ECLI:EU:C:2019:626

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

29 July 2019 (*)

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Common procedures for granting international protection — Directive 2013/32/EU — Article 46(3) — Full and ex nunc examination — Article 47 of the Charter of Fundamental Rights of the European Union — Right to an effective remedy — Extent of the powers of the first-instance court or tribunal — No power to vary — Refusal by the competent administrative or quasi-judicial body to comply with a decision of that court or tribunal)

In Case C–556/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Pécsi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Pécs, Hungary), made by decision of 5 September 2017, received at the Court on 22 September 2017, in the proceedings

Alekszij Torubarov

v

Bevándorlási és Menekültügyi Hivatal,

THE COURT (Grand Chamber),

K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal and M. Vilaras, Presidents of Chambers, A. Rosas, E. Juhász, M. Ilešič (Rapporteur), M. Safjan, D. Šváby, C.G. Fernlund, C. Vajda, N. Piçarra, L.S. Rossi and I. Jarukaitis, Judges,

Advocate General: M. Bobek,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 8 January 2019,

after considering the observations submitted on behalf of

– Mr Torubarov, by T. Fazekas and I. Bieber, ügyvédek,

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

– the Slovak Government, by B. Ricziová, acting as Agent,

– the European Commission, by M. Condou-Durande and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2019,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 46(3) 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), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Mr Alekszij Torubarov and Bevándorlási és Menekültügyi Hivatal (Immigration and Asylum Office, Hungary) ('the Immigration Office') concerning the rejection by that office of his application for international protection.

Legal context

EU law

Directive 2011/95/EU

3 Article 1 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9), provides:

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

4 Article 2 of Directive 2011/95 provides:

'For the purpose of this Directive the following definitions shall apply:

(a) "international protection" means refugee status and subsidiary protection status …

…

(d) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling

to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

…

(f) "person eligible for subsidiary protection" means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;…'

5 Chapters II to VI of that directive cover, respectively, the assessment of applications for international protection; qualification for being a refugee; refugee status; qualification for subsidiary protection; and subsidiary protection status.

6 Article 13 of that directive, entitled 'Granting of refugee status' and coming within Chapter IV thereof, provides:

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

7 Article 14 of Directive 2011/95, entitled 'Revocation of, ending of or refusal to renew refugee status' and coming within the same Chapter IV, states:

'1. Concerning applications for international protection …, Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body …

…

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

…'

8 Article 15 of that directive, entitled 'Serious harm' and coming within Chapter V thereof, lists types of harm that give rise to the right to subsidiary protection.

9 Article 18 of that directive, entitled 'Granting of subsidiary protection status' and coming within Chapter VI thereof, is worded as follows:

'Member States shall grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.'

10 Article 19 of Directive 2011/95, entitled 'Revocation of, ending of or refusal to renew subsidiary protection status' and coming within the same Chapter VI, provides:

‘1. Concerning applications for international protection …, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body …

2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body …

…’

Directive 2013/32

11 Recitals 18, 50 and 60 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.

…

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection … are subject to an effective remedy before a court or tribunal.

…

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.’

12 The aim of Directive 2013/32, according to Article 1 thereof, is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95.

13 Article 2(f) of Directive 2013/32 defines ‘determining authority’ as ‘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’.

14 Article 46(1), (3) and (4) of that directive provides:

‘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], at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. …'

15 Article 51(1) of that directive provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with … Articles 32 to 46 … by 20 July 2015 at the latest. …'

16 Under the first paragraph of Article 52 of Directive 2013/32:

'Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged … after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 … shall be governed by the laws, regulations and administrative provisions adopted pursuant to [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)].'

Hungarian law

The legislation applicable to proceedings concerning international protection in force before 15 September 2015

17 Article 339(1) and (2)(j) of the polgári perrendtartásról szóló 1952. évi III. törvény (Law No III of 1952 establishing the Code for Civil Procedure), in the version in force before 15 September 2015, provided:

'1. Unless otherwise provided by the relevant legislation, the court shall annul any administrative decision it finds unlawful — with the exception of any violation of a procedural rule that does not affect the merits of the case — and, if necessary, shall order the authority that adopts the administrative decision to conduct a new procedure.

2. The court may vary the following administrative decisions:

…

(j) decision as to the grant of refugee status.'

18 An analogous provision to Article 339(2)(j) appears in Article 68(5) of the menedékjogról szóló 2007. évi LXXX. törvény (Law No LXXX of 2007 on the right to asylum) ('the Law on the right to asylum').

The legislation applicable to proceedings concerning international protection in force after 15 September 2015

19 On 15 September 2015, the egyes törvényeknek a tömeges bevándorlás kezelésével összefüggő módosításáról szóló 2015. évi CXL. törvény (Law No CXL of 2015 amending certain

laws in the context of managing mass immigration) ('the Law on the management of mass immigration') entered into force. Article 1(3)(a) of that law repealed Article 339(2)(j) of Law No III of 1952 establishing the Code for Civil Procedure. Article 14 of the Law on the management of mass immigration amended Article 68(5) of the Law on the right to asylum.

20 Following that amendment, Article 68(3), (5) and (6) of the Law on the right to asylum, which was made applicable also to cases that were pending at the time of its entry into force, reads as follows:

'3. … The Court shall carry out a full examination of both the facts and law at the date of the court's decision.

…

5. The court may not overturn the decision of the authority competent in matters of asylum. The court shall annul any administrative decision it finds unlawful — with the exception of any violation of a procedural rule that does not affect the merits of the case — and, if necessary, shall order the authority competent in matters of asylum to conduct a new procedure.

6. The court's decision adopted in conclusion of the proceedings is final, no appeal lies against it.'

21 Article 109(4) of the közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvény (Law No CXL of 2004 laying down general provisions on administrative services and procedure) ('the Law on administrative procedure') provides:

'The administrative authority shall be bound by the operative part and by the justification of the decision adopted by the court of jurisdiction for administrative actions, and shall proceed accordingly in the new proceedings and when adopting a new decision.'

22 Article 121(1)(f) of that law provides:

'In proceedings governed by this Chapter, the decision shall be annulled:

…

(f) if the content of the decision is contrary to the provisions of [Article 109(4)].'

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

23 Mr Torubarov, a Russian national, was a businessperson who participated, as a member, in the activities of a Russian opposition political party and of a non-governmental organisation representing the interests of businesspersons. Several sets of criminal proceedings have been brought against him in Russia since 2008. Mr Torubarov therefore left Russian territory and established himself first in Austria and then in the Czech Republic, from where he was extradited to Russia on 2 May 2013.

24 After his return to Russia he was once again charged but released to prepare his defence. On 9 December 2013, he illegally crossed the Hungarian border and was immediately apprehended by the police force of that Member State. Since Mr Torubarov was not able to demonstrate the legality

of his stay in Hungary, the police arrested him. Mr Torubarov made an application for international protection on the same day.

25 By a decision of 15 August 2014, the Immigration Office rejected that application for international protection. In support of its decision, it found that the statements made by Mr Torubarov and the information gathered regarding the situation in his country of origin confirmed that it was unlikely that he would be the subject of persecution there, whether for political or other reasons, or that he would suffer serious harm within the meaning of Article 15 of Directive 2011/95.

26 Mr Torubarov brought an appeal against that decision before the Pécsi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Pécs, Hungary). That court, by judgment of 6 May 2015, annulled the said decision and ordered the Immigration Office to conduct a new procedure and make a new decision. The decision was annulled on the grounds that it contained inconsistencies and that the Immigration Office had failed generally to examine the facts that had been submitted for its assessment and, as regards those facts that it had taken into account, had assessed them in a biased manner, with the result that the decision was unfounded and was not amenable to a review by the court. In its decision, that court also provided the Immigration Office with detailed guidance as to the factors that it was required to examine in the new procedure that was to be undertaken.

27 Following that second administrative procedure, the Immigration Office, by a decision of 22 June 2016, again rejected Mr Torubarov's application for international protection, finding in particular that the right to independent judicial proceedings would be guaranteed to him in his country of origin and that he would not be exposed to any risk of persecution there. In support of that new decision, and in accordance with the guidelines provided by the referring court, the Immigration Office, having regard to the documents that Mr Torubarov had sent to it, identified, in particular, the information in respect of corruption in Russia and the conditions of detention in Russian prisons as well as the way in which the justice system operates in Russia.

28 In that second decision, the Immigration Office also relied on a position statement of the Alkotmányvédelmi Hivatal (Constitutional Protection Office, Hungary). The latter considered that the presence of Mr Torubarov on Hungarian territory was contrary to the interests of national security because the person concerned was guilty of activity contrary to the aims and principles of the United Nations, within the meaning of Article 1(F)(c) of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), which entered into force on 22 April 1954 and was completed and amended by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which itself entered into force on 4 October 1967.

29 Mr Torubarov brought an appeal against the decision of the Immigration Office of 22 June 2016 before the referring court. That court, by judgment of 25 February 2017, annulled the said decision and ordered the Immigration Office to conduct a new procedure and take a new decision. It considered that the decision of 22 June 2016 was unlawful owing to a manifestly incorrect assessment, first, of the information relating to the country concerned and, second, of the position statement of the Constitutional Protection Office.

30 In that regard, the referring court stated that it was clear from the facts described in that decision that, contrary to the assessment made by the Immigration Office, Mr Torubarov had reasons to fear persecution and serious harm in Russia on account of his political opinions. In addition, it noted that the content and the operative part of the Constitutional Protection Office's

position statement, which contained classified national information, were inconsistent and that the Immigration Office had not assessed the content of that position statement from which it could clearly be deduced that the facts stated there were not evidence against Mr Torubarov but, on the contrary, evidence showing that his application for international protection was well founded.

31 By decision of 15 May 2017 ('the decision at issue'), the Immigration Office rejected, for the third time, the application for international protection by Mr Torubarov concerning the grant both of refugee status and of subsidiary protection status on the ground, inter alia, that it could not be established that he would suffer any persecution on political grounds. That office no longer relied, however, on the position statement of the Constitutional Protection Office in support of its decision.

32 The referring court is now seised of a third appeal, this time against the decision at issue, by which Mr Torubarov seeks the variation of that decision to the effect that the referring court grants him, principally, the status of refugee or, in the alternative, that of a beneficiary of subsidiary protection.

33 In that regard the referring court states, however, that since the entry into force on 15 September 2015 of the Law on the management of mass immigration, the power of the administrative courts to vary administrative decisions on the grant of international protection has been withdrawn.

34 According to the referring court, that legislation effectively deprives applicants for international protection of an effective judicial remedy. The only consequence provided for by the national law in the event of infringement by the administration of its obligation to comply with the operative part and justification of a first judgment annulling a first administrative decision rejecting an application for international protection, consists of the annulment of the new administrative decision. In such circumstances, the court seised therefore has no remedy other than to order the administration to conduct a new procedure and adopt a new decision. Thus, it has no power either to order the administration to grant international protection to the applicant concerned or to impose a penalty for the failure by the administration to comply with its first judgment, which entails the risk that the procedure can be prolonged indefinitely, contrary to the rights of the applicant.

35 That is precisely the situation in the case before the referring court, which has already given rise to the annulment of decisions of the Immigration Office on two occasions, and in which that office has adopted a third decision, namely the decision at issue, which does not comply with the referring court's judgment of 25 February 2017, in which that court had concluded that international protection had to be granted to Mr Torubarov, unless there was a proven threat to public security. As a result, since making his application for international protection in December 2013, Mr Torubarov has lived, in the absence of a final decision on that application, in a situation of legal uncertainty without the benefit of any status whatsoever on Hungarian territory.

36 In such a situation, the referring court considers that Hungarian law does not guarantee the right to an effective remedy enshrined in Article 46(3) of Directive 2013/32 and Article 47 of the Charter. It asks, therefore, whether those provisions of EU law allow it to vary a decision such as the decision at issue through the disapplication of the national legislation that denies it that power.

37 In those circumstances, the Pécsi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Pécs) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 46(3) of [Directive 2013/32], in conjunction with Article 47 of [the Charter], to be interpreted as meaning that the Hungarian courts have the power to vary administrative decisions of the competent asylum authority refusing international protection, and also to grant such protection?’

Consideration of the question referred

38 By its question the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as conferring, in circumstances such as those in the main proceedings, on a first-instance court seised of an appeal against a decision rejecting an application for international protection, the power to vary that administrative decision and to substitute its own decision for that of the original administrative body that adopted it.

39 As a preliminary matter, it must be observed that, pursuant to the first sentence of the first paragraph of Article 52 of Directive 2013/32, Member States are to apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged ‘after 20 July 2015 or an earlier date’.

40 It is clear from the *travaux préparatoires* of Directive 2013/32 that, by adding the words ‘or at an earlier date’ to the first sentence of the first paragraph of Article 52, the EU legislature intended to enable Member States to apply their provisions implementing that directive with immediate effect to applications for international protection lodged before 20 July 2015 (see, to that effect, judgments of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 71 and 72, and of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 63 and 64).

41 Since the first paragraph of Article 52 of Directive 2013/32 offers various possibilities as regards temporal applicability, it is important, in order for the principles of legal certainty and equality before the law to be observed in the implementation of EU law and for applicants for international protection to be protected from arbitrariness, that each Member State bound by that directive examines applications for international protection lodged within the same period on its territory in a predictable and uniform manner (see, to that effect, judgments of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 73, and of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 66).

42 In the present case, it is clear from the order for reference that Mr Torubarov’s application for international protection was submitted on 9 December 2013, which was after the entry into force of Directive 2013/32 on 19 July 2013 but earlier than the latest date by which that directive had to be transposed into national law, namely 20 July 2015.

43 In addition, the referring court stated, in response to a request for information that had been sent to it by the Court, that under national law it is required to comply with the national legislation transposing Directive 2013/32 that entered into force on 15 September 2015 and that prohibits a court from varying an administrative decision on an application for international protection also in the context of legal proceedings that, although they concern an application for international protection lodged before 20 July 2015, were, as is the case in the action in the main proceedings, brought after that date. That information was confirmed by the Hungarian Government in its written observations.

44 In that regard, it is clear, first, from the case-law recalled in paragraph 40 above that a Member State may freely decide whether to make the legislation transposing Directive 2013/32 immediately applicable to such proceedings.

45 Second, the Court has already clarified that a provision of national law providing that a court must base its decision on the situation in fact and law obtaining on the date of its decision ensures that applications for international protection which have been lodged in the same period on national territory and on which no final decision has yet been made are examined in a predictable and uniform manner (see, to that effect, judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 67 and 68).

46 In those circumstances, the first paragraph of Article 52 of Directive 2013/32 does not preclude a national court, such as the referring court, from applying the national legislation transposing Directive 2013/32 in proceedings pending before it, even though those proceedings relate to an application for international protection lodged before 20 July 2015.

47 Having made those preliminary observations, it should be noted that the aim of Directive 2013/32, according to Article 1 thereof, is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95.

48 That directive lays down, in accordance with Article 1, standards, first, for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, secondly, for a uniform status for refugees or for persons eligible for subsidiary protection and, lastly, for the content of the protection granted.

49 As the Court has already held, it is clear from Articles 13 and 18 of Directive 2011/95, read in conjunction with the definitions of ‘refugee’ and ‘person eligible for subsidiary protection’ set out in Article 2(d) and (f) thereof, that the international protection referred to in that directive must, in principle, be granted to a third-country national or stateless person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, or faces a real risk of suffering serious harm, within the meaning of Article 15 of the directive (see, to that effect, judgments of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 47, and of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 36).

50 Therefore, where a person meets the minimum standards set by EU law to qualify for one of those statuses because he or she fulfils the conditions laid down in Chapters II and III or Chapters II and V of Directive 2011/95 respectively, Member States are required, subject to the grounds for exclusion provided for by that directive, to grant the international protection status sought, since those Member States have no discretion in that respect (see, to that effect, judgments of 24 June 2015, *T., C*-373/13, EU:C:2015:413, paragraph 63; of 12 April 2018, *A and S*, C-550/16, EU:C:2018:248, paragraph 52; and of 14 May 2019, *M and Others (Revocation of refugee status)*, C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraph 89).

51 Article 46(1) of Directive 2013/32 guarantees applicants for international protection the right to an effective remedy before a court or tribunal against decisions taken on their application. Article 46(3) of that directive defines the scope of the right to an effective remedy by specifying that Members States bound by it must ensure that the court or tribunal before which the decision relating to the application for international protection is contested carries out ‘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]' (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 105 and 106).

52 The expression '*ex nunc*' points to the court or tribunal's obligation to make an assessment that takes into account, should the need arise, new evidence which has come to light after the adoption of the decision being challenged. As for the word 'full', that adjective confirms that the court or tribunal is required to examine both the evidence which the determining authority took into account or could have taken into account and that which has arisen following the adoption of the decision by that authority (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 111 and 113).

53 It follows that Member States are required, pursuant to Article 46(3) of Directive 2013/32, to order their national law in such a way that the processing of the appeals referred to includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand, so that the application for international protection may be considered in an exhaustive manner without it being necessary to refer the case back to the determining authority. That interpretation furthers the aim pursued by Directive 2013/32 of guaranteeing that such applications are processed as rapidly as possible, without prejudice to an adequate and complete examination being carried out (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 109 to 112).

54 However, Article 46(3) of that directive only concerns the examination of the appeal brought and does not therefore govern what happens after any annulment of the decision under appeal. Thus, by adopting Directive 2013/32, the EU legislature did not intend to introduce any common rule to the effect that the quasi-judicial or administrative body referred to in Article 2(f) of that directive should be deprived of its powers following the annulment of its initial decision concerning an application for international protection, so that it remains open to the Member States to provide that the file must, following such an annulment, be referred back to that body for a new decision (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 145 and 146).

55 While Directive 2013/32 affords Member States some discretion inter alia in the determination of rules for thus dealing with an application for international protection where the original decision of such a body is annulled by a court or tribunal, it is important however to note, in the first place, that notwithstanding that discretion Member States are required, when implementing that directive, to comply with Article 47 of the Charter which enshrines the right to an effective remedy before a tribunal for everyone whose rights and freedoms guaranteed by EU law are infringed (see, to that effect, judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 30 and the case-law cited). 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, to that effect, judgments of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 31, and of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 114).

56 In the second place, it should be recalled that Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right which they may rely on as such (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 78). In view, in particular, of the matters recalled in the preceding paragraph, the same must hold true for Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter.

57 In the third place, the right to an effective remedy would be illusory if a Member State's legal system were to allow a final, binding judicial decision to remain inoperative to the detriment of one party (see, to that effect, judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci*, C-205/15, EU:C:2016:499, paragraph 43).

58 It is in that context that the Court held that Article 46(3) of Directive 2013/32 would be deprived of any practical effect if it were accepted that, after delivery of a judgment in which the court or tribunal of first instance conducted, in accordance with that provision, a full and *ex nunc* assessment of the international protection of the applicant by virtue of Directive 2011/95, the quasi-judicial or administrative body referred to in Article 2(f) of Directive 2013/32 could take a decision that ran counter to that assessment.

59 Consequently, even though the purpose of Directive 2013/32 is not to render uniform, in a specific and exhaustive manner, the procedural rules that must be applied within Member States where the power to adopt a new decision on an application for international protection after the annulment of the original decision rejecting such an application, it nevertheless follows from its purpose of ensuring the fastest possible processing of applications of that nature, from the obligation to ensure that Article 46(3) is effective, and from the need, arising from Article 47 of the Charter, to ensure an effective remedy, that each Member State bound by that directive must order its national law in such a way that, following annulment of the initial decision and in the event of the file being referred back to the quasi-judicial or administrative body, a new decision is adopted within a short period of time and that it complies with the assessment contained in the judgment annulling the initial decision (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 148).

60 The question referred must be examined in the light of those considerations.

61 In that regard, it must be observed, first of all, that the text of Article 109(4) of the Law on administrative procedure appears, subject to verification by the referring court, to satisfy the obligation on the part of Member States pursuant to Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, and recalled in paragraph 59 above, of guaranteeing that, following the annulment of a decision on an application for international protection and in the event of the referral of the case file back to the administrative body that had adopted it, the new decision of that body is to comply with the determination contained in the judgment declaring the annulment.

62 At the hearing before the Court however, the Hungarian Government submitted that that provision must be interpreted as meaning, in order to preserve the division of competences between, on the one hand, the administration, which must play a central role in procedures concerning an application for international protection and, on the other hand, the court hearing an appeal under Article 46(3) of Directive 2013/32, that that court may give instructions as to the facts to be examined and the new evidence to be admitted, provide an interpretation of the law and indicate the relevant matters that the administrative authority must take into account, but it may not bind the latter as to the specific determination of the case at hand, which may rest on other matters of law or fact than those taken into account by the said court, such as new matters arising after the court's decision.

63 Article 46(3) of Directive 2013/32, read in the light of the Court's case-law, precludes such an interpretation.

64 It is true that the Court has already recognised that the examination of the application for international protection by the competent administrative or quasi-judicial body, which has specific

resources and staff specialised in the matter, is a vital stage of the common procedures established by Directive 2013/32 (see, to that effect, judgments of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 116, and of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 96).

65 The fact remains however that, by providing that the court or tribunal with jurisdiction to rule on an appeal against a decision rejecting an application for international protection is required to examine, where applicable, the 'international protection needs' of the applicant, the EU legislature, through the adoption of Article 46(3) of Directive 2013/32, intended to confer on that court or tribunal, where it considers that it has available to it all the elements of fact and law necessary in that regard, the power to give a binding ruling following a full and *ex nunc* — that is to say exhaustive and up-to-date — examination of those elements, as to whether the applicant concerned satisfies the conditions laid down in Directive 2011/95 to be granted international protection.

66 It follows from the foregoing, as the Advocate General observed in essence in points 102 to 105, 107 and 108 of his Opinion, that where a court or tribunal rules exhaustively on an appeal by an applicant for international protection and makes, on that occasion, an up-to-date examination of the 'international protection needs' of that applicant on the basis of all the relevant elements of fact and law, following which it reaches the conclusion that the applicant must be granted the status of refugee or person eligible for subsidiary protection status, in accordance with the criteria laid down in Directive 2011/95, for the reasons that he or she relies on in support of his or her application and that court or tribunal annuls the decision of the administrative or quasi-judicial body rejecting that application and refers the case file back to that body, the latter is, subject to matters of fact or law arising that objectively require a new up-to-date assessment, bound by the decision of that court or tribunal and the grounds that support it. Therefore, in the context of such a referral back, that body no longer has a discretionary power as to the decision to grant or refuse the protection sought in the light of the same grounds as those that were submitted to that court or tribunal, otherwise Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, as well as Articles 13 and 18 of Directive 2011/95, would be deprived of all their practical effect.

67 In the present case, the referring court asks itself the question whether, where such an administrative or quasi-judicial body to which the case file has been referred back has not complied with its annulment decision, and the applicant for international protection brings before it an appeal against the decision of that body again refusing to grant such protection without setting out, in support of that refusal, a ground for excluding it that had arisen in the meantime or any new elements of fact or law requiring a new assessment, that court has the power, pursuant to EU law, to substitute its own decision for that of the Immigration Office, by varying that decision in a manner that complies with its previous judgment, notwithstanding a national provision prohibiting it from proceeding in that way.

68 The referring court emphasises, in that context, the fact that national law does not provide a remedy enabling it to ensure that its judgment is complied with, since the only penalty provided for under that law is the annulment of the Immigration Office's decision, which is liable to lead to a succession of annulments of administrative decisions and appeals before the courts that will prolong the applicant's situation of legal uncertainty, as Mr Torubarov's case illustrates in the present proceedings.

69 In that regard, as is clear from paragraphs 54 and 59 above, while Article 46(3) of Directive 2013/32 does not require Member States to confer the power referred to in paragraph 67 above on courts or tribunals with jurisdiction to hear appeals covered by that provision, it remains the case that Member States are required to ensure, in each case, that the right to an effective remedy

enshrined in Article 47 of the Charter is complied with (see, to that effect, judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 65 and the case-law cited).

70 Whether there is an infringement of the rights enshrined in that provision must be examined in relation to the specific circumstances of each case (see, to that effect, judgments 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 of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 41).

71 In the present case it must be noted that, at the hearing before the Court, the Hungarian Government provided details of a new law on administrative procedure that entered into force on 1 January 2018, namely after the date of the request for a preliminary ruling. That law is said to establish certain procedures and remedies whose purpose is to enable the administrative courts to require administrative bodies to comply with their judgments. Nevertheless, that government also pointed out that that legislative amendment does not apply *ratione temporis* to the case in the main proceedings and that, in any event, those remedies may not be used in the field of international protection, such that the situation that the referring court faces, namely that of being deprived of any remedy enabling it to ensure that its judgment in that field is complied with, remains unchanged.

72 A national law that results in such a situation in practice deprives the applicant for international protection of an effective remedy, within the meaning of Article 46(3) of Directive 2013/32, and fails to comply with the essential content of the right to an effective remedy enshrined in Article 47 of the Charter, since the judgment of a court, delivered after an assessment complying with the requirements of Article 46(3) and following which that court decided that the applicant satisfied the conditions laid down by Directive 2011/95 to be granted the status of refugee or person eligible for subsidiary protection, remains ineffective, for lack of any remedy whatsoever by means of which that court may ensure compliance with its judgment.

73 In such circumstances, any provision of a national legal system and any legislative, administrative or judicial practice that might impair the effectiveness of EU law by withholding from the national court with jurisdiction to apply that law the power to do everything necessary at the moment of its application to set aside national legislative provisions that might prevent EU rules which have direct effect, such as Article 46(3) of Directive 2013/32 read in conjunction with Article 47 of the Charter, from having full force and effect are incompatible with those requirements, which are the very essence of EU law (see, to that effect, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 22, and of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 52 to 62).

74 Therefore, in order to guarantee that an applicant for international protection has an effective judicial remedy within the meaning of Article 47 of the Charter, and in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, a national court or tribunal seised of an appeal is required to vary a decision of the administrative or quasi-judicial body, in the present case the Immigration Office, that does not comply with its previous judgment and to substitute is own decision on the application by the person concerned for international protection by disapplying, if necessary, the national law that prohibits it from proceeding in that way (see, by analogy, judgment of 5 June 2014, *Mahdi*, C-146/14 PPU, EU:C:2014:1320, paragraph 62).

75 Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted in that way in the first place because, as is clear from paragraph 50 of this judgment, where an applicant for international protection fulfils the conditions laid down by Directive 2011/95 to qualify for the status of refugee or person eligible for subsidiary protection, Member States are

required to grant the person that status and do not have any discretion in that regard, it being possible for, inter alia, a judicial body to grant that status, according to the wording of Article 14(1) and (4), and Article 19(1) and (2) of that directive.

76 In the second place, while it is true that the Court has held that, by adopting Directive 2013/32, the EU legislature did not intend to introduce any common rule to the effect that the quasi-judicial or administrative body referred to in Article 2(f) of that directive should be deprived of its powers following the annulment of its initial decision concerning an application for international protection (judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 146), it remains the case that if that body, in circumstances such as those at issue in the main proceedings, has not complied with the judgment of the national court hearing the appeal, it is for that court to vary the decision of that body and to substitute its own decision for that body's decision.

77 Consequently, it is necessary, in the present case, to find that, where, as it appears from the indications given in the order for reference, the referring court in fact conducted, in its judgment of 25 February 2017, a full and *ex nunc* examination of the 'international protection needs' of Mr Torubarov in accordance with Directive 2011/95 in view of all the relevant elements of fact and law, following which the court held that such protection must be granted to him, but that judgment has not been complied with by the Immigration Office, without it being established in the decision at issue, in that respect, that new elements had arisen which required a new assessment, which it is for the national court to verify, that court must, pursuant to Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, vary the decision at issue that does not comply with its previous judgment, and substitute its own decision as to the international protection that Mr Torubarov must benefit from under Directive 2011/95, while disapplying the national law prohibiting it from proceeding in that way (see, by analogy, judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 79, and of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraph 66).

78 It follows from all the foregoing considerations that Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that, in circumstances, such as those at issue in the main proceedings, where a first-instance court or tribunal has found — after making a full and *ex nunc* examination of all the relevant elements of fact and law submitted by an applicant for international protection — that, under the criteria laid down by Directive 2011/95, that applicant must be granted such protection on the ground that he or she relied on in support of his or her application, but after which the administrative or quasi-judicial body adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court or tribunal must vary that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, disapplying as necessary the national law that would prohibit it from proceeding in that way.

Costs

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

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

Article 46(3) 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,

read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in circumstances, such as those at issue in the main proceedings, where a first-instance court or tribunal has found — after making a full and *ex nunc* examination of all the relevant elements of fact and law submitted by an applicant for international protection — that, under the criteria laid down by 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, that applicant must be granted such protection on the ground that he or she relied on in support of his or her application, but after which the administrative or quasi-judicial body adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court or tribunal must vary that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, disapplying as necessary the national law that would prohibit it from proceeding in that way.

[Signatures]

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* Language of the case: Hungarian.