ECLI:EU:C:2018:775

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

26 September 2018 (*)

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Directive 2013/32/EU — Article 46 — Directive 2008/115/EC — Article 13 — Charter of Fundamental Rights of the European Union — Article 18, Article 19(2) and Article 47 — Right to an effective remedy — Principle of non-refoulement — Decision rejecting an application for international protection and imposing an obligation to return — National legislation providing for a second level of jurisdiction — Automatic suspensory effect limited to the action at first instance)

In Case C-180/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 29 March 2017, received at the Court on 7 April 2017, in the proceedings

X,

Y

v

Staatssecretaris van Veiligheid en Justitie,

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, E. Juhász, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– Y and X, by J. Pieters, advocaat,

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

– the Belgian Government, by M. Jacobs, C. Pochet and C. Van Lul, acting as Agents,

– the Estonian Government,, by N. Grünberg, acting as Agent,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by C. Cattabriga, M. Condou-Durande and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60) and of Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98), read in the light of Articles 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between, on the one hand, X and Y and, on the other, the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) concerning the rejection of their applications for international protection and return decisions taken in respect of them.

Legal context

The Convention relating to the Status of Refugees

3 Article 33 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 137, No 2545 (1954)), as 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 Geneva Convention’), that article being entitled ‘Prohibition of expulsion or return (“refoulement”)’, provides in paragraph 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.’

The ECHR

4 Article 3 (entitled ‘Prohibition of torture’) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (‘the ECHR’), provides:

‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’

5 Article 13 of that convention is worded as follows:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

EU law

Directive 2013/32

6 Recitals 12 and 60 of Directive 2013/32 state:

‘(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.

…

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. …’

7 Paragraph 1 of Article 3 of that directive, entitled ‘Scope’, provides:

‘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.’

8 Article 46 of that directive, entitled ‘The right to an effective remedy’, states:

‘1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

…

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

…

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

6. In the case of a decision:

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

(b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);

(c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or

(d) not to examine or not to examine fully the application pursuant to Article 39,

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

…'

Directive 2008/115

9 Recitals 2, 4 and 24 of Directive 2008/115 state:

'(2) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.

…

(4) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well-managed migration policy.

…

(24) This Directive respects the fundamental rights and observes the principles recognised in particular by the [Charter].'

10 Article 2(1) of that directive states that it applies to third-country nationals staying illegally on the territory of a Member State.

11 Under Article 3 of that directive:

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

…

(4) “return decision” means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

…’

12 Article 12(1) of Directive 2008/115 provides:

‘Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies.

…’

13 Article 13 of that directive, headed ‘Remedies’, is worded as follows:

‘1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

…’

Netherlands law

14 Under Netherlands law, an action at first instance before the rechtbank (District Court, Netherlands) against a decision of the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) on an asylum matter has automatic suspensory effect. While it is possible to appeal against a judgment of the rechtbank (District Court) confirming a decision rejecting an application for asylum and imposing an obligation to return, the appeal proceedings do not have automatic suspensory effect. It is nevertheless possible for an applicant to apply to the voorzieningenrechter (judge hearing applications for interim measures) of the Raad van State (Council of State, Netherlands) for interim measures, with a view in particular to avoiding expulsion, pending the outcome of the appeal proceedings. That application for interim measures does not itself have automatic suspensory effect.

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

15 X and Y, Russian nationals, were notified of decisions rejecting their applications for international protection and imposing an obligation to return. Following the dismissal of their

actions before the rechtbank Den Haag (District Court, The Hague, Netherlands) challenging those decisions, they appealed against the judgments delivered to the Raad van State (Council of State). As the appeals had no automatic suspensory effect, X and Y requested, by means of an application for interim relief, that the referring court take interim measures pending the outcome of the appeal proceedings. The referring court granted that application for interim measures and ruled that X and Y could not be expelled prior to the outcome of the appeal proceedings. Nevertheless, it states in the order for referral that the adoption of interim measures was justified by the need to prevent X and Y being expelled before the Court of Justice was able to rule on the questions referred for a preliminary ruling, and that the referring court will rule on the question of maintaining those interim measures on the basis of the Court's answers.

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

'(1) Must Article 13 of Directive 2008/115, read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter, be interpreted as meaning that under EU law, if national law makes provision to that effect, in proceedings challenging a decision which includes a return decision within the meaning of Article 3(4) of Directive 2008/115, the legal remedy of an appeal has automatic suspensory effect where the third-country national claims that enforcement of the return decision would result in a serious risk of infringement of the principle of non-refoulement? In other words, in such a case, should the expulsion of the third-country national concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the third-country national concerned being required to submit a separate request to that effect?

(2) Must Article 46 of Directive 2013/32, read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter, be interpreted as meaning that, under EU law, if national law makes provision to that effect, in proceedings relating to the rejection of an application for the granting of international protection, the legal remedy of an appeal has automatic suspensory effect? In other words, in such a case, should the expulsion of an applicant be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the applicant concerned being required to submit a separate request to that effect?

(3) In order for there to be such automatic suspensory effect, is it still relevant whether the application for international protection which prompted the procedures of bringing an action in law and a subsequent appeal has been rejected on one of the grounds mentioned in Article 46(6) of Directive 2013/32? Alternatively, does that requirement apply for all categories of asylum decisions as set out in that directive?'

The jurisdiction of the Court

17 The Belgian Government argues that the Court of Justice does not have jurisdiction to answer the questions referred for a preliminary ruling, on the ground that the subject of those questions — namely the bringing of an appeal, and the decision to confer on that appeal, where appropriate, automatic suspensory effect, against judgments delivered at first instance such as those at issue in the main proceedings — comes within the exclusive jurisdiction of the Member States.

18 In that connection, it should be noted that Article 46 of Directive 2013/32 and Article 13 of Directive 2008/115 contain provisions governing the right to an effective remedy against decisions by which the competent authorities of the Member States refuse to grant applications for

international protection and imposes an obligation to return on the applicants, such as the decisions at issue in the main proceedings in the present case.

19 As regards the question of whether the bringing of an appeal against judgments delivered at first instance concerning such decisions — and the decision to confer on that remedy, where appropriate, automatic suspensory effect — come within the exclusive jurisdiction of the Member States, that question is inextricably linked to the answers to be given to the questions referred for a preliminary ruling, since they relate specifically to the scope of the right to an effective remedy provided for in Article 46 of Directive 2013/32 and in Article 13 of Directive 2008/115, read in the light of the guarantees provided in Articles 18, 19(2) and 47 of the Charter. In those circumstances, the Court has jurisdiction to answer those questions (see, to that effect, judgment of 7 March 2017, *X and X*, C-638/16 PPU, EU:C:2017:173, paragraph 37 and the case-law cited).

Consideration of the questions referred

The first and second questions

20 By its first and second questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 46 of Directive 2013/32 and Article 13 of Directive 2008/115, read in the light of Articles 18, 19(2) and 47 of the Charter, must be interpreted as precluding national legislation which, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

21 Under Article 46(1) of Directive 2013/32, Member States are required to ensure that applicants for international protection have the right to an effective remedy before a court against, inter alia, a decision concerning their application for international protection. According to the wording of Article 46(3) of that directive, in order to comply with that right, Member States are required to ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95, at least in appeals procedures before a court or tribunal of first instance. In accordance with Article 46(5) of Directive 2013/32, without prejudice to paragraph 6 of that article, Member States are required to allow applicants to remain in the territory until the period within which they may exercise their right to an effective remedy has expired and, when such a right has been exercised within the period, pending the outcome of the remedy.

22 Under Article 13(1) of Directive 2008/115, read in conjunction with Article 12(1) thereof, the third-country national concerned is to be afforded an effective remedy to appeal against or seek review of decisions related to return before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

23 Thus, while the provisions of Directives 2013/32 and 2008/115 require the Member States to provide for an effective remedy against decisions rejecting an application for international protection and against return decisions, none of those provisions lays down the requirement that the Member States must grant a right to appeal to applicants for international protection whose appeals against the decision refusing their application have been unsuccessful at first instance, let alone that the exercise of such a right should be given automatic suspensory effect.

24 Nor can such requirements be inferred from the scheme or purpose of those directives. The respective objectives of those directives in fact consist, as is clear from recital 12 of Directive 2013/32, primarily in the further development of standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the European Union; and, in accordance with recitals 2 and 4 of Directive 2008/115, in the establishment of an effective removal and repatriation policy that fully respects the fundamental rights and dignity of the persons concerned (see, with regard to Directive 2008/115, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 48 and the case-law cited). By contrast, it is in no way apparent from the recitals of those directives that they seek to oblige the Member States to introduce a second level of jurisdiction.

25 Moreover, so far as concerns Directive 2013/32, the effective remedy obligation refers expressly, as is clear from Article 46(3) of that directive, to 'appeals procedures before a court or tribunal of first instance'. Inasmuch as it necessitates a full and *ex nunc* examination of both facts and points of law, that obligation refers only to the conduct of proceedings at first instance. Accordingly, that obligation cannot, in the light of the objective of Directive 2013/32, be interpreted as requiring Member States to introduce a second level of jurisdiction, or to make provision for specific rules on the conduct of such appeals.

26 Thus, while — as is confirmed by the words 'at least', which appear in Article 46(3) of Directive 2013/32 so far as concerns decisions rejecting an application for international protection — EU law does not preclude a Member State from making provision for a second level of jurisdiction for appeals against decisions refusing an application for international protection and return decisions, Directives 2013/32 and 2008/115 do not contain any rules on the introduction and putting into place of such a level of jurisdiction. In particular, and as the Advocate General notes in point 41 of his Opinion, it does not follow from the terms, general scheme or purpose of those directives that, where a Member State makes provision for a second level of jurisdiction against such decisions, the appeal procedure thus introduced must necessarily confer automatic suspensory effect on the appeal brought by the applicant.

27 Nevertheless it should be pointed out that any interpretation of Directive 2008/115 or of Directive 2013/32, must — as is apparent from recital 24 of the former and recital 60 of the latter — be consistent with the fundamental rights and principles recognised, in particular, by the Charter (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 51).

28 In that respect, it is settled case-law of the Court that, when a Member State decides to return an applicant for international protection to a country in which there are substantial grounds for believing that he will be exposed to a real risk of ill-treatment contrary to Article 18 of the Charter, read in conjunction with Article 33 of the Convention relating to the Status of Refugees, as supplemented by the Protocol, or to Article 19(2) of the Charter, the right to an effective remedy provided for in Article 47 of the Charter requires that that applicant must have available to him a remedy enabling automatic suspension of enforcement of the measure authorising his removal (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 54 and the case-law cited).

29 The Court has also stated that, in respect of a return decision and a possible removal decision, the protection inherent in the right to an effective remedy and in the principle of non-refoulement must be guaranteed by affording the applicant for international protection the right to an effective remedy enabling automatic suspensory effect, before at least one judicial body. Moreover, it is for the Member States to ensure the full effectiveness of an appeal against a decision rejecting the application for international protection by suspending all the effects of the return decision during

the period prescribed for bringing the appeal and, if such an appeal is brought, until resolution of the appeal (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraphs 56, 58 and 61 and the case-law cited, and order of 5 July 2018, *C and Others*, C-269/18 PPU, EU:C:2018:544, paragraph 50).

30 Nevertheless, it is clear from the case-law of the Court that neither Article 46 of Directive 2013/32, nor Article 13 of Directive 2008/115, nor Article 47 of the Charter, read in the light of the safeguards laid down in Article 18 and Article 19(2) of the Charter, requires that there be two levels of jurisdiction. The only requirement is that there must be a remedy before a judicial body (see, to that effect, judgments of 28 July 2011, *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 69, and of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 57).

31 In this connection, it should also be recalled that, in so far as the Charter contains rights corresponding to rights guaranteed by the ECHR, Article 52(3) of the Charter seeks to ensure the necessary consistency between the rights contained in it and the corresponding rights guaranteed by the ECHR, without thereby adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union (see, to that effect, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 47, and of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 50 and the case-law cited). According to the explanations relating to Article 47 of the Charter, the first paragraph of that article is based on Article 13 of the ECHR. The Court must, accordingly, ensure that its interpretation of the first paragraph of Article 47 of the Charter ensures a level of protection which does not disregard that guaranteed by Article 13 of the ECHR, as interpreted by the European Court of Human Rights (see, by analogy, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 77, and of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 62).

32 According to the case-law of the European Court of Human Rights, even with regard to a complaint alleging that the expulsion of the person concerned will expose him to a real risk of suffering treatment contrary to Article 3 of the ECHR, Article 13 thereof does not compel the High Contracting Parties to set up a second level of appeal or to confer, where appropriate, automatic suspensory effect on appeal proceedings (see, to that effect, judgment of the ECtHR of 5 July 2016, *A.M.* v *Netherlands*, CE:ECHR:2016:0705JUD002909409, paragraph 70).

33 It follows that the protection conferred on an applicant for international protection by Article 46 of Directive 2013/32 and Article 13 of Article 2008/115, read in the light of Articles 18, 19(2) and 47 of the Charter, against a decision rejecting an application for international protection and imposing an obligation to return, is confined to the existence of a single judicial remedy.

34 In that connection, it should be stated that the introduction of a second level of jurisdiction against decisions rejecting an application for international protection and against return decisions, as well as the decision to give that level of jurisdiction, where appropriate, automatic suspensory effect, constitute — contrary to the argument relied upon by the Belgian Government set out in paragraph 17 of the present judgment — procedural rules implementing the right to an effective remedy against such decisions provided for in Article 39 of Directive 2005/85 and Article 13 of Directive 2008/115. While such procedural rules are a matter for the domestic legal order of the Member States pursuant to the principle of procedural autonomy of the latter, the Court has pointed out that those rules must observe the principles of equivalence and effectiveness (see, by analogy, judgment of 17 July 2014, *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraphs 31, 36 and 50 and the case-law cited, and order of 16 July 2015, *Sánchez Morcillo and Abril García*, C-539/14, EU:C:2015:508, paragraph 33).

35 It thus follows from the settled case-law of the Court that procedural rules governing actions for safeguarding the rights which individuals derive from EU law must not be any less favourable than those governing similar domestic actions (principle of equivalence) and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the legal order of the European Union (principle of effectiveness) (see, to that effect, judgments of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 25, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 27 and the case-law cited).

36 The observance of the requirements stemming from the principles of equivalence and effectiveness must be analysed by reference to the role of the rules concerned in the procedure viewed as a whole, to the conduct of that procedure and to the special features of those rules, before the various national instances (judgments of 1 December 1998, *Levez*, C-326/96, EU:C:1998:577, paragraph 44, and of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 38 and the case-law cited).

37 It is settled case-law of the Court that the principle of equivalence requires equal treatment of claims based on a breach of national law and of similar claims based on a breach of EU law, but not equivalence of national procedural rules applicable to different types of proceedings (judgment of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 34 and the case-law cited).

38 It is therefore appropriate, on the one hand, to identify the comparable procedures or actions and, on the other hand, to determine whether the actions based on national law are handled in a more favourable manner than comparable actions concerning the safeguarding of the rights which individuals derive from EU law (see, to that effect, judgments of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraph 45, and of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 19).

39 As regards the comparability of actions, it is solely for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (judgments of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 39, and of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 20).

40 So far as concerns the similar handling of the actions, it must be borne in mind that every case in which the question arises as to whether a procedural rule of national law based on EU law is less favourable than those governing similar domestic actions must be analysed by the national court taking into account the role played by that provision in the procedure as a whole, as well as the operation and any special features of that procedure before the different national courts (see, to that effect, judgment of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 21).

41 In the present case, the referring court states in the order for reference that, in certain areas of administrative law other than the field of international protection, Netherlands law confers on appeals automatic suspensory effect. Nevertheless, it should be noted that none of the parties which submitted observations to the Court has expressed doubts as to the observance of the principle of equivalence by the national legislation at issue in the main proceedings. In any event, the file before the Court does not contain any criterion allowing an assessment to be made as to whether appeals brought in those areas are comparable, as regards their purpose, cause of action and essential characteristics, to that at issue in the main proceedings, or an examination of whether the former category of appeals must be considered as being more favourable than the latter by taking into account the aspects referred to in paragraph 40 of the present judgment.

42 In those circumstances, it is for the national court to examine any disregard which there may be of the principle of equivalence, by taking into account the aspects referred to in paragraphs 36 to 41 of the present judgment (see, by analogy, judgment of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 24).

43 As regards the principle of effectiveness, it must be found that this does not, in the present case, entail requirements going beyond those deriving from fundamental rights — in particular from the right to an effective remedy — guaranteed by the Charter. Since, as is apparent from paragraph 30 of the present judgment, Article 47 of the Charter, read in the light of the guarantees contained in Articles 18 and 19(2) thereof, requires only that an applicant for international protection whose application has been refused, and in regard to whom a return decision has been adopted, should be able to enforce his rights effectively before a judicial authority, the mere fact that an additional level of jurisdiction, provided for by national law, does not have automatic suspensory effect does not justify a finding that the principle of effectiveness has been disregarded.

44 In the light of the foregoing, the answer to the first and second questions referred must be that Article 46 of Directive 2013/32 and Article 13 of Directive 2008/115, read in the light of Articles 18, 19(2) and 47 of the Charter, must be interpreted as not precluding national legislation which, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

The third question

45 In view of the answer to the first and second questions, there is no need to answer the third question.

Costs

46 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 (Fourth Chamber) hereby rules:

Article 46 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 and Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in the light of Articles 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

[Signatures]

* Language of the case: Dutch.