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ECLI:EU:C:2022:616

Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

1 August 2022 (\*)

(Reference for a preliminary ruling – Applicants for international protection – Directive 2013/33/EU – Article 20(4) and (5) – Seriously violent behaviour – Member States’ right to determine the sanctions applicable – Scope – Withdrawal of material reception conditions)

In Case C-422/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 30 December 2020, received at the Court on 9 July 2021, in the proceedings

**Ministero dell’Interno**

v

**TO,**

THE COURT (Tenth Chamber),

composed of I. Jarukaitis, President of the Chamber, D. Gratsias (Rapporteur) and Z. Csehi, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, and by L. D’Ascia and D.G. Pintus, Avvocati dello Stato,
- the Belgian Government, by M. Jacobs and M. Van Regemorter, acting as Agents, and by A. Detheux, avocat,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the German Government, by J. Möller and A. Hoesch, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and M. Gijzen, acting as Agents,
- the European Commission, by A. Azéma and E. Montaguti, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 20(4) and (5) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

2 The request has been made in proceedings between the Ministero dell’ Interno (Ministry of the Interior, Italy) and TO concerning an application by TO for annulment of a decision of the Prefettura di Firenze (Prefecture of Florence, Italy) which excluded him from material reception conditions.

### **Legal context**

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

3 As set out in Article 1 of Directive 2013/33, the purpose of the directive is to lay down standards for the reception of applicants for international protection (‘applicants’) in the Member States.

4 Article 2 of the directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

...

(f) “reception conditions”: means the full set of measures that Member States grant to applicants in accordance with this Directive;

(g) “material reception conditions”: means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;

...

(i) “accommodation centre”: means any place used for the collective housing of applicants;  
...’

5 Article 8 of that directive, entitled ‘Detention’, provides in paragraph 3:

‘An applicant may be detained only:

...

(e) when protection of national security or public order so requires;

...’

6 Article 17 that directive, entitled ‘General rules on material reception conditions and health care’, provides in paragraphs 1 to 4 thereof:

‘1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

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

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when those basic needs were being covered, Member States may ask the applicant for a refund.’

7 Article 18 of the Directive 2013/33, entitled ‘Modalities for material reception conditions’, provides in paragraph 1 thereof:

‘Where housing is provided in kind, it should take one or a combination of the following forms:

(a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;

(b) accommodation centres which guarantee an adequate standard of living;

(c) private houses, flats, hotels or other premises adapted for housing applicants.’

8 Article 20 of that directive, the only provision in Chapter III thereof, is entitled ‘Reduction or withdrawal of material reception conditions’. That article is worded as follows:

‘1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or

(b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or

(c) has lodged a subsequent application as defined in Article 2(q) 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)].

In relation to cases (a) and (b), when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the material reception conditions withdrawn or reduced.

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.’

9 Article 21 of Directive 2013/33, entitled ‘General principle’, provides that, in the national law transposing that directive, Member States are to take into account the specific situation of vulnerable persons, in particular minors and unaccompanied minors.

*Italian law*

10 Article 14 of 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 implementing Directive 2013/33/EU laying down standards for the reception of applicants for international protection as well as Directive 2013/32/EU on common procedures for granting and withdrawing international protection), of 18 August 2015, (GURI No 214 of 15 September 2015, p.1), in the version applicable to the facts in the main proceedings ('Legislative Decree No 142/2015') provides:

'1. An applicant who has lodged an application [for refugee status or subsidiary protection status recognition] and who does not have sufficient means to ensure a standard of living adequate for himself or herself and his/her family members shall have access, with the members of his or her family, to the reception measures provided for in this decree.

...

3. In order to obtain the reception measures provided for in this decree, the applicant, at the time an application is made, declares that he or she does not have sufficient means of subsistence. The Prefecture – Government representative's territorial office shall assess the insufficiency of the means of subsistence referred to in paragraph 1 in relation to the annual amount of the social allowance.

...'

11 Article 23 of that legislative decree provides:

'1. The Prefect of the province in which the [initial reception centres] are situated shall, by reasoned decree, order the withdrawal of the reception measures in the following cases:

...

(e) serious or repeated infringement by the asylum seeker of the rules of the centre in which he or she is housed, including malicious damage to movable or immovable property, or seriously violent behaviour.

2. The withdrawal decision shall be adopted taking into account the applicant's situation, in particular as regards the conditions [relating to the reception of persons with special reception needs].

...

4. In the case referred to in paragraph 1(e), the centre manager shall forward to the Prefecture – Government representative's territorial office, a report on the facts which may give rise to possible withdrawal, within three days of their occurrence.

5. The decision to withdraw the reception measures shall take effect at the time of its communication ... The decision shall also be notified to the centre manager. The decision to withdraw may be challenged before the competent regional administrative court.

...'

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

12 As an applicant for international protection, TO benefited from the material reception conditions laid down by Legislative Decree No 142/2015 and was housed in a temporary accommodation centre.

13 It is apparent from a report of 28 June 2019 sent by the competent police authority to the Prefecture of Florence that, at a railway station, TO, with another applicant for international protection, verbally and physically assaulted a railway employee and two officers of the Florence municipal police. All three suffered injuries that required treatment by the local emergency service.

14 After inviting TO submit his observations, which TO failed to do, the Prefecture of Florence adopted a decision withdrawing material reception conditions from TO, on the basis of Article 14(3) and Article 23(1)(e) of Legislative Decree No 142/2015.

15 TO brought an action against that decision before the Tribunale amministrativo regionale per la Toscana (Regional Administrative Court, Tuscany, Italy). That court upheld the action and annulled the decision of the Prefecture of Florence. In essence, it held that Article 23(1)(e) of Legislative Decree No 142/2015 was contrary to EU law, as interpreted by the Court in its judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956) in so far as that provision provides for the withdrawal of material reception conditions as the only possible sanction in factual circumstances such as those in the main proceedings.

16 The Ministry of the Interior brought an appeal against the decision of the Tribunale amministrativo regionale per la Toscana (Regional Administrative Court, Tuscany) before the Consiglio di Stato (Council of State, Italy), on the ground that that court had misapplied both national law and EU law, as interpreted by the Court in the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956).

17 The referring court states that it harbours doubts as to the interpretation by the Tribunale amministrativo regionale per la Toscana (Regional Administrative Court, Tuscany) of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956).

18 In that regard, the referring court notes that, in accordance with Article 20(4) of Directive 2013/33, Member States may determine the sanctions applicable to serious breaches of the rules of the accommodation centres and to seriously violent behaviour. There is no doubt that the concept of ‘sanctions’, within the meaning of that provision, also includes, in principle, the withdrawal and restriction of material reception conditions, as the Court acknowledged, moreover, in the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956).

19 The referring court states that the impossibility of withdrawing material reception conditions even in cases of particularly serious and reprehensible acts, involving physical violence or sale of narcotics, could give rise to abuse. For such acts, less severe sanctions, such as placing the person concerned in a separate part of the accommodation centre, or in other accommodation, would be likely to be ineffective.

20 In that regard, the referring court points out that, under the applicable Italian legislation, foreign nationals cannot obtain a residence permit for work as an employed or self-employed person if they have been convicted of criminal offences which are regarded as particularly serious and reprehensible. However, it would be unreasonable to consider that the perpetrators of equally reprehensible acts can escape the most stringent sanctions when they are applicants for international

protection who, unlike the applicant in the main proceedings in the case giving rise to the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956), do not fall into the category of vulnerable persons, as referred to in Article 21 of Directive 2013/33. According to the referring court, extending the principles arising from that judgment to such persons would amount to applying the same treatment to different situations.

21 In addition, the interpretation of Article 20(4) of Directive 2013/33 on which the Tribunale amministrativo regionale per la Toscana (Regional Administrative Court, Tuscany) relied fails to take account of the consideration set out in paragraph 44 of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956), according to which, if Member States can adopt measures concerning the material reception conditions in order to protect themselves against the possibility of abuse of the reception system, they must also be able to do so in the event of serious breaches of the rules of accommodation centres or seriously violent behaviour.

22 The referring court observes that it appears possible to ensure respect for human dignity, which was emphasised by the Court in the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956), by the strict observance of procedural safeguards, in particular the obligation to conduct a full investigation and the obligation to state reasons for administrative acts. Those safeguards are intended to prevent the risk, referred to in paragraph 46 of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956), that the withdrawal of material reception conditions deprives the person concerned of the opportunity to meet his or her most basic needs, such as a place to live, food, clothing and personal hygiene, which puts him or her in a state of degradation which is incompatible with a dignified standard of living.

23 Finally, the referring court further raises the question of whether ‘seriously violent behaviour’, which may be sanctioned under Article 20(4) of Directive 2013/33, also covers acts committed outside an accommodation centre.

24 In those circumstances the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does Article 20(4) and (5) of Directive [2013/33] preclude national legislation which provides for the withdrawal of reception measures in respect of adult applicants who are not categorised as “vulnerable persons”, if such an applicant is deemed to have engaged in seriously violent behaviour outside the accommodation centre, involving the use of physical force against public officials and/or public servants, causing such injuries to the victims that they were required to seek emergency treatment?’

### **Consideration of the question referred**

25 The question referred for a preliminary ruling is divided into two parts, which must be examined separately.

#### ***The first part of the question referred***

26 By the first part of its question, the referring court asks, in essence, whether Article 20(4) of Directive 2013/33 must be interpreted as applying to seriously violent behaviour engaged in outside the accommodation centre.

27 It should be borne in mind, in that regard, that Article 20(4) of Directive 2013/33 authorises the Member States to ‘determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour’.

28 In accordance with the Court’s settled case-law, it is appropriate, in interpreting a provision of EU law, to consider not only the wording of that provision but also its context and the objectives pursued by the rules of which it forms part (judgment of 28 January 2020, *Commission v Italy (Directive combating late payment)*, C-122/18, EU:C:2020:41, paragraph 39 and the case-law cited).

29 As regards the wording of Article 20(4) of Directive 2013/33, it appears that the ‘serious breaches of the rules of the accommodation centre’ and ‘seriously violent behaviour’ are two distinct situations, each of which is sufficient to justify the imposition of a sanction.

30 However, in the absence of an express limitation to the contrary in the wording of that provision and having regard to the need to interpret the provisions of EU law in such a way as to preserve their effectiveness (see, to that effect, judgment of 21 March 2019, *Falck Rettungsdienste and Falck*, C-465/17, EU:C:2019:234, paragraph 32 and the case-law cited), it must be held that the concept of ‘seriously violent behaviour’ covers any such behaviour, irrespective of where it occurred.

31 If the intention of the EU legislature was to refer, in Article 20(4) of Directive 2013/33, only to seriously violent behaviour engaged in by an applicant for international protection in an accommodation centre, a specific reference to the occurrence of such behaviour would not have been necessary, since such behaviour, engaged in within an accommodation centre, would certainly constitute a serious breach of the rules of that centre and would therefore be covered by the first situation envisaged in that provision, the second of which would then be unnecessary.

32 The foregoing considerations are confirmed both by the context of Article 20(4) of Directive 2013/33 and by the objective pursued by that provision.

33 As regards the context, it is sufficient to note that Article 20(1) to (3) envisages situations capable of justifying the reduction or withdrawal, as the case may be, of material reception conditions which have no connection with behaviour engaged in within an accommodation centre.

34 As regards the objective pursued, since Article 20(4) is intended to allow Member States to impose appropriate sanctions for seriously violent behaviour engaged in by an applicant for international protection, in view of the danger that such behaviour may represent for public order and the safety of persons and property (see, to that effect, judgment of 12 November 2019, *Haqbin*, C-233/18, EU:C:2019:956 paragraph 44), there is no justification for reducing this possibility to seriously violent behaviour engaged in within an accommodation centre.

35 In the light of all the foregoing considerations, the answer to the first part of the question referred is that Article 20(4) of Directive 2013/33 must be interpreted as applying to seriously violent behaviour engaged in outside an accommodation centre.

### ***The second part of the question referred***

36 By the second part of its question, the referring court asks, in essence, whether Article 20(4) and (5) of Directive 2013/33 must be interpreted as precluding the imposition on an applicant for international protection, who has engaged in seriously violent behaviour against public officials, of



a sanction consisting of a withdrawal of material reception conditions, within the meaning of Article 2(f) and (g) of that directive.

37 In that regard, it is true that the Court held, in paragraph 44 of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956) that Article 20(4) of Directive 2013/33 does not explicitly preclude a sanction from concerning material reception conditions.

38 It added, in the same paragraph that, if Member States can adopt measures concerning those conditions in order to protect themselves against the possibility of abuse of the reception system, they must also be able to do so in the event of serious breaches of the rules of the accommodation centres or seriously violent behaviour, since they are capable of disrupting public order and the safety of persons and property.

39 However, the Court has ruled that a sanction that is imposed exclusively on the basis of one of the reasons mentioned in Article 20(4) of Directive 2013/33 and consists in the withdrawal, even if only a temporary one, of the full set of material reception conditions or of material reception conditions relating to housing, food or clothing would be irreconcilable with the requirement, arising from the third sentence of Article 20(5) of the directive, to ensure a dignified standard of living for the applicant, since it would preclude the applicant from being allowed to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene (judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956, paragraph 47)).

40 Such a sanction would also amount to a failure to comply with the proportionality requirement under the second sentence of Article 20(5) of Directive 2013/33, in so far as even the most stringent sanctions, whose objective is to punish, in criminal law, the breaches or behaviour referred to in Article 20(4) of the directive, cannot deprive the applicant of the possibility of meeting his or her most basic needs (judgment of 12 November 2019, *Haqbin* C-233/18, EU:C:2019:956, paragraph 48).

41 In the light of those considerations, the fact, mentioned by the referring court, that the conduct to be sanctioned may be particularly serious and reprehensible cannot lead to a different conclusion.

42 For the same reason, no parallel can be drawn between the situation of an applicant for international protection who is unable to meet his or her most basic needs and that of a third-country national who is refused a residence permit for work as an employed or self-employed person.

43 Nonetheless, the Court emphasised, in paragraph 52 of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956) that in the situations envisaged in Article 20(4) of Directive 2013/33, depending on the circumstances of the case and subject to the requirements set out in Article 20(5) of the directive, Member States may impose sanctions that do not have the effect of depriving the applicant of material reception conditions, such as being held in a separate part of the accommodation centre as well as being prohibited from contacting certain residents of the centre or being transferred to another accommodation centre or to other housing within the meaning of Article 18(1)(c) of the directive.

44 In the same paragraph, the Court also observed that similarly Article 20(4) and (5) of Directive 2013/33 does not preclude a measure to hold the applicant in detention under Article 8(3) (e) of that directive provided that the conditions laid down in Articles 8 to 11 thereof are satisfied.

45 As regards the procedural safeguards applicable, in accordance with national law, to a decision to withdraw material reception conditions adopted in respect of an applicant for international protection who engages in seriously violent behaviour, it should be noted that such guarantees, however important they may be, do not make it possible to exclude the risk that the applicant concerned may, as a result of that withdrawal, find himself or herself unable to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, to which the Court referred in paragraph 46 of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956).

46 It should also be noted that the considerations set out in paragraphs 46 to 52 of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956) and repeated, in essence, in paragraphs 39 to 45 of the present judgment, apply, as is clear from those paragraphs and from the very wording of the provisions which are interpreted therein, to any applicant for international protection and not only to those applicants who are ‘vulnerable persons’ within the meaning of Article 21 of Directive 2013/33, referred to in paragraphs 53 to 55 of the judgment of 12 November 2019, *Haqbin* (C-233/18, EU:C:2019:956).

47 In the light of all of the foregoing, the answer to the second part of the question referred is that Article 20(4) and (5) of Directive 2013/33 must be interpreted as precluding the imposition, on an applicant for international protection who has engaged in seriously violent behaviour against public officials, of a sanction consisting in the withdrawal of material reception conditions, within the meaning of Article 2(f) and (g) of that directive, relating to housing, food or clothing, in so far as it would have the effect of depriving the applicant of the possibility of meeting his or her most basic needs. The imposition of other sanctions under Article 20(4) of the directive must, in all circumstances, comply with the conditions laid down in Article 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity.

### Costs

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

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

- 1. Article 20(4) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection must be interpreted as applying to seriously violent behaviour engaged in outside an accommodation centre.**
- 2. Article 20(4) and (5) of Directive 2013/33 must be interpreted as precluding the imposition, on an applicant for international protection who has engaged in seriously violent behaviour against public officials, of a sanction consisting in the withdrawal of material reception conditions, within the meaning of Article 2(f) and (g) of that directive, relating to housing, food or clothing, in so far as it would have the effect of depriving the applicant of the possibility of meeting his or her most basic needs. The imposition of other sanctions under Article 20(4) of the directive must, in all circumstances, comply with the conditions laid down in Article 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity.**

[Signatures]

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\* Language of the case: Italian.

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