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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

27 February 2025 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Asylum policy – International protection – Directive 2011/95/EU – Refugee status – Article 14(4)(a) and (5) – Revocation or refusal to grant refugee status in the event of danger to the security of the host Member State – Conduct and acts prior to the entry of the applicant into the territory of the host Member State – Admissibility – Validity – Article 18 of the Charter of Fundamental Rights of the European Union – Article 78(1) TFEU – Convention relating to the Status of Refugees (‘Geneva Convention’))

In Case C454/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Dioikitiko Dikastirio Diethnous Prostasias (International Protection Administrative Court, Cyprus), made by decision of 19 June 2023, received at the Court on 18 July 2023, in the proceedings

K.A.M.

v

Republic of Cyprus,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, D. Gratsias (Rapporteur), E. Regan, J. Passer and B. Smulders, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– K.A.M., by N. Charalambidou, dikigoros,

– the Republic of Cyprus, by F. Sotiriou and E. Symeonidou, acting as Agents,

– the Federal Republic of Germany, by J. Möller and R. Kanitz, acting as Agents,

– the European Parliament, by I. Anagnostopoulou and R. van de Westelaken, acting as Agents,

– the Council of the European Union, by M. Balta, M. Moore and K. Pleśniak, acting as Agents,

– the European Commission, by T. Adamopoulos, A. Azéma, F. Blanc, J. Hottiaux and A. Katsimerou, 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, first, the interpretation of Article 12 and Article 14(4)(a) 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), and Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter') and, secondly, the validity of Article 14(4)(a) of that Directive in the light of Article 78(1) TFEU and Article 18 of the Charter.

2 The request has been made in the context of proceedings between K.A.M. and the Republic of Cyprus, represented by the Ypiresia Asylou (Asylum Service, Cyprus), concerning that service's rejection of K.A.M.'s application to be granted refugee status, on the ground that he constituted a danger to the security of that Member State.

Legal context

International law

3 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)) and which entered into force on 22 April 1954, as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967 and which entered into force on 4 October 1967 ('the Geneva Convention'), that article being headed 'Definition of the term "refugee"', is worded as follows in section F thereof:

'The provisions of [the Geneva Convention] shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.'

4 Under Article 33 of the Convention, entitled 'Prohibition of expulsion or return ("refoulement")':

'1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.'

European Union law

5 Recitals 21, 31 and 37 of Directive 2011/95 state as follows:

'(21) The recognition of refugee status is a declaratory act.

…

(31) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations resolutions relating to measures combating terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations"

…

(37) The notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.'

6 Article 2 of that directive, entitled 'Definitions', provides as follows:

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

…

(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;

…'

7 Chapter II of that directive, entitled 'Assessment of applications for international protection', and which contains Articles 4 to 8 of that directive, sets out the relevant elements to establish the applicant's need for international protection. Chapter III of that directive, entitled 'Qualification for being a refugee' and which contains Articles 9 to 12 thereof, lists the criteria for being a refugee.

8 Article 12 of Directive 2011/95, entitled 'Exclusion', provides as follows, in paragraph 2 thereof:

'A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of

refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.'

9 Under Article 13 of that directive, entitled 'Granting of refugee status':

'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.'

10 Article 14 of that directive, entitled 'Revocation of, ending of or refusal to renew refugee status', is worded as follows, in paragraphs 4 to 6 thereof:

'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.'

11 Article 21 of that directive, entitled 'Protection from refoulement', provides as follows:

'1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:

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

(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.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.'

12 Article 24 of Directive 2011/95, entitled 'Residence permits', reads as follows in paragraph 1 thereof:

'As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 years and renewable, unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).'

Cypriot law

13 Article 5 of the Peri Prosfygon Nómos of 2000 (Law on Refugees of 2000) (EE, Annex 6(I), No 3383, 28.1.2000, p. 1), as amended ('the Law on Refugees'), entitled 'Exclusion of the applicant', provides as follows;

'(1) The applicant is excluded from refugee status:

…

(c) where there are serious reasons for considering that:

(i) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international agreements drawn up to make provision in respect of such crimes; or

(ii) he or she has committed a serious non-political crime in another country prior to the issue of a residence permit based on the granting of refugee status; for the purposes of the present point, the concept of a serious non-political crime includes particularly cruel actions, even if committed with an allegedly political objective; or

(iii) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or

(iv) he or she is the instigator of one of the crimes or the actions provided for in points (i) to (iii) or otherwise participates in its commission.

…'

14 Article 6A of the Law on refugees provides as follows:

'(1) The status of refugee shall be revoked where the head of the [Asylum Service]:

…

(c) considers, on reasonable grounds, that the person concerned constitutes a danger to the security of the Republic; or

(d) considers that the person concerned constitutes a danger to the Cypriot community, because he or she has been convicted by final judgment of a particularly serious crime.

(1A) Where an application is submitted by a person who falls within the scope of one of the categories referred to in paragraph 1, points (c) and (d), the head of the [Asylum Service] shall by decision reject the application seeking the grant of refugee status.

(2) If, after examining the file and applying by analogy the ordinary procedure for appraisal of applications provided for in Article 13, the head of the [Asylum Service] finds that one of the conditions referred to in paragraph 1 is satisfied, he or she shall revoke the status of refugee of the person concerned by a reasoned, written decision, in which he or she shall indicate the factual and legal grounds on which that decision is based; he or she shall also inform the person concerned of his or her right to bring an appeal against that decision …

…

(5) The persons to whom the provisions of paragraph 1(b) or paragraph 1A apply shall enjoy, so long as they are on territories controlled by the government of the Republic, the rights provided for in Articles 3, 4, 16, 22, 31, 32 and 33 of the [Geneva Convention].'

15 Under Article 29 of the Law on Refugees, entitled 'Deportation of beneficiaries of international protection':

‘(1) The head of [the Tmima Archeiou Plithysmou kai Metanastefsis (the Civil Registry and Immigration Department)] is authorised to decide that a beneficiary for international protection is to be deported:

(a) where there are serious reasons for considering that the person concerned constitutes a danger to the security of the Republic;…

…

(4) It is prohibited to adopt an order deporting a refugee … to a country where his or her life or freedom would be threatened or where that person might be subject to torture or inhuman or degrading treatment or persecution on account of his or her gender, religion, nationality, membership of a particular community, political opinions, an armed conflict or an ecological catastrophe.

…

(6) The persons to whom the provisions of paragraph 1 apply shall enjoy, so long as they are present in the territories controlled by the government of the Republic, the rights provided for in Articles 3, 4, 16, 22, 31, 32 and 33 of the [Geneva Convention].’

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

16 The applicant in the main proceedings, K.A.M., a Moroccan national who had entered the territory of the Republic of Cyprus illegally on 29 December 2018, submitted, on 10 January 2019, an application for international protection to the Asylum Service.

17 On 28 January 2019, the Grafeio Katapolemisis tis Tromokratias (Counter Terrorism Office, Cyprus) sent the Asylum Service a confidential letter setting out the danger posed by the applicant in the main proceedings.

18 According to the evidence brought to the knowledge of the applicant in the main proceedings and to which he refers in his written observations before the Court of Justice, that letter stated, first, that the information obtained by the authorities of the Republic of Cyprus identified the person concerned as a person engaged in operational activity for a terrorist group, second, that he had contradicted himself inter alia as regards his travel prior to entering the national territory and, third, that the applicant in the main proceedings had been in trouble with the Belgian, Spanish and French police authorities for various offences and had threatened to bomb the Belgian embassy in Morocco.

19 On 16 April 2019, the Asylum Service notified the applicant in the main proceedings of the rejection of his application for international protection. In that regard, that service, ‘found that there [were] serious reasons for considering that if [K.A.M.] return[ed] to Morocco, he [would] be subject to serious persecution both by the authorities of the country and by the community’, on account of his opinions, and concluded that ‘it appear[ed] from [K.A.M.]’s abovementioned claims that, in his regard, the subjective and objective factors [were] such as to demonstrate that he [had] fled his country of origin and that he [did] not wish to return there on account of a justified fear of persecution for one of the reasons set out in Article 3(1) of the Laws on Refugees of 2000 and 2018’. Nevertheless, observing that the competent authorities referred to the person concerned as a person posing a danger to the Cypriot community and to the security of the Republic of Cyprus, that service found that the conditions set out in Article 6A(1)(c) and Article 6A(1A) of the Law on Refugees were satisfied and therefore refused to grant him refugee status.

20 The applicant in the main proceedings having, the same day, lodged an administrative appeal against that decision before the Anatheoritiki Archi Prosfygon (Refugee Review Authority, Cyprus) (‘the Review Authority’), that authority, on 30 July 2019, confirmed that decision. On similar grounds, that authority found that ‘it [was] necessary to revoke his refugee status in accordance with Article 6A(1)(c) and Article 6A(1A) of the Laws on Refugees of 2000 and 2018’.

21 On 14 October 2019, the applicant brought an action before the Dioikitiko Dikastirio Diethnous Prostasias (International Protection Administrative Court, Cyprus), which is the referring court, seeking annulment of the decision of the Review Authority of 30 July 2019.

22 In that action, the applicant in the main proceedings claims, in essence, that the referring court should make an order for reference to the Court of Justice to determine whether Article 14(4)(a) of Directive 2011/95 can be interpreted as meaning that that provision allows refugee status to be revoked based on past conduct or alleged acts of the refugee outside and prior to entering the State of refuge which are not included in the conduct which constitutes grounds for exclusion from refugee status and cannot, as past conduct prior to the person concerned entering the State of refuge, be subsumed under Article 33 of the Geneva Convention and whether, if that question is answered in the affirmative, such an interpretation widens the exhaustive list of instances in which exclusion from refugee status is allowed under the Geneva Convention.

23 The Republic of Cyprus, for its part, challenges before the referring court the relevance of the questions proposed by the applicant in the main proceedings to the resolution of the dispute in the main proceedings and contends, in addition, that the concept of 'danger to the security of the State' has already been interpreted by the Court of Justice and that questions of national security fall within the exclusive competence of the Member States.

24 The referring court observes, first, that it is common ground between the parties in the main proceedings that the facts which constitute the basis for the refusal to grant the applicant in the main proceedings refugee status are linked to the applicant's past conduct or acts, prior to his entry into national territory.

25 Next, that referring court points out that, although questions similar to those raised in the present case have already been referred to the Court of Justice, the latter has not yet answered the specific questions referred in the present case.

26 In that regard, first, the referring court observes that, in the case which gave rise to the judgment of 14 May 2019, *M and Others (Revocation of refugee status)* (C391/16, C77/17 and C78/17, EU:C:2019:403), the issue was referred to the Court of Justice of whether the provisions of Directive 2011/95, in particular Article 14(4) to (6) thereof, which allow the Member States to withdraw or to refuse to grant refugee status, are tantamount to a revocation or exclusion clause which is not included in the Geneva Convention, and whether those provisions were valid in the light of the rules of the Charter and the FEU Treaty under which EU asylum policy must be in accordance with the Geneva Convention.

27 In addition, the referring court notes that, in that judgment, the Court of Justice held that those provisions were valid and that it pointed out, specifically, that the revocation of and the refusal to grant refugee status does not cause a person with a well-founded fear of persecution in his or her country of origin to cease to be a refugee or to be deprived of the rights which the Geneva Convention associates with being a refugee, thus making a distinction between the concept of 'status of refugee' within the meaning of the Geneva Convention, and the concept of 'refugee status' as it is defined in Directive 2011/95.

28 Secondly, the referring court notes that, in paragraphs 100 to 105 of the judgment of 9 November 2010, *B and D* (C57/09 and C101/09, EU:C:2010:661), the Court of Justice held that the grounds for exclusion set out in Article 12(2)(b) and (c) 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), which was recast in Directive 2011/95, are intended as a penalty for acts committed in the past, but stated that any danger that a refugee may currently pose to the Member State concerned may be

taken into consideration, not under that provision, but under Article 14(4)(a) or Article 21(2) of that directive.

29 In those circumstances, the Dioikitiko Dikastirio Diethnous Prostasias (International Protection Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can Article 14(4)(a) of Directive [2011/95], which provides for refugee status to be revoked where there are reasonable grounds for regarding the person as a danger to the security of the State of refuge, be interpreted, in the light of the provisions of Article 78(1) TFEU, the [Geneva Convention] and Article 18 of the [Charter] on the right to asylum, as meaning that it allows refugee status to be revoked based on the past conduct or alleged acts of the refugee outside and prior to entering the State of refuge which are not included in the conduct which constitutes grounds for exclusion from being a refugee having regard to the provisions of Article 1(F) of the [Geneva Convention] and Article 12 of Directive [2011/95] on exclusion, which explicitly set out the grounds on which a person may be excluded from being a refugee?

(2) If the answer [to the first question] is in the affirmative, is Article 14(4)(a) [of Directive 2011/95], thus interpreted, compatible with Article 18 of the Charter and Article 78(1) TFEU, which provide, inter alia, that secondary [EU] legislation must comply with the Geneva Convention, the exclusion clause laid down in Article 1(F) of the Convention being exhaustively worded and requiring strict interpretation?

(3) How is the concept “danger to the security of the … State” to be interpreted for the purposes of Article 14(4)(a) of Directive [2011/95], having regard to the extremely high standard established for that concept in Article 33(2) of the Geneva Convention and the serious consequences for a refugee whose status is revoked, and more specifically, can that article include an assessment of the danger in the light of alleged conduct or acts prior to entering the State of refuge? Does the concept “danger to the security of the … State” refer for the purposes of Article 14(4)(a) of Directive [2011/95] to the conduct or acts of the refugee outside that State?’

Consideration of the questions referred

Preliminary observations

30 According to settled case-law, it is for the Court, in the procedure laid down by Article 267 TFEU providing for cooperation with the national courts, to provide the national court with an answer which will be of use to it and enable it to decide the case before it and, to that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 5 December 2023, *Nordic Info*, C128/22, EU:C:2023:951, paragraph 46 and the case-law cited).

31 It must be recalled at the outset that in accordance with both the need for a uniform application of EU law and the principle of equality, the terms of provisions of EU law which, like Article 14(4) and (5) of Directive 2011/95, make no express reference to the law of the Member States for the purpose of determining their meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (see, by analogy, judgment of 6 July 2023, *Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)*, C402/22, EU:C:2023:543, paragraph 23 and the case-law cited).

32 In this connection, it is clear from the terms of Article 14(4) of that directive that the revocation of the status of refugee implies that that status has been, previously, ‘granted to a refugee by a governmental, administrative, judicial or quasi-judicial body’. By contrast, the possibility not to grant refugee status, provided for in Article 14(5), presupposes that a decision on the grant of that status ‘has not yet been taken’.

33 In the present case, the referring court is, by the questions it has referred for a preliminary ruling, requesting only the interpretation of Article 14(4)(a) of Directive 2011/95 concerning revocation of refugee status.

34 It is apparent from the order for reference that, by its decision notified on 16 April 2019, the Asylum Service rejected the application for international protection submitted by the applicant in the main proceedings on 10 January 2019. As the referring court confirmed in reply to a request for information put to it by the Court of Justice, that decision was not preceded by any earlier decision by which refugee status was granted to the applicant in the main proceedings by a governmental, administrative, judicial or quasi-judicial body of the Republic of Cyprus, within the meaning of Article 14(4) of Directive 2011/95.

35 Admittedly, in its answer to the request for information sent by the Court of Justice, the referring court submitted that the Asylum Service ultimately rejected the application for international protection of the applicant in the main proceedings after concluding that the elements which could establish a justified fear on the part of that person of persecution in his country of origin were present and thus after having reached a decision recognising his refugee status and, accordingly, accepted his application for grant of that status. It follows that the final rejection of that application should be characterised as a 'revocation'. In addition, the referring court observes that the decision of the Review Authority expressly revoked that status.

36 However, it must be recalled that, as the Court has held, Article 14(4) and (5) of that directive cannot be interpreted as meaning that, in the context of the system introduced by that directive, the effect of the revocation of refugee status or the refusal to grant that status is that the third-country national or the stateless person concerned who satisfies the conditions set out in Article 2(d) of that directive, read in conjunction with the provisions of Chapter III thereof, is no longer a refugee for the purposes of Article 2(d) of that directive and Article 1(A) of the Geneva Convention. Indeed, the fact that the person concerned is covered by one of the scenarios referred to in Article 14(4) and (5) of Directive 2011/95 in no way means that he or she ceases to satisfy the material conditions, relating to a well-founded fear of persecution in his or her country of origin, on which his or her being a refugee depends (judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraphs 97 and 98).

37 Accordingly, contrary to the view that seems to be taken by the referring court, the fact that, in the grounds of a decision refusing to grant 'refugee status', the competent authority found that the applicant for international protection concerned satisfied the material conditions of that directive on which his or her 'being a refugee' depends, does not necessarily mean that that decision should be analysed as a 'revocation' of 'refugee status'. Notwithstanding such a finding, when the Member States have not already granted refugee status, they indeed have the option of refusing to grant it, on the basis of Article 14(5) of that directive, inter alia where there are reasonable grounds for regarding the applicant in questions as a danger to the security of the Member State in which he or she is present, within the meaning of Article 14(4)(a) of that directive.

38 In those circumstances, it must be held that the referring court, by its questions, covers both the situation in which refugee status is revoked and that where its grant is refused in the scenario described in Article 14(4)(a) of Directive 2011/95 and that, consequently, the referring court is requesting not only the interpretation of that provision, but also that of Article 14(5) of that directive. It is for the referring court to ascertain, on the basis of the guidance provided for in paragraphs 32 to 37 of the present judgment, whether the initial decision of the Asylum Service and the decision of the Review Authority at issue in the case in the main proceedings must be characterised as decisions revoking refugee status or decisions refusing to grant such status.

The first and third questions

39 By its first and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 14(4)(a) and (5) of Directive 2011/95, read in conjunction with Article 78(1) TFEU and Article 18 of the Charter, must be interpreted as meaning that a Member State may revoke refugee status or decide not to grant it where the reasonable grounds for regarding the refugee as a danger to the security of that Member State are based on acts or conduct of that refugee prior to his or her entry into the territory of that Member State, having regard, first, to the fact that those acts and that conduct do not constitute grounds for exclusion from being a refugee expressly provided for in Article 1(F) of the Geneva Convention and Article 12 of that directive and, second, to the conditions applicable to the concept of 'danger to the security of the country' to which Article 33(2) of that convention refers and the resulting serious consequences for the refugee.

40 In the first place, as regards the question whether the words 'reasonable grounds for regarding [the refugee] as a danger to the security of the Member State in which he or she is present', within the meaning of Article 14(4)(a) of Directive 2011/95, may refer to acts or conduct of that refugee prior to his or her entry into the territory of the Member State concerned, it should be noted that no provision of that directive defines the meaning and scope of those terms. They must be interpreted in accordance with their usual meaning in everyday language, while taking into consideration the context in which they are used and the objectives pursued by the rules of which they are part (see, by analogy, judgment of 6 July 2023, *Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)*, C402/22, EU:C:2023:543, paragraph 24 and the case-law cited).

41 As regards, first of all, the usual meaning in everyday language of the words 'reasonable grounds for regarding [the refugee] as a danger to the security of the Member State in which he or she is present', it should be noted that, having regard to their general nature, those words do not appear to refer to any limitation of such 'reasonable grounds' either territorially or temporally or as to the nature of the facts on which those grounds are based (see, to that effect and by analogy, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C159/21, EU:C:2022:708, paragraph 89 and the case-law cited).

42 As regards, next, the context in which those terms are used, it must be pointed out that, unlike Article 14(4)(b) of Directive 2011/95, which refers to two cumulative criteria relating to the existence, first, of a conviction by a final judgment for a particularly serious crime and, second, of a danger to the community of the Member State in which the third-country national concerned is present, Article 14(4)(a) of that directive allows refugee status to be withdrawn from a third-country national who constitutes a danger to the security of that Member State, irrespective of whether such a conviction exists (see, to that effect, judgment of 6 July 2023, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)*, C8/22, EU:C:2023:542, paragraphs 30 and 40).

43 As regards, lastly, the objective of Article 14(4)(a) of Directive 2011/95, it should be noted that, by referring to 'a danger to the security of the Member State in which he or she is present', that provision seeks to prevent a risk of that security being undermined which may arise due to the presence of the person concerned on the territory of that Member State, at the time when the competent authority takes its decision or at a later time.

44 Furthermore, it is true that that provision constitutes a derogation from the rule, set out in Article 13 of that directive, that Member States are to grant refugee status to any third-country national who qualifies as a refugee and must, therefore, be interpreted strictly (see, by analogy, judgment of 6 July 2023, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)*, C8/22, EU:C:2023:542, paragraph 32 and the case-law cited).

45 However, past acts or conduct attributable to that person may constitute relevant circumstances in order to ascertain whether he or she has a tendency to maintain such conduct in the future or to repeat

such acts having regard, in particular, to the seriousness of that conduct or of those acts, the time that has elapsed since that conduct or those acts occurred and any subsequent developments (see, to that effect, judgment of 6 July 2023, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)*, C8/22, EU:C:2023:542, paragraphs 63 and 64 and the case-law cited).

46 Therefore, the competent authority cannot be required to exclude the taking into consideration of past acts or conduct attributable to the refugee on the sole ground that they occurred before he or she entered the territory of the Member State where he or she is present.

47 As pointed out by the German Government, the need to take such acts or conduct into account seems all the more necessary where the competent authority must take a decision, for the first time, on an application for refugee status made by an applicant for international protection who has entered the territory shortly before. If that were not the case, the assessment of the potential danger that the refugee poses to the security of the Member State concerned, in that situation, could, in practice, prove excessively difficult. Article 14(5) of Directive 2011/95, which specifically authorises Member States to refuse to grant refugee status in such a situation, would then be rendered partly redundant.

48 In the second place, as regards the nature of the acts or conduct prior to the refugee's entry into the territory of the Member State concerned which may be taken into account for the purposes of assessing a danger to the security of that Member State, it should be noted that Article 14(4)(a) of Directive 2011/95 relates to a different type of danger from that referred to in Article 14(4)(b) of that directive, which refers to a danger to the community of that Member State (judgment of 6 July 2023, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)*, C8/22, EU:C:2023:542, paragraph 41).

49 Specifically, the concept of 'the security of the Member State in which [the refugee] is present', referred to in Article 14(4)(a) of Directive 2011/95, corresponds to that of 'national security', referred to in Article 24(1) of that directive. In that regard, it is necessary to take into consideration the case-law of the Court according to which the concept of 'public security', within the meaning of Article 28(3) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34), covers both the internal security of a Member State and its external security and consequently a threat to the functioning of institutions and essential public services and to the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security (see, to that effect, judgment of 24 June 2015, *T.*, C373/13, EU:C:2015:413, paragraph 78 and the case-law cited).

50 In particular, as is apparent from recital 37 of Directive 2011/95, the notion of 'national security' also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.

51 It will therefore be for the referring court to determine whether the information which was sent by the Counter Terrorism Office to the Asylum Service, referring to the conduct of the applicant in the main proceedings and to events concerning him which occurred before his entry into national territory, is such as to raise a concern that the internal or external security of the Member State concerned, as defined by the case-law referred to in paragraph 49 of the present judgment, might be undermined.

52 Furthermore, the fact that Article 14(4)(a) of Directive 2011/95 refers to 'reasonable grounds for regarding' the applicant for international protection as a danger to the security of the Member State concerned, whereas Article 14(4)(b) thereof refers to the situation where, convicted by a final judgment of

a particularly serious crime, that applicant 'constitutes' a danger to the community of that Member State, tends to indicate that the first of those provisions may cover not only a genuine and present danger, but also a potential danger (see, to that effect and by analogy, judgment of 2 April 2020, *Commission* v *Poland, Hungary and Czech Republic (Temporary mechanism for the relocation of applicants for international protection)*, C715/17, C718/17 and C719/17, EU:C:2020:257, paragraph 157 and the case-law cited, and of 6 July 2023, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)*, C8/22, EU:C:2023:542, paragraphs 52 and 53).

53 It is, however, for the competent authority, when applying Article 14(4)(a) and 14(5) of Directive 2011/95, to carry out, for each individual case, an assessment of all the circumstances of that case (judgment of 6 July 2023, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)*, C8/22, EU:C:2023:542, paragraph 61 and the case-law cited), having regard, inter alia, to the factors referred to in paragraph 45 of the present judgment.

54 It follows from the terms of those provisions that that authority must have discretion to decide whether or not considerations relating to the national security of the Member State concerned should give rise to the revocation of refugee status or the refusal to grant refugee status, which precludes a finding that there is a danger to that security automatically entailing such decision. In addition, the scope of the information provided by bodies entrusted with specialised functions linked to national security and its relevance to that decision must be freely assessed by that authority (see, to that effect, judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C159/21, EU:C:2022:708, paragraphs 81 and 83).

55 In the third place, the taking into consideration of past acts or conduct attributable to the refugee or the applicant for international protection cannot be restricted by the fact that those acts and that conduct do not constitute grounds for exclusion from being a refugee expressly provided for in Article 1(F) of the Geneva Convention and Article 12 of Directive 2011/95.

56 In that regard, it is settled case-law that, although the European Union is not a contracting party to the Geneva Convention, Article 78(1) TFEU and Article 18 of the Charter nonetheless require it to observe the rules of that convention. Directive 2011/95 must, therefore, be interpreted in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU and the rights recognised in the Charter, specifically in Article 18 thereof (see, to that effect, judgments of 1 March 2016, *Alo and Osso*, C443/14 and C444/14, EU:C:2016:127, paragraph 29 and the case-law cited, and of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraph 74).

57 However, the distinction between, on the one hand, the causes for exclusion referred to in Article 12(2) of that directive, in Chapter III thereof, under which a third-country national 'is excluded from being a refugee' and, on the other hand, the grounds for revocation or refusal to grant refugee status, laid down in Article 14(4) and (5) thereof, reflects, in essence, the distinction between Article 1(F) of the Geneva Convention and Article 33(2) thereof (see, to that effect, judgment of 6 July 2023, *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)*, C8/22, EU:C:2023:542, paragraph 34 and the case-law cited).

58 In particular, it is clear from the wording of Article 12(2) of Directive 2011/95 that, if the conditions laid down therein are met, the person concerned 'is excluded' from being a refugee. In addition, within the system of that directive, Article 2(d) thereof expressly makes being a 'refugee' conditional upon the fact that the person concerned does not fall within the scope of Article 12 thereof (see, by analogy, as regards Directive 2004/83, judgment of 9 November 2010, *B and D*, C57/09 and C101/09, EU:C:2010:661, paragraph 107). By contrast, as recalled in paragraph 36 of the present judgment, the revocation of refugee status or the refusal to grant it, on the basis of Article 14(4) or (5) thereof, does not have the effect that the

third-country national concerned ceases to be a refugee within the meaning of Article 2(d) of Directive 2011/95 and Article 1(A) of the Geneva Convention.

59 In the fourth place, it must be observed that, admittedly, the situations referred to in Article 14(4) of Directive 2011/95, in which the Member States may revoke refugee status or, under Article 14(5), decide not to grant that status, correspond, in essence, to those in which Member States may refoule a refugee under Article 21(2) of that directive and Article 33(2) of the Geneva Convention (judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraph 93).

60 However, where the refoulement of a refugee covered by one of the scenarios referred to in Article 14(4) and (5) and Article 21(2) of Directive 2011/95 would expose that refugee to the risk of infringement of his or her fundamental rights enshrined in Article 4 and Article 19(2) of the Charter, which prohibit in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned, as well as removal to a State where there is a serious risk that a person will be subjected to such treatment, the Member State concerned may not derogate from the principle of non-refoulement under Article 33(2) of the Geneva Convention (see, to that effect, judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraphs 94 and 95).

61 In those circumstances, in so far as Article 14(4) and (5) of that directive provides, in the scenarios referred to therein, for the possibility for Member States to revoke refugee status or to refuse to grant that status, while Article 33(2) of the Geneva Convention, for its part, permits the refoulement of a refugee covered by one of those scenarios to a country where his or her life or freedom would be threatened, EU law provides more extensive international protection for the refugees concerned than that guaranteed by that convention (see, to that effect, judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraph 96).

62 Therefore, the revocation of refugee status or the refusal to grant that status, pursuant to Article 14(4) or (5) of Directive 2011/95, cannot be regarded as implying the adoption of a position on the separate question of whether that person can be deported to his or her country of origin (see, to that effect, judgment of 6 July 2023, *Bundesamt für Fremdenwesen und Asyl (Refugee who has committed a serious crime)*, C663/21, EU:C:2023:540, paragraph 41 and the case-law cited).

63 Accordingly, in weighing up, on the one hand, the assessment of the danger posed by the refugee to the security of the Member State in which he or she resides, for the purposes of determining whether that danger justifies the revocation of refugee status or the refusal to grant him or her that status, and, on the other hand, the consequences of that revocation or refusal for his or her situation, there is no need to refer to a level of seriousness of the danger such as to justify the refoulement of the person concerned to his or her country of origin, under the conditions laid down in Article 33(2) of the Geneva Convention.

64 Specifically, certain circumstances which do not exhibit the degree of seriousness justifying the refoulement of that applicant may nevertheless be regarded as ‘reasonable grounds’ capable of justifying the refusal to grant him or her a residence permit (see, to that effect, judgment of 24 June 2015, *T.*, C373/13, EU:C:2015:413, paragraph 75).

65 The reference to ‘reasonable grounds’ for considering that the applicant for international protection or the refugee constitutes a danger to the security of the host Member State clearly leaves that Member State a wide margin of discretion (see, to that effect and by analogy, judgment of 2 April 2020, *Commission* v *Poland, Hungary and Czech Republic (Temporary mechanism for the relocation of applicants for international protection)*, C715/17, C718/17 and C719/17, EU:C:2020:257, paragraph 156).

66 It follows from all of the foregoing that the answer to the first and third questions is that Article 14(4)(a) and (5) of Directive 2011/95, read in conjunction with Article 78(1) TFEU and Article 18 of the Charter, must be interpreted as meaning that a Member State may revoke refugee status or decide not to grant it where the reasonable grounds for regarding the refugee as a danger to the security of that Member State, within the meaning of Article 14(4)(a) of that directive, are based on acts or conduct of that person prior to his or her entry into the territory of that Member State. It is irrelevant that those acts and that conduct do not constitute grounds for exclusion from being a refugee expressly provided for in Article 1(F) of the Geneva Convention and Article 12 of that directive. In order to assess, first, the level of seriousness of the danger justifying the revocation of refugee status or the refusal to grant that status and, secondly, the consequences of that revocation or refusal for the refugee's situation, there is no need to refer to the conditions applicable to the concept of 'danger to the security of the country' to which Article 33(2) of that convention refers or to the resulting serious consequences for that refugee.

The second question

67 By its second question, the referring court asks, in essence, whether, if the first and third questions are answered in the affirmative, Article 14(4)(a) and (5) of Directive 2011/95 is valid in the light of Article 78(1) TFEU and Article 18 of the Charter, in so far as the latter provisions require compliance with the Geneva Convention and, in particular, with Article 1(F) thereof.

68 As a preliminary point, it should be recalled that, under Article 78(1) TFEU and Article 18 of the Charter, Directive 2011/95 must comply with the rules of the Geneva Convention (see, to that effect, judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraph 74 and the case-law cited).

69 However, as observed in paragraph 57 of the present judgment, it is necessary to take account of the distinction between, on the one hand, the causes for exclusion referred to in Article 12(2) of that directive, in Chapter III thereof, under which a third-country national 'is excluded from being a refugee' and, on the other hand, the grounds for revocation or refusal to grant refugee status, laid down in Article 14(4) and (5) thereof, which distinction reflects, in essence, that between Article 1(F) of the Geneva Convention and Article 33(2) thereof.

70 Thus, given that, as stated in paragraph 36 of the present judgment, in the judgment of 14 May 2019, *M and Others (Revocation of refugee status)* (C391/16, C77/17 and C78/17, EU:C:2019:403, paragraph 97), the Court held that the revocation of refugee status or the refusal to grant it, on the basis of Article 14(4) or (5) of Directive 2011/95, does not result in the third-country national concerned no longer being a refugee, within the meaning of Article 2(d) of that directive and of Article 1(A) of the Geneva Convention, Article 14(4) and (5) of that directive cannot be interpreted as adding new grounds for exclusion from being a refugee to those set out in Article 12(2) of that directive and Article 1(F) of that convention.

71 Moreover, it should be noted that, in that judgment, the Court concluded that consideration of Article 14(4) to (6) of Directive 2011/95 has disclosed no factor of such a kind as to affect the validity of those provisions in the light of Article 78(1) TFEU and Article 18 of the Charter (judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, C391/16, C77/17 and C78/17, EU:C:2019:403, paragraph 112). It follows from the foregoing that the examination of Article 14(4)(a) and (5) of that directive, in the present case, has not revealed any new factor capable of calling that conclusion into question in so far as it relates to those provisions.

72 Having regard to all the foregoing considerations, it must be concluded that consideration of Article 14(4)(a) and (5) of Directive 2011/95 has disclosed no factor of such a kind as to affect the validity of that provision in the light of Article 78(1) TFEU and Article 18 of the Charter.

Costs

73 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:

1. **Article 14(4)(a) and (5) 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 78(1) TFEU and Article 18 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as meaning that a Member State may revoke refugee status or decide not to grant it where the reasonable grounds for regarding the refugee as a danger to the security of that Member State, within the meaning of Article 14(4)(a) of that directive, are based on acts or conduct of that person prior to his or her entry into the territory of that Member State. It is irrelevant that those acts and that conduct do not constitute grounds for exclusion from being a refugee expressly provided for in Article 1(F) of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, which entered into force on 22 April 1954, as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967 and which entered into force on 4 October 1967, and in Article 12 of that directive. In order to assess, first, the level of seriousness of the danger justifying the revocation of refugee status or the refusal to grant that status and, secondly, the consequences of that revocation or refusal for the refugee's situation, there is no need to refer to the conditions applicable to the concept of 'danger to the security of the country' to which Article 33(2) of that convention refers or to the resulting serious consequences for that refugee.

2. **Consideration of Article 14(4)(a) and (5) of Directive 2011/95 has disclosed no factor of such a kind as to affect the validity of that provision in the light of Article 78(1) TFEU and Article 18 of the Charter of Fundamental Rights.**

[Signatures]

* Language of the case: Greek.