

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

14 May 2019 (*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum policy — International protection — Directive 2011/95/EU — Refugee status — Article 14(4) to (6) — Refusal to grant or revocation of refugee status in the event of danger to the security or the community of the host Member State — Validity — Article 18 of the Charter of Fundamental Rights of the European Union — Article 78(1) TFEU — Article 6(3) TEU — Geneva Convention)

In Joined Cases C-391/16, C-77/17 and C-78/17,

THREE REQUESTS for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) in Case C-391/16, made by decision of 16 June 2016, received at the Court on 14 July 2016, and from the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) in Cases C-77/17 and C-78/17, made by decisions of 8 February 2017 and 10 February 2017, received at the Court on 13 February 2017, in the proceedings

M

v

Ministerstvo vnitra (C-391/16),

and

X (C-77/17),

X (C-78/17)

v

Commissaire général aux réfugiés et aux apatrides,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, T. von Danwitz (Rapporteur) and C. Toader, Presidents of Chambers, E. Levits, L. Bay Larsen, M. Safjan, D. Šváby, C.G. Fernlund and S. Rodin, Judges,

Advocate General: M. Wathelet,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 6 March 2018,

after considering the observations submitted on behalf of:

– M, by J. Mašek, advokát,

– X (C-77/17), by P. Vanwelde and S. Janssens, avocats,

- X (C-78/17), by J. Hardy, avocat,
 - the Czech Government, by M. Smolek, J. Vláčil and A. Brabcová, acting as Agents,
 - the Belgian Government, by C. Pochet, M. Jacobs and C. Van Lul, acting as Agents,
 - the German Government, by T. Henze and R. Kanitz, acting as Agents,
 - the French Government, by E. Armoët, E. de Moustier and D. Colas, acting as Agents,
 - the Hungarian Government, by M.Z. Fehér, G. Koós, Z. Biró-Tóth and M. Tátrai, acting as Agents,
 - the Netherlands Government, by M.A.M. de Ree and M.K. Bulterman, acting as Agents,
 - the United Kingdom Government, by S. Brandon, acting as Agent, and by D. Blundell, Barrister,
 - the European Parliament, by K. Zejdová, O. Hrstková Šolcová and D. Warin, acting as Agents,
 - the Council of the European Union, by E. Moro, A. Westerhof Löfflerová, S. Boelaert, M. Chavrier and J. Monteiro, acting as Agents,
 - the European Commission, by M. Šimerdová and M. Condou-Durande, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 21 June 2018,

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation and validity of Article 14(4) to (6) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9), which entered into force on 9 January 2012, in the light of Article 78(1) TFEU, Article 6(3) TEU and Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The requests have been made in three sets of proceedings between, in the first case (Case C-391/16), M and the Ministerstvo vnitra (Ministry of the Interior, Czech Republic) concerning the decision revoking his right to asylum, in the second case (Case C-77/17), X and the Commissaire général aux réfugiés et aux apatrides (Commissioner General for Refugees and Stateless Persons, Belgium) ('the Commissaire général') concerning the decision refusing to recognise him as having refugee status and to grant him subsidiary protection, and, in the third case (Case C-78/17), X and the Commissaire général concerning the decision withdrawing his refugee status.

Legal context

International law

- 3 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)) ('the Geneva Convention'), entered into force on 22 April 1954. It was supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967 ('the Protocol').

4 All the Member States are contracting parties to the Geneva Convention. By contrast, the European Union is not a contracting party to that convention.

5 The preamble to the Geneva Convention notes that the United Nations High Commissioner for Refugees (UNHCR) is responsible for supervising the application of international conventions guaranteeing the protection of refugees and provides that the States commit to cooperating with the UNHCR in the exercise of its duties and in particular to facilitating its duty of supervising the application of those instruments.

6 Article 1(A) of that convention provides:

‘For the purposes of the present Convention, the term “refugee” shall apply to any person who:

...

(2) ... 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.’

7 Article 1(C) of the Geneva Convention provides:

‘This Convention shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

...

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence;

...’

8 The first paragraph of Article 1(D) of that convention states:

‘This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.’

9 Article 1(E) of that convention provides:

‘This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.’

10 Article 1(F) of that convention is worded as follows:

‘The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.’

11 Under Article 3 of the Geneva Convention:

‘The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.’

12 Article 4 of that convention provides:

‘The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.’

13 Article 16(1) of that convention provides:

‘A refugee shall have free access to the courts of law on the territory of all Contracting States.’

14 Article 22(1) of the Geneva Convention states:

‘The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.’

15 Under Article 31 of that convention:

‘1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.’

16 Article 32 of that convention provides:

‘1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee

shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before [a] competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.'

17 Article 33 of that convention provides:

'1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.'

18 Under Article 42(1) of the Geneva Convention:

'At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive.'

European Union law

Directive 2011/95

19 Directive 2011/95, adopted on the basis of Article 78(2)(a) and (b) TFEU, repealed 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).

20 Recitals 3, 4, 10, 12, 16, 17, 21, 23 and 24 of Directive 2011/95 are worded as follows:

'(3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention ..., as supplemented by the ... Protocol ..., thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

(4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

...

(10) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying [Directive 2004/83] as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards.

...

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

...

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

(17) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.

...

(21) The recognition of refugee status is a declaratory act.

...

(23) Standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

(24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.’

21 Under Article 1 of Directive 2011/95:

‘The purpose of this Directive is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.’

22 Article 2 of that directive provides:

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

(a) “international protection” means refugee status and subsidiary protection status as defined in points (e) and (g);

(b) “beneficiary of international protection” means a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g);

...

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

(e) “refugee status” means the recognition by a Member State of a third-country national or a stateless person as a refugee;

...’

23 Chapter II of Directive 2011/95, entitled ‘Assessment of applications for international protection’, includes Articles 4 to 8 of that directive. Those articles set out the rules laying down the way in which

Member States should assess such applications.

24 Chapter III of Directive 2011/95, entitled ‘Qualification for being a refugee’, includes Articles 9 to 12 of that directive. Regarding Articles 9 and 10 of that directive in particular, these set out, respectively, the conditions under which an act is to be regarded as an act of persecution for the purposes of Article 1(A) of the Geneva Convention and the elements which must be taken into account by the Member States when assessing the reasons for persecution.

25 Article 11 of Directive 2011/95, entitled ‘Cessation’, provides:

- ‘1. A third-country national or a stateless person shall cease to be a refugee if he or she:
 - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
 - (b) having lost his or her nationality, has voluntarily re-acquired it; or
 - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
 - (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
 - (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
 - (f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.
2. ...
3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.’

26 Article 12 of that directive, entitled ‘Exclusion’, provides:

- ‘1. A third-country national or a stateless person is excluded from being a refugee if:
 - (a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall ipso facto be entitled to the benefits of this Directive;
 - (b) he or she is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.
2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
 - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

- (b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.'

27 Article 13 of Directive 2011/95, which appears in Chapter IV thereof, entitled 'Refugee status', is entitled 'Granting of refugee status' and provides:

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

28 Article 14 of that directive, which also appears in Chapter IV thereof, is entitled 'Revocation of, ending of or refusal to renew refugee status' and provides:

'1. Concerning applications for international protection filed after the entry into force of [Directive 2004/83], Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if he or she has ceased to be a refugee in accordance with Article 11.

...

3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

- (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
- (b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.

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

- (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
- (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.'

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

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.'

29 Chapter VII of Directive 2011/95, entitled 'Content of international protection', includes Articles 20 to 35 thereof. Article 20(1) and (2) of that directive states:

'1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.

2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.’

30 Article 21 of that directive provides:

‘1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

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

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

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

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.’

31 The first subparagraph of Article 24(1) of Directive 2011/95 provides:

‘As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 years and renewable, unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).’

32 Article 28 of that directive provides:

‘1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

2. Member States shall endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall comply with Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [(OJ 2005 L 255, p. 22)].’

33 Article 34 of Directive 2011/95 is worded as follows:

‘In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.’

National law

Czech law

34 The Zákon č. 325/1999 Sb., o azylu (Law No 325/1999 on asylum), in the version applicable to the facts in the main proceedings (‘the Law on asylum’), governs the granting and revocation of international protection.

35 Under Article 2(2) of that Law, a refugee for the purposes of that Law (*azylant*) means ‘a foreign national who has been granted the right to asylum under the present Law for the duration of the validity of the

decision granting the right to asylum'. According to the explanation provided by the referring court, if a person's right to asylum is revoked, that person ceases to be a refugee (*azylant*) and to enjoy the rights provided for by that Law.

36 Under Article 17(1)(i) of the Law on asylum, the right to asylum is to be revoked 'if there are legitimate grounds to consider that the refugee represents a danger to the security of the State'. In addition, Article 17(1)(j) of that Law provides that the right to asylum is to be revoked 'if the refugee has been convicted by a final judgment of a particularly serious crime and therefore represents a danger to the security of the State'.

37 Under Article 28(1) of the Law on asylum, the right to asylum is one of the forms of international protection granted to a foreign national in the territory of the Czech Republic.

Belgian law

38 Article 48/3(1) of the loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (*Moniteur belge* du 31 décembre 1980, p. 14584) (Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreign nationals) (*Belgian Official Journal* of 31 December 1980, p. 14584), in the version applicable to the facts in the main proceedings ('the Law of 15 December 1980'), provides:

'Refugee status shall be granted to foreign nationals who satisfy the conditions laid down in Article 1 of the [Geneva Convention], as amended by the [Protocol].'

39 Article 48/4(1) of that Law provides:

'Subsidiary protection status shall be granted to foreign nationals who do not qualify as refugees and to whom Article 9ter is not applicable, and in respect of whom there are serious grounds for believing that, if returned to their country of origin or, in the case of stateless persons, to their country of former habitual residence, they would face a genuine risk of suffering serious harm as referred to in paragraph 2, and who are unable, or, owing to such risk, are unwilling to avail themselves of the protection of that country, in so far as those persons are not covered by the exclusion clauses in Article 55/4.'

40 Article 52/4 of that Law states:

'Where a foreign national who has applied for asylum under Articles 50, 50bis, 50ter or 51 constitutes a danger to the community, having been convicted by a final judgment of a particularly serious offence, or where there are reasonable grounds for regarding him as a danger to national security, the Minister or his authorised representative shall communicate all evidence to that effect to the Commissaire général without delay.

The [Commissaire général] may refuse to grant refugee status where the foreign national constitutes a danger to the community, having been convicted by a final judgment of a particularly serious offence, or where there are reasonable grounds for regarding him as a danger to national security. In such cases the [Commissaire général] shall give an opinion as to whether a removal order is compatible with Articles 48/3 and 48/4.

The Minister may require the person concerned to reside in a particular place while his application is being reviewed, if he considers this necessary in order to protect public order or national security.

In exceptionally serious circumstances, the Minister may temporarily hand the person concerned over to the Government, if he considers this necessary in order to protect public order or national security.'

41 Under Article 55/3/1 of that Law:

‘§ 1. The [Commissaire général] may withdraw refugee status where a foreign national, having been convicted by final judgment of a particularly serious offence, represents a danger to the community or where there are reasonable grounds for regarding him as a danger to national security.

...

§ 3. Where he withdraws refugee status pursuant to paragraph 1 or paragraph 2(1), the Commissaire général shall give an opinion, in his decision, as to whether a removal order is compatible with Articles 48/3 and 48/4.’

42 Under the second paragraph of Article 55/4 of the Law of 15 December 1980:

‘A foreign national shall also not be eligible for subsidiary protection status where he represents a danger to the community or to national security.’

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

Case C-391/16

43 By decision of 21 April 2006, the Ministry of the Interior granted M, originally from Chechnya (Russia), the right to asylum, on the ground that he had legitimate reasons to fear persecution in his State of nationality on account of his race, religion, nationality, membership of a particular social group or political opinion.

44 Before receiving the right to asylum, M had committed a robbery for which he had received a three-year custodial sentence. After being granted the right to asylum he had also received a nine-year custodial sentence for repeat offences of robbery and extortion, to be served in a high security detention centre. In light of those circumstances, the Ministry of the Interior decided on 29 April 2014 to revoke M’s right to asylum and not to grant him subsidiary protection, on the ground that he had been convicted by final judgment of a particularly serious crime and that he represented a danger to the security of the State.

45 M brought an action against that decision before the Městský soud v Praze (Prague City Court, Czech Republic). Since that action was dismissed, M lodged an appeal on a point of law before the referring court.

46 That court questions, in particular, the validity of Article 14(4) and (6) of Directive 2011/95 in the light of Article 18 of the Charter, Article 78(1) TFEU and the general principles of EU law under Article 6(3) TEU, owing to the possibility that those provisions of Directive 2011/95 infringe the Geneva Convention.

47 In that regard, the referring court makes reference to a UNHCR report published on 29 July 2010, entitled ‘UNHCR comments on the European Commission’s proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551 of 21 October 2009)’, in which the UNHCR repeated the doubts it had previously expressed concerning the compatibility of Article 14(4) and (6) of Directive 2004/83 with the Geneva Convention.

48 It states that it is apparent from that report that Article 14(4) of that proposal for a directive, on which Article 14(4) of Directive 2011/95 is based, extends the grounds for exclusion from refugee status beyond the exclusion and cessation clauses laid down in Article 1 of the Geneva Convention, even though those clauses are exhaustive and Article 42(1) of that convention prohibits the Contracting States from making reservations to Article 1 thereof. It is also apparent from that report that, although Article 33 of the Geneva Convention permits the refoulement of a person to his country of origin or to another country, that provision has no effect on that person’s refugee status in his country of residence. The referring court

emphasises that the doubts expressed by the UNHCR are shared by, inter alia, the European Council on Refugees and Exiles, the International Association of Refugee and Migration Judges, and the Ombudsman of the Czech Republic.

49 The referring court adds, however, that, according to a part of the legal literature, Directive 2011/95 is consistent with the Geneva Convention. It notes, in that regard, that, according to the explanatory memorandum accompanying the proposal for a directive referred to in paragraph 47 above, the aim of Directive 2011/95 is, inter alia, to ensure the full and inclusive application of that convention. That directive is more detailed and makes a distinction, in Article 2(d) and (e) thereof, between ‘refugee’ and ‘refugee status’. The granting of refugee status, for the purposes of Directive 2011/95, results in a higher level of protection than that provided for in the Geneva Convention. Thus, a person whose refugee status is revoked pursuant to Article 14(4) of Directive 2011/95 can no longer enjoy the rights and benefits deriving from that directive, except for certain minimum rights enshrined in that convention. That provision seems to be based on the idea that those persons cannot be refouled to their country of origin, even though they satisfy the conditions of Article 33(2) of that convention. Those persons are therefore to be tolerated in the host Member State and have a ‘light-refugee’ status.

50 Although the Court has previously ruled, in the judgment of 24 June 2015, *H. T.* (C-373/13, EU:C:2015:413, paragraphs 71 and 94 to 98), on the connection between Article 33(2) of the Geneva Convention and Directive 2011/95, it has not yet examined the issue of the compatibility of Article 14(4) and (6) of that directive with Article 1(C) and Article 42(1) of the Geneva Convention; nor, by extension, has it examined the issue of the compatibility of those provisions with Article 78(1) TFEU, Article 18 of the Charter, and the general principles of EU law under Article 6(3) TEU.

51 Regarding Article 14(6) of Directive 2011/95, which guarantees that persons covered by Article 14(4) of that directive enjoy certain rights provided for in the Geneva Convention, the referring court notes that, according to the Ombudsman of the Czech Republic, the Law on asylum does not transpose Article 14(6) of that directive. Thus, according to that ombudsman, the revocation of the right to asylum pursuant to Article 17(1)(i) and (j) of the Law on asylum infringes EU law. In that regard, the referring court indicates that it cannot be ruled out from a detailed analysis of the Czech legal order that, in some individual cases, none of the rights derived from Articles 3, 4, 16, 22, 31, 32 or 33 of the Geneva Convention are guaranteed for the persons concerned. However, in the case in the main proceedings, the applicant has the possibility of asserting those rights in the Czech Republic.

52 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 14(4) and (6) of [Directive 2011/95] invalid on the grounds that it infringes Article 18 of [the Charter], Article 78(1) [TFEU] and the general principles of EU law under Article 6(3) [TEU]?’

Case C-77/17

53 On 10 March 2010 the tribunal de première instance de Bruxelles (Brussels Court of First Instance, Belgium) imposed on X, an Ivorian national, a partly suspended custodial sentence of 30 months for intentional assault and battery, possession of a bladed weapon without proper reason and possession of a prohibited weapon. In addition, on 6 December 2011 X was sentenced by the Cour d’appel de Bruxelles (Brussels Court of Appeal, Belgium) to four years’ imprisonment for rape of a minor aged over 14 years and under 16 years.

54 On 3 November 2015 X submitted an application for asylum in support of which he claimed fears of persecution in connection with the fact that his father and members of his family were closely linked to the former Ivorian regime and the former President Laurent Gbagbo.

- 55 By decision of 19 August 2016, the Commissaire général refused, on the basis of the second paragraph of Article 52/4 of the Law of 15 December 1980, to grant X refugee status, because of the offences he had committed in Belgium. The Commissaire général considered, in particular, that, in view of the particularly serious nature of those offences and the fact that they were repeat offences, X constituted a danger to the community for the purposes of that provision. For the same reasons, he considered that it was necessary to exclude X from subsidiary protection under the second paragraph of Article 55/4 of that Law. However, pursuant to Article 52/4 of that Law, the Commissaire général issued an opinion to the effect that, in view of his well-founded fears of persecution, X could not be directly or indirectly refouled to Côte d’Ivoire, as such a removal order was incompatible with Articles 48/3 and 48/4 thereof.
- 56 X brought an action against that decision before the referring court.
- 57 That court notes that the second paragraph of Article 52/4 of the Law of 15 December 1980, on which the decision at issue is based, transposes Article 14(5) of Directive 2011/95 into Belgian law.
- 58 The referring court questions the validity of that provision in the light of Article 18 of the Charter and Article 78(1) TFEU. Those provisions require the Union to comply with the Geneva Convention, meaning that secondary EU legislation must comply with that convention. That convention very clearly states, in Article 1(A) thereof, the persons who come within the definition of a ‘refugee’ and neither Article 1(F) nor any other provision thereof permits a general and definitive refusal to grant refugee status to a person solely on the ground that that person represents a danger to national security or constitutes a serious danger to the community of the host Member State. Article 14(5) of Directive 2011/95 provides for the possibility of refusing to grant that status on one of those grounds, which correspond to the situations referred to in Articles 32 and 33 of that convention, although those articles govern the expulsion of refugees and not the conditions for the granting of refugee status.
- 59 Thus, the issue arises as to whether Article 14(5) of Directive 2011/95 introduces a new ground for exclusion from refugee status not provided for in the Geneva Convention. The act of providing for a new exclusion clause constitutes a substantive modification of that convention, which is contrary to the principles of international law. If the Geneva Convention had intended to exclude or refuse to grant refugee protection for reasons connected with national security, public order or danger to the community of the host Member State, it would have made explicit provision for this, as it did regarding, inter alia, serious non-political crimes committed outside the host Member State.
- 60 Account should also be taken of the potentially far-reaching consequences of that exclusion clause, since it involves the loss of rights and benefits connected with refugee status. Thus, in its judgment of 24 June 2015, *H. T.* (C-373/13, EU:C:2015:413, paragraph 95), the Court clearly recalled that the revocation of a residence permit and the revocation of refugee status are two distinct issues with different implications. Indeed, the UNHCR, in an opinion entitled ‘UNHCR Annotated Comments on [Directive 2004/83]’ published in January 2005, was particularly critical with respect to identical provisions set out in Directive 2004/83.
- 61 In those circumstances, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Must Article 14(5) of [Directive 2011/95] be interpreted as creating a new ground for exclusion from refugee status provided for in Article 13 of the Directive and, consequently, from Article 1(A) of the Geneva Convention?
 2. If the answer to [the first question] is yes, is Article 14(5) of Directive 2011/95/EU, thus interpreted, compatible with Article 18 of [the Charter] and Article 78(1) [TFEU], which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention, the exclusion clause laid down in Article 1(F) of the Convention being exhaustively worded and requiring strict interpretation?

3. If the answer to [the first question] is no, must Article 14(5) of [Directive 2011/95] be interpreted as introducing a ground for refusing refugee status which is not provided for in the Geneva Convention, compliance with which is required by Article 18 of [the Charter] and Article 78(1) [TFEU]?
4. If the answer to [the third question] is yes, is Article 14(5) of [Directive 2011/95] compatible with Article 18 of [the Charter] and Article 78(1) [TFEU], which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention, as it introduces a ground for refusing refugee status without any consideration of fear of persecution, as required by Article 1(A) of the Geneva Convention?
5. If the answer to [the first and third questions] is no, how can Article 14(5) of [Directive 2011/95] be interpreted in a manner consistent with Article 18 of [the Charter] and Article 78(1) [TFEU], which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention?

Case C-78/17

62 By decision of 21 February 2007, the Commissaire général recognised X, a national of the Democratic Republic of the Congo, as a refugee.

63 On 20 December 2010 X was sentenced by the Cour d'assises de Bruxelles (Brussels Assize Court, Belgium) to 25 years' imprisonment for homicide and aggravated robbery. By decision of 4 May 2016, the Commissaire général withdrew his refugee status pursuant to paragraph 1 of Article 55/3/1 of the Law of 15 December 1980, on the ground, inter alia, that, in the light of the particularly serious nature of the offences committed, X constituted a danger to the community for the purposes of that provision. In addition, under paragraph 3 of Article 55/3/1 of that Law, the Commissaire général issued an opinion to the effect that the removal of X was compatible with Articles 48/3 and 48/4 thereof in so far as the fears that X had raised in 2007 were no longer relevant.

64 X brought an action against that decision of the Commissaire général before the referring court. That court notes that Article 55/3/1 of the Law of 15 December 1980, on which that decision is based, transposes Article 14(4) of Directive 2011/95 into Belgian law. As in Case C-77/17 and on the same grounds as those put forward in that case, the referring court considers that there are several grounds for questioning the validity of Article 14(4) of Directive 2011/95 in the light of Article 18 of the Charter and Article 78(1) TFEU.

65 In those circumstances, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '1. Must Article 14(4) of [Directive 2011/95] be interpreted as creating a new ground for exclusion from refugee status provided for in Article 13 of the Directive and, consequently, from Article 1(A) of the Geneva Convention?
2. If the answer to [the first question] is yes, is Article 14(4) of Directive 2011/95/EU, thus interpreted, compatible with Article 18 of [the Charter] and Article 78(1) [TFEU], which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention, the exclusion clause laid down in Article 1(F) of the Convention being exhaustively worded and requiring strict interpretation?
3. If the answer to [the first question] is no, must Article 14(4) of [Directive 2011/95] be interpreted as introducing a ground for withdrawing refugee status which is not provided for in the Geneva Convention, compliance with which is required by Article 18 of [the Charter] and Article 78(1) [TFEU]?
4. If the answer to [the third question] is yes, is Article 14(4) of [Directive 2011/95] compatible with Article 18 of [the Charter] and Article 78(1) [TFEU], which provide, inter alia, that secondary EU

legislation must comply with the Geneva Convention, as it introduces a ground for withdrawing refugee status for which no provision is made in the Geneva Convention, and for which no basis can be found in the Convention?

5. If the answer to [the first and third questions] is no, how can Article 14(4) of [Directive 2011/95] be interpreted in a manner consistent with Article 18 of [the Charter] and Article 78(1) [TFEU], which provide, inter alia, that secondary EU legislation must comply with the Geneva Convention?

Procedure before the Court

- 66 By decision of the President of the Court of 17 March 2017, Cases C-77/17 and C-78/17 were joined for the purposes of the written and oral procedure and the judgment. By decision of the President of the Court of 17 January 2018, those cases were joined with Case C-391/16 for the purposes of the oral procedure and the judgment.

The jurisdiction of the Court

- 67 The Member States and institutions that have submitted written observations to the Court have expressed divergent opinions as regards the question whether the Court has jurisdiction to assess, in the context of the present requests for a preliminary ruling, the validity of Directive 2011/95 in the light of Article 78(1) TFEU and Article 18 of the Charter, which refer to the Geneva Convention.

- 68 In that regard, the German Government considers that such a question calls for a negative response with regard to the requests for a preliminary ruling in Cases C-77/17 and C-78/17, in so far as those requests seek, in essence, to obtain an interpretation of the Geneva Convention, whereas, as is apparent from the case-law resulting from the judgment of 17 July 2014, *Qurbani* (C-481/13, EU:C:2014:2101, paragraphs 20, 21 and 28), the Court's jurisdiction to interpret that convention is limited.

- 69 For their part, the Council and the Commission remark that the Court has already ruled on the need to interpret the provisions of Directive 2011/95 in line with the Geneva Convention. As for the Parliament, it considers that, as that directive is an autonomous legislative act of the Union, the primacy, unity and effectiveness of which are to be guaranteed by the Court, the examination of the validity of that directive should be carried out only on the basis of the Treaty on European Union, the Treaty on the Functioning of the European Union, and the Charter. Directive 2011/95 should be interpreted, as far as possible, in such a way as not to affect its validity while still observing, inter alia, the fundamental principles of the Geneva Convention.

- 70 By contrast, the French and Netherlands Governments emphasise that, although the European Union is not a party to the Geneva Convention, Article 78 TFEU and Article 18 of the Charter nonetheless require the Union to comply with it. Thus, they maintain that the Court has jurisdiction to assess the compatibility of Article 14(4) to (6) of Directive 2011/95 with that convention.

- 71 In that regard, it follows from Article 19(3)(b) TEU and point (b) of the first paragraph of Article 267 TFEU that the Court has jurisdiction to give preliminary rulings on the interpretation and the validity of acts adopted by the EU institutions, without exception, as those acts must be entirely compatible with the Treaties, the constitutional principles stemming therefrom, and the Charter (see, to that effect, judgment of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraphs 44 and 46).

- 72 In the present case, it should be noted that Directive 2011/95 was adopted on the basis of Article 78(2)(a) and (b) TFEU. Under Article 78(1) TFEU, the common policy on asylum, subsidiary protection and temporary protection, which aims to offer 'appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement', 'must be in accordance with the Geneva Convention ... and the Protocol ..., and other relevant treaties'.

- 73 In addition, Article 18 of the Charter provides that the ‘right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention ... and the Protocol ... and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union’.
- 74 Thus, although the European Union is not a contracting party to the Geneva Convention, Article 78(1) TFEU and Article 18 of the Charter nonetheless require it to observe the rules of that convention. Directive 2011/95 must therefore, pursuant to those provisions of primary law, observe those rules (see, to that effect, judgments of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 29 and the case-law cited, and of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 53 and the case-law cited).
- 75 Consequently, the Court has jurisdiction to examine the validity of Article 14(4) to (6) of Directive 2011/95 in the light of Article 78(1) TFEU and Article 18 of the Charter and, in the context of that examination, to verify whether those provisions of that directive can be interpreted in a way which is in line with the level of protection guaranteed by the rules of the Geneva Convention.

Consideration of the questions referred

- 76 The questions of the referring courts as to the validity of Article 14(4) to (6) of Directive 2011/95 concern, in essence, the question whether the effect of Article 14(4) and (5) of that directive is to exclude the third-country national or the stateless person concerned, who satisfies the material conditions laid down in Article 2(d) thereof, from being a refugee and whether, as a result, it infringes Article 1 of the Geneva Convention. More specifically, their questions concern the fact that the scenarios referred to in Article 14(4) and (5) of Directive 2011/95 do not correspond to the exclusion and cessation clauses set out in Article 1(C) to (F) of the Geneva Convention, while those exclusion and cessation clauses are, within the scheme of that convention, exhaustive.
- 77 In that regard, it should be borne in mind that, in accordance with a general principle of interpretation, an EU measure must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter (judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 48 and the case-law cited). Thus, if the wording of secondary EU law is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with primary law rather than to the interpretation which leads to its being incompatible with that law (judgment of 26 June 2007, *Ordre des barreaux francophones et germanophone and Others*, C-305/05, EU:C:2007:383, paragraph 28 and the case-law cited).
- 78 It must therefore be ascertained whether the provisions of Article 14(4) to (6) of Directive 2011/95 can, in accordance with the requirements of Article 78(1) TFEU and Article 18 of the Charter, be interpreted in a way that ensures that the level of protection guaranteed by the rules of the Geneva Convention is observed.

The system introduced by Directive 2011/95

- 79 As is apparent from recital 12 of Directive 2011/95, the provisions thereof are intended to ensure the application of common criteria for the identification of persons in need of international protection and to ensure that a minimum level of benefits is available for those persons in all Member States.
- 80 In that regard, it should be borne in mind, as is confirmed by recital 3 of Directive 2011/95, that the Common European Asylum System, of which that directive is part, is based on the full and inclusive application of the Geneva Convention and the Protocol and on the guarantee that nobody will be sent back to a place where they again risk being persecuted (see, to that effect, judgments of 21 December 2011, *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraph 75, and of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 30).

- 81 In addition, it is apparent from recitals 4, 23 and 24 of Directive 2011/95 that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of that directive for determining who qualifies for refugee status and the content thereof were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria in order to recognise applicants for asylum as having refugee status for the purposes of Article 1 of that convention (see, to that effect, judgments of 31 January 2017, *Lounani*, C-573/14, EU:C:2017:71, paragraph 41, and of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 40 and the case-law cited).
- 82 Furthermore, recital 16 of Directive 2011/95 specifies that that directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members, the latter right being, under Article 18 of the Charter, guaranteed in compliance with the Geneva Convention and the Protocol.
- 83 Thus, although Directive 2011/95 establishes a system of rules including concepts and criteria common to the Member States and thus peculiar to the European Union, it is nonetheless based on the Geneva Convention and its purpose is, inter alia, to ensure that Article 1 of that convention is complied with in full.
- 84 Those clarifications having been made, it should be noted that, regarding the term ‘refugee’, Article 2(d) of that directive reproduces, in essence, the definition set out in Article 1(A)(2) of the Geneva Convention. In that regard, the provisions of Chapter III of Directive 2011/95, entitled ‘Qualification for being a refugee’ provide clarification regarding the material conditions necessary to enable a third-country national or a stateless person to be considered a refugee for the purposes of Article 2(d) of that directive.
- 85 For its part, Article 2(e) of Directive 2011/95 defines ‘refugee status’ as ‘the recognition by a Member State of a third-country national or a stateless person as a refugee’. As can be seen from recital 21 of that directive, that recognition is declaratory and not constitutive of being a refugee.
- 86 Thus, within the system introduced by Directive 2011/95, a third-country national or a stateless person who satisfies the material conditions set out in Chapter III of that directive is, on that basis alone, a refugee for the purposes of Article 2(d) thereof and Article 1(A) of the Geneva Convention.
- 87 The systematic interpretation of Directive 2011/95 according to which Chapter III thereof concerns only the fact of being a refugee cannot be called in question by the use of the expression ‘statut de réfugié’ in the French language version of Article 12(1) and (2) of that directive set out in that chapter. Indeed, other language versions of that provision, such as the Spanish, German, English, Portuguese and Swedish versions, use the expression ‘being a refugee’ instead of ‘refugee status’ in Article 12(1) and (2).
- 88 According to settled case-law of the Court, where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (judgments of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 27, and of 24 January 2019, *Balandin and Others*, C-477/17, EU:C:2019:60, paragraph 31). In that regard, while Chapter III of Directive 2011/95 is entitled ‘Qualification for being a refugee’, Chapter IV of that directive is entitled ‘Refugee status’ and contains Article 13, which governs the granting of that status, and Article 14, which governs the revocation and ending of, as well as the refusal to renew that status.
- 89 As regards Article 13 of Directive 2011/95, the Court has held that, pursuant to that provision, Member States are to grant refugee status to all third-country nationals or stateless persons who satisfy the material conditions for qualification as a refugee in accordance with Chapters II and III of that directive, without having any discretion in that respect (see, to that effect, judgments of 24 June 2015, *H. T.*, C-373/13, EU:C:2015:413, paragraph 63, and of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraphs 52 and 54).

90 The fact that being a ‘refugee’ for the purposes of Article 2(d) of Directive 2011/95 and Article 1(A) of the Geneva Convention is not dependent on formal recognition thereof through the granting of ‘refugee status’ as defined in Article 2(e) of that directive is, moreover, borne out by the wording of Article 21(2) of that directive, which states that a ‘refugee’ may, in accordance with the condition laid down in that provision, be refouled ‘whether formally recognised or not’.

91 The result of formal recognition as a refugee, which the granting of refugee status constitutes, is that the refugee concerned is, under Article 2(b) of Directive 2011/95, the beneficiary of international protection for the purposes of that directive, so that he is entitled, as the Advocate General noted in point 91 of his Opinion, to all the rights and benefits laid down in Chapter VII of that directive, which contains both rights equivalent to those set out in the Geneva Convention and, as has been observed by, inter alia, the Parliament and the United Kingdom Government, rights providing greater protection which have no equivalent in that convention, such as those referred to in Article 24(1) and Articles 28 and 34 of Directive 2011/95.

92 It follows from the foregoing that the fact of being a ‘refugee’ for the purposes of Article 2(d) of Directive 2011/95 and Article 1(A) of the Geneva Convention is not dependent on the formal recognition of that fact through the granting of ‘refugee status’ as defined in Article 2(e) of that directive, read in conjunction with Article 13 thereof.

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

93 Regarding the circumstances, referred to in Article 14(4) and (5) of Directive 2011/95, in which Member States may revoke or refuse to grant refugee status, those circumstances correspond, in essence, as the Advocate General noted in point 56 of his Opinion, to those in which Member States may refoule a refugee under Article 21(2) of that directive and Article 33(2) of the Geneva Convention.

94 However, it should, in the first place, be noted that, while Article 33(2) of the Geneva Convention denies the refugee the benefit, in such circumstances, of the principle of non-refoulement to a country where his life or freedom would be threatened, Article 21(2) of Directive 2011/95 must, as is confirmed by recital 16 thereof, be interpreted and applied in a way that observes the rights guaranteed by the Charter, in particular Article 4 and Article 19(2) thereof, which prohibit in absolute terms torture and inhuman or degrading punishment or treatment irrespective of the conduct of the person concerned, as well as removal to a State where there is a serious risk of a person being subjected to such treatment. Therefore, Member States may not remove, expel or extradite a foreign national where there are substantial grounds for believing that he will face a genuine risk, in the country of destination, of being subjected to treatment prohibited by Article 4 and Article 19(2) of the Charter (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 86 to 88, and of 24 April 2018, *MP (Subsidiary protection of a person previously a victim of torture)*, C-353/16, EU:C:2018:276, paragraph 41).

95 Thus, where the refoulement of a refugee covered by one of the scenarios referred to in Article 14(4) and (5) and Article 21(2) of Directive 2011/95 would expose that refugee to the risk of his fundamental rights, as enshrined in Article 4 and Article 19(2) of the Charter, being infringed, the Member State concerned may not derogate from the principle of non-refoulement under Article 33(2) of the Geneva Convention.

96 In those circumstances, in so far as Article 14(4) and (5) of Directive 2011/95 provides, in the scenarios referred to therein, for the possibility for Member States to revoke ‘refugee status’ as defined in Article 2(e) of that directive or to refuse to grant that status, while Article 33(2) of the Geneva Convention, for its part, permits the refoulement of a refugee covered by one of those scenarios to a country where his or her life or freedom would be threatened, EU law provides more extensive international protection for the refugees concerned than that guaranteed by that convention.

97 In the second place, as was noted by the Commission, the Council and the Parliament and by several of the Member States who submitted written observations to the Court, Article 14(4) and (5) of Directive

2011/95 cannot be interpreted as meaning that, in the context of the system introduced by that directive, the effect of the revocation of refugee status or the refusal to grant that status is that the third-country national or the stateless person concerned who satisfies the conditions set out in Article 2(d) of that directive, read in conjunction with the provisions of Chapter III thereof, is no longer a refugee for the purposes of Article 2(d) of that directive and Article 1(A) of the Geneva Convention.

98 Indeed, besides what has been stated in paragraph 92 above, the fact that the person concerned is covered by one of the scenarios referred to in Article 14(4) and (5) of Directive 2011/95 in no way means that he or she ceases to satisfy the material conditions, relating to a well-founded fear of persecution in his or her country of origin, on which his or her being a refugee depends.

99 In the event that a Member State decides to revoke or not to grant refugee status under Article 14(4) or (5) of Directive 2011/95, it is true that the third-country nationals or the stateless persons concerned will be denied that status and thus will not or will no longer be entitled to all the rights and benefits set out in Chapter VII of that directive, those rights and benefits being associated with that status. However, as is explicitly stated in Article 14(6) of that directive, those persons are, or continue to be entitled to a certain number of rights laid down in the Geneva Convention (see, to that effect, judgment of 24 June 2015, *H. T.*, C-373/13, EU:C:2015:413, paragraph 71), which, as the Advocate General emphasised in point 100 of his Opinion, confirms that they are, or continue to be refugees for the purposes of, inter alia, Article 1(A) of that convention, in spite of that revocation or refusal.

100 It follows that the provisions of Article 14(4) to (6) of Directive 2011/95 cannot be interpreted as meaning that the effect of the revocation of refugee status or the refusal to grant that status is that the third-country national or the stateless person concerned who satisfies the material conditions of Article 2(d) of that directive, read in conjunction with the provisions of Chapter III thereof, is not a refugee for the purposes of Article 1A of the Geneva Convention and is thus excluded from the international protection which, under Article 18 of the Charter, he must be guaranteed in compliance with that convention.

Article 14(6) of Directive 2011/95

101 Article 14(6) of Directive 2011/95 provides that persons to whom paragraphs 4 or 5 of that article apply are entitled to rights set out in ‘or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State’.

102 Regarding, first of all, the conjunction ‘or’ used in Article 14(6) of Directive 2011/95, that conjunction may, linguistically, have an alternative or a cumulative sense and must consequently be read in the context in which it is used and in light of the objectives of the act in question (see, by analogy, judgment of 12 July 2005, *Commission v France*, C-304/02, EU:C:2005:444, paragraph 83). In the present case, having regard to the context and objective of Directive 2011/95 as set out in recitals 3, 10 and 12 thereof, and taking account of the case-law cited in paragraph 77 above, that conjunction must, in Article 14(6) of that directive, be understood in a cumulative sense.

103 Regarding, next, the scope of the expression ‘similar [rights]’ contained in that provision, it should be noted that, as the Advocate General emphasised in point 110 of his Opinion, the application of Article 14(4) or (5) of Directive 2011/95 has the consequence, inter alia, of depriving the person concerned of the residence permit which Article 24(1) of that directive attaches to having refugee status as defined in that directive.

104 Thus, a refugee concerned by a measure taken on the basis of Article 14(4) or (5) of Directive 2011/95 may, for the purpose of determining the rights that he or she must be granted under the Geneva Convention, be regarded as not or no longer staying lawfully in the territory of the Member State concerned.

105 It must therefore be held that Member States, when implementing Article 14(4) or (5) of that directive, are, in principle, required to grant refugees who are present in their respective territories only the rights

expressly referred to in Article 14(6) of that directive and the rights set out in the Geneva Convention that are guaranteed for any refugee who is present in the territory of a Contracting State and do not require a lawful stay.

106 It should, however, be emphasised that, despite being denied the residence permit attached to refugee status under Directive 2011/95, a refugee covered by one of the scenarios referred to in Article 14(4) and (5) thereof may be authorised, on another legal basis, to stay lawfully in the territory of the Member State concerned (see, to that effect, judgment of 24 June 2015, *H. T.*, C-373/13, EU:C:2015:413, paragraph 94). In such a situation, Article 14(6) of that directive in no way prevents that Member State from guaranteeing that the person concerned is entitled to all the rights which the Geneva Convention attaches to 'being a refugee'.

107 Thus, Article 14(6) of Directive 2011/95 must, in accordance with Article 78(1) TFEU and Article 18 of the Charter, be interpreted as meaning that a Member State which uses the powers provided for in Article 14(4) and (5) of that directive must grant a refugee covered by one of the scenarios referred to in those provisions and present in the territory of that Member State, as a minimum, the rights enshrined in the Geneva Convention expressly referred to in Article 14(6) of that directive and the rights provided for by that convention which do not require a lawful stay, without prejudice to any reservations which may be made by that Member State under Article 42(1) of that convention.

108 Moreover, besides the rights which the persons concerned must be guaranteed by the Member States pursuant to Article 14(6) of Directive 2011/95, it should be emphasised that there is no way of interpreting that provision as having the effect of encouraging those States to shirk their international obligations as resulting from the Geneva Convention by restricting the rights that those persons derive from that convention.

109 In any event, it should be stated that, as the Advocate General noted in points 133 and 134 of his Opinion, and as is confirmed by recitals 16 and 17 of Directive 2011/95, the application of Article 14(4) to (6) of that directive is without prejudice to the obligation of the Member State concerned to comply with the relevant provisions of the Charter, such as those set out in Article 7 thereof, relating to respect for private and family life, Article 15 thereof, relating to the freedom to choose an occupation and the right to engage in work, Article 34 thereof, relating to social security and social assistance, and Article 35 thereof, relating to health protection.

110 It is apparent from all of the foregoing that, while, under the Geneva Convention, the persons covered by one of the scenarios described in Article 14(4) and (5) of Directive 2011/95 are liable, under Article 33(2) of that convention, to a measure whereby they are refouled or expelled to their country of origin, even though their life or freedom would be threatened in that country, such persons may not, by contrast, under Article 21(2) of that directive, be refouled if this would expose them to the risk of their fundamental rights, as enshrined in Article 4 and Article 19(2) of the Charter, being infringed. It is true that those persons may, in the Member State concerned, be the subject of a decision revoking their refugee status as defined in Article 2(e) of Directive 2011/95, or a decision refusing to grant that status, but the adoption of such decisions cannot alter the fact of their being refugees where they satisfy the material conditions necessary to be regarded as being refugees for the purposes of Article 2(d) of that directive, read in conjunction with the provisions of Chapter III thereof and, accordingly, Article 1(A) of the Geneva Convention.

111 In those circumstances, the interpretation of Article 14(4) to (6) of Directive 2011/95 thus applied ensures that the minimum level of protection laid down by the Geneva Convention is observed, as required by Article 78(1) TFEU and Article 18 of the Charter.

112 Therefore, the answer to the questions referred is that consideration of Article 14(4) to (6) of Directive 2011/95 has disclosed no factor of such a kind as to affect the validity of those provisions in the light of Article 78(1) TFEU and Article 18 of the Charter.

Costs

- 113 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Consideration of Article 14(4) to (6) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, has disclosed no factor of such a kind as to affect the validity of those provisions in the light of Article 78(1) TFEU and Article 18 of the Charter of Fundamental Rights of the European Union.

[Signatures]

* Languages of the case: Czech and French.