Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 21 June 2018 [1]

Joined Cases C-391/16, C-77/17 and C-78/17

M
v
Ministerstvo vnitra
(Request for a preliminary ruling
from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic))
and
X (C-77/17)
X (C-78/17)
v
Commissaire général aux réfugiés et aux apatrides

(Request for a preliminary ruling
from the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium))

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum policy — Directive 2011/95/EU — Refusal to grant or revocation of refugee status — Conviction for a particularly serious crime — Article 14(4) to (6) — Interpretation and validity — Article 18 of the Charter of Fundamental Rights of the European Union — Article 78(1) TFEU — Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951)

I. Introduction

1. These requests for a preliminary ruling from the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) in Cases C-77/17 and C-78/17 concern the interpretation of Article 14(4) and (5) of Directive 2011/95/EU [2] and its validity in the light of Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 78(1) TFEU.

2. In Case C-391/16, the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) questions the Court as to the validity of Article 14(4) and (6) of that directive in the light of both those provisions and Article 6(3) TEU.

1 Original language: French.

2 Directive 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).

3. The requests have been made in proceedings concerning the validity of decisions whereby the national asylum authorities refused to grant refugee status and subsidiary protection status to X (Case C-77/17) under the Belgian legislation transposing Article 14(5) of Directive 2011/95 and withdrew the refugee status previously granted to X (Case C-78/17) and M (Case C-391/16) under the provisions of national law (Belgian and Czech respectively) transposing Article 14(4) of that directive.

4. Article 14(4) and (5) of Directive 2011/95, in essence, allows a Member State to revoke the status granted to a refugee and to refuse to grant refugee status where the refugee in question represents a danger to the security or the community of that Member State. Article 14(6) sets out the minimum rights to which the refugee must nevertheless be entitled for as long as he remains in that Member State.

5. By the questions referred for a preliminary ruling, the referring courts are, in essence, seeking to ascertain whether those provisions disregard the Geneva Convention relating to the Status of Refugees [3] ('the Geneva Convention') and are therefore invalid in the light of Article 18 of the Charter and Article 78(1) TFEU, which state that the common asylum policy must comply with that convention.

II. Legal framework

A. International law

6. Article 1A(2) of the Geneva Convention defines a 'refugee' as any person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence …, is unable or, owing to such fear, is unwilling to return to it'. [4]

7. Article 1C of that convention provides:

'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 re-acquired 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 connection 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; …

3 Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 137, No 2545 (1954)), 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, which entered into force on 4 October 1967.

4 Article 1A(2) of the Geneva Convention states that such fears must be as a result of events occurring before 1 January 1951. Under Article 1 of the New York Protocol, the Contracting States are, however, to apply the provisions of that convention without taking account of that deadline.

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

…'

8. Article 1F of that convention provides:

'The provisions of this 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.'

9. Article 33 of that convention provides:

'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 judgment of a particularly serious crime, constitutes a danger to the community of that country.'

10. Under Article 42(1) of the Geneva Convention, 'at the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive'.

B. EU law

11. Article 2 of Directive 2011/95 is worded 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;

(e) "refugee status" means the recognition by a Member State of a third-country national or a stateless person as a refugee;

…'

12. Article 11 of that directive, entitled 'Cessation', provides, in paragraph 1 thereof:

'A third-country national or a stateless person shall cease to be a refugee if he or she:

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or

(b) having lost his or her nationality, has voluntarily re-acquired it; or

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

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

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or

(f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.'

13. Article 12 of that directive, entitled 'Exclusion', provides, 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; …

(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.'

14. Under Article 13 of the same directive, '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'.

15. Article 14 of Directive 2011/95 provides:

'1. Concerning applications for international protection filed after the entry into force of Directive 2004/83/EC, [5] 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.

…

5 Council Directive 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).

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.'

16. Article 20(1) of that directive, which is in Chapter VII, entitled 'Content of international protection', provides that 'this Chapter shall be without prejudice to the rights laid down in the Geneva Convention'.

17. In accordance with Article 21 of that directive:

'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.'

C. National laws

1. Belgian law

18. Article 48/3(1) of the loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreign nationals) ('the Belgian Law on foreign nationals'),[6] in the version applicable to the facts in the main proceedings in Cases C-77/17 and C-78/17, provides that 'refugee status shall be granted to foreign nationals who satisfy the conditions laid down in Article 1 of the [Geneva Convention]'.

19. Article 48/4(1) of that Law sets out the conditions under which subsidiary protection status is to be granted.

20. According to the second paragraph of Article 52/4 of that Law, 'the Commissaire général aux réfugiés et aux apatrides (Commissioner General for Refugees and Stateless Persons) [('the CGRA')] may refuse to grant refugee status where the foreign national constitutes a danger to the community, having been convicted by a final judgment of a particularly serious offence, or where there are reasonable grounds for regarding him as a danger to national security. In such cases [the CGRA] shall give an opinion as to whether a removal order is compatible with Articles 48/3 and 48/4.'

21. Article 55/3/1 of that law provides:

'§ 1. [The CGRA] may withdraw refugee status where a foreign national, having been convicted by a final judgment of a particularly serious offence, represents a danger to the community or where there are reasonable grounds for regarding him as a danger to national security.

…

§ 3. Where he withdraws refugee status pursuant to paragraph 1 …, [the CGRA] shall give an opinion, in his decision, as to whether a removal order is compatible with Articles 48/3 and 48/4.'

22. The grounds referred to in Article 55/3/1(1) of the Belgian Law on foreign nationals also entail, under Article 55/4(2) of that Law, exclusion from subsidiary protection status.

2. Czech law

23. Article 2(6) of the zákon č. 325/1999 Sb., o azylu (Law No 325/1999 on asylum) ('the Czech Law on asylum'), in the version in force at the time of the relevant facts in Case C-391/16, defines a refugee for the purposes of that Law (*azylant*) as 'a foreign national who has been granted the right to asylum under the present Law for the duration of the validity of the decision granting the right to asylum'.

24. Under Article 12(b) of that Law, the right to asylum is to be granted to a foreign national if it is established that he has legitimate reasons to fear persecution on account of one of the reasons set out in Article 1A(2) of the Geneva Convention.

6 *Moniteur belge* of 31 December 1980, p. 14584.

25. In accordance with Article 17(1)(i) of that Law, the right to asylum is to be revoked 'if there are legitimate grounds to consider that the refugee represents a danger to the security of the State'. Article 17(1)(j) of that same Law provides that the right to asylum is to be revoked 'if the refugee has been convicted by a final judgment of a particularly serious crime and therefore represents a danger to the security of the State'. In accordance with Article 15a of the Czech Law on asylum, those grounds make it impossible for subsidiary protection to be granted.

26. According to the Nejvyšší správní soud (Supreme Administrative Court), an *azylant* is entitled to qualitatively greater advantages than a 'mere' refugee who satisfies the conditions set out in Article 1A of the Geneva Convention. A refugee whose status is revoked ceases to be an *azylant* and, therefore, ceases to benefit from those advantages.

III. The disputes in the main proceedings, the questions referred and the procedure before the Court

A. Case C-77/17

27. X has stated that he is an Ivorian national and a member of the Bété ethnic group. He arrived in Belgium in July 2003, when he was 12 years old. X was accompanying his father who, at that time, was close to the former President, Laurent Gbagbo, and a diplomat in the Embassy of Côte d'Ivoire in Brussels.

28. In 2010 X was sentenced by the Tribunal de première instance de Bruxelles (Brussels Court of First Instance, Belgium) to 30 months' imprisonment for intentional assault and battery, possession of a bladed weapon without proper reason and possession of a prohibited weapon. In 2011 the Cour d'appel de Bruxelles (Brussels Court of Appeal, Belgium) sentenced him to 4 years' imprisonment for rape of a minor aged over 14 years and under 16 years.

29. In 2013 X made a first application for asylum, which he subsequently withdrew. In 2015 he made a second application for asylum, in support of which he submitted that he feared persecution on account of the fact that his father and members of his family were closely linked to the former Ivorian regime and the former President, Laurent Gbagbo.

30. By decision of 19 August 2016, the CGRA refused to grant him refugee status, pursuant to the second paragraph of Article 52/4 of the Belgian Law on foreign nationals. The CGRA considered that, in the light of the particularly serious nature of the offences he had committed and as they were repeat offences, X constituted a danger to the community for the purposes of that provision. For the same reasons, the CGRA excluded X from subsidiary protection under Article 55/4(2) of that Law. Moreover, the CGRA issued an opinion under Article 52/4 of that Law, in accordance with which, in the light of his fears of persecution, X could not be refouled to Côte d'Ivoire since such a measure would be incompatible with Articles 48/3 and 48/4 of the same Law.

31. X brought an action against that decision before the referring court. That court notes that the second paragraph of Article 52/4 of the Belgian Law on foreign nationals transposes Article 14(5) of Directive 2011/95 into Belgian law. It asks whether those provisions are valid in the light of Article 18 of the Charter and Article 78(1) TFEU.

32. That court emphasises, in essence, that Article 14(5) of Directive 2011/95 stipulates, as a ground for refusing to grant refugee status, the danger to the security or the community of a Member State. However, that ground is not provided for in the grounds for exclusion listed exhaustively in Article 1F of the Geneva Convention or in any other provision of that convention. Article 14(5) of that directive establishes, as grounds for refusal, the situations referred to in Articles 32 and 33 of that convention,

although those articles do not govern the determination of refugee status but rather the expulsion of refugees. The question therefore arises as to whether, contrary to the Geneva Convention, Article 14(5) of that directive introduces a new form of exclusion from refugee status which is not provided for in that convention.

33. The referring court notes that the United Nations High Commissioner for Refugees (UNHCR) issued a particularly critical opinion with respect to Article 14(4) to (6) of Directive 2004/83[7] (which was succeeded by Directive 2011/95). The relevant passage of that opinion is worded as follows:[8]

'Article 14(4) of [Directive 2004/83] runs the risk of introducing substantive modifications to the exclusion clauses of [the Geneva Convention], by adding the provision of Article 33(2) of [that convention] (exceptions to the non-refoulement principle) as a basis for exclusion from refugee status. Under [that convention], the exclusion clauses and the exception to the non-refoulement principle serve different purposes. The rationale of Article 1F which exhaustively enumerates the grounds for exclusion based on the conduct of the applicant is twofold. Firstly, certain acts are so grave that they render their perpetrators undeserving of international protection. Secondly, the refugee framework should not stand in the way of serious criminals facing justice. By contrast, Article 33(2) deals with the treatment of refugees and defines the circumstances under which they could nonetheless be refouled. It aims at protecting the safety of the country of refuge or of the community. The provision hinges on the assessment that the refugee in question is a danger to the national security of the country or, having been convicted by a final judgment of a particularly serious crime, poses a danger to the community. Article 33(2) was not, however, conceived as a ground for terminating refugee status … Assimilating the exceptions to the non-refoulement principle permitted under Article 33(2) to the exclusion clauses of Article 1 F would therefore be incompatible with [the Geneva Convention]. Moreover, it may lead to a wrong interpretation of both … provisions [of that convention].

"Status granted to a refugee" is therefore understood to refer to the asylum ("status") granted by the State rather than refugee status in the sense of Article 1A (2) of [the Geneva Convention] … States are therefore nonetheless obliged to grant the rights of [that convention] which do not require lawful residence and which do not foresee exceptions for as long as the refugee remains within the jurisdiction of the State concerned.'

34. In those circumstances, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 14(5) of [Directive 2011/95] be interpreted as creating a new ground for exclusion from refugee status provided for in Article 13 of the Directive and, consequently, from Article 1A of the Geneva Convention?

(2) If the answer to [the first question] is yes, is Article 14(5) 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 1F of the Convention being exhaustively worded and requiring strict interpretation?

(3) If the answer to [the first question] is no, must Article 14(5) of [Directive 2011/95] be interpreted as introducing a ground for refusing refugee status which is not provided for in the Geneva Convention, compliance with which is required by Article 18 of [the Charter] and Article 78(1) [TFEU]?

7 The content of Article 14(4) to (6) of Directive 2004/83 is identical to that of the corresponding provisions of Directive 2011/95.

8 UNHCR, UNHCR Annotated Comments on [Directive 2004/83], 28 January 2005, available at http://www.refworld.org/docid/4200d8354.html, pp. 30 and 31.

(4) If the answer to [the third question] is yes, is Article 14(5) of [Directive 2011/95] 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, as it introduces a ground for refusing refugee status without any consideration of fear of persecution, as required by Article 1A of the Geneva Convention?

(5) If the answer to [the first and third questions] is no, how can Article 14(5) of [Directive 2011/95] be interpreted in a manner consistent 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?'

B. Case C-78/17

35. According to statements by X, he is a national of the Democratic Republic of the Congo and was born between 1986 and 1990. In 1997 he was abducted from his mother, taken to the Kokolo military camp (Congo) and, subsequently, trained in Goma (Congo), where he was drugged, mistreated and sent to participate in military operations. In 2000 X joined his father in Belgium, where, in 2006, he made an application for asylum. By decision of 21 February 2007, the CGRA recognised him as a refugee.

36. In 2010 X was sentenced by the Cour d'assises de Bruxelles (Brussels Assize Court, Belgium) to 25 years' imprisonment for robbery offences in which a deliberate homicide was committed. X had also committed a number of offences of robbery and assault in Belgium before he was recognised as a refugee.

37. By decision of 4 May 2016, the CGRA withdrew his refugee status, pursuant to Article 55/3/1 of the Belgian Law on foreign nationals. The CGRA considered that, in the light of the particularly serious nature of the offences recorded by the Cour d'assises de Bruxelles (Brussels Assize Court) and his criminal past, X constituted a danger to the community for the purposes of that provision — which transposes Article 14(4) of Directive 2011/95. Moreover, the CGRA issued an opinion which stated that the removal of X was compatible with Articles 48/3 and 48/4 of that Law in so far as the fears of persecution on the ground that he had deserted the Congolese army that he had raised in 2007 were no longer relevant.

38. X brought an action against that decision before the referring court. For the same reasons as those set out in Case C-77/17, that court asks whether Article 14(4) of Directive 2011/95 is valid in the light of Article 18 of the Charter and Article 78(1) TFEU.

39. In those circumstances, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 14(4) of [Directive 2011/95] be interpreted as creating a new ground for exclusion from refugee status provided for in Article 13 of the Directive and, consequently, from Article 1A of the Geneva Convention?

(2) If the answer to [the first question] is yes, is Article 14(4) 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 1F of the Convention being exhaustively worded and requiring strict interpretation?

(3) If the answer to [the first question] is no, must Article 14(4) of [Directive 2011/95] be interpreted as introducing a ground for withdrawing refugee status which is not provided for in the Geneva Convention, compliance with which is required by Article 18 of [the Charter] and Article 78(1) [TFEU]?

(4) If the answer to [the third question] is yes, is Article 14(4) of [Directive 2011/95] 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, as it introduces a ground for withdrawing refugee status for which no provision is made in the Geneva Convention, and for which no basis can be found in the Convention?

(5) If the answer to [the first and third questions] is no, how can Article 14(4) of [Directive 2011/95] be interpreted in a manner consistent 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?'

C. Case C-391/16

40. According to statements made by M, he was born in Grozny in Chechnya and fought alongside the former Chechen President during the first Chechen war. After that war, he left the army and did not fight in the second Chechen war. M has stated that he feared both the Russians and the supporters of Ramzan Kadyrov and that the latter had tried to kill him and had put him in a 'filtration camp' where he was mutilated and beaten. Many members of his family have been killed.

41. Having considered that those fears were well founded, by decision of 21 April 2006, the Ministerstvo vnitra (Ministry of the Interior, Czech Republic) granted M the right to asylum.

42. In 2004 M was found guilty of aggravated robbery and was given a custodial sentence of 3 years by a judgment of the Městský soud v Brně (Brno City Court, Czech Republic). Following his conditional release, M committed aggravated robbery and extortion offences, which were considered to be particularly dangerous repeat offences. In 2007 that court gave M a custodial sentence of 9 years for those offences, to be served in a high security detention centre.

43. In the light of those circumstances, by decision of 29 April 2014, the Ministry of the Interior held that M had been convicted by a final judgment of a particularly serious crime and represented a danger to the security of the State and its citizens. On that basis, in accordance with Article 17(1)(j) of the Czech Law on asylum, that authority revoked M's right to asylum and, under Article 15a of that Law, considered that he was not eligible for subsidiary protection.

44. M brought an action against that decision before the Městský soud v Praze (Prague City Court, Czech Republic). In his application, M submitted, in particular, that Article 17(1)(i) and (j) of the Czech Law on asylum — which transposes Article 14(4) of Directive 2011/95 — infringed the Czech Republic's international commitments. According to M, this was because that provision introduced grounds for the revocation of international protection which were not stipulated in the exhaustive list of grounds set out in Article 1C of the Geneva Convention. Article 42(1) of that convention does not allow reservations to be made to that provision.

45. Since that action was dismissed, M lodged an appeal on a point of law before the referring court.

46. In that context, that court asks, inter alia, whether Article 14(4) and (6) of Directive 2011/95 is in line with the Geneva Convention, since a failure to comply with that convention would render those provisions invalid in the light of Article 18 of the Charter, Article 78(1) TFEU and the general principles of EU law enshrined in Article 6(3) TEU.

47. In particular, the Nejvyšší správní soud (Supreme Administrative Court) refers to a document in which the UNHCR commented on the European Commission's proposal which led to the adoption of Directive 2011/95.[9] In that document, in particular, the UNHCR reiterated the doubts it had expressed as to the compatibility of Article 14(4) to (6) of Directive 2004/83 with Article 1F of the Geneva Convention.[10] The referring court notes that those doubts are shared by the European Council on Refugees and Exiles (ECRE),[11] the International Association of Refugee Law Judges[12] and the Ombudsman of the Czech Republic.

48. However, that court notes that the validity of Article 14(4) and (6) of Directive 2011/95 is also the subject of opinions to the contrary. Those opinions are based on the view that the objective of that directive is to ensure higher standards of protection in relation to the grounds for granting international protection and the content of that protection, in order to ensure the full and inclusive application of the Geneva Convention and respect for the fundamental rights enshrined in the Charter and the European Convention on Human Rights, signed at Rome on 4 November 1950 ('the ECHR'). Article 14(4) and (6) of that directive is said to confer on persons falling within its scope greater protection than that under the Geneva Convention. Under Article 33(2) of that convention, those persons could be refouled to a country where they would be at risk of persecution. After having left the country of asylum, they are no longer entitled to the benefits of that convention. By contrast, Article 14(4) of Directive 2011/95, read in conjunction with Article 14(6) thereof, does not allow the persons concerned to be refouled or to be denied the minimum standard of rights provided for in the Geneva Convention.

49. In that context, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 14(4) and (6) of [Directive 2011/95] invalid on the grounds that it infringes Article 18 of [the Charter], Article 78(1) [TFEU] and the general principles of EU law under Article 6(3) [TEU]?'

D. The procedure before the Court

50. By decision of 17 March 2017, the President of the Court ordered that Cases C-77/17 and C-78/17 be joined for the purposes of the written procedure, the oral procedure and the judgment.

51. In those cases, the applicants in the main proceedings, the Belgian, Czech, German, French, Hungarian and United Kingdom Governments and the European Parliament, the Council of the European Union and the Commission lodged written observations before the Court.

52. In Case C-391/16, the Czech, Belgian, French, Netherlands and United Kingdom Governments and the Parliament, the Council and the Commission lodged written observations before the Court.

53. By decision of the President of the Court of 17 January 2018, Cases C-77/17, C-78/17 and C-391/16 were joined for the purposes of the oral procedure and the judgment.

9 UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551 of 21 October 2009), available at http://www.refworld.org/docid/4c503db52.html, pp. 13 and 14.

10 See point 33 of this Opinion.

11 ECRE, European Legal Network on Asylum (ELENA), *The Impact of the EU Qualification Directive on International Protection*, October 2008, p. 25, available at https://www.refworld.org/docid/4908758d2.html.

12 International Association of Refugee Law Judges, *A Manual for Refugee Law Judges relating to European Council Qualification Directive 2004/38/EC and European Council Procedures Directive 2005/85/EC*, 2007, pp. 30 and 31.

54. X (in Case C-77/17), X (in Case C-78/17), M, the Belgian, Czech and United Kingdom Governments, and the Parliament, the Council and the Commission participated at the hearing on 6 March 2018.

IV. Analysis

A. Preliminary remarks

55. The powers to revoke and to refuse to grant refugee status provided for in Article 14(4) and (5) of Directive 2011/95 may be exercised when there are reasonable grounds for regarding a refugee as a danger to the security of the Member State in which he or she is present, or when 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.

56. These circumstances correspond to those in which the exception to the principle of non-refoulement set out in Article 21(2) of Directive 2011/95[13] applies, the wording of which, in essence, reproduces that of Article 33(2) of the Geneva Convention.[14] Under those provisions, when such circumstances arise, Member States may derogate from the principle that a refugee may not be removed to 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.

57. However, as specified in Article 21(2) of that directive, Member States are authorised to implement that option only 'where not prohibited by [their] international obligations'. Developments in the field of human rights protection since the Geneva Convention was adopted mean that the obligations of the Member States under EU law and international law now largely offset the exception to the principle of non-refoulement.

58. In that regard, Article 19(2) of the Charter provides that 'no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'. Like Article 4 of the Charter, which prohibits torture and the infliction of such punishment or treatment,[15] no derogations may be made to that provision.

59. As is apparent from the explanations relating to the Charter,[16] Article 19(2) was inserted into the Charter for the purposes of incorporating the case-law developed by the European Court of Human Rights ('the ECtHR') concerning the prohibition, which is absolute in nature, of torture and inhuman or degrading treatment or punishment enshrined in Article 3 of the ECHR, to which Article 4 of the

13 I note that the French version of Directive 2011/95 refers to 'motifs raisonnables' (reasonable grounds) in Article 14(4)(a), whereas it mentions 'raisons sérieuses' (serious reasons) in Article 21(1)(a) thereof. The Bulgarian and Czech versions also contain a distinction of that kind. However, the other language versions do not make such a distinction.

14 It is clear from the judgment of 24 June 2015, *H.T.* (C-373/13, EU:C:2015:413, paragraph 75), that Article 21(2) and Article 14(4) and (5) of Directive 2011/95 have a narrower scope than Article 24(1) of that directive, which enables the revocation of a refugee's residence permit only for 'compelling reasons of national security or public order'. According to the Court, such 'compelling reasons' have a broader scope than the 'serious reasons' referred to in Article 21(2) of Directive 2011/95, and, therefore, than the 'reasonable grounds' required to apply Article 14(4) and (5), the scope of which overlaps with that of Article 21(2).

15 See judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 85); of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 56); and of 24 April 2018, *MP* (*Subsidiary protection of a person previously a victim of torture*) (C-353/16, EU:C:2018:276, paragraph 36).

16 OJ 2007 C 303, p. 24.

Charter corresponds.[17] According to the settled case-law of the ECtHR, Article 3 of the ECHR precludes, without any possibility of derogation, Contracting States from removing, expelling or extraditing a foreign national if there are substantial grounds for believing that he faces a real risk of being subjected to treatment prohibited by that provision in the country of destination.[18]

60. That prohibition is also derived from the international obligations of the Member States under the International Covenant on Civil Rights and Political Rights[19] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[20] adopted under the auspices of the United Nations.

61. It follows from the foregoing that, where the refoulement of a refugee poses a serious risk that he may be subject to the death penalty or treatment prohibited by Article 4 of the Charter, Article 3 of the ECHR and the other international obligations mentioned in point 60 above, the power to derogate from the principle of non-refoulement laid down in Article 33(2) of the Geneva Convention and Article 21(2) of Directive 2011/95 now represents only a theoretical possibility for Member States as its practical implementation is now prohibited in the name of the protection of fundamental rights.[21]

62. As has been highlighted by the Czech, German, Netherlands and United Kingdom Governments, and by the Parliament, the Council and the Commission, Article 14(4) and (5) of Directive 2011/95 is specifically intended to govern the situation of refugees who, despite the fact that they fall under one of the situations covered by the exception to the principle of non-refoulement, are not refouled on the ground, in particular, that their refoulement would infringe the obligations incumbent on the Member States under the Charter, the ECHR and other instruments of international law. Where they use the options provided for in those provisions, the Member States are therefore required, under Article 14(6), to ensure that those refugees are entitled to the rights enshrined in certain provisions of the Geneva Convention.

B. The status of the Geneva Convention in EU law

63. Article 18 of the Charter provides that 'the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention'. Under Article 78(1) TFEU, the common policy on asylum 'must be in accordance with the Geneva Convention'.

17 Under Article 52(3) of the Charter, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are to be identical to those laid down by that convention. This provision is not to prevent Union law providing more extensive protection.

18 See, inter alia, judgments of the ECtHR of 7 July 1989, *Soering v. the United Kingdom* (CE:ECHR:1989:0707JUD001403888, paragraphs 90 and 91); of 15 November 1996, *Chahal v. the United Kingdom* (CE:ECHR:1996:1115JUD002241493, paragraphs 74 and 80); and of 17 December 1996, *Ahmed v. Austria* (CE:ECHR:1996:1217JUD002596494, paragraphs 39 and 41).

19 That instrument, Article 7 of which prohibits torture and cruel, inhuman or degrading treatment or punishment, was adopted in New York on 16 December 1966 and entered into force on 23 March 1976. All the Member States have acceded to it. See General Comment No 31 [80] of the Human Rights Committee on the nature of the general legal obligation imposed on State parties to the Covenant, 29 March 2004, paragraph 12, CCPR/C/21/Rev.1/Add.13.

20 That convention, Article 3 of which sets out the prohibition in question, was adopted in New York on 10 December 1984 and entered into force on 26 June 1987. All the Member States have acceded to it.

21 In my view, paragraph 43 of the judgment of 24 June 2015, *H.T.* (C-373/13, EU:C:2015:413), in which the Court acknowledged that the Member States have the capacity to refoule a refugee who fulfils the conditions set out in Article 21(2) of Directive 2011/95, should be interpreted in this narrow sense, without prejudice to their international obligations mentioned in Article 21(1) and their obligations under the Charter.

64. Those provisions of primary law, by means of which the authors of the Treaties sought to require that the EU institutions, and the Member States when they implement EU law, act in full compliance with the Geneva Convention, reflect the specific status of that convention in EU law. Although, unlike its Member States, the European Union is not bound by that convention vis-à-vis third States which are party to it,[22] the EU institutions must respect that convention under EU law.[23]

65. Likewise, recitals 4, 23 and 24 of Directive 2011/95 state that the Geneva Convention provides the 'cornerstone' of the international legal regime for the protection of refugees and that the provisions of that directive have been adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria. Recital 3 of that directive adds that, drawing on the conclusions of the Tampere European Council, the EU legislature intended to ensure that the European asylum system, which that directive helps to define, is based on the full and inclusive application of the Geneva Convention. Furthermore, a number of provisions of Directive 2011/95 refer to provisions of that convention[24] or reproduce the content thereof.[25]

66. In those circumstances, the Court has repeatedly held that the provisions of Directive 2011/95 must be interpreted in the light of the general scheme and purpose of that directive, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 16 thereof, that directive must also be interpreted in a manner consistent with the fundamental rights recognised by the Charter.[26]

67. Furthermore, according to settled case-law, an EU measure must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole.[27] It follows from this principle of interpretation, applied in conjunction with the principle set out in point 66 above, that the provisions of Directive 2011/95 must, as far as possible, be read in such a manner that they respect the Geneva Convention and, therefore, comply with Article 18 of the Charter and Article 78(1) TFEU. It is only if such an interpretation in conformity with primary law is not possible that the Court would be able to find that a provision of that directive is invalid in the light of those provisions of primary law.

68. Where the Court is called upon to interpret a provision of secondary law or to examine the validity of that provision in the light of Article 18 of the Charter and Article 78(1) TFEU, it falls to it, as was emphasised by the Parliament at the hearing, to determine whether that provision of secondary law offers refugees a level of protection that is at least equivalent to that accorded to them by the Geneva Convention.

22 See judgment of 17 July 2014, *Qurbani* (C-481/13, EU:C:2014:2101, paragraphs 23 to 25). In that judgment, the Court held that, where the European Union has not assumed all of the powers previously exercised by the Member States in the field to which the Geneva Convention applies, the provisions of that convention do not have the effect of binding the European Union within the meaning of the case-law developed in the judgments of 12 December 1972, *International Fruit Company and Others* (21/72 to 24/72, EU:C:1972:115, paragraph 18); of 3 June 2008, *Intertanko and Others* (C-308/06, EU:C:2008:312, paragraph 48); and of 4 May 2010, *TNT Express Nederland* (C-533/08, EU:C:2010:243, paragraph 62).

23 A comparison may be made with the special significance that the ECHR has in the EU legal order, even though the European Union has not acceded to it. As is clear from Article 6(3) TEU, 'fundamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law'. Before the adoption of the Charter as a binding instrument, the Court was required to examine the validity of provisions of secondary law by reference to that article as read in the light of the ECHR. See, inter alia, judgments of 12 July 2005, *Alliance for Natural Health and Others* (C-154/04 and C-155/04, EU:C:2005:449, paragraph 130), and of 26 June 2007, *Ordre des barreaux francophones et germanophone and Others* (C-305/05, EU:C:2007:383, paragraphs 26 and 29).

24 See Articles 9(1), 12(1)(a), 14(6) and 25(1) of Directive 2011/95.

25 See, inter alia, Articles 2(d), 11, 12(2) and 21(2) of Directive 2011/95.

26 See, inter alia, judgments 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, paragraphs 51 to 54); of 17 June 2010, *Bolbol* (C-31/09, EU:C:2010:351, paragraphs 36 to 38); of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661, paragraphs 76 to 78); of 5 September 2012, *Y and Z* (C-71/11 and C-99/11, EU:C:2012:518, paragraphs 47 and 48); of 19 December 2012, *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:826, paragraphs 42 and 43); of 1 March 2016, *Alo and Osso* (C-443/14 and C-444/14, EU:C:2016:127, paragraphs 28 to 30); and of 31 January 2017, *Lounani* (C-573/14, EU:C:2017:71, paragraphs 41 and 42).

27 See, inter alia, judgments of 10 September 1996, *Commission* v *Germany* (C-61/94, EU:C:1996:313, paragraph 52); of 16 September 2010, *Chatzi* (C-149/10, EU:C:2010:534, paragraph 43); and of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43, paragraph 44).

69. In that context, in the performance of its duties under Article 267 TFEU, the Court is inevitably required at the outset to determine the content of the requirements inherent in complying with that convention. Such a determination may require it to carry out assessments which go beyond a mere overview of the wording of the provisions of the Geneva Convention and therefore lead to that convention being interpreted indirectly. That conclusion does not in any way call into question the fact that the Court does not have jurisdiction to interpret that convention directly. [28]

70. It is from that perspective that the Court was called upon, in the judgments in *Bolbol* [29] and *Abed El Karem El Kott and Others*, [30] to interpret Article 1D of the Geneva Convention — to which Article 12(1)(a) of Directive 2011/95 expressly refers — in order to interpret that provision of secondary law under Article 267 TFEU. In the light of that reference, the Court could not, after all, perform that task without determining at the outset the requirements arising from Article 1D of that convention.

71. To me, this reasoning implies that, whenever the exercise of the Court's jurisdiction to give preliminary rulings concerning the interpretation or the validity of a provision of secondary law involves clarifying the requirements of the Geneva Convention, the Court may, if need be, interpret that convention for the purposes of providing such clarification. [31]

72. From that perspective, the examination of the questions referred by the national courts will include, within the limits of what is necessary, such interpretations of the Geneva Convention. [32] In accordance with the principles set out in Article 31 of the Vienna Convention on the Law of Treaties, [33] those interpretations will be in good faith in accordance with the ordinary meaning to be given to the terms of the Geneva Convention in their context and in the light of its object and purpose. The UNHCR's interpretative notes will be given special attention in that regard. Although they are not binding on the Contracting States, they are points of interpretation which have a particular 'persuasive … force'. [34]

73. In the present case, I consider, for the reasons set out below, that Article 14(4) to (6) of Directive 2011/95 lends itself to an interpretation which supports the conclusion that it complies with Article 18 of the Charter and Article 78(1) TFEU.

28 See judgment of 17 July 2014, *Qurbani* (C-481/13, EU:C:2014:2101, paragraph 24).

29 Judgment of 17 June 2010 (C-31/09, EU:C:2010:351, paragraphs 42 to 52). See, also, Opinion of Advocate General Sharpston in *Bolbol* (C-31/09, EU:C:2010:119, points 36 to 90).

30 Judgment of 19 December 2012 (C-364/11, EU:C:2012:826, paragraphs 46 to 65). See, also, Opinion of Advocate General Sharpston in *Abed El Karem El Kott and Others* (C-364/11, EU:C:2012:569, points 22 to 24).

31 I note that, while the International Court of Justice (ICJ) has jurisdiction to interpret the Geneva Convention in accordance with the arbitration clause provided for in Article 38 of that convention, a matter may be brought before it only in the context of a dispute between States party to that convention (see, also, Articles 34(1) and 36(2)(a) of the Statute of the International Court of Justice of 26 June 1945 (*United Nations Treaty Series*, vol. 1, p. XVI)). The ICJ has not yet had the opportunity to give a ruling on the questions regarding the interpretation of the Geneva Convention raised in the present case. In those circumstances, the recognition that the Court has jurisdiction to interpret that convention indirectly when performing its duties of interpreting and reviewing the validity of secondary legislation adopted in the field of the common asylum policy in the light of EU primary law seems essential in order to enable it fully to perform those duties.

32 See, in particular, points 109 to 113 of this Opinion.

33 Concluded on 23 May 1969 (*United Nations Treaty Series*, vol. 1155, p. 331). Even though the Vienna Convention on the Law of Treaties does not bind either the European Union or all its Member States, a series of provisions in that convention reflect the rules of customary international law that, as such, are binding upon the EU institutions and form part of the EU legal order (judgment of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91, paragraphs 42 and 43 and the case-law cited)). See, also, judgment of 24 November 2016, *SECIL* (C-464/14, EU:C:2016:896, paragraph 94).

34 The competence of the UNHCR extends to, inter alia, supervising the application of the provisions of the Geneva Convention (see Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the United Nations General Assembly on 14 December 1950, A/RES/428, paragraph 8(a), and Article 35 of the Geneva Convention). Recital 22 of Directive 2011/95 also states that 'consultations with the [UNHCR] may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention'. See, in that regard, Opinion of Advocate General Sharpston in *Bolbol* (C-31/09, EU:C:2010:119, point 16 and footnote 20).

C. Interpretation of Article 14(4) and (5) of Directive 2011/95

1. The distinction between the revocation of or the refusal to grant refugee status and the cessation of and exclusion from being a refugee

74. By the first and second questions raised in Cases C-77/17 and C-78/17 and by the question referred in Case C-391/16, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) and the Nejvyšší správní soud (Supreme Administrative Court) seek, in essence, to ascertain whether Article 14(4) and (5) of Directive 2011/95 infringes Article 18 of the Charter and Article 78(1) TFEU,[35] on the ground that it introduces grounds for cessation and exclusion that are not provided for in Articles 1C and 1F of the Geneva Convention — the content of which is reproduced in Articles 11 and 12 of that directive. As is apparent from the orders for reference, the doubts that those courts have in that regard are mainly based on the concerns expressed by the UNHCR regarding the compatibility of those provisions with the Geneva Convention.[36]

75. I propose that those questions be answered in the negative, in so far as the application by a Member State of Article 14(4) and (5) of Directive 2011/95, unlike the application of a ground for cessation or exclusion, does not have the effect of depriving the individual concerned of his or her status as a refugee. The significance of that distinction lies in the fact that retaining that status means that that individual not only has the right to protection by the UNHCR[37] and any other State party to the Geneva Convention if he or she leaves that Member State, but is also, for as long as he or she remains in that Member State, entitled to the rights that that convention guarantees for all refugees, irrespective of the legality of their residence (I will come back to this).[38]

76. As regards Article 14(4) of Directive 2011/95, this conclusion follows from its very wording. As the German Government has submitted, the use of the terms 'status granted *to a refugee*' (emphasis added) indicates that the application of that provision is without prejudice to the person concerned being a refugee. Moreover, although the French version of Article 14(5) uses the expression 'statut de réfugié' (refugee status), most of the other language versions use wording which corresponds to 'not to grant status *to a refugee*'.[39]

77. According to settled case-law, where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part.[40] In the present case, a systematic and teleological interpretation of Article 14(4) and (5) of Directive 2011/95 leads me to consider that the application of those provisions does not amount to the cessation of or the exclusion from being a refugee.

78. In the first place, it is apparent from the general scheme of that directive that the conditions for being a refugee, on the one hand, and the grant or withdrawal of refugee status, on the other, are two distinct concepts.

35 The Nejvyšší správní soud (Supreme Administrative Court) added Article 6(3) TEU to the provisions of primary law in the light of which it raises the question of the validity of the provisions at issue. It is apparent from the order for reference that, by that addition, the intention of that court was to refer to the constitutional traditions common to the Member States under the Geneva Convention, to which all the Member States are party. Since Article 18 of the Charter and Article 78(1) TFEU also require compliance with that convention, the examination of whether Article 14(4) to (6) of Directive 2011/95 is valid in the light of those provisions of primary law also involves examining whether it complies with Article 6(3) TEU.

36 See points 33 and 47 of this Opinion.

37 See Statute of the Office of the UNHCR, adopted by the United Nations General Assembly on 14 December 1950, A/RES/428, paragraph 6B.

38 See points 112 to 130 of this Opinion.

39 Namely, in German, 'einem Flüchtling eine Rechtsstellung nicht zuzuerkennen'. See, also, the Danish, Greek, Italian, Latvian, Maltese, Dutch, Portuguese, Slovak, Slovenian and Swedish versions.

40 See, inter alia, judgment of 1 March 2016, *Alo and Osso* (C-443/14 and C-444/14, EU:C:2016:127, paragraph 27 and the case-law cited).

79. As stated in recital 21 of Directive 2011/95, a person is a refugee simply where he qualifies as such, irrespective of any recognition by a Member State. The conditions to be satisfied form the subject matter of Chapter III of that directive, entitled 'Qualification for being a refugee'. They correspond to those set out in Article 1 of the Geneva Convention.

80. Chapter III includes Articles 11 and 12 of Directive 2011/95, concerning cessation and exclusion, the content of which reproduces Articles 1C and 1F of the Geneva Convention. Those provisions lay down the situations in which a third-country national or a stateless person is not entitled to be a refugee and, consequently, is excluded from the scope of the international protection under that directive and that convention. [41]

81. Those scenarios do not cover situations, such as those at issue in the cases in the main proceedings, in which a refugee constitutes a danger to the community of the country of refuge because he has committed a particularly serious non-political crime in that country. [42] The grounds for exclusion were introduced not with the aim of protecting the security or the community of the country of refuge from the present danger that a refugee may pose, but with the aim of maintaining the integrity of the system for the international protection of refugees and of preventing the benefit of that protection from enabling those who have committed certain serious crimes to escape criminal liability. [43]

82. Those situations, however, fall within the scope of the exception to the principle of non-refoulement and Article 14(4) and (5) of Directive 2011/95. That provision is in a separate chapter, namely Chapter IV of that directive, entitled 'Refugee status'.

83. The distinction between being a refugee and the status granted to a refugee is highlighted still further by Article 14(1) and (3) of Directive 2011/95. Those provisions lay down the obligation to revoke the refugee status granted to persons who are not, or are no longer, refugees, in particular in the case of one of the grounds for cessation set out in Article 11 of that directive or where those persons are or should have been excluded from being refugees in accordance with Article 12 thereof. The cessation of or the exclusion from being a refugee and the resulting revocation of refugee status cannot, therefore, be reduced to a single concept.

84. In the second place, attainment of the objectives of Article 14(4) and (5) of Directive 2011/95 also presupposes that, as long as a person qualifies as a refugee, he shall continue to be a refugee and this will not be affected by the revocation of the status granted to him or by the refusal to grant such status.

41 As evidenced by the wording of Article 11 of Directive 2011/95, a person who is the subject of the situations set out therein 'shall cease to be a refugee'. Where, like a number of other language versions, the French version of Article 12 of that directive is not as unequivocal in so far as it refers to the exclusion from 'statut de réfugié' (refugee status), the English version uses the terms 'excluded from being a refugee'. Other language versions, such as the Spanish, Portuguese and Swedish, use similar wording. Moreover, Article 2(d) of Directive 2011/95 makes being a refugee expressly dependent on no ground for exclusion under Article 12 of that directive being applicable.

42 By contrast, where the person concerned has committed such a crime *outside* the country of refuge prior to his admission there as a refugee, he is excluded from being a refugee under Article 12(2)(b) of Directive 2011/95, which corresponds to Article 1F(b) of the Geneva Convention. See also, in that regard, Additional UNHCR Observations on Article 33(2) of the 1951 Convention in the Context of the Draft Qualification Directive, December 2002, available at http://www.refworld.org/docid/437c6e874.html, paragraph 6.

43 See UNHCR, UNHCR Annotated Comments on [Directive 2004/83], 28 January 2005, available at http://www.refworld.org/docid/4200d8354.html, p. 32, cited in point 33 of this Opinion. See, also, judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661, paragraphs 101 and 104).

85. The grounds for cessation of and exclusion from being a refugee are listed exhaustively in Articles 1C to 1F of the Geneva Convention [44] — provisions in respect of which the Contracting States are not authorised to make reservations under Article 42(1) of that convention. Therefore, the introduction of additional grounds for cessation or exclusion in Directive 2011/95 would have undermined the objective of that directive, which is to ensure the full implementation of that convention.

86. In that connection, it is emblematic that Article 17 of Directive 2011/95 allows a third-country national or a stateless person to be 'excluded' from being eligible for subsidiary protection for the same reasons as those set out in Article 14(4) and (5) of that directive. Since subsidiary protection does not fall within the scope of the Geneva Convention, the EU legislature was free to determine the circle of beneficiaries in the directive on the basis of independent criteria. However, the legislature opted for a different approach with regard to refugees in order to ensure that that directive is compatible with the Geneva Convention. [45]

87. While the foregoing considerations indicate that Article 14(4) and (5) of Directive 2011/95 is not comparable to the grounds for cessation of and exclusion from being a refugee, they do not fully clarify the scope and the actual effects of those provisions. This issue is, in essence, the subject of the third, fourth and fifth questions raised in Cases C-77/17 and C-78/17.

2. The scope and the actual effects of Article 14(4) and (5) of Directive 2011/95

88. By its third, fourth and fifth questions, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings) asks whether, in the event that the Court answers the first questions raised in Cases C-77/17 and C-78/17 as I have recommended above, Article 14(4) and (5) of Directive 2011/95 should then be interpreted as introducing grounds for withdrawing and refusing refugee status that are not provided for in the Geneva Convention and, accordingly, are invalid (questions 3 and 4), or whether those provisions should be interpreted differently to make it possible to ensure that they comply with primary EU law (question 5). It is also necessary to examine these questions in order to give a decision on the question referred by the Nejvyšší správní soud (Supreme Administrative Court).

89. With a view to answering those questions, I consider it necessary to examine further the meaning to be ascribed to the terms 'status granted to a refugee' and to grant 'status to a refugee' contained in Article 14(4) and (5) of Directive 2011/95 respectively. [46] If the 'status' which may be revoked or refused under those provisions is not equivalent to that of being a refugee, what is its true meaning?

44 See UNHCR, The Cessation Clauses: Guidelines on their Application, April 1999, available at http://www.refworld.org/pdfid/3c06138c4.pdf, paragraph 2; Guidelines on International Protection No 5: Application of the Exclusion Clauses: Article 1F of the [Geneva Convention], 4 September 2003, HCR/GIP/03/05, available at http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid= 3f5857684.html, paragraph 3; and Background Note on the Application of the Exclusion Clauses: Article 1F of the [Geneva Convention], 4 September 2003, available at http://www.refworld.org/docid/3f5857d24.html, paragraph 7.

45 According to a document from the UNHCR (Additional UNHCR Observations on Article 33(2) of the 1951 Convention in the Context of the Draft Qualification Directive, December 2002, available at http://www.refworld.org/docid/437c6e874.html, paragraph 1) and as has also been noted by the French Government, in the context of the travaux préparatoires which preceded the adoption of Directive 2004/83, the legislature had planned to include the reasons set out in Article 14(4) and (5) of that directive among the grounds for cessation of and exclusion from being a refugee. However, that approach was not chosen, in all likelihood, in view of the requirements deriving from the Geneva Convention. See also, in that regard, Hailbronner, K., and Thym, D. (Eds.), *EU Immigration and Asylum Law: A Commentary*, Second Edition, C.H. Beck — Hart — Nomos, 2016, pp. 1202 and 1203.

46 With regard to the divergence between the language versions of Article 14(5) of Directive 2011/95, see point 76 of this Opinion.

90. Article 2(e) of Directive 2011/95, which has no corresponding provision in the Geneva Convention, defines 'refugee status' as 'the recognition by a Member State … as a refugee'. Read in the light of recital 21 of that directive, those terms appear to designate the — declaratory — act whereby a Member State recognises that an applicant for asylum is a refugee, since that act occurs after a procedure to verify whether that applicant qualifies as a refugee.[47]

91. That act entails, in principle, granting all of the rights referred to in Chapter VII of Directive 2011/95 (subject to the limitations laid down therein).[48] As the Commission emphasised at the hearing, being a refugee and the grant of such rights necessarily go hand in hand outside the context of the application of Article 14(4) and (5) of that directive. Under Article 20(2) of that directive, Member States must grant recognised refugees all of those rights, whereas a person who has not (yet) been recognised as being a refugee is not entitled to such rights.[49] Similarly, the application of one of the grounds for cessation or exclusion set out in Articles 11 and 12 of Directive 2011/95 to a person who has previously been recognised as being a refugee gives rise, under Article 14(1) and (3) of that directive, to the expiry or the invalidity of that recognition and the loss of the rights stemming from it.

92. That intrinsic link between recognition as a refugee and the grant of such rights might explain why the definition of 'refugee status' in Article 2(e) of that directive refers only to the recognition as a refugee and does not mention the subsequent grant of rights that that recognition brings.

93. By contrast, Article 14(4) and (5) of Directive 2011/95 introduces a disconnection between being a refugee and the grant of those rights. Whilst retaining the status of being a refugee, the persons to whom those provisions are applied are not, or are no longer, entitled to the rights set out in Chapter VII of that directive.

94. The terms 'status granted to a refugee' and to grant 'status to a refugee' used in Article 14(4) and (5) of Directive 2011/95, respectively, must be interpreted in the light of those considerations. In my view, in that context, those terms have a more restrictive meaning than that set out in Article 2(e) of that directive.[50] They refer only to the grant of the rights set out in Chapter VII of that directive,[51] without, however, undermining the recognition of the persons concerned as refugees.

95. That, in my view, is the only interpretation that enables the internal coherence of that directive and the effectiveness of its provisions to be maintained.

47 That procedure must be carried out in accordance with the rules laid down in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

48 See Articles 23(4), 24(1) and 25(1) of Directive 2011/95.

49 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96), however, requires Member States to ensure certain minimum rights for applicants for international protection.

50 In that connection, recital 32 of Directive 2011/95 states that 'as referred to in Article 14, "status" can also include refugee status'. While it is difficult to establish an unequivocal meaning of that term, that recital, in my view, is evidence of the fact that the legislature intended to attribute to the term 'status' used in Article 14(4) and (5) of that directive a meaning that is somewhat distinct from that given to it in Article 2(e) of that directive.

51 In particular, the application of Article 14(4) or (5) of Directive 2011/95 entails the loss of the right to a residence permit, provided for in Article 24(1) of that directive. Consequently, the refugees concerned may be subject to a return decision and, where appropriate, may be expelled to a third country where there is no risk of them being persecuted or suffering serious harm within the meaning of Article 15 of Directive 2011/95, namely the death penalty or execution, torture or inhuman or degrading treatment and serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (see judgment of 24 June 2015, *H.T.* (C-373/13, EU:C:2015:413, paragraph 43)), if such a third country is willing to receive them. The Member States must therefore respect the guarantees to that effect provided for in Article 32 of the Geneva Convention (see point 112 et seq. of this Opinion). Moreover, the refugees referred to in Article 14(4) and (5) of Directive 2011/95 lose the benefit of other rights set out in Chapter VII of that directive. Their situation differs in that respect from the situation of refugees who are solely denied a residence permit under Article 24(1) of Directive 2011/95. Those persons continue to benefit from all of the other rights provided for in Chapter VII of that directive (see judgment of 24 June 2015, *H.T.* (C-373/13, EU:C:2015:413, paragraph 95)), it being understood that the overriding reasons of national security or public order which may justify a residence permit being denied may also lead to a reduction in the benefits related to maintaining family unity and the issue of travel documents (see Articles 23(4) and 25(1) of Directive 2011/95).

96. In the first place, the interpretation that the expression to grant 'status to a refugee' encompasses the actual recognition of the status of being a refugee seems, to me, to be incompatible with the wording and scheme of Article 14(5) of Directive 2011/95. I note, in that regard, that that provision applies to refugees who have not yet been granted any status. Thus, it does cover a 'refugee', as defined in Article 2(d) of that directive, but does not cover an 'applicant' within the meaning of Article 2(i) of that directive. Moreover, Article 14(5) of Directive 2011/95 applies to persons whose status of being a refugee has been verified and recognised accordingly by the host Member State.

97. It follows, as has been emphasised by the Belgian and French Governments, that that provision cannot be interpreted as allowing the Member States to refuse to examine an application for asylum lodged with them, in compliance with the procedural guarantees provided for in Directive 2013/32, and to recognise, where appropriate, that the applicant is a refugee. I would add, in that connection, that Article 11(1) of that directive provides that any decision on the application for asylum is to be given to the person concerned in writing. As the Commission stated at the hearing, the person whose status is revoked must be able to demonstrate his specific situation in the event of administrative controls, which means that a document must be issued confirming that he is a refugee. [52]

98. In the second place, Article 14(4) of Directive 2011/95 applies by definition to refugees who have already been recognised as such. As explained above, the application of that provision does not entail the loss of that status. In those circumstances, the interpretation that the 'status granted to a refugee' within the meaning of that provision refers to both the recognition as a refugee and the grant of the rights stemming from that status would be wholly illogical. Like the applicant in the main proceedings in Case C-77/17, I fail to see the sense in revoking that recognition without calling into question its subject matter — namely whether the person concerned is a refugee. [53]

99. In the same vein, the UNHCR has stated that the grounds for invalidating a decision recognising refugee status within the meaning of the Geneva Convention do not include grounds which involve the loss of protection against refoulement pursuant to Article 33(2) of that convention — which correspond to the grounds for the revocation of and refusal to grant refugee status provided for in Article 14(4) and (5) of Directive 2011/95. [54]

100. In the third place, I note that, on account of being refugees, the refugees against whom a Member State applies Article 14(4) or (5) of that directive continue to be entitled to the rights provided for in the Geneva Convention, to which Article 14(6) refers. The recognition by a Member State of entitlement to those rights, in order to allow them to be exercised, presupposes recognition as a refugee, without which the person concerned is not entitled to those rights. In other words, whilst recognition as a refugee does not result in all of the rights set out in Chapter VII of Directive 2011/95 being granted, the grant of rights linked to being a refugee implies that that status has been recognised.

52 See, in that regard, UNHCR, Identity Documents for Refugees, EC/SCP/33, 20 July 1984, available at http://www.unhcr.org/uk/excom/scip/3ae68cce4/identity-documents-refugees.html. According to the UNHCR, 'the refugee, in order to benefit from treatment in accordance with internationally accepted standards, needs to be able to establish vis-à-vis government officials not only his identity but also his refugee character'.

53 The situation described in Article 14(4) of Directive 2011/95 differs in that respect from the situation covered by Article 14(3), such as that at issue in one of the two cases giving rise to the judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661, paragraph 60). The latter provision applies to persons who should never have been recognised as refugees, and therefore the Member States must revoke both the recognition as a refugee and the grant of the rights stemming from it.

54 UNHCR, Note on the Cancellation of Refugee Status, 22 November 2004, available at http://www.refworld.org/docid/41a5dfd94.html, paragraph 2.

101. Furthermore, my proposed interpretation addresses the concerns raised by the UNHCR by also endorsing the interpretation that it has itself advocated on several occasions. According to the UNHCR, to prevent the possibilities provided for in Article 14(4) and (5) of Directive 2011/95 from being interpreted in the Member States as introducing new grounds for cessation and exclusion, contrary to the Geneva Convention, '"status granted to a refugee" is therefore understood to refer to the asylum ("status") granted by the State rather than … status [designating in that context the condition of being a refugee] in the sense of Article [1A of that convention] …'.[55]

102. Therefore, I consider that the terms 'status granted to a refugee' and to grant 'status to a refugee' within the meaning of Article 14(4) and (5) of Directive 2011/95 refer only to entitlement to the rights provided for in Chapter VII of that directive,[56] without prejudice to the rights which must be granted to the refugees concerned under the Geneva Convention.[57]

103. I now turn to the question regarding the validity of those provisions, as interpreted and read in conjunction with Article 14(6) — which must first be interpreted in order to answer that question — in the light of Article 18 of the Charter and Article 78(1) TFEU.

D. Interpretation of Article 14(6) of Directive 2011/95 and examination of the validity of Article 14(4) to (6) thereof

104. As has been argued by the Belgian Government and the Parliament, Directive 2011/95 is an independent instrument belonging to the EU legal order which is not intended formally to transpose the Geneva Convention. From that perspective, although it does specify that the provisions in that chapter are to be without prejudice to the rights laid down in that convention,[58] Chapter VII of Directive 2011/95 lays down a series of rights, some of which are not guaranteed by the Geneva Convention, whereas others correspond to those provided for in that convention.

105. Accordingly, on the one hand, as has been noted by the United Kingdom Government, certain provisions of Chapter VII of Directive 2011/95 require that Member States grant to refugees rights which have no equivalent in the Geneva Convention, such as the right to a residence permit, to recognition of qualifications, to healthcare and to access to integration facilities.[59]

106. There is little doubt, in my mind, that, in so far as the provisions of Chapter VII of Directive 2011/95 guarantee rights which are separate from and independent of the Geneva Convention, without disregarding the requirements for compliance with that convention, the EU legislature could have also determined, by means of other independent provisions, the circumstances in which a refugee may be denied those rights.

55 UNHCR, UNHCR Annotated Comments on [Directive 2004/83], 28 January 2005, available at http://www.refworld.org/docid/4200d8354.html, p. 31, cited in point 33 of this Opinion. See, also, UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551 of 21 October 2009), available at http://www.unhcr.org/protection/operations/4c5037f99/unhcr-comments-european-commissions-proposal-directive-european-parliament.html, p. 14, and UNHCR, Asylum in the European Union. A Study of the Implementation of the Qualification Directive, November 2007, available at http://www.refworld.org/docid/473050632.html, p. 94.

56 The Czech Law on asylum, as presented by the referring court in Case C-391/16 (see point 26 of this Opinion), appears to reflect that interpretation.

57 See points 112 to 130 of this Opinion.

58 See Article 20(1) of Directive 2011/95.

59 See Articles 24, 28, 30 and 34 of Directive 2011/95.

107. On the other hand, Chapter VII of that directive includes rights which are also laid down in the Geneva Convention. These are, in particular, the right to the issue of travel documents,[60] to freedom of movement[61] and to access to employment,[62] housing[63] and social assistance.[64]

108. In my view, Article 14(4) and (5) of Directive 2011/95 also does not infringe Article 18 of the Charter and Article 78(1) TFEU in so far as it makes it possible to deprive a refugee of the rights listed in point 107 above when he or she represents a danger to the security or the community of a Member State, although the Geneva Convention does not provide expressly for that possibility.

109. I note, in that regard, that, under the Geneva Convention, those rights must be granted only to refugees *lawfully staying* in the territory of a Contracting State — unlike other rights provided for by that convention, which must be granted to any refugee *present* on that territory.[65] That convention does not define the concept of lawful stay. In a note on interpretation, the UNHCR considered that the criterion of lawfulness contained in that concept refers normally to respect for the rules of the national law of the Contracting States regarding the conditions for admission and residence, since the Geneva Convention does not govern such conditions.[66]

110. In the present case, the application by a Member State of Article 14(4) or (5) of Directive 2011/95 has the consequence of, inter alia, depriving the refugee concerned of the residence permit to which he would normally be entitled under Article 24(1) of that directive. In my view, that Member State may, without infringing its obligations under the Geneva Convention, take the view that that refugee is not, or is no longer, lawfully staying in its territory in accordance with that convention and, accordingly, deprive that refugee of the rights provided for by that convention to which entitlement depends on that stay being lawful.[67]

111. As the governments and institutions which submitted observations to the Court have stated, that approach is compatible with the scheme and the objectives of the Geneva Convention. Articles 32 and 33 of that convention authorise, under certain conditions, the expulsion and the refoulement of a refugee who represents a danger to the security or the community of the country of refuge. Although the authors of the Geneva Convention thus intended to take account of the interests of the Contracting States in preserving public order and public security by allowing such drastic measures, that convention cannot be interpreted as prohibiting them, of itself, from taking the view that such a refugee is not or is no longer lawfully staying in their territory and, therefore, is not or is no longer entitled to the rights which, under that convention, are reserved for refugees whose stay is lawful.

112. However, after having made use of the options provided for in Article 14(4) or (5) of Directive 2011/95, Member States are still required to ensure that the refugees in question are afforded the rights to which all refugees are entitled under the Geneva Convention, irrespective of the lawfulness of their stay. Those rights concern non-discrimination (Article 3), the freedom of religion (Article 4),

60 See Article 25 of Directive 2011/95 and Article 28 of the Geneva Convention.

61 See Article 33 of Directive 2011/95 and Article 26 of the Geneva Convention.

62 See Article 26 of Directive 2011/95 and Articles 17 to 19 and 24 of the Geneva Convention.

63 See Article 32 of Directive 2011/95 and Article 21 of the Geneva Convention.

64 See Article 29 of Directive 2011/95 and Article 23 of the Geneva Convention. The rights provided for in Chapter VII of that directive that overlap with the rights laid down in that convention include, in addition, the right to protection from refoulement (Article 21 of that directive and Article 33 of the Geneva Convention). However, under Article 14(6) of the same directive, the application of Article 14(4) or (5) thereof does not entail the loss of that right.

65 See point 112 of this Opinion.

66 UNHCR, 'Lawfully Staying' — A Note on Interpretation, 3 May 1988, available at http://www.refworld.org/docid/42ad93304.html. However, in paragraphs 16 to 22 of that note, the UNHCR submitted that a stay which has not been regularised under national law may nevertheless, depending on the circumstances, be regarded as 'lawful' within the meaning of the Geneva Convention. See, also, Additional UNHCR Observations on Article 33(2) of the 1951 Convention in the Context of the Draft Qualification Directive, December 2002, available at http://www.refworld.org/docid/437c6e874.html, footnote 1.

67 I note, however, that, *under EU law*, a Member State that solely denies a refugee a residence permit under Article 24(1) of Directive 2011/95 is still required to grant him all of the other rights provided for in Chapter VII of that directive (see footnote 51 of this Opinion).

the protection of movable and immovable property (Article 13), access to courts (Article 16), rationing (Article 20), access to public education (Article 22), administrative assistance (Article 25), the issue of identity papers (Article 27), the absence of discrimination in tax matters (Article 29), the absence of penalties on account of illegal entry or stay (Article 31) and protection from expulsion (Article 32) and refoulement (Article 33).[68]

113. From that perspective, the UNHCR has noted that, when the Member States implement those options, they are 'nonetheless obliged to grant the rights of [the Geneva Convention] which do not require lawful residence and which do not foresee exceptions for as long as the refugee remains within the jurisdiction of the State concerned'.[69] Recently, the UNHCR has, in essence, reiterated that position once more in its comments on the draft regulation intended to replace Directive 2011/95.[70]

114. Article 14(6) of Directive 2011/95 must be read in the light of those considerations. That provision states that refugees who have been subject to a revocation of or a refusal to grant refugee status under Article 14(4) and (5) continue, as long as they are present in the territory of a Member State, to be 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'.

115. The applicants in the three cases in the main proceedings have questioned the validity of Article 14(6) of that directive on the ground that that provision does not mention, in the list of rights set out therein, the rights provided for by Articles 13, 20, 25, 27 and 29 of the Geneva Convention.

116. In accordance with the principles set out in points 66 and 67 of this Opinion, it must be examined whether it is possible to interpret Article 14(6) of Directive 2011/95 in a manner consistent with the Geneva Convention, so that it remains valid in the light of primary law and the attainment of its objective of the full application of that convention is ensured.

117. Those principles would require that provision to be interpreted in such a way that it is not without prejudice to the obligation of the Member States, in accordance with the Geneva Convention, to ensure entitlement to all of the rights which, under that convention, must be accorded to all refugees present on the territory of a Member State, irrespective of the lawfulness of their stay.

118. In my view, the key to a consistent interpretation of that kind lies in the words 'or similar [rights]' used in Article 14(6) of Directive 2011/95.

119. The scope and the meaning of those words are not specified in that directive or in the travaux préparatoires preceding its adoption or that of Directive 2004/83. Nor do those travaux préparatoires provide further clarification as to the reasons why the legislature did not set out all of the relevant rights from the Geneva Convention in the list in Article 14(6) of Directive 2011/95.

68 I think it is useful to add that, where a refugee who is staying illegally as a result of the application of Article 14(4) or (5) of Directive 2011/95 is subject to a return decision which cannot be executed on account of the principle of non-refoulement or the obligations of the Member States under the Charter, the ECHR and international law, his situation also falls within the scope of Article 14 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98). In accordance with that provision, during periods for which removal has been postponed, Member States are to ensure, as far as possible, that the persons concerned have safeguards with regard to, inter alia, maintaining family unity as well as emergency health care and essential treatment of illness.

69 UNHCR, UNHCR Annotated Comments on [Directive 2004/83], 28 January 2005, available at http://www.refworld.org/docid/4200d8354.html, p. 31, cited in point 33 of this Opinion.

70 See UNHCR Comments on the European Commission Proposal for a Qualification Regulation — COM (2016) 466, February 2018, available at http://www.refworld.org/docid/5a7835f24.html, p. 23. In those comments, the UNHCR recommended that the situation of refugees who constitute a danger to public order or public security be dealt with in the provision which corresponds to Article 21(2) of Directive 2011/95 and that that provision be supplemented by the following wording: 'Persons to whom points (a) and (b) [apply] shall be entitled to rights set out in or similar to those set out in Articles 3, 4, 13, 16, 20, 22, 25, 27, 29, 31 and 32 of the Geneva Convention in so far as they are present in the Member State.'.

120. In those circumstances, examination of the wording of that provision in the light of the context in which it occurs and the objectives pursued by the rules of which it is part, as the case-law requires,[71] leads me to conclude that it must be interpreted as meaning that the words 'or similar [rights]' refer to the rights provided for by the Geneva Convention which the Member States must ensure are accorded to refugees who have been the subject of the application of Article 14(4) and (5) of Directive 2011/95 in addition, and not as an alternative, to those specifically listed in Article 14(6).

121. As regards the *wording* of Article 14(6) of Directive 2011/95, I would point out that, as the Court has already held in other contexts, the conjunction 'or' may, linguistically, have an alternative or a cumulative sense. It must, therefore, be read in the context in which it is used and in the light of the purposes of the measure in question.[72]

122. In the present case, in my view, the *context* and the *purpose* of Directive 2011/95 require that a cumulative sense be attributed to that conjunction. I have already established that, in adopting that directive, the EU legislature sought to ensure the full application of the Geneva Convention in the Member States. Therefore, the intention of the EU legislature was certainly not to deny the refugees referred to in Article 14(4) and (5) of Directive 2011/95 the benefit of the rights that must be accorded to them by the Member States under that convention. That objective was reaffirmed in the observations submitted to the Court by the Parliament, the Council and the Commission.[73]

123. To attribute an alternative sense to the conjunction 'or' in Article 14(6) of Directive 2011/95 would be irreconcilable with an objective of that kind, since it would imply that the Member States could freely grant the refugees in question either the rights set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention, or other rights of similar scope. That outcome would clearly infringe that convention, which requires that the rights set out therein must be guaranteed, and therefore granting rights which are 'similar' to those rights would not suffice.

124. In the light of the objective pursued by Directive 2011/95 of the full application of the Geneva Convention, the terms 'or similar [rights]' refer rather, in my view, to rights in addition to those to which Article 14(6) of that directive expressly refers, which that convention stipulates are to be granted to any refugee present in the territory of a Contracting State.

125. That interpretation is supported by the fact that none of the governments which have submitted observations to the Court, with the exception of the United Kingdom Government, has mentioned the need to deprive those persons of some of those rights. On the contrary, at the hearing, the Belgian and Czech Governments submitted that the function of Article 14(6) of Directive 2011/95 was primarily to remind Member States of their international obligations in a non-exhaustive manner.

71 See, inter alia, judgment of 29 January 2009, *Petrosian* (C-19/08, EU:C:2009:41, paragraph 34 and the case-law cited).

72 In the judgment of 12 July 2005, *Commission* v *France* (C-304/02, EU:C:2005:444, paragraph 83), the Court attributed a cumulative sense to the conjunction 'or', contained in Article 260(2) TFEU, which provides for the possibility of the Court imposing a 'lump sum or penalty payment' on a Member State for failure to comply with a judgment finding an infringement. See, also, judgment of 10 March 2005, *Tempelman and van Schaijk* (C-96/03 and C-97/03, EU:C:2005:145, paragraph 43), and, to that effect, Opinion of Advocate General Mengozzi in *Georgakis* (C-391/04, EU:C:2006:669, point 62).

73 At the hearing, however, the Parliament and the Commission claimed that the absence of any reference to Articles 13 and 27 of the Geneva Convention in the wording of Article 14(6) of Directive 2011/95 is explained by the desire to treat the refugees referred to in Article 14(4) and (5) less favourably than refugees who, without falling within the scope of those provisions, are not (or are no longer) lawfully staying in a Member State. I doubt that such an interpretation is compatible with Article 18 of the Charter and Article 78(1) TFEU, since the Geneva Convention provides that the rights in question are to be enjoyed by 'all refugees', without providing for any limitation, as the UNHCR also found in its position statements referred to in point 113 of this Opinion.

126. In that regard, I note, in particular, that the right to the issue of identity papers, set out in Article 27 of the Geneva Convention, is also a prerequisite for the exercise of the rights provided for by that convention which are expressly listed in Article 14(6) of Directive 2011/95.[74] The exercise of those rights would be impeded if the refugee concerned was not issued identity papers, which, moreover, could also serve as proof of his status as a refugee.[75]

127. The failure to supplement the list provided for in Article 14(6) of Directive 2011/95 by not referring in it to Articles 13, 20, 25, 27 and 29 of the Geneva Convention may, in my view, also be explained by the fact that, as has been argued by the Belgian and the Netherlands Governments and by the Parliament and the Council, those articles may be the subject of reservations under Article 42(1) of that convention. That provision allows Contracting States, at the time of signature, ratification or accession to the Geneva Convention, to make reservations to provisions of that convention 'other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive'.

128. The intention of the EU legislature was therefore to remind Member States of their relevant obligations under the Geneva Convention to which no reservations may be made, namely Articles 3, 4, 16 and 33,[76] while also requiring them to grant the refugees concerned the rights set out in Articles 22 and 31 of that convention in the light of the particular importance that the EU legal order attaches to those rights.[77] Articles 13, 20, 25, 27 and 29 of that convention, by contrast, have not been expressly mentioned in so far as the Member States may make reservations to them,[78] since Directive 2011/95 does not affect the obligation of the Member States to ensure the rights provided for in those articles where they have not expressed such reservations.

129. This explanation must be understood in the light of the minimal nature of the level of protection required under Article 14(6) of that directive. Since Article 14(4) and (5) merely establishes options, in any event, it is still open to the Member States to grant those refugees, in respect of whom they have those options, rights which extend beyond the lower limit provided for in Article 14(6). More generally, Article 3 of Directive 2011/95, read in the light of recital 12 thereof, allows the Member States to provide for more favourable standards relating in particular to the content of international protection, in so far as they are compatible with that directive.

74 Therefore, it seems to me that the right to the issue of identity papers is already established by the other rights set out in Article 14(6) of Directive 2011/95, since it is necessary for the effective exercise of those rights. A comparable line of reasoning led the Court, in the judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraphs 59 and 60), to hold that a Member State is obliged to make provision, in so far as possible, for the basic needs of a third country national where that Member State is required to provide emergency health care and essential treatment of illness under Article 14(1)(b) of Directive 2008/115. Although that directive does not explicitly lay down that obligation, Article 14(1)(b) thereof would be rendered meaningless if those needs were not met.

75 See UNHCR, Identity Documents for Refugees, EC/SCP/33, 20 July 1984, available at http://www.unhcr.org/uk/excom/scip/3ae68cce4/identity-documents-refugees.html, paragraph 2, and UNHCR Annotated Comments on [Directive 2004/83], 28 January 2005, available at http://www.refworld.org/docid/4200d8354.html, p. 41. See, in that regard, point 97 of this Opinion.

76 Article 1 of the Geneva Convention defines the term 'refugee'. Articles 36 to 46 of that convention are enforceable and transitional provisions and, therefore, do not concern the content of refugees' rights.

77 The particular importance of the right to access public education with respect to elementary education, provided for in Article 22(1) of the Geneva Convention, is clear from Article 14 of Directive 2013/33. That provision requires the Member States to grant to minor children of applicants for international protection and to applicants who are minors access to the education system — at the very least the State system — under conditions similar to those applied to their own nationals (see, also, Article 14(1)(c) of Directive 2008/115). Article 8 of Directive 2013/33, pursuant to which 'Member States shall not hold a person in detention for the sole reason that he or she is an applicant [for international protection]', attests to the fundamental role played by the prohibition on imposing criminal penalties on refugees solely on account of their illegal entry or presence, set out in Article 31 of the Geneva Convention, which is specifically cited in recital 15 of that directive (see, also, recital 20 and Article 28(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31)).

78 A number of Member States, namely the Republic of Estonia, Ireland, the Republic of Austria, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland, have expressed certain reservations to Article 25 of the Geneva Convention. Ireland and the French Republic have expressed reservations regarding Article 29 of that convention. See *United Nations Treaty Collection*, available at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter= 5&Temp=mtdsg2&clang=_en.

130. In the light of those considerations, I take the view that Article 14(6) of Directive 2011/95 must be interpreted as meaning that a Member State which makes use of the options provided for in Article 14(4) or (5) is obliged to grant the refugee concerned, in addition to the rights set out in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention, the other rights that that convention guarantees for all refugees present on the territory of a Contracting State, namely the rights provided for in Articles 13, 20, 25, 27 and 29 of that convention, provided that that Member State has not made any reservations to them under Article 42(1) of that convention.

131. Therefore, I consider that Article 14(4), (5) and (6) of Directive 2011/95, read together, as interpreted in the manner proposed in this Opinion, does not infringe Article 18 of the Charter and Article 78(1) TFEU.

E. Concluding remarks

132. For the sake of completeness, I would point out that the foregoing conclusion solely concerns the validity of Article 14(4) to (6) of Directive 2011/95, in so far as it introduces the possibility for the Member States to deprive certain refugees of the rights provided for in Chapter VII of that directive, in the light of Article 18 of the Charter and Article 78(1) TFEU. It is only on the validity *in abstracto* of that possibility in the light of those provisions that the Court is asked to give a ruling in the context of the present references for a preliminary ruling and, therefore, this is what the observations submitted to the Court concerned.

133. That conclusion is without prejudice to the assessment, on a case-by-case basis, of whether the exercise by a Member State of the options provided for in Article 14(4) and (5) of Directive 2011/95 is compatible with certain fundamental rights guaranteed by the Charter.

134. Three examples come to mind in that regard. First, in the event that, as a result of exercising those options, a Member State were to deny a refugee access to certain medical treatment, such denial could infringe Article 35 of the Charter (concerning the right to health), or even, to the extent that it endangers the life of that refugee, or exposes him to inhuman or degrading treatment, Article 2(1) (concerning the right to life) or Article 4 of the Charter.[79] Secondly, in the event that a Member State decides to expel the refugee in question to a safe third country prepared to admit him to its territory,[80] that Member State should verify whether such a measure is compatible with the right to respect for private and family life enshrined in Article 7 of the Charter.[81] Thirdly, although Article 15 of the Charter, concerning the freedom to choose an occupation and the right to engage in work, applies only to the nationals of third countries 'who are authorised to work in the territories of the Member States', it cannot be ruled out, in particular, that the refusal to allow a refugee to enter the labour market after his release from prison, even though he cannot be removed to a third country

79 See, with regard to the scope of Articles 2(1) and 3 of the ECHR (which correspond to Articles 2(1) and 4 of the Charter respectively), judgment of the ECtHR of 10 April 2012, *Panaitescu v. Romania* (CE:ECHR:2012:0410JUD003090906, §§ 27 to 30 and the case-law cited). I note that it is apparent from Article 52(3) of the Charter that, in so far as that Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are to be identical to those laid down by that convention, without prejudice to the possibility of EU law providing more extensive protection. In some circumstances, the denial of access to certain medical treatment may also infringe Article 14(1)(b) of Directive 2008/115 (see footnote 68 of this Opinion).

80 See footnote 51 of this Opinion.

81 According to the case-law of the ECtHR, the ECHR does not guarantee the right of an alien to enter or to reside in a particular country and Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations (including the ECHR) to control the entry, residence and expulsion of aliens. However, measures restricting an alien's right of residence may, in certain cases, entail a violation of Article 8 of the ECHR if they create disproportionate repercussions on his private or family life, or both (see, in particular, judgment of 26 June 2012, *Kurić and Others v. Slovenia* (CE:ECHR:2012:0626JUD002682806, § 355 and the case-law cited)). As regards the factors to be taken into account in order to examine whether a removal measure is proportionate, see judgments of the ECtHR of 2 August 2001, *Boultif v. Switzerland* (CE:ECHR:2001:0802JUD005427300, § 48), and of 18 October 2006, *Üner v. the Netherlands* (CE:ECHR:2006:1018JUD004641099, §§ 57 and 58). Those principles also apply where the proportionality of a decision refusing the issue of a residence permit is at issue (see, inter alia, judgment of the ECtHR of 1 March 2018, *Ejimson v. Germany* (CE:ECHR:2018:0301JUD005868112, §§ 56 and 57)).

and must therefore remain indefinitely in the Member State of refuge, may, depending on the circumstances, infringe Article 7 of the Charter. According to the case-law of the ECtHR, Article 8 of the ECHR, to which Article 7 of the Charter corresponds, encompasses the social identity and the personal, social and economic relationships which constitute the private life of any human being.[82]

V. Conclusion

135. Having regard to all of the foregoing, I propose that the Court answer the questions referred by the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium) in Cases C-77/17 and C-78/17 and by the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) in Case C-391/16 as follows:

(1) Article 14(4) 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, must be interpreted as permitting the Member States to revoke, end or refuse to renew the decision whereby they granted the rights provided for in Chapter VII of that directive to refugees falling within the scope of that provision, without that decision affecting the status of those persons as refugees or rendering the decision whereby those persons were recognised as being refugees invalid.

(2) Article 14(5) of Directive 2011/95 must be interpreted as permitting the Member States to refuse to grant the rights provided for in Chapter VII of that directive to refugees falling within the scope of that provision, without such a refusal affecting the status of those persons as refugees or the obligation of the Member States to examine their application for international protection in a manner consistent with the requirements stemming from Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

(3) Article 14(6) of Directive 2011/95 must be interpreted as meaning that, where a Member State makes use of the options provided for in Article 14(4) and (5) of that directive, that Member State remains obliged to ensure that, for as long as they are present on its territory, the refugees concerned are afforded not only the rights provided for in Articles 3, 4, 16, 22, 31, 32 and 33 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, but also those provided for in Articles 13, 20, 25, 27 and 29 of that convention, provided that that Member State has not made reservations to those provisions in accordance with Article 42(1) of that convention.

(4) The examination of Article 14(4) to (6) of Directive 2011/95 has not revealed any factor capable of affecting its validity.

82 See, inter alia, judgments of the ECtHR of 9 October 2003, *Slivenko v. Latvia* (CE:ECHR:2003:1009JUD004832199, § 96), and, to that effect, of 18 October 2006, *Üner v. the Netherlands* (CE:ECHR:2006:1018JUD004641099, § 59).