ECLI:EU:C:2017:591

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

26 July 2017 (*)

(Reference for a preliminary ruling — Asylum policy — Directive 2013/32/EU — Articles 12, 14, 31 and 46 — Charter of Fundamental Rights of the European Union — Article 47 — Right to effective judicial protection — Appeal against a decision refusing an application for international protection — Whether it is possible for the court to adjudicate without hearing the applicant)

In Case C-348/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Milano (District Court, Milan, Italy), made by decision of 14 June 2016, received at the Court on 22 June 2016, in the proceedings

Moussa Sacko

v

Commissione Territoriale per il riconoscimento della protezione internazionale di Milano,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal (Rapporteur), A. Rosas, C. Toader and E. Jarašiūnas, Judges,

Advocate General : M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr Sacko, by S. Santilli, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and L. D'Ascia, avvocato dello Stato,

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

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

– the French Government, by D. Colas and E. Armoët, acting as Agents,

– the Hungarian Government, by M. Tátrai, M.Z. Fehér and G. Koós, acting as Agents,

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

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

after hearing the Opinion of the Advocate General at the sitting on 6 April 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 12, 14, 31 and 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).

2 The request has been made in proceeding between Mr Moussa Sacko, a Malian national, and the Commissione Territoriale per il riconoscimento della protezione internazionale di Milano (Regional Commission for the grant of international protection, Milan) ('the Regional Commission') concerning the latter's rejection of Mr Sacko's application for international protection within the meaning of Article 2(b) of Directive 2013/32.

Legal context

EU law

3 Directive 2013/32 lays down common procedures for granting and withdrawing international protection 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).

4 Recitals 18 and 20 of Directive 2013/32 are worded as follows:

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

…

(20) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant’s effective access to basic principles and guarantees provided for in this Directive.’

5 Article 2 of that directive, headed ‘Definitions’, is worded as follows:

‘For the purpose of this Directive:

(c) “applicant” means a third country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…

(f) “determining authority” means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;

…’

6 Article 12 of Directive 2013/32, headed ‘Guarantees for applicants’, in Chapter II of the directive, headed ‘Basic principles and guarantees’, provides as follows:

‘1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

…

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

(c) they shall not be denied the opportunity to communicate with [the Office of the United Nations High Commissioner for Refugees (HCR)] or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;

(d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;

(e) they shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;

…

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).'

7 Article 14 of Directive 2013/32, headed 'Personal interview', provides in paragraph 1 thereof:

'Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This paragraph shall be without prejudice to Article 42(2)(b).'

8 Article 17 of Directive 2013/32, headed 'Report and recording of personal interviews', is worded as follows:

'1. Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.

2. Member States may provide for audio or audiovisual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

…'

9 Article 31 of Directive 2013/32, headed 'Examination procedure', which opens Chapter III, headed 'Procedures at first instance', provides as follows:

'1. Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

3. Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

…

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

(a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive [2011/95]; or

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

(c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or

(d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality; or

(e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Directive [2011/95]; or

(f) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or

(g) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his or her removal; or

(h) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry; or

(i) the applicant refuses to comply with an obligation to have his or her fingerprints taken ...; or

(j) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

…'

10 Article 32(2) of Directive 2013/32 reads as follows:

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

11 Article 46 of Directive 2013/32, headed 'The right to an effective remedy', which is the only provision in Chapter V, headed 'Appeal procedures', states as follows:

'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,

(ii) considering an application to be inadmissible pursuant to Article 33(2),

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

(iv) not to conduct an examination pursuant to Article 39;

(b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 27 and 28;

(c) a decision to withdraw international protection pursuant to Article 45.

…

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

…'

Italian law

12 It is apparent from the order for reference that, as regards international protection, Italian law provides for an administrative stage, during which a panel of experts examines the application, which entails interviewing the applicant, and a judicial stage, during which an unsuccessful applicant may challenge an adverse decision by the administrative body.

13 The referring court indicates that, at the judicial stage, the court may refuse or grant the application without necessarily having to hear the applicant if that person has already been interviewed by the administrative authority with competence to conduct the examination procedure. That solution may be adopted in particular where the application is clearly unfounded.

14 That interpretation of the national rules applicable is based, according to the referring court, inter alia on Article 19 of decreto legislativo n. 150 — Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell'articolo 54 della legge 18 giugno 2009, n. 69 (Legislative Decree No 150 of 18 June 2009 supplementing the provisions of the Civil Code of Procedure concerning the streamlining and simplification of civil declaratory proceedings for the purpose of Article 54 of Law No 69 of 18 June 2009) GURI No 220 of 21 September 2011), as amended by decreto legislativo n. 142 — Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale (Legislative Decree No 142 of 18 August 2015 implementing Directive 2013/33/EU laying down standards for the reception of applicants for international protection and Directive 2013/32/EU on common procedures for granting and withdrawing international protection) (GURI No 214 of 15 September 2015) ('Legislative Decree No 150/2011').

15 Article 19(9) of Legislative Decree No 150/2011 states as follows:

‘Within six months of submission of the appeal, the court shall decide, on the basis of the evidence available at the time of its decision, to issue an order dismissing the appeal or granting the applicant refugee status or subsidiary protection status.’

16 According to the referring court, the court may directly uphold or dismiss the appeal, in particular where it considers that the solution at which evidence in the existing case file points would be no different even if a further interview were conducted with the applicant.

17 The referring court states in that regard that its interpretation has been confirmed by the Corte suprema di cassazione (Supreme Court of Cassation), which held, by order of 8 June 2016, that ‘in proceedings for the grant of international protection, the court is not required to order that the asylum-seeker be heard’.

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

18 Upon arriving in Italy on 20 March 2015, Mr Sacko submitted an application for international protection. On 10 March 2016, the Regional Commission, attached to the Prefettura di Milano (Milan Prefecture, Italy) interviewed Mr Sacko concerning his situation and the reasons for his application. At the conclusion of the interview, it was apparent that Mr Sacko had left Mali because of a serious deterioration in his personal economic circumstances.

19 By administrative decision of which Mr Sacko was given notification on 5 April 2016, the Regional Commission rejected his application for international protection, refusing either to grant him refugee status or to consider him eligible for subsidiary protection and stating that the application was based on strictly economic grounds and that he did not have any well-founded fear of persecution.

20 On 3 May 2016, Mr Sacko lodged an appeal against that decision before the referring court, reiterating the grounds of his application for international protection and giving a general description of the situation in Mali but nevertheless failing to indicate how that situation affected his personal circumstances.

21 The referring court indicates that it is minded to dismiss Mr Sacko’s appeal as manifestly unfounded, without first giving him the opportunity to be heard.

22 As it entertains doubts as to whether that approach is compatible with EU law, in particular Articles 12, 14, 31 and 46 of Directive 2013/32, the Tribunale di Milano (District Court, Milan, Italy) has decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Directive 2013/32 (in particular Articles 12, 14, 31 and 46) be interpreted as permitting a procedure, such as the Italian procedure (under Article 19(9) of Legislative Decree No 150 of 2011), whereby a judicial authority seised by an asylum-seeker —

whose application has been rejected by the administrative authority responsible for considering applications for asylum after it has conducted a full examination, including an interview — may, in cases where the application for judicial review is manifestly unfounded and the administrative authority's rejection of the application is thus incontrovertible, dismiss the application for judicial review without preparatory inquiries and without being required to afford the applicant a further opportunity to be heard?'

Consideration of the question referred

23 By its question, the Tribunale di Milano (District Court, Milan) seeks to ascertain, in essence, whether Directive 2013/32, in particular Articles 12, 14, 31 and 46 thereof, is to be interpreted as precluding a national court hearing an appeal against a decision rejecting a manifestly unfounded application for international protection from dismissing the appeal without hearing the applicant, in particular where the applicant has already been interviewed by the administrative authorities and where the factual circumstances leave no doubt as to whether the decision rejecting the application was well founded.

24 It should be noted at the outset that, as observed by the referring court, none of the provisions of which that court seeks an interpretation expressly require a court hearing an application of the kind referred to in Article 46 of Directive 2013/32 to hold a hearing as part of the proceedings.

25 In the first place, Article 12 of Directive 2013/32, which forms part of Chapter II thereof, headed 'Basic principles and guarantees', sets out the guarantees enjoyed by applicants and makes an express distinction between (i) the guarantees applicable only to the procedures provided for in Chapter III, headed 'Procedures at first instance', as set out in Article 12(1), and (ii) the guarantees applicable to the procedures provided for in Chapter V, headed 'Appeal procedures', as set out in Article 12(2). However, while Article 12(2) of the directive states that 'Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e)', the guarantees exhaustively set out in that paragraph do not include the right of the applicant to submit observations as part of an oral procedure.

26 In the second place, it is true that Article 14 of Directive 2013/32, which also forms part of Chapter II, requires the determining authority, before taking a decision, to give the applicant for international protection the opportunity of a personal interview on his or her application with a person competent under national law to conduct such an interview. Nevertheless, it is clear from the very wording of that provision, read in conjunction with Article 2(f) of Directive 2013/32, that that requirement applies only to the authority responsible for examining applications for international protection that is competent to take decisions at first instance in such cases, and does not therefore apply to appeal procedures.

27 In the third place, Article 31(3) of Directive 2013/32, which is in Chapter III, headed 'Procedures at first instance', provides that such procedures are to be concluded, in principle, within six months of the lodging of the application, without prejudice to

possibility of extending that period on the grounds set out in Articles 31(3) and (4) of the directive. Article 31(8) of the directive allows Member States, in situations which that provision describes exhaustively, to provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II of the directive may be accelerated or conducted at the border or in transit zones. That is the case, inter alia, where the applicant has put forward only evidence that is not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95.

28 In the fourth and final place, Article 46 of Directive 2013/32, which is the only provision in Chapter V, headed 'Appeals procedures', provides for the right to an effective remedy before a court or tribunal against a decision rejecting an application for international protection, including decisions dismissing the application as manifestly inadmissible or unfounded. In order to comply with that provision, Member States are required, pursuant to Article 46(3) of the directive, 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. However, neither Article 46 of Directive 2013/32 nor any other provision thereof provides that a hearing must be held before the court or tribunal hearing the appeal.

29 It should be noted in that regard that, according to the Court's established case-law, under the principle of sincere cooperation laid down in Article 4(3) TEU, it is for the courts of the Member States to ensure judicial protection of a person's rights under EU law, Article 19(1) TEU, moreover, requiring Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law (judgments of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 50, and of 9 February 2017, *M*, C-560/14, EU:C:2017:101, paragraph 30 and the case-law cited).

30 That requirement on the part of the Member States corresponds to the right enshrined in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Right to an effective remedy and to a fair trial', which provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 44).

31 It follows that the characteristics of the remedy provided for in Article 46 of Directive 2013/32 must be determined in a manner that is consistent with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection (see, by analogy, with reference to Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13), judgment of 17 December 2015, *Tall*, C-239/14, EU:C:2015:824, paragraph 51).

32 The principle of effective judicial protection of the rights which individuals derive from EU law comprises various elements; in particular, the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 48).

33 With regard, first, to the proceedings at first instance covered by Chapter III of Directive 2013/32, it should be recalled that when the authorities of the Member States take measures which come within the scope of EU law, they are, as a rule, subject to the obligation to observe the rights of defence of addressees of decisions which significantly affect their interests (judgment of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 35, and of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 40).

34 In particular, the Court has held that the right to be heard in any procedure, inherent in respect for the rights of the defence, which is a general principle of EU law, guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see, to that effect, judgments of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraphs 34 and 36, and of 9 February 2017, *M*, C-560/14, EU:C:2017:101, paragraphs 25 and 31).

35 In that regard, the purpose of the rule that the addressee of an adverse decision must be placed in a position to submit his observations before that decision is adopted is, inter alia, to enable that person to correct an error or submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, to that effect, judgment of 5 November 2014, *Mukarubega*, C-166/13, EU:C:2014:2336, paragraph 47, and of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 37 and the case-law cited).

36 With regard, on the other hand, to the appeals procedures covered by Chapter V of Directive 2013/32, in order for the right to a remedy to be exercised effectively, the national court must be able to review the merits of the reasons which led the competent administrative authority to find that the application for international protection was unfounded or made in bad faith (see, by analogy with reference to Directive 2005/85, judgment of 28 July 2011, *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 61).

37 In this instance, it should be noted that failure to give the applicant the opportunity to be heard in an appeals procedure such as that covered by Chapter V of Directive 2013/32 constitutes a restriction of the rights of the defence, which form part of the principle of effective judicial protection enshrined in Article 47 of the Charter.

38 However, according to the Court's settled case-law, fundamental rights, such as respect for the rights of the defence, which includes the right to be heard, do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in

fact correspond to objectives of general interest pursued by the measure in question and that they do not entail, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (see, to that effect, judgments of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraph 33; of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 43, and of 7 July 2016, *Lebek*, C-70/15, EU:C:2016:524, paragraph 37).

39 An interpretation of the right to be heard, guaranteed by Article 47 of the Charter, to the effect that it is not an absolute right is confirmed by the case-law of the European Court of Human Rights, in the light of which Article 47 of the Charter must be interpreted, as the first and second paragraphs of that article correspond to Article 6(1) and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraphs 40 and 41 and the case-law cited).

40 In that regard, the Court has previously stated that Article 6(1) of that convention does not impose an absolute obligation to hold a public hearing and does not necessarily require that a hearing be held in all proceedings. It has held, similarly, that neither the second paragraph of Article 47 of the Charter nor any other provision thereof imposes such an obligation (judgment of 4 June 2015, *Andechser Molkerei Scheitz* v *Commission*, C-682/13 P, not published, EU:C:2015:356, paragraph 44, which refers to the judgment of the ECtHR, 23 November 2006, *Jussilav.Finland*, CE:ECHR:2006:1123JUD007305301, § 41).

41 Furthermore, the Court has also held that the question whether there is an infringement of the rights of the defence and the right to effective judicial protection must be examined in relation to the specific circumstances of each case, including the nature of the act at issue, the context in which it was adopted and the legal rules governing the matter in question (judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 102, and, to that effect, judgment of 9 February 2017, *M*, C-560/14, EU:C:2017:101, paragraph 33).

42 In this instance, the obligation imposed in Article 46(3) of Directive 2013/32 on the court with jurisdiction to ensure that a full and *ex nunc* examination of both facts and points of law is conducted must be interpreted in the context of the procedure for the examination of applications for international protection as a whole, as governed by that directive, taking into account the close link between appeal proceedings before a court or tribunal and the proceedings at first instance preceding those proceedings, during which the applicant must be given the opportunity of a personal interview on his or her application for international protection, as required by Article 14 of the directive.

43 It should be noted in that regard that, as the report or transcript of any personal interview with an applicant must, in accordance with Article 17(2) of Directive 2013/32, be available in connection with the applicant's file, the content of the report or transcript

is an important factor in the assessment by the court with jurisdiction when it carries out the full and *ex nunc* examination of both facts and points of law required under Article 46(3) of the directive.

44 It follows, as the Advocate General observed in points 58, 59 and 65 to 67 of his Opinion, that whether it is necessary for the court or tribunal hearing the appeal provided for in Article 46 of Directive 2013/32 to grant the applicant a hearing has to be assessed in the light of its obligation to carry out the full and *ex nunc* examination required under Article 46(3) of the directive, in the interests of effective judicial protection of the rights and interests of the applicant. It is only if that court or tribunal considers that it is in a position to carry out such an examination solely on the basis of the information in the case-file, including, where applicable, the report or transcript of the personal interview with the applicant in the procedure at first instance, that it may decide not to hear the applicant in the appeal before it. In such circumstances, the possibility of not holding a hearing is in the interest of both the Member States and applicants, as referred to in recital 18 of Directive 2013/32, to have a decision made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

45 On the other hand, if the court or tribunal hearing the appeal considers that the applicant must be afforded a hearing in order to carry out the full and *ex nunc* examination required, that hearing, as ordered by that court or tribunal, constitutes an essential procedural requirement, which cannot be dispensed with on grounds of speed, as referred to in recital 20 of Directive 2013/32. As the Advocate General observed in point 67 of his Opinion, although that recital allows Member States to accelerate the examination procedure in certain cases, inter alia where an application is likely to be unfounded, it does not authorise the elimination of procedures which are essential in order to guarantee the applicant's right to effective judicial protection.

46 In the case of a manifestly unfounded application within the meaning of Article 32(2) of Directive 2013/32, such as the application in the main proceedings, the obligation for the court or tribunal to carry out the full and *ex nunc* examination referred to in Article 46(3) of the directive is, in principle, fulfilled where that court or tribunal takes into consideration the pleadings submitted to the court or tribunal seised of the application and of the objective information contained in the administrative file in the proceedings at first instance, including, where applicable, the report or recording of the personal interview conducted in those proceedings.

47 That conclusion is supported by the case-law of the European Court of Human Rights to the effect that there is no need for a hearing where the case does not raise any questions of fact or law that cannot be adequately resolved by referring to the file and the written submissions of the parties (judgment of 4 June 2015, Andechser Molkerei Scheitz v Commission, C-682/13 P, not published, EU:C:2015:356, paragraph 46, which refers to the judgment of the ECtHR of 12 November 2002, *Döryv.Sweden*, CE:ECHR:2002:1112JUD002839495, § 37).

48 Moreover, while Article 46 of Directive 2013/32 does not require a court or tribunal hearing an appeal against a decision rejecting an application for international protection to hear the applicant in all circumstances, it does not, nonetheless, authorise the national legislature to prevent that court or tribunal ordering that a hearing be held where, having found that the information gathered during the personal interview conducted in the procedure at first instance is insufficient, it considers it necessary to conduct a hearing to ensure that there is a full and *ex nunc* examination of both facts and points of law, as required under Article 46(3) of the directive.

49 In the light of the foregoing considerations, Directive 2013/32, in particular Articles 12, 14, 31 and 46 thereof, read in the light of Article 47 of the Charter, must be interpreted as not precluding the national court or tribunal hearing an appeal against a decision rejecting a manifestly unfounded application for international protection from dismissing the appeal without hearing the applicant where the factual circumstances leave no doubt as to whether that decision was well founded, on condition that, first, during the proceedings at first instance, the applicant was given the opportunity of a personal interview on his or her application for international protection, in accordance with Article 14 of the directive, and the report or transcript of the interview, if an interview was conducted, was placed on the case-file, in accordance with Article 17(2) of the directive, and, second, the court hearing the appeal may order that a hearing be conducted if it considers it necessary for the purpose of ensuring that there is a full and *ex nunc* examination of both facts and points of law, as required under Article 46(3) of the directive.

Costs

50 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 (Second Chamber) hereby rules:

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, in particular Articles 12, 14, 31 and 46 thereof, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the national court or tribunal hearing an appeal against a decision rejecting a manifestly unfounded application for international protection from dismissing the appeal without hearing the applicant where the factual circumstances leave no doubt as to whether that decision was well founded, on condition that, first, during the proceedings at first instance, the applicant was given the opportunity of a personal interview on his or her application for international protection, in accordance with Article 14 of the directive, and the report or transcript of the interview, if an interview was conducted, was placed on the case-file, in accordance with Article 17(2) of the directive, and, second, the court hearing the appeal may

order that a hearing be conducted if it considers it necessary for the purpose of ensuring that there is a full and *ex nunc* examination of both facts and points of law, as required under Article 46(3) of the directive.

[Signatures]

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* Language of the case: Italian.