ECLI:EU:C:2022:951

Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

1 December 2022 (*)

Reference for a preliminary ruling – Fundamental rights – Right to an effective remedy – Article 47 of the Charter of Fundamental Rights of the European Union – Asylum policy – Directive 2013/32/EU – Article 11(1), Article 23(1) and Article 46(1) and (3) – Access to information in the applicant's file – Completeness of the file – Metadata – Communication of that file in the form of individual unstructured electronic files – Information in writing – Digitised copy of the decision with a handwritten signature – Keeping of the electronic file without archiving a paper file

In Case C-564/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Wiesbaden (Administrative Court, Wiesbaden, Germany), made by decision of 3 September 2021, received at the Court on 14 September 2021, in the proceedings

BU

v

Federal Republic of Germany,

THE COURT (Tenth Chamber),

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

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– BU, by J. Leuschner, Rechtsanwalt,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the European Commission, by F. Erlbacher and L. Grønfeldt, 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 11(1), Article 23(1), Article 45(1)(a) and Article 46(1) to (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), as well as Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between BU, an asylum seeker, and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) ('the BAMF'), concerning the rejection of the applicant's application for international protection in the main proceedings, in which the applicant's representative submitted an application for interim measures, requesting the provision of the latter's complete administrative file, presented in the form of a single file in PDF (Portable Document Format) and with consecutive page numbering.

The legal framework

European Union law

3 According to recitals 25 and 50 of Directive 2013/32:

'(25) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 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)), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967] or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: …the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.

…

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an

application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.'

4 Article 11 of that directive, entitled 'Requirements for a decision by the determining authority', provides in paragraph 1 thereof:

'Member States shall ensure that decisions on applications for international protection are given in writing.'

5 Article 23 of that directive, entitled 'Scope of legal assistance and representation', provides in paragraph 1 thereof :

'Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.'

6 Article 45 of that directive, entitled 'Procedural rules', provides in paragraph 1 thereof:

'Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 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)], the person concerned enjoys the following guarantees:

(a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; …

…'

7 Article 46 of Directive 2013/32, entitled 'The right to an effective remedy', provides in paragraphs 1 and 3 thereof:

'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.'

German law

The Law on the right of asylum

8 Paragraph 31 of the Asylgesetz (Asylum Act) of 26 June 1992 (BGBl. 1992 I, p. 1126), as published on 2 September 2008 (BGBl. 2008 I, p. 1798), in the version applicable to the dispute in the main proceedings, entitled 'Decision of the Federal Office on asylum applications', provides, in subparagraph 1:

'Decisions of the Federal Office shall be given in writing. They shall contain a written statement of reasons. Decisions open to challenge shall be served on the parties concerned without undue delay. …'

The Code of Administrative Justice

9 Paragraph 99 of the Verwaltungsgerichtsordnung (Code of Administrative Justice) of 21 January 1960 (BGBl. 1960 I, p. 17), in the version applicable to the dispute in the main proceedings, provides, in subparagraph 1:

'Authorities shall be obliged to submit certificates or files, to transmit electronic documents and to provide information. If disclosure of the contents of those certificates, files, electronic documents or that information would prove disadvantageous to the interests of the Federation or of a *Land*, or if the records must be kept secret by virtue of a law or by reason of their nature, the competent supreme supervisory authority may refuse to submit certificates or files, to transmit electronic documents or to provide information.'

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

10 The applicant in the main proceedings submitted an application for international protection which was rejected by the BAMF by decision of 18 December 2019 ('the decision of 18 December 2019'). That decision was based, in particular, on the opinion of an officer of the BAMF responsible for matters specific to the country of which BU is a national. The content of that opinion has been quoted in the statement of facts in that decision.

11 In accordance with the BAMF's administrative practice, the officer who decided on the applicant's application for international protection in the main proceedings affixed his handwritten signature to the decision of 18 December 2019, scanned that decision and saved the document resulting from the scanning of that decision in the applicant's electronic administrative file. The applicant in the main proceedings received a printout of that document. By contrast, the original of that decision was destroyed after it was scanned.

12 The applicant in the main proceedings brought an action before the referring court against the decision of 18 December 2019.

13 In the course of the dispute in the main proceedings, the BAMF responded by producing the electronic file of the applicant in the main proceedings, supplemented by that opinion, in the form of several separate documents in PDF format and a set of structural data in XML (Extensible Markup Language) format, which require the use of appropriate software in order to reproduce the original structure of the file as it appears to the BAMF. It appears from the file submitted to the Court that the national courts concerned have such software and that it is publicly available and can be downloaded free of charge from the internet by others, including the representatives of applicants. However, even if that software is used, the file at issue is not consecutively paginated.

14 The representative of the applicant in the main proceedings requested that the BAMF provide him with the applicant's complete administrative file in the form of a single file in PDF format with consecutive page numbering. Following the rejection of that request, he applied to the referring court for interim measures in that regard.

15 The BAMF argued in that regard that a file does not have to be transferred to the persons concerned in the same format as it is before that administration. It argued that the provision of the content of the files under EU law can also be carried out by granting the applicant access for consultation. Furthermore, it would be reasonable to require a representative of the applicant to download software which is available free of charge. In addition, consecutive page numbering would hinder the efficiency of a structured digital exchange of files.

16 First, the referring court considers that the claim of the applicant's representative in the main proceedings is well founded, since the applicant's electronic file is neither accessible nor produced in its entirety, pursuant to Paragraph 99(1) of the Code of Administrative Justice.

17 In that regard, the referring court considers that proper record-keeping by the administration is essential to guarantee the transparency of public action and the possibility of monitoring that action, so that the obligation of a democratic State governed by the rule of law to be accountable is satisfied. That obligation implies, according to it, that an objective documentary record of all essential relevant events in the administrative process be kept, in order, inter alia, to allow the control of the executive power by the administrative court. It points out that the legislator assumed that the administration complied with the law and that, consequently, the legislator did not offer the possibility for that court to compel the administration to produce administrative records. The administration concerned should therefore, in accordance with the principles of the rule of law and due process, promptly fulfil the obligation to disclose those files in their entirety, so that they are available to the administration and to all parties to the proceedings. Only in such a case would the requirements of Article 23 of Directive 2013/32 be met.

18 The printed part of the electronic administrative file managed by the BAMF, which was communicated to the referring court, does not include the entire content of that file. The referring court considers it essential that the metadata of the file, such as access to the file, insertions and deletions of documents, the history of the file, links to other proceedings concerning the applicant or members of his or her family, which would not be accessible to the court or the applicant's representative, should also be communicated as part of the access to the file.

19 Ultimately, the referring court considers that the applicant's representative and the competent court should have online access to the entire administrative file of the person concerned, as held by the administration. Only on that condition would the requirement in Article 23 of Directive 2013/32, according to which the asylum seeker's representative must have access to 'information in the applicant's file', and the principle of the right to a fair trial be respected.

20 Secondly, the referring court notes that it is not the originals of the administrative acts concerned that are communicated. According to the administrative practice of the BAMF, those originals, bearing the signature of the author of the decision concerned, must first be scanned and then destroyed, so that only an electronic copy of them ultimately remains.

21 The referring court considers that the requirement laid down in Article 11(1) of Directive 2013/32 that a decision on an application for asylum must be communicated in writing implies, in principle, the handwritten signature of the author of that decision. It notes that such an interpretation corresponds to the definition of 'in writing' in Paragraph 126 of the Bürgerliches Gesetzbuch

(BGB) (German Civil Code) and that, in the judgment of 28 May 2020, *Asociación de fabricantes de morcilla de Burgos* v *Commission* (C-309/19 P, EU:C:2020:401), the Court also held that a scanned signature does not constitute an original signature. Furthermore, it observes that the BAMF does not use an electronic signature which could satisfy the signature requirement, as evidenced by Article 25 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ 2014 L 257, p. 73).

22 Thus, the referring court considers that, in the event that the original of a decision on an asylum application is destroyed and only a scanned copy of that decision remains, the latter does not have the written character required by Directive 2013/32. In particular, while a copy may have the legal appearance of a reproduction of the original of the administrative act concerned, its integrity is not certain.

23 Finally, the referring court questions whether, where the original of an administrative act has been destroyed, the fact that only a copy of that act remains can give rise to its annulment and whether, in the present case, it should not reject the request of the representative of the applicant in the main proceedings for access to the entire administrative file of the person concerned and order the BAMF, in the context of the main proceedings, to adopt a new written decision.

24 In those circumstances, the national court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does it follow from the right to a fair trial under Article 47 of [the Charter] that the administrative file to be submitted by the authority in the context of an inspection of files or a judicial review is to be submitted in such a way – even where it is in electronic form – that it is complete and paginated, and changes are therefore traceable?

(2) Do Articles 23(1) and 46(1) to (3) of Directive [2013/32] preclude a national administrative practice according to which, as a general rule, the authority provides the asylum seeker’s legal representative and the [national] court with only an extract taken from an electronic document management system and containing an incomplete, unstructured and non-chronological collection of electronic PDF files, whereby the latter do not have a structure or set out the sequence of events in chronological order, let alone reflect the complete content of the electronic file?

3. Does it follow from Articles 11(1) and 45(1)(a) of Directive [2013/32] that a decision must be signed by hand by the decision-maker of the determining authority, kept on file or served on the applicant also as a document signed by hand?

4. Is the handwritten form within the meaning of Articles 11(1) and 45(1)(a) of Directive [2013/32] respected where the decision is signed by the decision-maker but then scanned and the original destroyed, that is to say, the decision exists in writing only to a certain extent?’

The questions referred for a preliminary ruling

Admissibility of the questions referred

25 According to the Court’s settled case-law, it is for the national court alone, which is seised of the dispute and which must assume responsibility for the judicial decision to be taken, to assess, in the light of the particular features of the case, both the need for a preliminary ruling in order to be able to give judgment and the relevance of the questions which it puts to the Court, which are

presumed to be relevant in that regard. Therefore, where the questions referred concern the interpretation or validity of a rule of EU law, the Court is, in principle, obliged to give a ruling, unless it appears that the interpretation sought has no connection with the facts or the subject matter of the main proceedings, if the problem is hypothetical or if the Court does not have the factual and legal elements necessary to give a useful answer to those questions (judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU: C:2021:313, paragraph 38 and the case-law cited).

26 In the first place, in its written observations, the German Government expresses its doubts as to the relevance of the first and second questions, in so far as they concern the scope of the right of access to the file. Those doubts are based on the consideration that access to the metadata, which is at issue in the main proceedings, is not necessary for the referring court to rule on the merits of the decision rejecting the application for international protection before it.

27 It is clear from the reference for a preliminary ruling that the referring court did not make the reference to the Court in order to rule on the legality of that rejection decision, but in order to rule on the applicant's application for interim measures in the main proceedings, seeking the production of a complete administrative file, in the form of a single file in PDF format and with consecutive page numbering. It is therefore relevant for the referring court to ask whether such a file can be considered complete, even if it does not contain the metadata which are available to the administration when the latter uses that file.

28 In the second place, in its written observations, the European Commission also questions the relevance of the first and second questions. It states that it does not understand the relationship between the principle of the right to a fair trial and the facts or the subject matter of the main proceedings. Furthermore, on the ground that it does not appear from the order for reference that the applicant's representative was not able to download the software to consult the applicant's file and therefore to represent his client, it doubts that the question of whether EU law precludes a national practice requiring the representative of the applicant for international protection to download software to consult the file of the person concerned is necessary for the purposes of deciding the dispute in the main proceedings on the substance.

29 First, as regards the considerations of the referring court relating to the principle of the right to a fair trial, it is apparent from the grounds of the request for a preliminary ruling that that court considers that that principle, enshrined in the second paragraph of Article 47 of the Charter, requires access to the applicant's file in its entirety, in the form in which that file is held by the administration. That court questions precisely whether, having regard to the method of transmission of the information contained in the file of the applicant in the main proceedings, which is at issue in the dispute before it, it can be considered that access to that file in its entirety is guaranteed. There is therefore no doubt as to the relevance of those considerations in the present case.

30 Secondly, as regards the Commission's interpretation of the first and second questions, according to which those questions seek, in particular, to determine whether EU law precludes a national practice requiring the representative of the applicant for international protection to download software in order to consult the latter's file, it should be noted that those questions do concern not the material impossibility for the applicant's representative to have access to the latter's file, but rather full access to that file and in a form which allows it to be understood in the same way as the administration concerned. The referring court considers that the solution adopted in the present case by the BAMF, which requires, inter alia, the downloading of free software by the applicant's representative, does not make it possible to satisfy such requirements.

31 Therefore, the first and second questions are admissible.

32 In the third place, however, it must be noted that, as regards the third and fourth questions, it may be observed that, in so far as the decision contested by the applicant in the main proceedings is a decision rejecting his application for international protection, the outcome of the dispute in the main proceedings does not appear to require, as such, the interpretation of Article 45(1)(a) of Directive 2013/32, which is the subject of those questions. That provision applies to situations in which the competent authority intends to withdraw international protection from a person to whom it has already been granted. Thus, only the interpretation of Article 11(1) of that directive, which applies to decisions on applications for international protection and which is also referred to in the third and fourth questions, appears to be relevant to the resolution of the main proceedings. Moreover, the referring court does not provide any explanation as to how the interpretation of Article 45(1)(a) of that directive is necessary to enable it to decide the present case. It follows that the third and fourth questions are inadmissible in so far as they concern the interpretation of Article 45(1)(a) of Directive 2013/32.

The first and second questions

33 By its first and second questions, which should be considered together, the referring court asks, in essence, whether Article 23(1) and Article 46(1) and (3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as precluding a national administrative practice under which the administrative authority which has decided on an application for international protection transfers to the applicant's representative a copy of the electronic file relating to that application in the form of an unstructured series of separate files in PDF format, without consecutive page numbering, and the structure of which can be viewed by means of free software freely accessible on the internet.

34 In that regard, first of all, it should be noted that Article 23(1) of Directive 2013/32 implements the right of access to the file in proceedings concerning applications for international protection by providing that the legal adviser who assists or represents the applicant has access to the information in the applicant's file on the basis of which a decision is or will be taken.

35 Next, as regards Article 46(1) and (3) of Directive 2013/32, that provision implements the principle of effective judicial protection by providing that Member States are to ensure that an effective remedy provides for a full and *ex nunc* examination of both the facts and the legal issues, including, where appropriate, an examination of international protection needs under Directive 2011/95, at least in the context of appeal proceedings before a court of first instance.

36 Finally, it should be noted that, in the context of the protection of the rights and freedoms guaranteed by EU law and the right to effective judicial protection, the second paragraph of Article 47 of the Charter guarantees the right to a fair trial, a particular aspect of which is respect for the rights of the defence, which, according to that paragraph, entails the possibility of being advised, defended and represented. Those rights must be respected in any proceedings against a person which may result in an act adversely affecting him or her. The effective exercise of those rights has as a necessary corollary the right of access to the file (see judgment of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraphs 59 to 61 and the case-law cited).

37 However, it is settled case-law that fundamental rights, such as respect for the rights of the defence under Article 47, including the right to disclosure of documents relevant to the defence, are not absolute prerogatives, but may be subject to restrictions, provided that such restrictions effectively meet the objectives of general interest pursued by the measure in question and do not involve, in the light of the aim pursued, disproportionate and intolerable intervention which would

undermine the very substance of the rights thus guaranteed (see, to that effect, judgment of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraphs 62 and 68 and the case-law cited).

38 With regard specifically to the right of access to the file, it is well established in the case-law that that right implies that the person against whom an act adversely affecting him or her has been adopted must be given the opportunity to examine all the documents in the investigation file that are likely to be relevant to his or her defence. Those documents include both incriminating and exculpatory material, with the exception of business secrets concerning other persons, internal documents of the authority which adopted the act and other confidential information (judgment of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraph 66 and the case-law cited).

39 As to the documents which must be included in the investigation file, it should be noted that it also follows from the Court's case-law that, while it cannot be for the authority which took the decision complained of alone to determine which documents are useful for the defence of the person concerned, it is, however, entitled to exclude material which has no connection with the matters of fact and law underlying the reasons for that decision and which is therefore of no relevance to the outcome of the decision (see, to that effect, judgment of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraph 67 and the case-law cited).

40 The Court has further held that the existence of a breach of the rights of the defence, including the right of access to the file, must be assessed in the light of the specific circumstances of each case, in particular the nature of the measure at issue, the context in which it was adopted and the legal rules governing the matter concerned (judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 97 and the case-law cited).

41 More specifically, since the first and second questions relate to access to the file in the context of judicial proceedings, it should be noted that, having regard to the precise requirements laid down in Article 46(3) of Directive 2013/32, the case file which is transmitted to the competent court, at least at first instance, by the authority which decided on the application for international protection concerned must be complete and include all the procedural acts, documents and exhibits which that authority had at its disposal for those purposes and even, where appropriate, material subsequent to that decision which is relevant to the outcome of that decision.

42 Furthermore, the scope of judicial review of a decision on an application for international protection necessarily has a decisive impact on the required extent of access to the file to enable the person concerned to exercise his or her rights of defence effectively.

43 Subject to the elements for which the authority concerned requests confidentiality, for duly explained objectives of public interest, such as those referred to in paragraphs 37 and 38 of the present judgment, and to documents which are not relevant to the outcome of the application for international protection, the applicant's representative must be granted access to the complete file as presented to the competent court, in order to be able to discuss, in the context of an adversarial debate, both the factual and legal elements which are decisive for the outcome of the proceedings. Such a requirement is necessary in order fully to guarantee the applicant's rights of defence and respect for the adversarial nature of the proceedings, which are linked to the right to a fair trial (see, to that effect, judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraphs 55 to 57 and the case-law cited).

44 Furthermore, such a right of access to the file may also include access to the metadata of the applicant's administrative file, namely, data which are part of the structure of that file and which are intended to describe, explain, locate or otherwise facilitate access to its content. It cannot be excluded that, depending on their nature and content, such metadata constitute 'information in the applicant's file upon the basis of which a decision is or will be made', within the meaning of Article 23(1) of Directive 2013/32. That may include links to other proceedings concerning the applicant or members of his or her family. It is, however, for the referring court to ascertain whether there are no public interest objectives, such as those referred to in paragraphs 37 and 38 of the present judgment, which preclude the disclosure of those metadata, by seeking to strike a balance between the applicant's rights of defence and the interests connected with the maintenance of the confidentiality of the information (see, to that effect, judgment of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraph 69 and the case-law cited).

45 As regards the format in which the various elements of the file are communicated to the applicant's representative and their structure, it should be noted at the outset that the wording of Article 23(1) and Article 46(1) and (3) of Directive 2013/32 does not contain any rules expressly governing the practical and technical arrangements for access to the file by the applicant's representative.

46 As is apparent, moreover, from the case-law referred to in paragraph 37 of the present judgment, the protection of the rights of the defence under Article 47 of the Charter, including the right of access to the file, implies that the national legislation or practice concerned does not constitute a disproportionate and intolerable interference with the very substance of the rights thus guaranteed.

47 In the present case, as noted in paragraph 13 of the present judgment, in accordance with the relevant national administrative practice, the applicant's representative received the electronic file of the applicant in the main proceedings, in the form of several separate documents in PDF format and a set of structural data in XML format, which require the use of appropriate software, downloadable free of charge from the internet, in order to reproduce the original structure of the file. By contrast, the communication of the file does not include the metadata relating to the file, such as access to the file by the administration's staff, the history of the file or links to other procedures concerning the applicant or members of his or her family.

48 The referring court considers that, unlike the communication of a single file in PDF format with consecutive page numbering, a method of communication such as that used by the BAMF does not make it possible to keep track of changes in the administrative file of the applicant in the main proceedings and to ensure that the file produced corresponds to that kept by the administration. According to it, that method of communication does not comply with the right to a fair trial enshrined in the second paragraph of Article 47 of the Charter. In particular, it points out that, since the display of all the documents in PDF format transmitted by the administration in chronological order requires the downloading of specific software, it cannot be ruled out that that display is different for the competent court and for the representative of the person concerned, so that the availability of a file of identical content and form to all the parties to the asylum procedure concerned is not guaranteed.

49 For its part, in its written observations, the German Government maintains that the structural data accompanying the individual files in PDF format make it possible, with the aid of appropriate software, to reproduce the organisation of the original file. In addition, the names of the individual files, containing numbering and a description by keywords, would make it possible to determine the order in which the individual documents were placed in the file concerned, the nature of the

individual documents and the number of documents contained in that file. It would therefore be possible to verify that the entire file has been transmitted.

50 In that regard, it follows from the case-law referred to in paragraphs 38, 39 and 43 of the present judgment that, in order to determine whether a method of communication of the case file, such as that adopted by the BAMF, complies with the right of access to the file, as protected by Article 47 of the Charter, it is for the national court to assess whether that method of communication guarantees a faithful reproduction, as far as possible, of the structure of that file and the chronology of the submission of the various documents, so that the applicant's representative is able to check whether all the documents relevant to the applicant's defence are in the file and, where appropriate, to request disclosure of the missing documents or the reason for their absence. Such missing documents may, where appropriate, prove useful for the applicant's defence, if they contain essential elements of the administrative procedure or elements which allow a different interpretation of the relevant facts from that adopted by the authority which decided on the application for international protection.

51 Furthermore, it should be pointed out that the existence of a single technical solution capable of guaranteeing the effectiveness of the rights of the defence and effective judicial protection, in accordance with Article 47 of the Charter, cannot be presumed. In the absence of a uniform standard at European Union level governing that method of communication and in the context of new technologies, it cannot be ruled out that there are several solutions which are functionally equivalent and capable of providing sufficient guarantees for the protection of the right of access to the file (see, by analogy, judgment of 5 July 2012, *Content Services*, C-49/11, EU:C:2012:419, paragraphs 39 to 42).

52 It cannot, in particular, be ruled out that the transmission of the file concerned in the form of individual files in PDF format may ensure, in a way equivalent to the transmission of a single file in that format with consecutive page numbering, the effectiveness of the applicant's rights of defence provided that such transmission is accompanied by formal and technical arrangements offering as faithful a representation as possible of the applicant's entire file and its organisation, if necessary by means of downloadable software that is easily accessible and offers sufficient security guarantees, which it will be for the referring court to verify.

53 In particular, the referring court may verify that the software used to visualise the structure of the procedural file communicated by the national authority competent to decide on the applicant's application for international protection guarantees the representative of the latter a representation of its organisation equivalent to that available to the national authority, in so far as that equivalence is necessary to enable him or her to exercise effectively, on behalf of the applicant, the rights of defence before that court.

54 In addition, it will have to check whether, as the German Government suggests in its written observations, the structural data and PDF files by means of which the applicant's file is communicated to his representative provide sufficient information to understand the structure of that file and whether the use of software to visualise that structure is not indispensable. Similarly, it will be able to verify whether, as that government claims, the visualisation software in question, which can be used by that representative, is the same as that available to the courts competent to rule on actions against decisions on applications for international protection and whether, as it also claims, the use of that software only leads to differences in presentation in minor respects, thus not impairing the ability of the representative to exercise the rights of defence effectively on behalf of the applicant.

55 Moreover, it should be noted that it does not appear, subject to verification by the referring court, that the need, for the applicant's representative, to download such software in order to be able to view the structure of that applicant's file in chronological order constitutes, in itself, a disproportionate and intolerable intervention capable of undermining the very substance of the latter's rights of defence.

56 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 23(1) and Article 46(1) and (3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, must be interpreted as not precluding a national administrative practice whereby the administrative authority which has decided on an application for international protection provides the applicant's representative with a copy of the electronic file relating to that application in the form of a series of separate files in PDF format, without consecutive page numbering, and the structure of which can be viewed by means of free software readily accessible on the internet, provided, first, that that method of disclosure guarantees access to all the information in the file relevant to the applicant's defence, and on the basis of which the decision on that application was taken, and that, secondly, that that method of communication offers as faithful a representation as possible of the structure and chronology of that file, subject to cases where public interest objectives prevent the disclosure of certain information to the applicant's representative.

The third and fourth questions

57 By its third and fourth questions, which must be considered together, the referring court asks, in essence, whether Article 11(1) of Directive 2013/32 must be interpreted as meaning that a decision on an application for international protection must bear the handwritten signature of the official of the competent authority who made that decision in order for it to be considered to be communicated in writing within the meaning of that provision, and, if so, whether it precludes an administrative practice of scanning the signed original of such a decision and then destroying it and keeping the scanned version of that decision in an electronic file.

58 It should be noted at the outset that the requirement that the decision on an application for international protection be communicated in writing, referred to in Article 11(1) of Directive 2013/32, does not imply an obligation that that decision be signed by the author thereof.

59 It follows from the case-law that the obligation to produce an act, in particular a decision adversely affecting a person, in written form, which is provided for in a large number of cases by EU law (see judgments of 5 June 2014, *Mahdi*, C-146/14 PPU, EU:C:2014:1320, paragraphs 41 to 49 and the case-law cited, and of 17 December 2020, *Commission* v *Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraphs 204 to 207 and 251), implies only that that decision is in the form of graphic signs with meaning, irrespective of whether they are in handwritten form, printed on paper or recorded in electronic form (see, to that effect, judgment of 12 April 2018, *Finnair*, C-258/16, EU:C:2018:252, paragraphs 33, 35 and 36). Thus, the expression 'in writing', within the meaning of Directive 2013/32, must be interpreted as opposed to an implied decision or, as the German and Hungarian Governments point out, as opposed to an oral decision.

60 By contrast, the requirement that the decision be signed by the author, either by hand or by electronic signature, does not automatically follow from the written form of that decision.

61 Although the requirement that an individual act adversely affecting an individual be communicated in writing and the requirement that such an act be signed by its author, namely, by

the person authorised by the competent authority to make it, both meet the objectives of legal certainty and protection of the procedural rights of the addressee, those objectives must nevertheless be distinguished. The requirement that the act be in writing is intended to enable, in particular, the addressee to become aware of the legal scope of that act, its implementing rules and the reasons for it so that, where appropriate, he or she can challenge it in court in a meaningful way (see, to that effect, judgment of 5 June 2014, *Mahdi*, C-146/14 PPU, EU:C:2014:1320, paragraphs 44 to 46). By contrast, the formality of authentication of the document, in particular by means of a signature, where it is required by the applicable law, is intended to ensure that the document is certain as to its author and its content, which must be checked before any other check, such as, in particular, compliance with the obligation to state the reasons for the document (see, to that effect, judgment of 23 November 2021, *Council* v *Hamas*, C-833/19 P, EU:C:2021:950, paragraph 55).

62 In view of those considerations, it is not necessary to answer the question whether Article 11(1) of Directive 2013/32 precludes an administrative practice of scanning the signed original of a decision on an application for international protection, subsequently destroying it and retaining the scanned version of that decision in an electronic file.

63 In the light of all the foregoing considerations, the answer to the third and fourth questions is that Article 11(1) of Directive 2013/32 must be interpreted as meaning that a decision on an application for international protection does not need to be signed by the official of the competent authority who took that decision in order for it to be considered to be communicated in writing within the meaning of that provision.

Costs

64 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 (Tenth Chamber) hereby rules:

1. **Article 23(1) and Article 46(1) and (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:

they do not preclude a national administrative practice whereby the administrative authority which has decided on an application for international protection provides the applicant's representative with a copy of the electronic file relating to that application in the form of a series of separate files in PDF (Portable Document Format) format, without consecutive page numbering, and the structure of which can be viewed by means of free software readily accessible on the internet, provided, first, that that method of disclosure guarantees access to all the information in the file relevant to the applicant's defence, and on the basis of which the decision on that application was taken, and that, secondly, that that method of communication offers as faithful a representation as possible of the structure and chronology of that file, subject to cases where public interest objectives prevent the disclosure of certain information to the applicant's representative.

2. **Article 11(1) of Directive 2013/32**

must be interpreted as meaning that:

a decision on an application for international protection does not need to be signed by the official of the competent authority who took that decision in order for it to be considered to be communicated in writing within the meaning of that provision.

[Signatures]

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* Language of the case: German.