(b) of that directive is subject to the fulfilment of two separate conditions, relating, first, to the third-country national concerned having been convicted by a final judgment of a particularly serious crime and, secondly, to it having been established that that person constitutes a danger to the community of the Member State in which he or she is present.

23 So far as concerns the first of those conditions, it must be recalled at the outset in accordance with both the need for uniform application of EU law and the principle of equality, the terms of a provision of EU law which, like Article 14(4)(b) of Directive 2011/95, makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (see, to that effect, judgments of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 36, and of 15 November 2022, *Senatsverwaltung für Inneres und Sport*, C-646/20, EU:C:2022:879, paragraph 40).

24 In that respect, given that neither Article 14(4)(b) of that directive nor any other provision thereof defines the terms 'particularly serious crime', those terms must be interpreted in accordance with their usual meaning in everyday language, while taking into consideration the context in which they are used and the objectives pursued by the rules of which they are part (see, to that effect, judgment of 7 September 2022, *Staatssecretaris van Justitie en Veiligheid (Nature of the right of*

residence under Article 20 TFEU), C-624/20, EU:C:2022:639, paragraph 28 and the case-law cited).

25 As regards, first of all, the usual meaning in everyday language of the terms ‘particularly serious crime’, first, the term ‘crime’ characterises, in that context, an act or omission which constitutes a serious breach of the legal order of the community concerned and which is, therefore, criminally punishable as such within that community.

26 Secondly, the expression ‘particularly serious’, in so far as it adds two qualifiers to that concept of ‘crime’, refers, as the Advocate General observed in point 38 of his Opinion, to a crime of exceptional seriousness.

27 So far as concerns, next, the context in which the terms ‘particularly serious crime’ are used, it is important, in the first place, to point out that Article 14(4)(b) of Directive 2011/95 constitutes a derogation from the rule, set out in Article 13 of that directive, that Member States are to grant refugee status to a third-country national who qualifies as a refugee. That provision must therefore be interpreted strictly (see, by analogy, judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 52).

28 In the second place, while certain provisions of Directive 2011/95, such as Article 12(2)(a), specify the specific nature of the crimes which they cover, Article 14(4)(b) of that directive covers any ‘particularly serious crime’.

29 In the third place, given that Article 12(2)(b) of Directive 2011/95, which refers to a ‘serious non-political crime’, and Article 17(1)(b) of that directive, which refers to a ‘serious crime’, are also intended to deprive of international protection a third-country national who has committed a crime of a certain degree of seriousness, account must be taken of the Court’s case-law relating to those provisions for the purposes of interpreting Article 14(4)(b) of that directive.

30 First, according to that case-law the competent authority of the Member State concerned cannot rely on the grounds for exclusion laid down in Article 12(2)(b) and 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 (see, to that effect, judgments of 2 April 2020 *Commission* v *Poland, Hungary and Czech Republic (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, and of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708, paragraph 92).

31 Secondly, as regards, more specifically, the criteria to be used to assess the degree of seriousness of a crime for the purposes of the application of Article 17(1)(b) of Directive 2011/95, the Court has held that the criterion of the penalty provided for under the criminal legislation of the Member State concerned is of particular importance for that purposes, without however being decisive in itself (see, to that effect, judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 55).

32 In addition, in paragraph 56 of that judgment of 13 September 2018, *Ahmed* (C-369/17, EU:C:2018:713), the Court referred to the report of the European Asylum Support Office (EASO) for the month of January 2016, entitled 'Exclusion: Articles 12 and 17 of the Qualification Directive (2011/95/EU)', which recommends, in paragraph 3.2.2 on Article 17(1)(b) of Directive 2011/95, that the seriousness of the crime that could result in a person being excluded from subsidiary protection be assessed in the light of a number of criteria such as, inter alia, the nature of the act at issue, the consequences of that act, the form of procedure used to prosecute the crime, the nature of the penalty provided and the taking into account of whether most jurisdictions also classify the act at issue as a serious crime.

33 That being the case, in the fourth place, it is apparent from a comparison of Articles 12, 14, 17 and 21 of Directive 2011/95 that the EU legislature imposed different requirements as regards the degree of seriousness of the crimes which may be relied on in order to justify the application of a ground for exclusion or revocation of international protection or the refoulement of a refugee.

34 Thus, Article 17(3) of Directive 2011/95 mentions the commission of 'one or more crimes'. Article 12(2)(b) and Article 17(1)(b) of that directive refer, as has been noted in paragraph 29 above, to the commission of a 'serious crime'. On the other hand, the EU legislature decided to use the same wording in Article 14(4)(b) and Article 21(2)(b) of that directive, by requiring that the third-country national concerned has been convicted by a final judgment of a 'particularly serious crime'.

35 It follows that the use, in Article 14(4)(b) of Directive 2011/95, of the expression 'particularly serious crime' highlights the choice of the EU legislature to make the application of that provision subject to the satisfaction, inter alia, of a particularly strict condition relating to the existence of a final conviction for a crime of exceptional seriousness, more serious than the crimes which may justify the application of Article 12(2)(b) or Article 17(1)(b) and (3) of that directive.

36 Lastly, the main objective of Directive 2011/95, as is apparent from Article 1 of that directive and recital 12 thereof, namely to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection and to ensure that a minimum level of benefits is available for those persons in all Member States, also militates in favour of a strict interpretation of Article 14(4)(b) of that directive.

37 It follows from all of the foregoing that Article 14(4)(b) of Directive 2011/95 can be applied only to a third-country national who has been convicted by a final judgment of a crime the specific features of which enable it to be regarded as of exceptional seriousness, in so far as it is one of the crimes which most seriously undermine the legal order of the community concerned.

38 In that regard, although the assessment of the seriousness of a given crime for the purposes of applying Directive 2011/95 must be carried out, in accordance with the case-law referred to in paragraph 23 above, on the basis of a common standard and common criteria, the fact remains that, as EU law currently stands, the criminal law of the Member States is not the subject of general harmonisation measures. Accordingly, that assessment must be carried out taking into account the choices made, within the framework of the criminal system of the Member State concerned, as regards the identification of the crimes which most seriously undermine the legal order of the community.

39 Still, given that that provision refers to a final conviction for a 'particularly serious crime' in the singular and that it must be interpreted strictly, its application can be justified only in the event of a conviction by a final judgment for a crime which, taken individually, falls within the concept of

‘particularly serious crime’. That presupposes that it has the degree of seriousness referred to in paragraph 37 above, it being specified that that degree of seriousness cannot be attained by a combination of separate offences, none of which constitutes per se a particularly serious crime.

40 Furthermore, as is apparent from the case-law referred to in paragraph 30 above, the assessment of the degree of seriousness of a crime for which a third-country national has been convicted entails an assessment of all the specific circumstances of the case concerned. In that regard, the grounds of the conviction are of significant relevance for identifying those circumstances, in so far as those grounds express the competent criminal court’s assessment of the conduct of the third-country national concerned.

41 Furthermore, among the other circumstances which must be taken into account in order to assess whether a crime reaches the degree of seriousness referred to in paragraph 37 above, the nature and quantum of the penalty provided for and, a fortiori, of the penalty imposed are of crucial importance.

42 Thus, in so far as the application of Article 14(4)(b) of Directive 2011/95 is limited to crimes of exceptional seriousness, only a crime which has warranted the imposition of a particularly severe penalty in the light of the scale of penalties generally applied in the Member State concerned may be regarded as a ‘particularly serious crime’ within the meaning of that provision.

43 In addition to the penalties provided for and imposed, it is for the determining authority, subject to review by the competent courts, to take into account, inter alia, the nature of the crime committed, in so far as it may help to show the extent of the undermining of the legal order of the community concerned, and all the circumstances surrounding the commission of the crime, including any mitigating or aggravating circumstances, whether or not that crime was intentional, and the nature and extent of the harm caused by that crime.

44 The nature of the criminal procedure applied to punish the crime in question may also be relevant, if it reflects the degree of seriousness that the criminal law enforcement authorities have attributed to that crime.

45 On the other hand, to the view taken of the crime in question in the media or among the general public cannot, in view of the essentially subjective and contingent nature of such a circumstance, be taken into account for the purposes of applying Article 14(4)(b) of Directive 2011/95.

46 It should also be noted that, since, as is apparent from paragraph 40 above, the assessment of the crime at issue involves an assessment of all the circumstances of the case concerned, the assessment criteria set out in paragraphs 40 to 44 of the present judgment are not exhaustive and may therefore, where appropriate, be supplemented by additional criteria.

47 In that context, while it is in particular open to the Member States to establish minimum thresholds intended to facilitate the uniform application of that provision, such thresholds must necessarily be consistent with the degree of seriousness referred to in paragraph 37 above and must not, under any circumstances, make it possible to establish that the crime in question is ‘particularly serious’ without the competent authority having carried out a full examination of all the circumstances of the individual case concerned (see, by analogy, judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 55).

48 Accordingly, the answer to the first question is that Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that a crime which, in view of its specific features, is exceptionally serious, in so far as it is one of the crimes which most seriously undermine the legal order of the community concerned, constitutes a 'particularly serious crime' within the meaning of that provision. In order to assess whether a crime for which a third-country national has been convicted by a final judgment has such a degree of seriousness, account must be taken, inter alia, of the penalty provided for and the penalty imposed for that crime, the nature of that crime, any aggravating or mitigating circumstances, whether or not that crime was intentional, the nature and extent of the harm caused by that crime and the procedure applied to punish it.

The second question

49 By its second question, the referring court asks, in essence, whether Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that the existence of a danger to the community of the Member State in which the third-country national concerned is present may be regarded as established by the mere fact that he or she has been convicted by a final judgment of a particularly serious crime.

50 As has been noted in paragraph 22 above, it follows from paragraphs 27 to 42 of today's judgment in *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)* (C-8/22), that the application of Article 14(4)(b) of Directive 2011/95 is subject to the fulfilment of two separate conditions relating, first, to the third-country national concerned having been convicted by a final judgment of a particularly serious crime and, secondly, to it having been established that that person constitutes a danger to the community of the Member State in which he or she is present.

51 Therefore, it cannot be held, without disregarding the choice thus made by the EU legislature, that the fact that one of those two conditions has been satisfied is sufficient to establish that the other has also been satisfied.

52 Consequently, the answer to the second question is that Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that the existence of a danger to the community of the Member State in which the third-country national concerned is present cannot be regarded as established by the mere fact that he or she has been convicted by a final judgment of a particularly serious crime.

The third and fourth questions

53 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that the application of that provision is subject to the competent authority establishing that the danger which the third-country national concerned represents to the community of the Member State in which he or she is present is genuine, present and serious and that the revocation of refugee status constitutes a measure proportionate to that danger.

54 It is apparent from paragraphs 47 to 65 of the judgment delivered today, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)* (C-8/22), that a measure referred to in Article 14(4)(b) of Directive 2011/95 may be adopted only where the third-country national concerned constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State in which he or she is present. In the context of the assessment of the existence of that threat, it is for the competent authority to carry out an assessment of all the circumstances of the individual case concerned.

55 In addition, as noted in paragraphs 66 to 70 of that judgment, that authority must weigh up, on the one hand, the threat represented by the third-country national concerned to the society of the Member State in which he or she is present and, on the other hand, the rights which must be guaranteed, in accordance with Directive 2011/95, to persons fulfilling the substantive conditions of Article 2(d) of that directive, in order to determine whether the adoption of a measure referred to in Article 14(4)(b) of that directive constitutes a measure proportionate to that threat.

56 It follows that the answer to the third and fourth questions is that Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that the application of that provision is subject to the competent authority establishing that the threat which the third-country national concerned represents to one of the fundamental interests of the society of the Member State in which he or she is present is genuine, present and sufficiently serious and that the revocation of refugee status constitutes a measure that is proportionate to that threat.

Costs

57 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 (First Chamber) hereby rules:

1. **Article 14(4)(b) 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**

must be interpreted as meaning that a crime which, in view of its specific features, is exceptionally serious, in so far as it is one of the crimes which most seriously undermine the legal order of the community concerned, constitutes a 'particularly serious crime' within the meaning of that provision. In order to assess whether a crime for which a third-country national has been convicted by a final judgment has such a degree of seriousness, account must be taken, inter alia, of the penalty provided for and the penalty imposed for that crime, the nature of that crime, any aggravating or mitigating circumstances, whether or not that crime was intentional, the nature and extent of the harm caused by that crime and the procedure used to punish it.

2. **Article 14(4)(b) of Directive 2011/95**

must be interpreted as meaning that the existence of a danger to the community of the Member State in which the third-country national concerned is present cannot be regarded as established by the mere fact that he or she has been convicted by a final judgment of a particularly serious crime.

3. **Article 14(4)(b) of Directive 2011/95**

must be interpreted as meaning that the application of that provision is subject to the competent authority establishing that the threat which the third-country national concerned represents to one of the fundamental interests of the society of the Member State in which he or she is present is genuine, present and sufficiently serious and that the revocation of refugee status constitutes a measure that is proportionate to that threat.

[Signatures]

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* Language of the case: Dutch.