Lingua del documento :

ECLI:EU:C:2024:841

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

4 October 2024 (*)

(Reference for a preliminary ruling – Asylum policy – International protection – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Articles 36 and 37 – Concept of ‘safe country of origin’ – Designation – Annex I – Criteria – Article 46 – Right to an effective remedy – Examination by the court of the designation of a third country as a safe country of origin)

In Case C-406/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Krajský soud v Brně (Regional Court, Brno, Czech Republic), made by decision of 20 June 2022, received at the Court on 20 June 2022, in the proceedings

CV

v

Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky,

THE COURT (Grand Chamber)

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan (Rapporteur), T. von Danwitz, Z. Csehi and O. Spineanu-Matei, Presidents of Chambers, J.-C. Bonichot, I. Jarukaitis, A. Kumin, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: N. Emiliou,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 6 June 2023,

after considering the observations submitted on behalf of:

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

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

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

– the European Commission, by A. Azéma and M. Salyková, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 May 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 36 and 37 and Article 46(3) of and Annex I to 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 Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between CV and the Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky (Ministry of the Interior of the Czech Republic, Department of Asylum and Migration Policy; 'the Ministry of the Interior'), concerning the rejection of his application for international protection.

Legal framework

International law

The Geneva Convention relating to the Status of Refugees

3 Article 1A(2) of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), which entered into force on 22 April 1954 and was supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967 and which entered into force on 4 October 1967 ('the Geneva Convention'), provides that 'for the purposes of the present Convention, the term "refugee" shall apply to any person who … owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; …'

The ECHR

4 Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), is headed 'Derogation in time of emergency' and provides:

'1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.'

European Union law

Directive 2005/85/EC

5 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) was repealed by Directive 2013/32. Article 30 of Directive 2005/85, entitled 'National designation of third countries as safe countries of origin', stated in paragraph 1:

'Without prejudice to Article 29, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.'

6 Article 31 of that directive, entitled 'The safe country of origin concept', provides in paragraph 1:

'A third country designated as a safe country of origin in accordance with either Article 29 or 30 may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:

(a) he/she has the nationality of that country; or

(b) he/she is a stateless person and was formerly habitually resident in that country;

and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee in accordance with [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)].'

7 Annex II to that directive, entitled 'Designation of safe countries of origin for the purposes of Articles 29 and 30(1)', defined the criteria for designating a third country as a safe country of origin.

Directive 2011/95/EU

8 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) provides in Article 9, entitled 'Acts of persecution':

'1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) [ECHR]; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature.

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.'

Directive 2013/32

9 Recitals 18 and 20 of Directive 2013/32 state:

'(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

…

(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.'

10 Article 31 of that directive, entitled 'Examination procedure', provides in paragraph 8:

'Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

…

(b) the applicant is from a safe country of origin within the meaning of this Directive; …

…'

11 Article 32 of that directive, entitled 'Unfounded applications', states:

'1. Without prejudice to Article 27, Member States may only consider an application to be unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive [2011/95].

2. In cases of unfounded applications in which any of the circumstances listed in Article 31(8) apply, Member States may also consider an application to be manifestly unfounded, where it is defined as such in the national legislation.'

12 Article 36 of Directive 2013/32, entitled 'The concept of safe third country', states:

'1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

(a) he or she has the nationality of that country; or

(b) he or she is a stateless person and was formerly habitually resident in that country,

and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive [2011/95].

2. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.'

13 Article 37 of that directive, entitled 'National designation of third countries as safe countries of origin', provides:

'1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article.

3. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, [the European Asylum Support Office (EASO)], [the United Nations High Commissioner for Refugees (UNHCR)], the Council of Europe and other relevant international organisations.

4. Member States shall notify to the [European] Commission the countries that are designated as safe countries of origin in accordance with this Article.'

14 Article 43 of that directive, entitled 'Border procedures', provides, in paragraph 1:

'Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on:

…

(b) the substance of an application in a procedure pursuant to Article 31(8).'

15 Article 46 of Directive 2013/32, entitled 'The right to an effective remedy', provides:

'1. 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;

…

(iii) taken at the border or in the transit zones of a Member State as described in Article 43(1);

…

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95], at least in appeals procedures before a court or tribunal of first instance.

…

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.

…'

16 Article 53 of that directive, entitled 'Repeal', provides:

'Directive [2005/85] is repealed for the Member States bound by this Directive with effect from 21 July 2015 …

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.'

17 In accordance with Annex I to that directive, entitled 'Designation of safe countries of origin for the purposes of Article 37(1)':

'A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive [2011/95], no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the [ECHR] and/or the International Covenant on Civil and Political Rights[, adopted on 16 December 1966 by the United Nations General Assembly and which entered into force on 23 March 1976,] and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) [ECHR];

(c) respect for the non-refoulement principle in accordance with the Geneva Convention;

(d) provision for a system of effective remedies against violations of those rights and freedoms.'

Regulation (EU) 2024/1348

18 Article 61 of Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32 (OJ L 2024/1348), entitled 'The concept of safe country of origin', provides in paragraph 2:

‘The designation of a third country as a safe country of origin both at [European] Union and national level may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.’

19 Article 78 of that regulation, entitled ‘ Repeal’, provides in paragraph 1:

‘Directive [2013/32] is repealed with effect from the date referred to in Article 79(2), without prejudice to Article 79(3).

20 Article 79 of that regulation, entitled ‘Entry into force and application’, provides in paragraphs 2 and 3:

‘2. This Regulation shall apply from 12 June 2026.

3. This Regulation shall apply to the procedure for granting international protection in relation to applications lodged as from 12 June 2026. Applications for international protection lodged before that date shall be governed by Directive [2013/32]. This Regulation shall apply to the procedure for withdrawing international protection where the examination to withdraw international protection started as from 12 June 2026. Where the examination to withdraw international protection started before 12 June 2026, the procedure for withdrawing international protection shall be governed by Directive [2013/32].’

Czech law

The Law on Asylum

21 Paragraph 2(1)(b) and (k) of the zákon č. 325/1999 Sb., o azylu (Law No 325/1999 on Asylum), in the version applicable to the dispute in the main proceedings (‘the Law on Asylum’), provides:

‘For the purposes of this Law:

…

(b) an applicant for international protection means a foreign national who has lodged an application for international protection in the Czech Republic, which has not yet given rise to a definitive decision. A foreign national shall also have the status of an applicant for international protection for the duration of the time limit for bringing an action under Paragraph 32 and for the duration of the judicial proceedings in the action challenging the ministry’s decision in accordance with the [zákon č. 150/2002 Sb., soudní řád správní (Law No 150/2002, Code of Administrative Justice), in the version applicable to the dispute in the main proceedings (‘the Code of Administrative Justice’),] if that action has suspensive effect, or until the Regional Court gives a decision not to grant suspensory effect, where the foreign national has applied for it. …

…

(k) safe country of origin means the State of which the foreign national is a citizen or, in the case of a stateless person, the State where he or she last had permanent residence,

1. and which, generally and consistently, never resorts to persecution, torture or inhuman or degrading treatment or punishment, and where there is no threat by reason of indiscriminate violence in situations of international or internal armed conflict,

2. its citizens or stateless persons do not leave for the reasons cited in Paragraph 12 or Paragraph 14a,

3. which has ratified and complies with international treaties on human rights and fundamental freedoms, including the provisions on effective remedies, and

4. which allows action to be taken by legal persons monitoring the human rights situation,

…’

22 Paragraph 3d of that law provides:

‘1. An applicant for international protection shall have the right to remain on the territory; … The right to remain on the territory shall not give an entitlement to a residence permit within the meaning of [zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů (Law No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws)]. The ministry has the right to restrict the residence of an applicant for international protection in the territory to only a part of the territory or to the reception centre of the transit area of an international airport if the applicant is not allowed to enter the territory.

2. If the applicant for international protection is not a person who has repeated an application for international protection, his or her stay on the territory cannot be terminated on the basis of an administrative or judicial decision; …’

23 Paragraph 16(2) and (3) of that law is worded as follows:

‘2. The application for international protection of an applicant coming from a State which the Czech Republic considers to be a safe country of origin shall also be rejected as manifestly unfounded, unless the applicant demonstrates that, in his or her case, that State cannot be regarded as a safe country of origin.

3. If there are grounds for rejecting the application for international protection as manifestly unfounded, there is no need to examine whether the applicant for international protection complies with the grounds for granting asylum, provided for in Paragraphs 13 and 14, or for subsidiary protection, provided for in Paragraph 14b. If there are grounds for rejecting the application for international protection as manifestly unfounded pursuant to subparagraph 2, there is also no need to examine whether the applicant for international protection refers to circumstances showing that he or she might be exposed to persecution for the reasons referred to in Paragraph 12 or that he or she is at risk of suffering serious harm within the meaning of Paragraph 14a.’

24 Paragraph 32(2) of the Law on Asylum provides:

‘The filing of an action … shall have suspensory effect, except … for an action against a decision given pursuant to Paragraph 16(2) …’

25 Paragraph 85b(1) of that law provides:

‘Following … a decision rejecting an application for international protection as manifestly unfounded, if it has not been annulled by a court, or following a decision of a regional court not to grant suspensory effect, if requested, the ministry shall *ex officio* issue a removal order in respect of the foreign national valid for a maximum period of one month, unless the procedure under [Law No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws] is followed …’

26 Paragraph 86(4) of that law provides:

‘The ministry shall draw up by decree the list of safe countries of origin … It shall review at least once a year the lists of countries established by decree.’

Decree No 328/2015 implementing the Law on Asylum and the Law on the temporary protection of foreign nationals

27 Paragraph 2(15) of vyhláška č. 328/2015 Sb., kterou se provádí zákon o azylu a zákon o dočasné ochraně cizinců (Decree No 328/2015 implementing the Law on Asylum and the Law on the temporary protection of foreign nationals) provides:

‘The Czech Republic considers Moldova, with the exception of Transnistria, to be a safe country of origin …’

The Code of Administrative Justice

28 Paragraph 75(2) of the Code of Administrative Justice states:

‘The court shall examine the contested points of the decision within the limits of the grounds relied on. …’

29 Paragraph 76(1) of that code provides:

‘By judgment, without a hearing, the court shall annul the contested decision on grounds of procedural defects

(a) where a review is impossible because of the incomprehensible nature of the decision or the failure to state reasons,

(b) because the facts on which the administrative authority relied in order to adopt the contested decision do not correspond to the case file or have no basis therein, or must be fully or substantially supplemented,

(c) due to a substantial infringement of the provisions relating to the procedure before the administrative authority, if that infringement risks leading to an unlawful decision on the merits.’

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

30 On 9 February 2022, CV, a Moldovan national, lodged an application for international protection in the Czech Republic. In that application, he stated that, in 2015, he witnessed an accident in Moldova in which the driver of a car knocked over and killed a pedestrian, and then absconded. On the night of the accident, certain individuals went to CV’s home, took him to a forest and assaulted him.

31 After escaping, CV hid out with some friends, before returning to his home two days later and finding that his house had been burnt down. He subsequently fled Moldova and entered Czech territory using a false Romanian passport which an acquaintance had acquired for him. In 2016 and in 2019, CV returned to Moldova, trying hard to conceal this fact from everyone apart from his cousins.

32 In support of his application for international protection, CV invoked the threats made to him in Moldova by individuals whom the police authorities had failed to identify. He also stated that he did not wish to return to his region of origin because of the Russian Federation’s invasion of Ukraine.

33 By decision of 8 March 2022 (‘the rejection decision’), the Ministry of the Interior rejected that application as being manifestly unfounded, within the meaning of Paragraph 16(2) of the Law on Asylum, in the light of the information it had gathered on the political and security situation in Moldova and on respect for human rights in that third country. In particular, that ministry observed that, under Paragraph 2 of Decree No 328/2015 implementing the Law on Asylum and the Law on the temporary protection of foreign nationals, the Czech Republic considers the Republic of Moldova, with the exception of Transnistria, to be a ‘safe country of origin’, and that CV failed to demonstrate that that would not apply in his specific case.

34 CV challenged that decision before the Krajský soud v Brně (Regional Court, Brno, Czech Republic), the referring court. Before that court, repeating, in essence, the submissions made in support of his application for international protection, CV claims that, although it was required to take into consideration all the relevant information and to assess that application as a whole, the ministry took as the only decisive factor the fact that CV comes from the Republic of Moldova.

35 Before that court, the Ministry of the Interior states that it did not disregard the situation arising from the conflict caused by the Russian Federation’s invasion of Ukraine. However, on the date that decision was adopted, no report indicated that that conflict extended beyond Ukraine, or that the ministry, one way or another, had to review the content of the information gathered concerning the Republic of Moldova.

36 Furthermore, the referring court states that the ministry acknowledged the existence of fundamental shortcomings in respect for the law in Moldova, in particular in the field of justice, with the result that the existence of cases of persecution, within the meaning of Article 9 of Directive 2011/95, cannot be ruled out. In particular, there are disproportionate or discriminatory criminal prosecutions or convictions, which to a large extent affect opposition politicians, their lawyers, human rights defenders or civil society activists. However, the Ministry of the Interior took the view that CV does not belong to any of those categories. Moreover, CV did not state that he had any problems with Moldovan State institutions.

37 On 9 May 2022, the referring court granted CV's application for his action against the rejection decision to be given suspensive effect, upholding his argument that a successful outcome after leaving Czech territory would have only formal effect for him, since, in Moldova, he would be exposed to the risk of suffering serious harm at the hands of the individuals who had attacked him in the past. Furthermore, that court states that it took account of the fact that, on 28 April 2022, the Republic of Moldova had decided, on account of the Russian Federation's invasion of Ukraine, to extend the exercise of its right to derogate from the obligations under the ECHR, pursuant to Article 15 of that convention, which it had invoked on 25 February 2022, on account of the energy crisis it was experiencing.

38 Since CV's application for international protection was rejected, inter alia, on account of the fact that the Czech Republic designated the Republic of Moldova as a safe country of origin, with the exception of Transnistria, the referring court, first, raises the issue of the concept of 'safe country of origin' and in particular, having regard to Article 37 of Directive 2013/32 and Annex I thereto, the criteria for designating a third country as a safe country of origin.

39 It asks whether a third country ceases to be able to be designated as such when it invokes the right of derogation provided for in Article 15 ECHR.

40 The referring court also asks whether EU law precludes a Member State from designating a third country as a safe country of origin, with the exception of certain parts of its territory. In that regard, it states that the ability to make such a partial designation, which appeared in Article 30 of Directive 2005/85, repealed by Directive 2013/32, is no longer provided for in Article 37 of the latter directive. Furthermore, that court considers that the objective of the concept of 'safe country of origin' is to simplify the procedure for examining applications for international protection, which is justified only for third countries whose nationals are genuinely unlikely to be granted international protection or subsidiary protection. That is the case only in respect of third countries which satisfy the criteria laid down in Annex I to Directive 2013/32 throughout the whole of their territory.

41 Second, if the view were to be taken that a third country which has exercised the right of derogation provided for in Article 15 ECHR cannot be designated as a safe country of origin or that such designation cannot exclude part of the territory of the third country concerned, the referring court questions the extent of the review which it must exercise in that regard under Article 46(3) of Directive 2013/32, a provision which has not been transposed into Czech law but which it considers to have direct effect.

42 In particular, that court states that applications for international protection lodged by nationals of third countries designated as safe countries of origin may, like the application to which the dispute pending before that court relates, be subject to a special examination scheme, making it possible, under the provisions of that directive, inter alia, to process those applications under an accelerated procedure and, where appropriate, to declare them to be manifestly unfounded. That court also states that, in those circumstances, the Member State in which an applicant for international protection has lodged such an application may not allow him or her to remain in its territory pending the outcome of his or her action against the decision rejecting that application.

43 Therefore, that court is uncertain whether, where a court or tribunal is hearing an action against a decision rejecting an application for international protection, adopted in the context of such a scheme, it is required, as part of the full and *ex nunc* examination of both the facts and the points of law provided for in Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, to raise a failure to have regard to the rules laid down by that directive for the purposes of designating a third country as a safe country of origin, even if that failure has not been challenged by the applicant who brought that action.

44 In those circumstances, the Krajský soud v Brně (Regional Court, Brno) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should the criterion for the designation of safe countries of origin for the purposes of Article 37(1) [of Directive 2013/32] in Annex I(b) to [that directive] – [that is to say], that the country concerned provides protection against persecution and ill treatment through observance of the rights and freedoms laid down in the [ECHR], in particular the rights from which derogation cannot be made under Article 15(2) [ECHR] – be interpreted as meaning that, if the country withdraws from its commitments under the [ECHR] in time[s] of emergency under Article 15 [ECHR], it no longer meets the criterion for being designated as a safe country of origin?

(2) Should Articles 36 and 37 [of Directive 2013/32] be interpreted as meaning that they prevent a Member State from designating a country as a safe country of origin only in part, with certain territorial exceptions, to which the assumption that that part of the country is safe for the applicant will not apply, and if the Member State does designate a country with such territorial exceptions as safe, then the country concerned as a whole cannot be deemed a safe country of origin for the purpose of [that directive]?

(3) If the reply to either of these [first] two questions referred is affirmative, should Article 46(3) [of Directive 2013/32], [read] in conjunction with Article 47 of the [Charter], be interpreted as meaning that a court [hearing] an [action] challenging the decision on the manifestly unfounded nature of the application, pursuant to Article 32(2) [of Directive 2013/32], issued in proceedings conducted pursuant to Article 31(8)(b) [of that directive], must take into account *ex officio* that the designation of the country as safe is contrary to EU law, due to the reasons stated above, without requiring an objection on the part of the applicant?'

Consideration of the questions referred

The first question

45 By its first question, the referring court asks, in essence, whether Article 37 of Directive 2013/32, read in conjunction with Annex I thereto, must be interpreted as meaning that a third country ceases to fulfil the criteria enabling it to be designated as a safe country of origin on the sole ground that it invokes the right to derogate from the obligations laid down in the ECHR, pursuant to Article 15 of that convention.

46 As is apparent from the information provided by that court, the applicant in the main proceedings criticises the Ministry of the Interior because, although he had recounted the threats made to him in Moldova and stated that he did not wish to return to his region of origin because of the Russian Federation's invasion of Ukraine, that ministry based the rejection decision solely on the fact that he comes from the Republic of Moldova and that the Czech Republic designated that third country as a safe country of origin, with the exception of Transnistria. Consequently, that court wishes to ascertain the possible effect on that designation of the fact that the Republic of Moldova decided, on 28 April 2022, when the dispute in the main proceedings was pending before it, to extend the exercise of its right to derogate from the obligations arising from the ECHR, pursuant to Article 15 thereof, on account of the Russian Federation's invasion of Ukraine.

47 As a preliminary point, it should be recalled that Articles 36 and 37 of Directive 2013/32, concerning, respectively, the concept of safe country of origin and the designation by Member States of third countries as safe countries of origin, establish a special examination scheme to which Member States may subject applications for international protection; that scheme is based on a rebuttable presumption of adequate protection in the country of origin, which can be displaced by the applicant where he or she submits overriding reasons relating to his or her individual situation (see, to that effect, judgment of 25 July 2018, *A*, C-404/17, EU:C:2018:588, paragraph 25).

48 As part of the specific features of that special examination scheme, Member States may decide, in accordance with Article 31(8)(b) of that directive, first, to accelerate the examination procedure and, second, to conduct it at the border or in the transit zones, in accordance with Article 43 of that directive.

49 Furthermore, where an application for international protection lodged by an applicant from a safe country of origin has been held to be unfounded, in so far as, in accordance with Article 32(1) of Directive 2013/32, the determining authority has established that the applicant does not qualify for international protection pursuant to Directive 2011/95, Member States may also consider such an application to be manifestly unfounded pursuant to Article 32(2) of Directive 2013/32, if it is defined as such in the national legislation.

50 Furthermore, one of the consequences for the person whose application is rejected on the basis of the implementation of the safe country of origin concept is that, contrary to what is provided for in the case of a simple rejection, that person may not be allowed to remain, pending the outcome of his or her action against the decision rejecting that application, in the territory of the Member State in which that application was lodged, as is clear from the provisions of Article 46(5) and (6) of Directive 2013/32 (see, to that effect, judgment of 25 July 2018, *A*, C-404/17, EU:C:2018:588, paragraph 27).

51 With those preliminary observations having been made, it should be noted that Article 37 of that directive concerns, as its title indicates, the designation by Member States of third countries as safe countries of origin. In particular, Article 37(1) of that directive states that Member States may retain or introduce legislation that allows, in accordance with Annex I thereto, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

52 Annex I states inter alia that a third country may be considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

53 In that regard, that annex lists the factors that may be taken into consideration in order to assess, inter alia, the extent to which protection is provided against persecution or mistreatment in the country concerned. Those factors include, in point (b) of the second paragraph of that annex, observance of the rights and freedoms laid down in the ECHR, in particular the rights from which derogation cannot be made under Article 15(2) of that convention.

54 Although that article of the ECHR provides that it is possible, in times of war or other public emergency threatening the life of the nation, to take measures derogating from the obligations under that convention, the exercise of that option is accompanied by certain safeguards.

55 According to the wording of Article 15(1) ECHR, that option must, first of all, be exercised to the extent strictly required by the exigencies of the situation, provided that the measures adopted are not inconsistent with the other obligations under international law. Next, Article 15(2) provides that there is to be no derogation from Article 2 ECHR, relating to the right to life, except in respect of deaths resulting from

lawful acts of war, or from Article 3 and Article 4(1) of that convention, which lay down, respectively, the prohibition of torture, inhuman or degrading treatment or punishment, and the prohibition of slavery, or from Article 7 of that convention, which enshrines the principle that there is to be no punishment without law. Finally, as the referring court also points out, the measures adopted pursuant to Article 15 remain subject to review by the European Court of Human Rights.

56 Furthermore, as the Advocate General observed, in essence, in point 62 of his Opinion, it cannot be inferred merely from the fact that a third country invokes the right of derogation provided for in Article 15 ECHR either that the third country concerned has actually taken measures that have the effect of derogating from the obligations laid down in that convention or, if so, what the nature and extent of the derogating measures adopted are.

57 It follows that the view cannot be taken that a third country ceases to fulfil the criteria, referred to in paragraph 52 above, enabling it to be designated as a safe country of origin, within the meaning of Article 37 of Directive 2013/32, on the sole ground that it has invoked the right of derogation provided for in Article 15 ECHR.

58 Nevertheless, as the Advocate General observed in point 85 of his Opinion, the fact that that right was invoked must lead the competent authorities of the Member State which designated the third country concerned as a safe country of origin to assess whether, having regard to the conditions for implementing that right of derogation, such designation should be maintained for the purposes of examining applications for international protection lodged by applicants from that third country.

59 Article 37(2) of Directive 2013/32 requires Member States to review regularly the situation in third countries designated as safe countries of origin. That way, the EU legislature intended to oblige Member States to take account of the fact that the circumstances giving rise to a presumption of the safety of applicants for international protection in a given country of origin are, by their very nature, subject to variation.

60 Consequently, that requirement for regular review also covers the occurrence of significant events, in that, because of their importance, those events may affect the possibility for a third country, designated as a safe country of origin, to continue to fulfil the criteria set out for that purpose in Annex I to that directive, and thus to be presumed to be capable of guaranteeing the applicants' safety.

61 Invoking the right of derogation provided for in Article 15 ECHR constitutes such an event. As the Advocate General observed, in essence, in point 67 of his Opinion, although measures contrary to Article 15(2), derogating in particular from the prohibition of inhuman or degrading treatment or punishment enshrined in Article 3 of that convention, preclude, by their very nature, the designation of a third country as a safe country of origin, it cannot be ruled out that derogating measures affecting fundamental rights other than those which Article 15(2) ECHR excludes from the scope of that derogation may also be incompatible with the criteria laid down in Annex I to Directive 2013/32 for the purposes of designating a third country as a safe country of origin. Moreover, invoking that right reveals, in any event, an appreciable risk of a significant change in the manner in which the rules on rights and freedoms are applied in the third country concerned.

62 In the light of the foregoing considerations, the answer to the first question is that Article 37 of Directive 2013/32, read in conjunction with Annex I thereto, must be interpreted as meaning that a third country does not cease to fulfil the criteria enabling it to be designated as a safe country of origin on the sole ground that it invokes the right to derogate from the obligations laid down by the ECHR, pursuant to Article 15 of that convention; however, the competent authorities of the Member State which made such designation must assess whether the conditions for the implementation of that right are such as to call that designation into question.

The second question

63 By its second question, the referring court asks, in essence, whether Article 37 of Directive 2013/32 must be interpreted as precluding a third country from being designated as a safe country of origin, with the exception of certain parts of its territory.

64 Since the Czech Republic designated the Republic of Moldova as a safe country of origin, with the exception of Transnistria, that court expresses doubts as to whether such a partial designation is compatible with that directive.

65 According to settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context, the objectives pursued by the rules of which it is part and, where appropriate, its origins (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, paragraph 113 and the case-law cited).

66 In the first place, as regards the wording of Article 37 of Directive 2013/32, which, in accordance with its title, relates to the designation by a Member State of third countries as safe countries of origin, reference is made, on a number of occasions, to the terms 'country/ies' and 'third country/ies' without any indication that, for the purposes of such designation, those terms may be understood as referring only to part of the territory of the third country concerned.

67 In the second place, as regards the context of Article 37 of that directive, it is apparent, first, from Article 37 that Member States may designate safe countries of origin in accordance with Annex I to that directive. Like the wording of Article 37, the criteria set out in that annex do not provide any indication that it is open to the Member States to designate as a safe country of origin only the part of the territory of the third country concerned in which those criteria are met.

68 On the contrary, under that annex, the designation of a country as a safe country of origin is dependent, as was recalled in paragraph 52 above, on the possibility of demonstrating that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

69 As the Advocate General observed in points 92 and 93 of his Opinion, the use of the words 'generally and consistently' tends to indicate that, in the absence of any reference to a part of the territory of the third country concerned in Annex I to Directive 2013/32 or in Article 37 of that directive, the conditions set out in that annex must be met throughout the territory of the third country concerned in order for that country to be designated as a safe country of origin.

70 Second, as has been set out in paragraphs 47 to 50 above, the designation by a Member State of third countries as safe countries of origin makes it possible to subject the applications for international protection of applicants from those third countries to a special examination scheme that is exceptional in nature.

71 In that regard, interpreting Article 37 of Directive 2013/32 as allowing third countries to be designated as safe countries of origin, with the exception of certain parts of their territory, would have the effect of extending the scope of that special examination scheme. Since there is no support for such an interpretation in the wording of Article 37 or, more generally, in that directive, recognising such an option would fail to have regard to the strict interpretation to which provisions having an exceptional character must be subject (see, to that effect, judgments of 5 March 2015, *Commission* v *Luxembourg*, C-502/13, EU:C:2015:143, paragraph 61, and of 8 February 2024, *Bundesrepublik Deutschland (Admissibility of a subsequent application)*, C-216/22, EU:C:2024:122, paragraph 35 and the case-law cited).

72 In the third place, the interpretation according to which Article 37 of Directive 2013/32 does not allow Member States to designate a third country as a safe country of origin, with the exception of certain parts of its territory, is confirmed by the legislative history of that provision. In that regard, it should be noted that, prior to the entry into force of Directive 2013/32, the ability to designate third countries as safe countries of origin, for the purposes of examining applications for international protection, was granted to the Member States by Directive 2005/85, in particular by Article 30 of that directive.

73 Article 30 expressly provided that Member States could also designate as safe a portion of the territory of a third country if the conditions laid down in Annex II to Directive 2005/85, which correspond, in essence, to those set out in Annex I to Directive 2013/32, were satisfied in respect of that part of the territory. Although Annex II to Directive 2005/85, like Annex I to Directive 2013/32, required proof that 'generally and consistently' there was never any persecution, it followed from the actual wording of Article 30 that that requirement applied, in the case of such partial designation, only to the part of the territory designated as safe.

74 In accordance with Article 53 of Directive 2013/32, that directive repealed Directive 2005/85, Article 30 of which, as is apparent from the correlation table in Annex III to Directive 2013/32, was replaced by Article 37 of Directive 2013/32. The ability to designate a part of the territory of a third country as safe no longer appears in Article 37.

75 The intention to remove that option is apparent from the actual wording of the amendment to Article 30(1) of Directive 2005/85 contained in the Commission Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009) 554 final, p. 60), that option having been expressly crossed out in the vast majority of the language versions and, in the other versions, removed.

76 In addition, such an intention is confirmed by the detailed explanation of that proposal (COM(2009) 554 final, Annex, 14959/09 ADD 1, p. 15), which the Commission had provided to the Council of the European Union, and which expressly mentions the intention to remove the possibility for Member States to apply the concept of safe country of origin to part of a third country and the consequence of such removal, namely that it is now required that the material conditions for such designation be met for the entire territory of the third country concerned.

77 In the fourth and last place, the objectives pursued by Directive 2013/32 do not preclude such a consequence or, therefore, the interpretation of Article 37 of that directive to the effect that it does not allow Member States to designate as a safe country of origin a third country in which parts of its territory do not satisfy the material conditions for such designation, as set out in Annex I to that directive.

78 In that regard, apart from the fact that Directive 2013/32 pursues the overall purpose of establishing common procedural standards, that directive seeks in particular, as is apparent inter alia from recital 18, to ensure that applications for international protection are dealt with 'as soon as possible …, without prejudice to an adequate and complete examination being carried out' (judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 109).

79 In that perspective, recital 20 of that directive states that, in well-defined circumstances, where, inter alia, a request is likely to be unfounded, 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 the basic principles and guarantees provided for in that directive.

80 As stated in paragraphs 47 to 50 above, a Member State may subject applications for international protection lodged by applicants from a third country which that Member State has designated as a safe

country of origin to a special examination scheme, which is based on a rebuttable presumption of adequate protection in the country of origin, under which it is possible, inter alia, to accelerate the procedure for examining those applications.

81 As has been noted in paragraph 78 above, in so far as the EU legislature seeks to ensure, through Directive 2013/32, that applications for international protection are examined in a manner that is both rapid and exhaustive, it is for that legislature, when exercising the discretion it enjoys for the purposes of establishing common procedures for granting and withdrawing international protection, to strike a balance between those two objectives when determining the conditions under which Member States may designate a third country as a safe country of origin. Thus, the fact that that legislature did not provide, in the context of that directive, for the option for Member States to exclude part of the territory of a third country for the purposes of such designation reflects that balancing exercise and its choice to favour an exhaustive examination of applications for international protection lodged by applicants whose country of origin does not satisfy, for the whole of its territory, the material conditions set out in Annex I to that directive.

82 Although Article 61(2) of Regulation 2024/1348, which repeals Directive 2013/32 with effect from 12 June 2026, reintroduces such an option, by providing that the designation of a third country as a safe country of origin, both at EU level and at national level, may provide for exceptions for specific parts of its territory, it is the prerogative of the EU legislature to reconsider that choice, by striking a fresh balance, provided that it complies with the requirements arising, inter alia, from the Geneva Convention and the Charter. Furthermore, it must be held that the fact that the legal system introduced, for that purpose, by that regulation differs from the one that had been laid down by Directive 2005/85 supports the interpretation that the EU legislature did not make provision for that option in Directive 2013/32.

83 In the light of the foregoing considerations, the answer to the second question is that Article 37 of Directive 2013/32 must be interpreted as precluding a third country from being designated as a safe country of origin where certain parts of its territory do not satisfy the material conditions for such designation, set out in Annex I to that directive.

The third question

84 By its third question, the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as meaning that, where an action is brought before a court or tribunal against a decision rejecting an application for international protection, examined in the context of the special scheme applicable to applications lodged by applicants from third countries designated, in accordance with Article 37 of that directive, as safe countries of origin, that court or tribunal must, as part of the full and *ex nunc* examination required by Article 46(3) of that directive, raise a failure to have regard to the material conditions for such designation, set out in Annex I to that directive, even if that failure is not expressly relied on in support of that action.

85 In accordance with its title, Article 46 of Directive 2013/32 concerns the right to an effective remedy for applicants for international protection. Paragraph 1 of Article 46 of that directive guarantees those applicants such a right to an effective remedy before a court or tribunal against decisions taken on their application. Paragraph 3 of Article 46 of that directive defines the scope of the right to an effective remedy by specifying that Member States bound by that directive must ensure that the court or tribunal before which the decision relating to the application for international protection concerned is contested carries out ‘a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95]’ (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 51 and the case-law cited).

86 Furthermore, it should be recalled that it is apparent from the case-law of the Court that the characteristics of the remedy provided for in Article 46 of Directive 2013/32 must be determined in a

manner that is consistent with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection. Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right which they may rely on as such. The same must hold true for Article 46(3) of that directive, read in the light of Article 47 of the Charter (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraphs 55 and 56 and the case-law cited).

87 From that perspective, as regards the scope of the right to an effective remedy, as defined in Article 46(3) of that directive, the Court has held that the words 'shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law' must be interpreted as meaning that the Member States are required, by virtue of that provision, to order their national law in such a way that the processing of the actions referred to includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 110).

88 In that regard, first of all, the expression '*ex nunc*' points to the court or tribunal's obligation to make an assessment that takes into account, should the need arise, new evidence that has come to light after the adoption of the decision which is being challenged. Such an assessment makes it possible to deal with the application for international protection exhaustively without there being any need to refer the case back to the determining authority. Thus, the power of the court or tribunal to take into consideration new evidence on which that authority has not taken a decision is consistent with the purpose of Directive 2013/32, as referred to in paragraph 78 above (judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 111 and 112).

89 Next, the adjective 'full' used in Article 46(3) of Directive 2013/32 confirms that the court or tribunal is required to examine both the evidence which the determining authority took into account or should have taken into account and that which has arisen following the adoption of the decision by that authority (judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 113).

90 Lastly, the words 'where applicable', contained in the limb of the sentence 'including, where applicable, an examination of the international protection needs pursuant to [D]irective [2011/95]', underline the fact that the full and *ex nunc* examination to be carried out by the court or tribunal need not necessarily involve a substantive examination of the international protection needs and may accordingly concern the procedural aspects of an application for international protection (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 115).

91 The designation of a third country as a safe country of origin falls within those procedural aspects of applications for international protection in that, in the light of the considerations set out in paragraphs 48 to 50 above, such designation is liable to have an impact on the examination procedure relating to such applications.

92 Furthermore, as stated in paragraph 46 above, the applicant in the main proceedings criticises the authority which adopted the rejection decision because, although he had recounted the threats made to him in Moldova and stated that he did not wish to return to his region of origin because of the Russian Federation's invasion of Ukraine, that authority based that decision solely on the fact that he comes from the Republic of Moldova, the Czech Republic having designated that third country as a safe country of origin, with the exception of Transnistria.

93 Thus, the designation of that third country as a safe country of origin is one of the elements on file brought to the attention of the referring court and which it is called upon to hear and determine in the action against that decision.

94 It must be concluded that, in such circumstances, even though the applicant in the main proceedings has not expressly relied on, as such, a possible failure to have regard to the rules laid down by Directive 2013/32 for the purposes of such designation with a view to subjecting the procedure for examining an application for international protection of an applicant coming from that third country to the special scheme resulting from its designation as a safe country of origin, that possible failure constitutes a point of law which the referring court must consider as part of the full and *ex nunc* examination required by Article 46(3) of that directive.

95 The rejection decision is based exclusively on the fact that the applicant in the main proceedings comes from the Republic of Moldova and that that third country must be regarded as a safe country of origin. Consequently, it must be held that the decisive element of that rejection decision based on the designation of that third country as a safe country of origin is necessarily covered by the action brought by the applicant in the main proceedings against that decision. Thus, the court having jurisdiction to rule on that action must examine, as part of that action, the lawfulness of such designation under Article 46(3).

96 Having regard, in particular, to the questions posed by the national court for the purposes of resolving the dispute before it, as set out in paragraphs 38 to 40 above, its assessment must, as part of that full and *ex nunc* examination required by Article 46(3) of that directive and on the basis of the evidence in the file, first, focus on the fact that Article 15 ECHR was invoked, where the competent authorities in that regard have not been able to consider the scope of a significant event of that sort which affects the possibility for the third country designated as a safe country of origin to continue to fulfil the criteria laid down for that purpose by Directive 2013/32. Second, that assessment must concern a failure to have regard to the condition, resulting from the provisions of Directive 2013/32, that the designation of a third country as a safe country of origin must extend to the whole of its territory.

97 Furthermore, the Court has already stated that, where a third-country national fulfils the conditions for the granting of international protection set out in that directive, the Member States are, in principle, obliged to grant the status applied for, those States having no discretion in that regard (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 50 and the case-law cited).

98 It follows from all the foregoing considerations that the answer to the third question is that Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as meaning that, where an action is brought before a court or tribunal against a decision rejecting an application for international protection, examined in the context of the special scheme applicable to applications lodged by applicants from third countries designated, in accordance with Article 37 of that directive, as safe countries of origin, that court or tribunal must, as part of the full and *ex nunc* examination required by Article 46(3) of that directive, raise, on the basis of the information in the file and the information brought to its attention during the proceedings before it, a failure to have regard to the material conditions for such designation, set out in Annex I to that directive, even if that failure is not expressly relied on in support of that action.

Costs

99 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 (Grand Chamber) hereby rules:

1. **Article 37 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 Annex I thereto,**

must be interpreted as meaning that a third country does not cease to fulfil the criteria enabling it to be designated as a safe country of origin on the sole ground that it invokes the right to derogate from the obligations laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, pursuant to Article 15 of that convention; however, the competent authorities of the Member State which made such designation must assess whether the conditions for the implementation of that right are such as to call that designation into question.

2. **Article 37 of Directive 2013/32**

must be interpreted as precluding a third country from being designated as a safe country of origin where certain parts of its territory do not satisfy the material conditions for such designation, set out in Annex I to that directive.

3. **Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as meaning that, where an action is brought before a court or tribunal against a decision rejecting an application for international protection, examined in the context of the special scheme applicable to applications lodged by applicants from third countries designated, in accordance with Article 37 of that directive, as safe countries of origin, that court or tribunal must, as part of the full and *ex nunc* examination required by Article 46(3) of that directive, raise, on the basis of the information in the file and the information brought to its attention during the proceedings before it, a failure to have regard to the material conditions for such designation, set out in Annex I to that directive, even if that failure is not expressly relied on in support of that action.

[Signatures]

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* Language of the case: Czech.