ECLI:EU:C:2019:448

JUDGMENT OF THE COURT (Fifth Chamber)

23 May 2019 (*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum policy — Subsidiary protection — Directive 2011/95/EU — Article 19 — Revocation of subsidiary protection status — Error on the part of the administrative authorities with respect to the facts)

In Case C-720/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decision of 14 December 2017, received at the Court on 28 December 2017, in the proceedings

Mohammed Bilali

v

Bundesamt für Fremdenwesen und Asyl,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, C. Lycourgos (Rapporteur), E. Juhász, M. Ilešič and I. Jarukaitis, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr Bilali, by N. Lorenz, Rechtsanwältin,

– the Austrian Government, by G. Hesse, acting as Agent,

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

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

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

– the United Kingdom Government, by R. Fadoju, acting as Agent, and by D. Blundell, Barrister,

– the European Commission, by M. Condou-Durande and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 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).

2 The request has been made in proceedings between Mr Mohammed Bilali and the Bundesamt für Fremdenwesen und Asyl (Federal Office for Immigration and Asylum, Austria) concerning the revocation of the subsidiary protection status granted to Mr Bilali.

Legal context

International law

3 The Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 137, No 2545 (1954)), entered into force on 22 April 1954. It was supplemented and amended by the Protocol relating to the Status of Refugees, done at New York on 31 January 1967, which entered into force on 4 October 1967 (‘the Geneva Convention’).

4 Article 1 of that convention, having, inter alia, defined ‘refugee’ in section A thereof, states, in section C:

‘This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.'

EU law

Directive 2011/95

5 Recitals 3, 8, 9, 12 and 39 of Directive 2011/95 state:

'(3) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees ("the Geneva Convention"), as supplemented by the New York Protocol of 31 January 1967 ("the Protocol"), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

…

(8) In the European Pact on Immigration and Asylum, adopted on 15 and 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.

(9) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78 [TFEU], for those granted international protection, by 2012 at the latest.

…

(12) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

…

(39) While responding to the call of the Stockholm Programme for the establishment of a uniform status for refugees or for persons eligible for subsidiary protection, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees under this Directive, and should be subject to the same conditions of eligibility.'

6 Article 2 of that directive provides:

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

(a) "international protection" means refugee status and subsidiary protection status as defined in points (e) and (g);

…

(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;

(g) "subsidiary protection status" means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;

(h) "application for international protection" means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

…'

7 According to Article 3 of that directive:

'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.'

8 Article 14 of the directive, entitled 'Revocation of, ending of or refusal to renew refugee status', provides:

'1. Concerning applications for international protection filed after the entry into force of [Council] Directive 2004/83/EC [of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12)], 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 if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted refugee status shall, on an individual basis, demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

3. Member States shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(a) he or she should have been or is excluded from being a refugee in accordance with Article 12;

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.

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, when:

(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;

(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention in so far as they are present in the Member State.'

9 Chapter V of Directive 2011/95, entitled 'Qualification for subsidiary protection', includes Article 15, entitled 'Serious harm', which provides:

'Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

10 Article 16 of that directive provides:

'1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.'

11 According to Article 18 of that directive:

'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.'

12 Article 19 of the directive, entitled 'Revocation of, ending of or refusal to renew subsidiary protection status', provides:

'1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, 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 if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.

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, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).

3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third-country national or a stateless person, if:

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third-country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the subsidiary protection status shall, on an individual basis, demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.'

Directive 2003/109

13 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2003 L 16, p. 44), as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 (OJ 2011 L 132, p. 1) ('Directive 2003/109'), provides, in Article 4(1a):

‘Member States shall not grant long-term resident status on the basis of international protection in the event of the revocation of, ending of or refusal to renew international protection as laid down in Articles 14(3) and 19(3) of Directive 2004/83/EC.’

14 Article 9(3a) of Directive 2003/109, as inserted by Directive 2011/51, provides:

‘Member States may withdraw the long-term resident status in the event of the revocation of, ending of or refusal to renew international protection as laid down in Articles 14(3) and 19(3) of Directive 2004/83/EC if the long-term resident status was obtained on the basis of international protection.’

Austrian law

15 Paragraph 8 of the Bundesgesetz über die Gewährung von Asyl (Federal Law concerning the granting of asylum), as applicable to the facts in the main proceedings (‘AsylG 2005’), provides as follows:

‘(1) Subsidiary protection status shall be granted to a foreign national

1. who has filed an application for international protection in Austria, if that application is refused in relation to the granting of asylum status, or

2. whose asylum status has been revoked, if the refoulement, expulsion or deportation of the foreign national to his country of origin would involve a genuine risk of a breach of Article 2 [of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950], Article 3 of [that convention] or Protocols No 6 or No 13 to [that convention], or would entail for him, as a civilian, a serious threat to his life or person by reason of indiscriminate violence in situations of international or internal conflict.

…

(6) If the asylum seeker’s country of origin cannot be established, the application for international protection shall be refused in relation to subsidiary protection status. In that event, a return decision shall be adopted, where this is not impermissible under Paragraph 9(1) and (2) [of the Law governing the procedure before the Federal Office for Immigration and Asylum].

…’

16 Paragraph 9 of the AsylG 2005 provides:

‘(1) The subsidiary protection status of a foreign national shall be revoked of [the competent authority’s] own motion by administrative decision if

1. the conditions for the granting of subsidiary protection status (Paragraph 8(1)) are not met or are no longer met;

…’

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

17 On 27 October 2009, Mr Bilali, who by his own account is stateless, filed an application in Austria for international protection. On 15 March 2010, that application was refused by the Bundesasylamt (Federal Asylum Office, Austria). On 8 April 2010, the Asylgerichtshof (Asylum Court, Austria) upheld the action brought against that decision refusing his application, and remitted the case for re-examination.

18 By decision of 27 October 2010, the Federal Asylum Office refused Mr Bilali's application for asylum but granted him subsidiary protection status, noting that Mr Bilali's identity was not established and that he was probably an Algerian national. He was granted subsidiary protection status on the ground that, on account of the high level of unemployment, lack of infrastructure and continuing instability in Algeria, Mr Bilali could be exposed to inhuman treatment within the meaning of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('ECHR'), if he were to return to that country.

19 Mr Bilali brought an action before the Asylgerichtshof (Asylum Court) against the decision refusing his asylum application. The decision concerning the grant of subsidiary protection became final, however.

20 By a judgment of 16 July 2012, the Asylgerichtshof (Asylum Court) annulled the decision refusing the applicant's asylum application, noting in particular that nothing more than assumptions had been made with regard to his nationality.

21 By decision of 24 October 2012, the Federal Asylum Office again refused the application for asylum made by Mr Bilali. In addition, the subsidiary protection status which he had been granted on 27 October 2010 was revoked by that office of its own motion, and the temporary right of residence which he had been awarded as a beneficiary of that status was withdrawn. The Federal Asylum Office also refused the application for subsidiary protection status inasmuch as Mr Bilali was a Moroccan national, and adopted a return decision indicating Morocco as his country of destination.

22 The Federal Asylum Office found that the conditions for the grant of subsidiary protection had never been met. It is evident from the response provided by the unit providing information about countries of origin that the assumption that Algeria was Mr Bilali's country of origin was false, and that Mr Bilali was eligible both for Moroccan nationality and for Mauritanian nationality.

23 By a judgment of 21 January 2016, the Bundesverwaltungsgericht (Federal Administrative Court, Austria) dismissed in part Mr Bilali's action against the decision of 24 October 2012, notably in so far as it concerned the provisions of that decision that revoked his subsidiary protection status. It did, however, annul the provisions of that decision ordering his return to Morocco.

24 With regard, in particular, to Mr Bilali's nationality, the Bundesverwaltungsgericht (Federal Administrative Court) held that he had dual Moroccan and Mauritanian nationality, and that he had stated on several occasions that his family was originally from Morocco. Subsidiary protection status had been granted to him on the basis that he was originally from Algeria, so that, according to that court, that status was revoked correctly in accordance with Paragraph 9(1) of the AsylG 2005, read in conjunction with Paragraph 8(1) of that law. The court found, moreover, that the withdrawal of the temporary right of residence followed from the revocation of subsidiary protection status. It also considered that it had not been established that Mr Bilali would be exposed to threats to his life or person in Morocco to such an extent that his deportation would be contrary to Article 3 of the ECHR.

25 Mr Bilali lodged an appeal on a point of law against that judgment in the referring court.

26 The referring court notes, first of all, that subsidiary protection status was granted to Mr Bilali by a decision of the Federal Asylum Office dated 27 October 2010, on the ground that he was an Algerian national. It states that that decision became final but that, by its decision of 24 October 2012, the Federal Asylum Office revoked the subsidiary protection status granted to Mr Bilali on factual grounds that emerged upon further investigation after that status had been granted. According to the referring court, there is nothing to indicate that the delay in gathering information was attributable to Mr Bilali. On the contrary, he had stated a number of times that he did not have Algerian nationality and that he was stateless. The referring court further notes that the judgment under appeal before it contains no indication that the 'legally relevant facts' have changed since Mr Bilali was granted subsidiary protection status.

27 The referring court states in that regard that the Bundesverwaltungsgericht (Federal Administrative Court) relied on Paragraph 9(1)(1) of the AsylG 2005, according to which the subsidiary protection status granted to a foreign national must be revoked by the competent authority of its own motion if the conditions for the granting of that status are not met or are no longer met. According to the referring court, it is the first of those scenarios that is applicable to the case pending before it, namely that in which the conditions for the granting of that status were not met at the time of the decision granting it. The referring court states that where the competent authority intends to revoke that status of its own motion in the first scenario, that provision draws no distinction as to whether the conditions for granting subsidiary protection status were not met because the applicant did not qualify for protection or because he did not need protection. Nor does that provision contain any limitation whereby it is only if subsidiary protection status is obtained by false pretences that the legal finality of the decision to grant it could be overturned. Thus, a simple error by the authorities would also fall within the scope of that provision.

28 The referring court goes on to point out, however, that Article 19(3)(b) of Directive 2011/95 does not cover the revocation of subsidiary protection status merely because new information has been obtained by the authorities. It might be concluded from this that that status could not be revoked, where the factual circumstances remain unchanged, notwithstanding the authorities' error as to the existence of one of the facts that led to the granting of that status, if the beneficiary is not responsible for any conduct of the kind referred to in that provision.

29 The referring court nonetheless notes that Article 19(1) of Directive 2011/95 provides that Member States are to revoke, end or refuse to renew subsidiary protection status if the person concerned has ceased to be eligible for it under Article 16 of that directive, that is to say, if the circumstances which led to the granting of that protection have ceased to exist. According to the referring court, that wording can be interpreted as referring to circumstances that were known when that status was granted, and therefore that the change in the competent authorities' knowledge would also result in the subsidiary protection status being extinguished.

30 In those circumstances, the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) decided to stay the proceedings and to refer the following question to the Court of justice for a preliminary ruling:

'Do the provisions of EU law, in particular Article 19(3) of Directive 2011/95 …, preclude a national provision of a Member State concerning the possibility of revocation of subsidiary protection status pursuant to which subsidiary protection status may be revoked without a change in the factual circumstances themselves which are relevant for the purpose of granting that status, but rather only where the state of knowledge of the authority in this regard has undergone a change,

and, in that context, without either a misrepresentation or an omission of facts on the part of the third-country national or stateless person having been a determinant factor in the granting of the subsidiary protection status?'

Consideration of the question referred

31 By its question, the referring court asks, in essence, whether Article 19 of Directive 2011/95 must be interpreted as precluding a Member State from revoking subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion.

32 As a preliminary point, it must be noted that, in the case in the main proceedings, the decision revoking subsidiary protection status was taken on 24 October 2012 while, under Article 39 of Directive 2011/95, the deadline for transposing Article 19 of that directive was fixed as 21 December 2013.

33 However, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 28 March 2019, *Idi*, C-101/18, EU:C:2019:267, paragraph 28 and the case-law cited).

34 In the present case, the referring court is seised of an appeal on a point of law against the judgment of the Bundesverwaltungsgericht (Federal Administrative Court) of 21 January 2016 dismissing the action brought against the decision of 24 October 2012 revoking subsidiary protection status. In those circumstances, it is not obvious that the interpretation of Article 19 of Directive 2011/95 bears no relation to the action pending before the referring court.

35 Having clarified that point, it must be stated, in the first place, that since Directive 2011/95 was adopted on the basis, in particular, of Article 78(2)(b) TFEU, it seeks, inter alia, to establish a uniform subsidiary protection system (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 88). It is, moreover, apparent from recital 12 of that directive that one of its main objectives is to ensure that all Member States apply common criteria for the identification of persons genuinely in need of international protection (judgments of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 37, 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 79).

36 In that regard, it is apparent from Article 18 of Directive 2011/95, read in conjunction with the definition of 'person eligible for subsidiary protection' in Article 2(f) thereof, and that of 'subsidiary protection status' in Article 2(g) thereof, that the subsidiary protection status referred to in that directive must, in principle, be granted to a third-country national or stateless person who faces a real risk of suffering serious harm, within the meaning of Article 15 of that directive, if returned to his country of origin or to the country of his former habitual residence (see, to that effect, judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 47).

37 By contrast, Directive 2011/95 does not provide for the granting of subsidiary protection status to third-country nationals or stateless persons other than those mentioned in the preceding

paragraph of the present judgment (see, to that effect, judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 48).

38 It is apparent from the order for reference that the competent Austrian authority, which considered the application for international protection made by the appellant in the main proceedings, made a mistake in determining what was assumed to be his nationality. It is also apparent from that order that the appellant in the main proceedings was never exposed to a real risk of suffering serious harm, within the meaning of Article 15 of that directive, in the event of his being returned to his country of origin or to the country of his former habitual residence.

39 Furthermore, although Article 3 of that directive allows Member States to introduce or retain more favourable criteria with respect to the granting of subsidiary protection, the referring court has not mentioned any national legislation of that nature.

40 Article 19 of Directive 2011/95 sets out the circumstances in which Member States may or must revoke, end or refuse to renew subsidiary protection status.

41 In that context it must be noted, in the second place, as the referring court indicates, that Article 19(3)(b) of that directive provides for the loss of subsidiary protection status only where there has been a misrepresentation or omission by the person concerned that was decisive for the granting of that status. Furthermore, no other provision of that directive expressly states that that status must or may be withdrawn if, as in the case at issue in the main proceedings, the decision granting that status was taken on the basis of incorrect information, without any misrepresentation or omission by the person concerned.

42 Nor, however, it must be noted in the third place, does Article 19 of Directive 2011/95 expressly preclude subsidiary protection status being lost where the host Member State realises that it has granted that status on the basis of incorrect information that is not attributable to the person concerned.

43 The Court must therefore consider whether, taking into account also the purpose and general scheme of Directive 2011/95, one of the other reasons for the loss of subsidiary protection status, as listed in Article 19 of Directive 2011/95, is intended to apply to such a situation.

44 In that regard, it should be noted, first, that the Court has already held that it would be contrary to the general scheme and objectives of Directive 2011/95 to grant refugee status and subsidiary protection status to third-country nationals in situations which have no connection with the rationale of international protection (see, to that effect, judgment of 18 December 2014, *M'Bodj*, C-542/13, EU:C:2014:2452, paragraph 44). The situation of an individual who has obtained subsidiary protection status on the basis of incorrect information without ever having met the conditions for obtaining that status has no connection with the rationale of international protection.

45 The loss of subsidiary protection status in such circumstances is, therefore, consistent with the purpose and general scheme of Directive 2011/95, and in particular with Article 18 thereof, which provides for subsidiary protection status to be granted only to persons who meet those conditions. If the Member State concerned was not entitled legally to grant that status, it must, *a fortiori*, be obliged to withdraw it when its mistake is discovered (see, by analogy, judgment of 24 June 2015, *H. T.*, C-373/13, EU:C:2015:413, paragraph 49).

46 It must be pointed out, second, that Article 19(1) of Directive 2011/95 provides that, concerning applications for international protection filed, as in the case in the main proceedings,

after the entry into force of Directive 2004/83, Member States must revoke, end or refuse to renew the subsidiary protection status of a third-country national or stateless person if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16 of Directive 2011/95.

47 Under Article 16(1) of Directive 2011/95, a third-country national or a stateless person is to cease, in principle, to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. That change in circumstances must, according to paragraph 2 of that article, be of such a significant and definitive nature that the person concerned no longer faces a real risk of serious harm, within the meaning of Article 15 of that directive.

48 It follows, therefore, from the actual wording of Article 19(1) of Directive 2011/95 that there is a causal connection between the change in circumstances referred to in Article 16 of that directive, and the impossibility for the person concerned of retaining his status as beneficiary of subsidiary protection, in that his original fear of serious harm, within the meaning of Article 15 of that directive, no longer appears to be well founded (see, by analogy, judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 66).

49 While that adjustment generally arises from a change in the factual circumstances in the third country, that change having remedied the reasons which led to subsidiary protection status being granted, the fact remains that Article 16 of Directive 2011/95 does not expressly provide for its scope of application to be limited to such a situation and, moreover, a change in the host Member State's state of knowledge of the personal situation of the individual concerned can, in the same way, result in that person's original fear of serious harm, within the meaning of Article 15 of that directive, no longer appearing to be well founded, in the light of the new information in that Member State's possession.

50 That is true, however, only in so far as the new information at the host Member State's disposal entails a sufficiently significant and definitive change in the state of its knowledge as to whether the person concerned qualifies for the granting of subsidiary protection status.

51 Consequently, it follows from a combined reading of Articles 16 and 19(1) of Directive 2011/95, in the light of the general scheme and purpose of that directive, that, where the host Member State has new information which establishes that, contrary to its initial assessment of the situation of a third-country national or of a stateless person to whom it granted subsidiary protection, based on incorrect information, that person never faced a risk of serious harm, within the meaning of Article 15 of that directive, that Member State must conclude from this that the circumstances underlying the granting of subsidiary protection status have changed in such a way that retention of that status is no longer justified.

52 In that regard, the fact that the error made by the host Member State when granting that status is not attributable to the person concerned cannot alter the finding that that person was never in fact a 'person eligible for subsidiary protection', within the meaning of Article 2(f) of Directive 2011/95, and accordingly never met the conditions for the granting of subsidiary protection status, within the meaning of Article 2(g) of that directive.

53 In the fourth place, it must be pointed out that support for that interpretation is to be found on reading Directive 2011/95 in the light of the Geneva Convention.

54 In that regard, it is apparent from Article 78(1) TFEU that the common policy which the European Union is to develop on asylum, subsidiary protection and temporary protection must be in accordance with the Geneva Convention (judgment of 13 September 2018, *Ahmed*, C-369/17, EU:C:2018:713, paragraph 37). In addition, it follows from recital 3 of Directive 2011/95 that, drawing on the Conclusions of the Tampere European Council, the EU legislature intended to ensure that the European asylum system, to whose definition that directive contributes, is based on the full and inclusive application of the Geneva Convention (judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 30).

55 Those considerations are, in principle, relevant only in relation to the conditions for determining who qualifies for refugee status and the content of that status, since the system laid down by the Geneva Convention applies only to refugees and not to beneficiaries of subsidiary protection status. Nevertheless, recitals 8, 9 and 39 of Directive 2011/95 state that the EU legislature intended, in responding to the call of the Stockholm Programme, to establish a uniform status for all beneficiaries of international protection and that it accordingly chose to afford beneficiaries of subsidiary protection the same rights and benefits as those enjoyed by beneficiaries of refugee status, with the exception of derogations which are necessary and objectively justified (see, to that effect, judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraphs 31 and 32).

56 Furthermore, it must be noted that the EU legislature drew on the rules applicable to refugees in order to define the causes of loss of subsidiary protection status. The wording and the structure of Article 19 of Directive 2011/95, concerning the loss of subsidiary protection status, have similarities with Article 14 of that directive, relating to the loss of refugee status, which in turn draws on Article 1(C) of the Geneva Convention.

57 It follows from this that the requirements arising under the Geneva Convention must be taken into account for the purpose of interpreting Article 19 of Directive 2011/95. In that context, documents from the United Nations High Commissioner for Refugees (UNHCR) are particularly relevant in the light of the role conferred on the UNHCR by the Geneva Convention (see, to that effect, judgment of 30 May 2013, *Halaf*, C-528/11, EU:C:2013:342, paragraph 44).

58 Although there is nothing in that convention that expressly provides for loss of refugee status if it subsequently emerges that that status should never have been conferred, the UNHCR nevertheless considers that, in such a situation, the decision granting refugee status must, in principle, be annulled (Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1992, paragraph 117).

59 It must be added, in the fifth place, that the loss of subsidiary protection status, pursuant to Article 19(1) of Directive 2011/95, does not imply the adoption of a position on the separate question as to whether the person concerned loses any right of residence in the Member State concerned and can be deported to his country of origin (see, by analogy, judgment of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 110).

60 In that regard, it must be noted in particular, first, that, unlike the loss of subsidiary protection status pursuant to Article 19(3)(b) of Directive 2011/95, the loss of that status pursuant to Article 19(1) of that directive covers neither those cases in which Member States must refuse, in accordance with Article 4(1a) of Directive 2003/109, to grant long-term resident status to beneficiaries of international protection, nor those cases in which, under Article 9(3a) of Directive 2003/109, Member States may withdraw long-term resident status from those beneficiaries.

61 Second, it is clear from the closing words of Article 2(h) of Directive 2011/95 that the directive does not preclude a person from applying for 'another kind of protection' outside the scope of Directive 2011/95. That directive does allow, therefore, for host Member States to be able to grant, in accordance with their national law, national protection which includes rights enabling individuals who do not enjoy subsidiary protection status to remain in the territory of the Member State concerned. The grant by a Member State of such national protection status does not, however, fall within the scope of that directive (see, to that effect, judgment of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 116 to 118).

62 It should also be added that when making the assessments which it is for the Member State concerned to carry out under the procedures referred to in paragraphs 60 and 61 of the present judgment, that Member State is obliged to observe, in particular, the fundamental right of the person concerned to respect for private and family life, which is guaranteed, within their respective scope of application, by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the ECHR.

63 The fact that, unlike the situation envisaged in Article 19(3) of Directive 2011/95, the person whose subsidiary protection status has been revoked on the basis of Article 19(1), in conjunction with Article 16, of that directive did not wilfully mislead the competent national authority when it granted that status is a relevant circumstance, in that respect.

64 It is apparent, moreover, from paragraphs 60 and 63 of the present judgment that the interpretation of Article 19(1) of Directive 2011/95, read in conjunction with Article 16 thereof, adopted in paragraph 51 of the present judgment does not impair the effectiveness of Article 19(3)(b) of Directive 2011/95.

65 It follows from the foregoing that the answer to the question referred is that Article 19(1) of Directive 2011/95, read in conjunction with Article 16 thereof, must be interpreted as meaning that a Member State must revoke subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion.

Costs

66 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 (Fifth Chamber) hereby rules:

Article 19(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, read in conjunction with Article 16 thereof, must be interpreted as meaning that a Member State must revoke subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion.

[Signatures]

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* Language of the case: German.