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Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

22 June 2023 (\*)

(Failure of a Member State to fulfil obligations – Area of freedom, security and justice – Policies on border checks, asylum and immigration – Procedures for granting international protection – Directive 2013/32/EU – Article 6 – Effective access – The making of an application – National legislation laying down prior administrative steps to be carried out outside the territory of the Member State – Public health objective)

In Case C-823/21,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 22 December 2021,

**European Commission**, represented by A. Azéma, L. Grønfeldt, A. Tokár and J. Tomkin, acting as Agents,

applicant,

v

**Hungary**, represented by M.Z. Fehér and M.M. Tátrai, acting as Agents,

defendant,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, L.S. Rossi, J.-C. Bonichot, S. Rodin and O. Spineanu-Matei, Judges,

Advocate General: T. Čapeta,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 9 February 2023,  
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

## **Judgment**

1 By its application, the European Commission asks the Court to declare that, by making the possibility, for third-country nationals present in the territory of Hungary, including at the borders of that Member State, of accessing the procedure for granting international protection and of making an application for international protection, subject to the requirement of first undergoing a procedure at a Hungarian diplomatic representation in a third country, Hungary has failed to fulfil its obligations under Article 6 of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), interpreted in the light of Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter').

### **Legal context**

#### ***European Union law***

##### *Directive 2013/32*

2 Article 3(1) and (2) of Directive 2013/32 provides:

'1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.

2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.'

3 Article 6 of that directive provides:

'1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days.'

4 According to Article 9(1) of that directive:

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

#### *Directive 2013/33/EU*

5 Article 13 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96) states:

'Member States may require medical screening for applicants on public health grounds.'

6 Article 17(2) of that directive is worded as follows:

'Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.'

7 Article 19(1) of that directive provides:

'Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.'

#### *Hungarian law*

8 Article 268 of the a veszélyhelyzet megszűnésével összefüggő átmeneti szabályokról és a járványügyi készültségről szóló 2020. évi LVIII. törvény (Law No LVIII of 2020 on the transitional rules relating to the end of the state of emergency and on the pandemic crisis) (*Magyar Közlöny*, 2020. évi 144. száma, p. 3653) ('the Law of 2020') provides:

(1) The foreign national shall notify the competent authority for asylum of his or her wish to enter Hungary in order to lodge an asylum application by personally making a declaration of intent in respect of the lodging of an asylum application.

(2) The declaration of intent in respect of the lodging of an asylum application may be submitted, in the form of a document addressed to the competent asylum authority, at a diplomatic representation of Hungary (“the embassy”) within the meaning of Article 3(1)(a) of the Law on Diplomatic Representations and External Service, as defined in the Government Decree, with the content specified and published by the competent asylum authority.

(3) The competent asylum authority shall examine the declaration of intent and may conduct remote interviews with the foreign national in its embassies.

(4) The competent asylum authority shall inform the embassy, within 60 days, of the issue of a single-entry travel document for Hungary (“the travel document”) for the purpose of making an asylum application.

(5) If, on the basis of the declaration of intent, the competent asylum authority does not propose to issue a travel document, it shall inform the foreign national through the embassy.’

9 Under Article 269 of the Law of 2020:

‘On the basis of the information provided by the competent asylum authority in accordance with Article 268(4), the Embassy of Hungary shall issue a travel document valid for 30 days if the foreign national does not have permission to enter the territory of Hungary.’

10 Article 270 of that law provides:

(1) Subject to Article 271, an asylum application may be lodged in accordance with the procedures conducted in accordance with Articles 268 and 269.

(2) A foreign national who holds a travel document shall inform the border police of his or her intention to make an asylum application immediately after entering the country.

(3) The border police shall present the foreign national to the competent asylum authority within a maximum period of 24 hours.

(4) A foreign national who has made an asylum application may exercise the rights conferred on him or her by the Law on the right to asylum from the date on which his or her asylum application is made with the competent asylum authority.

(5) The competent asylum authority may, by order, assign accommodation to the asylum applicant in a closed reception centre. If four weeks have elapsed from the date of lodging the application and the conditions for detention have not been met, the competent asylum authority shall determine the place of accommodation in accordance with the general rules of the asylum procedure.’

11 Article 271 of that law is worded as follows:

(1) The lodging of an asylum application shall not be subject to the making of the declaration of intent referred to in Article 268 in the case of the following persons:

- (a) a beneficiary of subsidiary protection staying in Hungary,
  - (b) a family member of a person recognised as a refugee or a beneficiary of subsidiary protection within the meaning of the Law on the right to asylum, who was in Hungary at the time when the asylum application was lodged, and
  - (c) a person subject to a coercive measure, a measure or a conviction restricting individual liberty, unless he or she has irregularly crossed the borders of Hungary.
- (2) A foreign national who crosses the Hungarian border irregularly shall be returned by the police – if he or she informs the police of his or her intention to lodge an asylum application – to the Hungarian embassy in the neighbouring country of the place where the border was crossed.
- (3) In the scenario referred to in paragraph 1, the competent asylum authority shall conduct the asylum procedure in accordance with the general rules.’

12 Article 274 of that law provides:

‘The provisions of this chapter shall apply to the examination of asylum applications made after the entry into force of Government Decree No 233/2020 (of 26 May 2020) on the rules of the asylum procedure during the state of danger declared in order to avoid human epidemics causing mass disease endangering the safety of persons and property, to prevent their consequences and to protect the health and life of Hungarian citizens.’

13 Article 275 of the Law of 2020 states:

‘(1) The Government is empowered to draw up by decree the list of Hungarian embassies in which a declaration of intent may be lodged in respect of the lodging of an asylum application.

(2) The Minister for Migration and Asylum is hereby authorised to establish by decree, with the agreement of the Minister for Foreign Affairs, the procedural arrangements necessary for the implementation of this Chapter.’

14 Under Article 1 of Government Decree No 292/2020 of 17 June 2020 designating embassies for the purposes of the declaration of intent to submit an asylum application, such a declaration of intent may be made to the Hungarian Embassies in Belgrade (Serbia) and Kyiv (Ukraine).

### **Pre-litigation procedure**

15 On 30 October 2020, the Commission sent Hungary a letter of formal notice concerning the compatibility with Article 6 of Directive 2013/32, read in the light of Article 18 of the Charter, of certain provisions of the Law of 2020.

16 On 21 December 2020, Hungary replied that the Hungarian legislation complained of complied with EU law.

17 On 18 February 2021, the Commission, not being convinced by that reply, issued a reasoned opinion in which it considered that Hungary had failed to fulfil its obligations under Article 6 of Directive 2013/32, read in the light of Article 18 of the Charter, by making the possibility for third-country nationals present in the territory of Hungary, including at the borders of that Member State, to apply for international protection subject to the condition that they undergo a preliminary

procedure at a Hungarian diplomatic representation located in a third country. The Commission called upon Hungary to adopt the necessary measures to comply with the reasoned opinion within two months of its receipt.

18 On 19 April 2021, Hungary replied to the Commission's reasoned opinion, restating its view that its legislation was in conformity with EU law.

19 On 15 July 2021, not being convinced by Hungary's observations, the Commission decided to bring the present action.

## **The action**

### *Arguments of the parties*

20 The Commission considers that by making the possibility for third-country nationals present in the territory of Hungary, including at the borders of that Member State, to access the international protection procedure and make an application for international protection subject to the condition that they undergo a preliminary procedure at a Hungarian diplomatic representation located in a third country, Hungary has failed to fulfil its obligations under Article 6 of Directive 2013/32, read in conjunction with Article 18 of the Charter.

21 The Commission submits that Directive 2013/32, which lays down the procedural rules necessary to give effect to the right to asylum, recognised in Article 18 of the Charter, requires Member States to guarantee for all persons present in the territory of a Member State, including at the borders of that Member State, the right to make an application for international protection. If the effectiveness of Article 6 of Directive 2013/32 is not to be undermined, a Member State may not, moreover, unjustifiably delay the time at which the person concerned is given the opportunity to make his or her application for international protection.

22 However, in the first place, according to the Commission, it follows from the Law of 2020 that, if third-country nationals present in the territory of Hungary or at the borders of that Member State express their intention to apply for international protection, that declaration is not regarded as the making of an application for international protection, within the meaning of Article 6 of Directive 2013/32. On the contrary, those nationals should leave the territory of Hungary to submit, in person, a declaration of intent, at a Hungarian embassy in a third country, which would allow them, as required, to obtain a travel document authorising them to initiate an international protection procedure in Hungary.

23 The Commission maintains that the obligation thus imposed on applicants for international protection to leave Hungarian territory in order to have access to the asylum procedure may be incompatible not only with the right of those applicants to remain in the Member State, guaranteed in Article 9 of Directive 2013/32, but also with the principle of non-refoulement.

24 In addition, according to the Commission, the Hungarian authorities can reject the application for entry into Hungarian territory, without taking into account Hungary's obligations of international protection.

25 In the second place, the Commission acknowledges that the COVID-19 pandemic requires the adoption of measures to limit the spread of the virus. However, Member States could only take necessary and proportionate measures to protect public health. Thus, such measures cannot have the effect of preventing access to the international protection procedure.

26 In that regard, the Commission maintains that it provided the Member States with practical guidance drawing their attention to the possibility of adopting measures such as an extension of the time limit for registering applications for international protection, the lodging of applications online or by post, the carrying out of an individual interview by videoconference or the extension of the time limit for examining applications.

27 In the third place, it submits that the Law of 2020 cannot be justified on the basis of Article 72 TFEU. It is for the Member State which seeks to take advantage of the derogation set out in that article to prove that it is necessary to have recourse to that derogation in order to exercise its responsibilities in terms of the maintenance of public policy and the safeguarding of internal security. Hungary has not provided such evidence.

28 Hungary contends, in the first place, that the Law of 2020 was adopted following the outbreak of the COVID-19 pandemic in order to protect the population of that Member State and of the European Union.

29 In accordance with that law and its implementing measures, in the event of an epidemiological risk, a third-country national must submit, in person, a declaration of intent at the Hungarian Embassies in Belgrade and Kyiv before being able to initiate the asylum procedure in that Member State.

30 However, according to Hungary, the Law of 2020 allows certain categories of persons to make their application for international protection directly in Hungary. That is thus the case for persons who have been resident for a long time in that Member State, who clearly do not present any risk from an epidemiological point of view. In addition, in view of the large number of third-country nationals fleeing the war in Ukraine, third-country nationals legally resident in Ukraine are also exempt from that obligation to make a prior declaration of intent. Furthermore, those nationals benefit from temporary protection as refugees fleeing an armed conflict.

31 In the second place, Hungary submits that it follows from international law that every State has the right to authorise or refuse entry into its territory, since no provision of EU law or international law requires that foreign nationals residing in the territory of another State be automatically admitted to that State.

32 Furthermore, according to Hungary, the procedure laid down by the Law of 2020 does not fall within the scope of Directive 2013/32, as confirmed by Article 3(2) of that directive. Moreover, third-country nationals who have not yet reached the border of a Member State are not subject to the rules of EU asylum law.

33 In the third place, Hungary claims that the epidemiological situation deteriorated considerably, including in Hungary, in the second half of 2020 and that the Commission did not take account of those drastic changes, since the rules of EU law currently in force are not capable of ensuring adequate protection for EU citizens.

34 As a result of that epidemiological situation, several Member States severely restricted entry into their territory from non-member countries, while the vast majority of Member States also restricted freedom of movement between Member States, or even free movement within their territory. In addition, several Member States reintroduced border control at their internal borders.

35 In the fourth place, Hungary maintains that the Law of 2020 implements the obligation to ensure territorial sovereignty and self-determination arising from the Magyarország Alaptörvénye (Hungarian Basic Law).

36 In the last place, Hungary has given constitutional status to the main provisions 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)) and which entered into force on 22 April 1954, and 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. Moreover, the declaration of intent, provided for by the Law of 2020, may be made at the Hungarian Embassy in Serbia. That third country is a contracting party to that convention and, in addition, a candidate country for accession to the European Union and, on that basis, a safe country of origin. For that reason, Hungary denies that there is a risk of refoulement. Furthermore, the Law of 2020 does not preclude repeated filing of the declaration of intent.

### ***Findings of the Court***

37 As a preliminary point, it should be noted that it is apparent from the file submitted to the Court and from the hearing before the Court that, under the Hungarian legislation disputed by the Commission, a third-country national or a stateless person present in the territory of Hungary or presenting himself or herself at the borders of that Member State who wishes to apply for international protection there is, in principle, required to travel beforehand to the Hungarian Embassy in Belgrade or Kyiv in order to submit, in person, a declaration of intent. After examining that declaration, the competent Hungarian authorities may decide to issue a travel document to that third-country national or stateless person, that document enabling him or her to enter Hungary in order to make an application for international protection, within the meaning of Article 6 of Directive 2013/32, in the absence of other permission to enter Hungarian territory.

38 That said, third-country nationals or stateless persons referred to in Article 271(1) of the Law of 2020 are not subject to such a prior procedure. Thus, a third-country national or a stateless person is not required to submit a declaration of intent at a Hungarian embassy where he or she is a beneficiary of subsidiary protection and resides in Hungary, where he or she is a family member of a refugee or beneficiary of subsidiary protection and was in Hungary at the time when his or her application for international protection was lodged, or where he or she is the subject of a coercive measure or a measure or conviction restricting his or her individual freedom, unless he or she irregularly crossed Hungarian borders.

39 Furthermore, Hungary submits that, under a government decree which was adopted and entered into force on 24 February 2022, third-country nationals or stateless persons who have been legally resident in Ukraine are now also exempt from carrying out such a preliminary procedure.

40 In the latter regard, it is clear from settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion. The assessment as to whether or not there has been a failure to fulfil obligations as claimed must therefore relate to the state of the domestic legislation in force on that date (judgment of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraph 68 and the case-law cited).

41 It follows that, when examining the compatibility of the Law of 2020 with the provisions of EU law relied on by the Commission, the Court cannot take into account the amendment referred to



in paragraph 39 of the present judgment, since that amendment was made after the expiry of the period laid down in the reasoned opinion.

42 With the benefit of that clarification, it must be pointed out that, according to Article 3(1) of Directive 2013/32, that directive applies to all applications for international protection made in the territory of the Member States, including at the border, in territorial waters or in a transit zone of the Member States. It follows, by contrast, from paragraph 2 of that article, that that directive does not apply in cases of requests for diplomatic or territorial asylum lodged at representations of Member States.

43 Furthermore, it follows from Article 6 of Directive 2013/32 that any third-country national or stateless person has the right to make an application for international protection, including at the borders of a Member State, by expressing his or her wish to benefit from international protection to one of the authorities referred to in that article, without the expression of that wish being subject to any administrative formality. That right must be recognised, even if he or she is staying illegally on that territory and irrespective of the prospects of success of such a claim (see, to that effect, judgments of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraphs 97 and 98, and of 16 November 2021, *Commission v Hungary (Criminalisation of assistance to asylum seekers)*, C-821/19, EU:C:2021:930, paragraph 136).

44 The right to make an application for international protection thus makes the effective observance of the applicant's rights conditional on that application being registered and being able to be lodged and examined within the periods prescribed by Directive 2013/32 including, ultimately, the effectiveness of the right to seek asylum in a Member State, as guaranteed by Article 18 of the Charter and specified in Article 6 of that directive (see, to that effect, judgments of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraph 102, and of 16 November 2021, *Commission v Hungary (Criminalisation of assistance to asylum seekers)*, C-821/19, EU:C:2021:930, paragraph 132).

45 Moreover, as soon as an application for international protection is made, the third-country national or stateless person becomes a person seeking international protection within the meaning of Directive 2013/32 and must, in principle, be allowed to remain in the territory of that Member State, in accordance with Article 9 of that directive (see, to that effect, judgment of 16 November 2021, *Commission v Hungary (Criminalisation of assistance to asylum seekers)*, C-821/19, EU:C:2021:930, paragraph 137 and the case-law cited).

46 It is also apparent from the Court's case-law that Directive 2013/32 seeks to ensure effective, easy and rapid access to the procedure for granting international protection, including as early as the making of the application for international protection (judgment of 16 November 2021, *Commission v Hungary (Criminalisation of assistance to asylum seekers)*, C-821/19, EU:C:2021:930, paragraph 80 and the case-law cited).

47 From that point of view, Article 6 of that directive requires Member States to ensure that the persons concerned may be able to exercise effectively the right to make an application for international protection, including at their borders, as soon as they express their wish to do so. A Member State cannot, without undermining the effectiveness of Article 6 of that directive, therefore, unjustifiably delay the time at which the person concerned is given the opportunity to make his or her application for international protection (judgment of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraphs 103 and 106).

48 In the present case, it should be noted that Articles 268 to 270 of the Law of 2020 apply to third-country nationals and stateless persons who are present in the territory of Hungary or present themselves at its borders and who wish to express their intention to receive international protection in that Member State. It follows that, contrary to what Hungary maintains, those persons fall fully within the scope of that directive, as defined in Article 3(1) thereof.

49 The fact that those persons are required, under Hungarian law, to travel from the territory of Hungary or from the border of that Member State in order to lodge, in person, a prior declaration of intent at an embassy of that Member State, located in Serbia or Ukraine, cannot alter that conclusion. More specifically, contrary to what Hungary submits, it cannot follow from such an obligation that those persons should be regarded as having merely submitted an application for diplomatic or territorial asylum to the representations of the Member States, within the meaning of Article 3(2) of Directive 2013/32.

50 Furthermore, as has been recalled in paragraph 37 of the present judgment, under Articles 268 to 270 of the Law of 2020, the competent Hungarian authorities can, in principle, consider that an application for international protection has been made, within the meaning of Article 6 of Directive 2013/32, only where the person concerned has previously lodged a declaration of intent at a Hungarian embassy in a third country and has obtained a travel document enabling him or her to enter Hungary.

51 However, such a condition is not laid down in Article 6 of Directive 2013/32 and runs counter to the objective, pursued by that directive and recalled in paragraph 46 above, of ensuring effective, easy and rapid access to the procedure for granting international protection.

52 Furthermore, the effect of the legislation complained of by the Commission is that, apart from the persons referred to in Article 271(1) of the Law of 2020, third-country nationals or stateless persons who are staying in the territory of Hungary or present themselves at the borders of that Member State, without undergoing the prior procedure imposed by that law, are deprived of the effective enjoyment of their right, as guaranteed by Article 18 of the Charter, to seek asylum from that Member State.

53 In particular, as Hungary acknowledged at the hearing before the Court, it follows from an *a contrario* reading of Article 271(1)(c) of the Law of 2020 that third-country nationals or stateless persons who have irregularly crossed the Hungarian border and who are deprived of their liberty have no means of applying for asylum in Hungary. First, they are not exempt, under Article 271, from the obligation to submit, in person, a declaration of intent at the Hungarian Embassy in Belgrade or Kyiv, and, second, in practice, it is impossible for them to submit such a declaration of intent in person for as long as they are deprived of their liberty.

54 That said, Hungary submits, first, that the procedure established in Articles 268 to 270 of the Law of 2020 is justified on public health grounds and, more specifically, by the fight against the spread of the COVID-19 pandemic.

55 In that regard, it must be noted that it is apparent from Article 35 of the Charter and from Article 9 TFEU, Article 114(3) TFEU and Article 168(1) TFEU that a high level of human health protection must be ensured in the definition and implementation of all the European Union's policies and activities (judgment of 24 February 2022, *Agenzia delle dogane e dei monopoli and Ministero dell'Economia e delle Finanze*, C-452/20, EU:C:2022:111, paragraph 49 and the case-law cited).

56 As has been recalled in paragraph 47 of the present judgment, Article 6 of Directive 2013/32 merely prohibits Member States from unjustifiably delaying the time at which an application for international protection may be made in their territory or at their borders.

57 It follows that Article 6 does not preclude Member States, by way of exception, from making an application for international protection subject to special arrangements, intended to limit the spread of a contagious disease on their territory, provided that those detailed rules are appropriate for securing such an objective and are not disproportionate in the light of that objective.

58 However, that is not the case with the procedure laid down in Articles 268 to 270 of the Law of 2020.

59 Forcing third-country nationals or stateless persons, who reside in Hungary or who present themselves at the borders of that Member State, to go to the embassy of that Member State in Belgrade or Kyiv in order to be able, subsequently, to return to Hungary in order to make an application for international protection there constitutes a manifestly disproportionate interference with the right of those persons to make an application for international protection upon their arrival at a Hungarian border, as enshrined in Article 6 of Directive 2013/32, and their right to be able, in principle, to remain in the territory of that Member State during the examination of their application, in accordance with Article 9(1) of that directive.

60 Furthermore, that constraint cannot achieve the objective of combating the spread of the COVID-19 pandemic in so far as it obliges third-country nationals or stateless persons to move, thereby potentially exposing them to that disease which they could subsequently spread in Hungary.

61 In addition, Hungary has not demonstrated, or even argued before the Court, that no other measure intended to combat the spread of the COVID-19 pandemic could adequately be adopted, in Hungarian territory, in respect of third-country nationals or stateless persons wishing to apply for international protection in Hungary.

62 It should be noted, in particular, that, under Article 13 of Directive 2013/33, Member States may require applicants for international protection to undergo a medical examination on grounds of public health. Furthermore, no provision of that directive or of Directive 2013/32 precludes those applicants from being subject to distancing or isolation procedures intended to prevent the spread of a contagious disease, provided that those procedures pursue such an objective in a relevant, proportionate and non-discriminatory manner and that the rights granted to applicants in Article 17(2) and Article 19 of Directive 2013/33 are guaranteed.

63 It should also be added that, according to Article 6(4) of Directive 2013/32, an application for international protection may be lodged using a form and that, under Article 14(2)(b) of that directive, the health problems of the applicant for international protection may justify dispensing with the personal interview on the substance of the application. In any event, it should be possible to carry out such an interview remotely, as the Commission suggests in its guidance on the implementation of asylum procedures in the context of combating the COVID-19 pandemic (202/C 126/02) (OJ 2020 C 126, p. 12).

64 It follows that, contrary to what Hungary maintains, EU law authorises the Member States to adopt measures which make it possible to reconcile adequately, on the one hand, the effectiveness of the right of any third-country national or stateless person to make an application for international protection in their territory or at their borders and, on the other hand, the fight against contagious diseases.

65 Second, in so far as Hungary also invokes grounds of public policy and public security in order to justify the adoption of the Law of 2020, it is important to clarify that, pursuant to Article 72 TFEU, the provisions of Title V of Part Three of that Treaty do not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

66 Although it is for the Member States to adopt appropriate measures to ensure law and order on their territory and their internal and external security, it does not follow that such measures fall entirely outside the scope of EU law. As the Court has held, only in clearly defined cases does the FEU Treaty expressly provide for derogations applicable in situations which may affect law and order or public security. It cannot be inferred that the FEU Treaty contains an inherent general exception excluding all measures taken for reasons of law and order or public security from the scope of EU law (judgment of 30 June 2022, *Valstybės sienos apsaugos tarnyba and Others*, C-72/22 PPU, EU:C:2022:505, paragraph 70 and the case-law cited).

67 In addition, the derogation provided for in Article 72 TFEU must be interpreted strictly. It follows that Article 72 TFEU cannot be read in such a way as to confer on Member States a power to depart from the provisions of EU law based on no more than reliance on the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security (judgment of 30 June 2022, *Valstybės sienos apsaugos tarnyba and Others*, C-72/22 PPU, EU:C:2022:505, paragraph 71 and the case-law cited).

68 It is accordingly for the Member State which seeks to take advantage of Article 72 TFEU to prove that it is necessary to have recourse to that derogation in order to exercise its responsibilities in terms of the maintenance of law and order and the safeguarding of internal security (judgment of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraph 216 and the case-law cited).

69 In the context of the present action, Hungary merely invoked, in a general manner, the risk of threats to public policy and internal security in order to justify the compatibility of the Law of 2020 with EU law, without demonstrating that it was necessary for it to derogate specifically from the requirements arising from Article 6 of Directive 2013/32, in view of the situation prevailing in its territory on the expiry of the period laid down in the reasoned opinion.

70 It follows from all the foregoing considerations that, by making the possibility, for certain third-country nationals or stateless persons present in the territory of Hungary or at the borders of that Member State, of making an application for international protection subject to the prior lodging of a declaration of intent at a Hungarian embassy located in a third country and to the granting of a travel document enabling them to enter Hungarian territory, Hungary has failed to fulfil its obligations under Article 6 of Directive 2013/32.

### **Costs**

71 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against Hungary and the latter has been unsuccessful, Hungary must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby:

**1. Declares that by making the possibility, for certain third-country nationals or stateless persons present in the territory of Hungary or at the borders of that Member State, of making an application for international protection subject to the prior lodging of a declaration of intent at a Hungarian embassy located in a third country and to the granting of a travel document enabling them to enter Hungarian territory, Hungary has failed to fulfil its obligations under Article 6 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;**

**2. Orders Hungary to bear its own costs and to pay those incurred by the European Commission.**

[Signatures]

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\* Language of the case: Hungarian.