



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
CAMPOS SÁNCHEZ-BORDONA  
delivered on 6 June 2019<sup>1</sup>

**Case C-233/18**

**Zubair Haqbin**

v

**Federaal agentschap voor de opvang van asielzoekers**

(Request for a preliminary ruling  
from the arbeidshof te Brussel (Higher Labour Court, Brussels, Belgium))

(Reference for a preliminary ruling — Political asylum — Directive 2013/33/EU — Standards for the reception of applicants for international protection — Article 20 — Reduction or withdrawal of material reception conditions — Sanctions applicable to serious breaches of the rules of the accommodation centre or seriously violent behaviour — Violence committed by an unaccompanied minor — National legislation providing for temporary exclusion from material support — Compatibility — Charter of Fundamental Rights of the European Union)

### I. Introduction

1. By its questions for a preliminary ruling, the arbeidshof te Brussel (Higher Labour Court, Brussels, Belgium) asks the Court to clarify the meaning of the provisions laid down in Article 20(4) of Directive 2013/33/EU,<sup>2</sup> in such a way as to determine whether and, if so, according to what procedures a Member State may exclude from material reception conditions an unaccompanied minor on the ground that he has committed a serious breach of the rules of the accommodation centre or has engaged in particularly violent behaviour.

2. This reference for a preliminary ruling was made in the course of proceedings between Mr Zubair Haqbin, an unaccompanied minor of Afghan nationality, and the Federaal Agentschap voor de opvang van asielzoekers (Federal Agency for the Reception of Asylum Seekers, Belgium).<sup>3</sup> Owing to the seriousness of the violence committed by Mr Haqbin, Fedasil adopted a sanction in respect of him, entailing the temporary withdrawal from him of material reception conditions. That sanction meant not only exclusion from the reception centre but also from all related services.

<sup>1</sup> Original language: French.

<sup>2</sup> Directive 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). The European Commission has proposed a recast of that directive, in its Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (COM(2016) 465 final).

<sup>3</sup> 'Fedasil'.

3. In line with the judgments of 27 September 2012, *Cimade and GISTI*,<sup>4</sup> and of 27 February 2014, *Saciri and Others*,<sup>5</sup> the Court is requested to clarify the rules governing the provision of support by the host Member State for an applicant for international protection<sup>6</sup> where the latter is an unaccompanied minor whose behaviour has put the staff and other residents of the reception centre in danger.

## II. Legal framework

### A. EU law

4. According to Article 1 of Directive 2013/33, the purpose of that directive is to lay down standards for the reception of applicants in Member States.

5. Recitals 9, 14, 25 and 35 of that directive state:

‘(9) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, [7] the 1989 United Nations Convention on the Rights of the Child [8] and the ... Convention for the Protection of Human Rights and Fundamental Freedoms [9] respectively.

...

(14) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.

...

(25) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which material reception conditions for applicants may be reduced or withdrawn while at the same time ensuring a dignified standard of living for all applicants.

...

(35) This Directive respects the fundamental rights and observes the principles recognised in particular by the [Charter]. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.’

6. Article 2 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

...

4 C-179/11, EU:C:2012:594.

5 C-79/13, EU:C:2014:103.

6 ‘The applicant’.

7 ‘The Charter’.

8 Adopted by the General Assembly of the United Nations in resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990.

9 Signed at Rome on 4 November 1950, ‘the ECHR’.

- (d) “minor”: means a third-country national or stateless person below the age of 18 years;
- (e) “unaccompanied minor”: means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (f) “reception conditions”: means the full set of measures that Member States grant to applicants in accordance with this Directive;
- (g) “material reception conditions”: means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;

...

- (i) “accommodation centre”: means any place used for the collective housing of applicants;

...’

7. Article 17 of Directive 2013/33, entitled ‘General rules on material reception conditions and health care’, provides, in paragraph 2:

‘Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.’

8. Article 20 of that directive, the only provision in Chapter III, entitled ‘Reduction or withdrawal of material reception conditions’, is worded as follows:

‘1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

- (a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or
- (b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or
- (c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU [of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection<sup>10</sup>].

...

<sup>10</sup> OJ 2013 L 180, p. 60.

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.'

9. Chapter IV of Directive 2013/33, entitled 'Provisions for vulnerable persons', includes, in particular, Articles 21 to 24.

10. Article 21 of that directive, entitled 'General principle', provides that, in their national law transposing that directive, Member States are to take into account the specific situation of vulnerable persons, in particular minors and unaccompanied minors.

11. Article 22 of Directive 2013/33, entitled 'Assessment of the special reception needs of vulnerable persons', provides, in the third subparagraph of paragraph 1 and in paragraph 3:

'Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

...

3. Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive.'

12. Article 23 of that directive, on minors, states:

'1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors ...

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

...

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

...'

13. Article 24 of that directive, on unaccompanied minors, provides, in paragraph 2:

'Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

...

(c) in accommodation centres with special provisions for minors;

(d) in other accommodation suitable for minors.

...'

### **B. Belgian law**

14. The wet betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen (Law on the reception of asylum seekers and certain other categories of foreign nationals)<sup>11</sup> of 12 January 2007 had not yet been amended for the purpose of the transposition of Directive 2013/33 at the time of the facts at issue in the main proceedings.

15. According to Article 2(6) of the Law on reception, material support is defined as 'support granted by [Fedasil] or the partner, within a reception centre, consisting in particular in lodging, meals, clothing, medical, social and psychological support and the grant of a daily allowance. It also includes access to legal aid, access to services such as interpretation and training and also access to a voluntary return programme'.

16. The first paragraph of Article 3 of that law provides that 'every asylum seeker shall be entitled to a reception that should allow him to lead a life consistent with human dignity'.

17. Article 5 of that law states that, 'without prejudice ... to Book III, Title III on disciplinary measures and sanction, the material support described in this Law shall not in any case be withdrawn'.

18. Book III, Title III of the Law on reception, entitled 'Disciplinary measures and sanctions', provides, in Article 45:

'A sanction may be imposed on the beneficiary of the reception in the event of a serious breach of the operating regulations and rules applicable to the reception centres referred to in Article 19. When choosing the sanction, it is necessary to take into account the nature and the importance of the breach and also the actual circumstances in which it was committed.

Only the following sanctions may be imposed:

...

7. temporary exclusion from material support in a reception centre for a maximum period of one month.

<sup>11</sup> *Belgisch Staatsblad*, 7 May 2007, p. 24027, 'the Law on reception'.

The sanctions shall be imposed by the director or responsible officer of the reception centre. The sanction referred to in subparagraph 2(7) must be confirmed by the director-general of [Fedasil] within three working days of the adoption of the sanction by the director or the manager of the reception centre. Where it is not confirmed within that period, the sanction of temporary exclusion shall automatically be lifted.

Sanctions may, while they are being implemented, be reduced or lifted by the authority which imposed them.

The decision imposing a sanction shall be adopted objectively and impartially and shall state the reasons on which it is based.

With the exception of the sanction referred to in subparagraph 2(7), in no case shall the enforcement of a sanction have the effect of completely cancelling the material support granted under this Law, or of reducing access to medical support. The sanction referred to in subparagraph 2(7) shall have the effect that the person on whom it is imposed is unable to benefit from any other form of reception apart from access to medical support, as referred to in Articles 24 and 25 of the Law.

The sanction referred to in subparagraph 2(7) may be imposed only in the event of a very serious breach of the internal regulations of the reception centre endangering the staff or other residents of the reception centre or giving rise to serious risks for security or respect for public order in the reception centre.

The person on whom the sanction of temporary exclusion is imposed must be heard before the sanction is adopted.

...'

### **III. The facts of the main proceedings and the questions for a preliminary ruling**

#### ***A. The facts***

19. On 23 December 2015, Mr Haqbin, of Afghan nationality, lodged an application for international protection with the Belgian authorities, as an unaccompanied minor. He was hosted, in turn, at Sugny and Broechem (Belgium) reception centres and, in application of the applicable national legislation, a 'guardian' was appointed to represent and assist him.<sup>12</sup>

<sup>12</sup> As the Belgian Government explained at the hearing, the guardian must be considered to be the 'representative' within the meaning of Article 2(j) of Directive 2013/33.



20. On 18 April 2016, Mr Haqbin took part in acts of violence involving residents of various ethnic origins in Broechem reception centre. The police then placed him under administrative arrest before releasing him on 19 April 2016. On the same day the Director of the reception centre decided to impose on Mr Haqbin the disciplinary sanction provided for in Article 45 of the Law on reception.<sup>13</sup> That sanction entails not only the temporary exclusion of the minor from the reception centre but also his exclusion from all related services, such as meals, clothing and activities and, apart from urgent medical assistance, the termination of medical, social and psychological support.

21. That decision was confirmed on 21 April 2016 by the Director-General of Fedasil, in accordance with the applicable national legislation.

22. It is apparent from the order for reference that Mr Haqbin then slept in Maximilian Park, Brussels, on the nights of 19 to 21 April 2016, and then on the nights of 24 April to 1 May 2016. During that period, on 25 April 2016, Mr Haqbin's guardian made application to the arbeidsrechtbank te Antwerpen (Labour Court, Antwerp, Belgium) for suspension of the exclusion measure.<sup>14</sup> That application was dismissed in the absence of extreme urgency, as Mr Haqbin had not succeeded in showing that he was homeless.

23. On 4 May 2016, Mr Haqbin was received at the Poelcapelle (Belgium) reception centre.

24. Mr Haqbin's guardian then challenged the decisions excluding Mr Haqbin from Broechem detention centre before the Nederlandstalige arbeidsrechtbank Brussel (Brussels Labour Court (Dutch-speaking), Belgium), by application dated 5 July 2016. The guardian maintained that, in those circumstances, Fedasil was required to provide Mr Haqbin with reception or to provide guarantees of respect for his human dignity during the period of his exclusion and claimed compensation of EUR 1 for non-pecuniary damage.

25. By judgment of 21 February 2017, the Nederlandstalige arbeidsrechtbank Brussel (Brussels Labour Court (Dutch-speaking)) dismissed that application as unfounded, as it considered that Mr Haqbin was seeking compensation for damage which had not been proved.

26. By application dated 27 March 2017, the guardian appealed against that judgment before the referring court.

### ***B. The grounds of the order for reference***

27. In the first place, the referring court wonders whether, in the words of Article 20(4) of Directive 2013/33, a Member State may withdraw or reduce material reception conditions in the event of serious breach of the rules of the accommodation centre or seriously violent behaviour. It refers in that regard to the opinion expressed by the Contact Committee set up to assist the Member States

<sup>13</sup> According to the seventh paragraph of Article 45 of the Law on reception, the sanction of temporary exclusion from a reception centre can be imposed only in the event of a very serious breach of the internal rules of the reception centre endangering the staff or the other residents of the reception centre or giving rise to serious risks for security or respect for public order in the reception centre. The Grondwettelijk Hof (Constitutional Court, Belgium), in its judgment of 27 July 2011, No 135/2011, upheld the legality of that provision when it considered that the sanction envisaged was not disproportionate to the legitimate objective pursued by the national legislature and did not significantly reduce the level of protection in the form of social assistance (see, in particular, points B.18.1 et seq. of that judgment). In that regard, the Grondwettelijk Hof (Constitutional Court) observed that, in the words of the *travaux préparatoires* for that legislation, 'this extreme measure [must not] be taken unless it is established that other measures less harmful to the rights and freedoms of the beneficiary of reception (in particular as regards respect for human dignity) did not or do not make it possible to achieve the objective pursued, namely to ensure a secure reception for all residents of the centre'.

<sup>14</sup> The arbeidsrechtbank (Labour Court, Belgium) hears disputes relating to any breach of the rights guaranteed to beneficiaries of reception by Books II and III of the Law on reception, in accordance with Article 580(8)(f) of the gerechtelijk wetboek (Judicial Code), and to the application of administrative sanctions provided for in those books, in accordance with the first paragraph of Article 583 of the Judicial Code.

with the transposition of Directive 2013/33<sup>15</sup> and to the opinion issued by the United Nations High Commissioner for Refugees.<sup>16</sup> Those bodies consider that Article 20(1) to (3) of Directive 2013/33 sets out an exhaustive list of the grounds that justify the reduction or withdrawal of material reception conditions and that Article 20(4) of that directive therefore refers to other types of sanctions. The referring court also refers to the opinion issued by the Raad van State (Council of State, Belgium), according to which that is not the only possible one reading, having regard to the drafting and the interaction of Article 20(4) to (6) of that directive.<sup>17</sup>

28. In the second place, the referring court wonders about the steps that the competent national authority must actually take in order to guarantee, within the meaning of Article 20(5) and (6) of Directive 2013/33, a dignified standard of living for all applicants, including an applicant temporarily excluded from a reception centre.

29. The referring court rejects the arguments put forward by Fedasil, according to which the responsibilities borne by the guardian are sufficient to meet that obligation. Relying on the national provisions on the guardianship of unaccompanied foreign minors, the referring court observes that the guardian is not legally bound to contribute himself to the reception of the unaccompanied minor and excludes any shortcoming on the guardian's part.<sup>18</sup>

30. On the other hand, the referring court expresses doubts as to the steps which the competent national authority must take. It observes that, according to the explanatory memorandum to the draft legislation<sup>19</sup> that gave rise to the Law amending the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals of 6 July 2016,<sup>20</sup> such an obligation is satisfied since Fedasil annexes to its exclusion decision a list of the reception places for the homeless to which the applicant could have access. Only where it is shown that the applicant cannot in fact take advantage of those infrastructures is Fedasil then required to find an alternative solution *ex post facto*.

31. The referring court wonders whether such a procedure is capable of satisfying the obligation referred to in Article 20(5) of Directive 2013/33 or whether compliance with that directive requires the competent national authority to guarantee lodging before the applicant is excluded from the reception centre.

15 Contact Committee 'Reception Condition Directive' (2013/33/EC). At a meeting on 12 September 2013, that Contact Committee considered that Article 20(1) to (3) of Directive 2013/33 provided an exhaustive list of grounds allowing for the reduction or withdrawal of the benefit of material conditions of reception; Article 20(4) of that directive therefore referred to other types of sanctions.

16 'The HCR'. *Comments of the HCR on the draft legislation that gave rise to the wet tot wijziging van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen* (Law amending the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals), of 6 July 2016 (*Belgisch Staatsblad*, 5 August 2016, p. 47647), adopted for the purposes of the partial transposition of Directive 2013/33, available at the following internet address: <https://www.refworld.org/docid/5746b44b4.html>; the HCR supports the view expressed by the Contact Committee.

17 Opinion of 27 April 2016, No 59.196/4.

18 The obligations borne by the guardian are defined in the Programmawet (Programme-Law) of 24 December 2002 (*Belgisch Staatsblad*, 31 December 2002, p. 58686). Reference must be made, in particular, to Articles 9 to 13, in Book XIII, Chapter 6, of that law, entitled 'Guardianship of unaccompanied foreign minors'. That legislation is supplemented by the provisions laid down, on the one hand, in the Koninklijk besluit tot uitvoering van Titel XIII, Hoofdstuk 6 'Voogdij over niet-begeleide minderjarige vreemdelingen' van de programmawet van 24 december 2002 (Royal Decree implementing Title XIII, Chapter 6 'Guardianship of unaccompanied foreign minors' of the Programme-Law of 24 December 2002) of 22 December 2003 (*Belgisch Staatsblad*, 29 January 2004, p. 5538), and, on the other hand, of the General Directives for guardians of unaccompanied foreign minors of 2 December 2013, available at the following internet address: [https://justice.belgium.be/sites/default/files/directives\\_generales\\_pour\\_tuteurs\\_-\\_02\\_12\\_2013.pdf](https://justice.belgium.be/sites/default/files/directives_generales_pour_tuteurs_-_02_12_2013.pdf) (see, in particular, point 2.8(66) to (73) of those directives).

19 Wetsontwerp tot wijziging van de wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen (draft legislation to amend the Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals) of the Chamber of Representatives of Belgium of 18 May 2016 (Doc 54, 1839/001).

20 Cited in footnote 16.



32. In the third place, if the Court should consider that the sanctions referred to in Article 20(4) of Directive 2013/33 may take the form of exclusion from the material support conditions, the referring court wonders whether, in the light of Article 20(5), Articles 21 to 23 and Article 24(2) of that directive, such sanctions may be imposed on a minor and, in particular, an unaccompanied minor. It adds that, in that context, the question also arises of the compatibility of those sanctions imposed on minors with Articles 1, 3, 4 and 24 of the Charter, referred to in recital 35 of that directive.<sup>21</sup>

### ***C. The questions for a preliminary ruling***

33. The *arbeidshof te Brussel* (Higher Labour Court, Brussels) therefore decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Must Article 20(1) to (3) of Directive [2013/33] be interpreted as enumerating exhaustively the cases in which material reception conditions may be reduced or withdrawn, or does it follow from Article 20(4) and (5) [of that directive] that withdrawal of the right to material reception conditions may also occur by means of sanctions for serious breaches of the rules relating to reception centres and serious acts of violence?
- (2) Must Article 20(5) and (6) [of that directive] be interpreted as meaning that Member States, before taking a decision on the reduction or withdrawal of material reception conditions or on the imposition of sanctions, must, in the context of those decisions, lay down the measures necessary for guaranteeing the right to a dignified standard of living during the period of exclusion, or can those provisions be complied with by a system whereby, after the decision to reduce or withdraw the material reception conditions, an examination is carried out as to whether the person who is the subject of the decision enjoys a dignified living standard and, if necessary, remedial measures are taken at that point?
- (3) Must Article 20(4) to (6) [of Directive 2013/33], read in conjunction with [its] Articles 14, 21, 22, 23 and 24 ... and with Articles 1, 3, 4 and 24 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that a measure or sanction of temporary (or definitive) exclusion from the right to material reception conditions is possible, or impossible, in respect of a minor, specifically in respect of an unaccompanied minor?

### **IV. Analysis**

34. The referring court asks the Court about the scope of the rules laid down in Article 20 of Directive 2013/33 where an applicant commits a serious breach of the rules of a reception centre or engages in particularly violent behaviour. While the first and second questions relate to the treatment given to any applicant, irrespective of his age and situation, the third question is more refined and refers specifically to the situation of Mr Haqbin, that is to say of an unaccompanied minor.

<sup>21</sup> I note that recital 35 of Directive 2013/33 refers to Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter.

35. I think that those questions must be addressed solely from the aspect of an unaccompanied minor. The case in the main proceedings is primarily concerned with the procedures for the reception in a Member State of an unaccompanied minor. His situation requires specific protection and appropriate reception procedures, so that the interpretation of Article 20 of Directive 2013/33 rests on the interaction between specific provisions deriving not only from that directive but also from the Charter.<sup>22</sup>

36. I therefore propose to address the examination of those questions by concentrating on the special situation of an unaccompanied minor.

#### *A. The first question*

37. By its first and third questions, the referring court asks the Court, in essence, whether Article 20(4) of Directive 2013/33 precludes national legislation under which an unaccompanied minor may be excluded from material reception conditions because he has committed a serious breach of the rules of the accommodation centre in which he was hosted or that he engaged in seriously violent behaviour.

38. The referring court therefore wonders about the nature and scope of the ‘sanctions applicable’ that the host Member State may adopt on the basis of Article 20(4) of that directive.

39. In order to answer that question, it is necessary to set out the terms and the scheme of Article 20 of that directive and also the purpose of that provision.

##### *1. The terms, scheme and purpose of Article 20 of Directive 2013/33*

40. The nature and scope of the ‘sanctions applicable’ referred to in Article 20(4) of Directive 2013/33 raise doubts since that article is entitled ‘Reduction or withdrawal of material reception conditions’ and is the only article in Chapter III, which has the same title. Nonetheless, the wording of paragraph 4 of that provision can be clearly distinguished from that of the preceding paragraphs, since the EU legislature did not expressly state that the host Member State may reduce or withdraw material reception conditions, but merely stated that Member States ‘may determine sanctions applicable’ to serious breaches of the rules of the accommodation centre or to seriously violent behaviour.

41. That choice of words, and the margin of discretion which it implies on the part of the host Member State, are justified in the light of the nature of the grounds referred to by the EU legislature.

42. Unlike the grounds referred to in Article 20(1) to (3) of Directive 2013/33, the ‘serious breaches of the rules of the accommodation centres’ and the ‘seriously violent behaviour’ refer to acts capable not only of disrupting order and security in the reception centre, but also of constituting a criminal offence. The EU legislature thus has in mind acts the nature and seriousness of which can be assessed only by the competent national authorities, in the light of the laws and regulations of the host Member State. It also refers to acts the commission of which will entail, according to the legal system and the applicable law in that State, the adoption of a measure or a particular sanction of a disciplinary, administrative or penal nature, which may go beyond the reduction or withdrawal of material reception conditions.

<sup>22</sup> See, in that regard, Communication from the Commission to the European Parliament and the Council of 12 April 2017, entitled ‘The protection of children in migration’ (COM(2017) 211 final), and the European Asylum Support Office Guidance on reception conditions: operational standards and indicators, September 2016 (available at the following internet address: <https://www.easo.europa.eu/sites/default/files/EASO%20Guidance%20on%20reception%20conditions%20-%20operational%20standards%20and%20indicators%5B3%5D.pdf>), and Guidance on reception conditions for unaccompanied children: operational standards and indicators, December 2018 (available at the following internet address: <https://www.easo.europa.eu/sites/default/files/Guidance-on-%20reception-%20conditions-%20for-unaccompanied-children.pdf>).

43. Thus, unlike the grounds referred to in Article 20(1) to (3) of Directive 2013/33, the ground referred to in paragraph 4 of that provision means that the host Member State must be recognised as having scope for manoeuvre. That enables it to assess the extent to which an applicant who has committed a serious breach of the rules of the accommodation centre or a seriously violent act must be punished by reference to the nature and the level of seriousness of the act. That scope for manoeuvre also allows the host Member State to take account of the actual circumstances in which the act in question was committed, and also of the age, situation and specific needs of the person who committed it.

44. Nonetheless, the margin of discretion which it enjoys in that respect is not unlimited.

45. First, the host Member State must respect fundamental rights, as is apparent from recital 35 of Directive 2013/33. Consequently, Article 20 of that directive must be read and interpreted in the light, in particular, of respect for human dignity and the rights of the child, enshrined, respectively, in Articles 1 and 24 of the Charter.

46. Second, the host Member State must respect the obligations referred to in Article 20(5) and (6) of that directive.

47. In accordance with Article 20(5) of Directive 2013/33, the decision for reduction or withdrawal of material reception conditions or the sanction which may be applied for a serious breach of the rules of the accommodation centres or for seriously violent behaviour must satisfy a number of substantive and procedural requirements.

48. First, that decision or sanction must be taken objectively and impartially and must state the reasons on which it is based.

49. Second, it must be proportionate and must be adopted following an individual examination, in which the particular situation and the specific needs of vulnerable persons are taken into account.

50. Where the act was committed by an unaccompanied minor, the host Member State is thus required to make the best interests of the child a primary consideration, as required by Article 23 of Directive 2013/33 and Article 24(2) of the Charter.<sup>23</sup> In particular, due account must thus be taken of the minor's well-being and social development and of safety and security considerations, especially where no support is available from a person entitled to exercise parental authority. In addition, the host Member State must ensure that the sanction adopted will not deprive the minor of the guarantees linked with the protection of his interests and the satisfaction of his special needs.

51. Those provisions mean, consequently, that where the unaccompanied minor's behaviour shows that the conditions of his education or development are compromised, the host Member State is required to have recourse to the child-protection mechanisms available under the general law in order to organise support appropriate to his needs. That mechanism seems to me to be indispensable in the case of an unaccompanied minor, who is a particularly vulnerable person because of what is sometimes his long and traumatising migratory trek and his precarious position, owing to the absence of family support and of his own resources.

52. Third, and last, Article 20(5) of Directive 2013/33 states that the decision for reduction or withdrawal of material reception conditions or the sanction applicable must 'under all circumstances' ensure access to health care and ensure a dignified standard of living for all applicants.

<sup>23</sup> See also recitals 9, 14 and 22 of that directive.

53. That provision is intended to ensure continuing support that respects the dignity of the applicant, following a sanction adopted by the host Member State.<sup>24</sup>

54. The provision of such support is justified since the adoption of such a sanction does not mean that the reception right has legally come to an end. For as long as the minor is authorised to remain on the territory of the host Member State for the purposes of examination of his application<sup>25</sup> and provided that he does not have sufficient own means to support his essential needs,<sup>26</sup> that State must ensure reception conditions that enable him to have access to health care and to live in dignity.<sup>27</sup> Although the EU legislature does not specify the measures which the host Member State is specifically required to adopt in order to ensure a dignified standard of living, those measures must cover the most essential rights at the time when the applicant is without sources of income, namely the possibility to be housed, fed and clothed.<sup>28</sup>

55. In accordance with recital 35 of Directive 2013/33, the principle referred to in Article 20(5) of that directive is called for by the fact that that directive respects fundamental rights and seeks, in particular, to ensure full respect for human dignity.

56. The purpose of that principle is to ensure the effective protection of the applicant on the territory of the host Member State, thus helping to reduce the risk of marginalisation to which he is exposed and of 'secondary movements' by which he would be tempted.<sup>29</sup>

57. Respect for that principle allows the applicant to exercise his right to asylum and to participate in the procedure for examination of his application for international protection, in accordance with the rights conferred on him and the obligations imposed on him under Directives 2011/95/EU<sup>30</sup> and 2013/32. Those rights would be deprived of genuine effect and those obligations would lose their practical effect if at the same time provision were not made for ongoing support for the applicant's most basic needs. The provision of such support also allows the host Member State to carry out a diligent examination of the application for international protection, since, in spite of the sanction adopted, that State is in a position to locate the applicant for the purpose of notifying him of the various interviews and meetings which he may be required to attend.<sup>31</sup>

58. The principle referred to in Article 20(5) of Directive 2013/33 is supplemented by the procedural provisions laid down in Article 20(6) of that directive, the scope of which I shall explain when I examine the second question.

59. Having said that, I shall now address the question whether and, if so, according to what procedures the host Member State may order the withdrawal of material reception conditions in circumstances such as those at issue.

24 That principle is apparent from recitals 11 and 25 of Directive 2013/33.

25 See, in that regard, Article 9 of Directive 2013/32.

26 See, in that regard, Article 17(2) and (3) of Directive 2013/33.

27 See, in that regard, judgment of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraphs 59 to 62), concerning the interpretation 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 which the Court held that the Member State concerned is required to make provision, in so far as possible, for the basic needs of a third-country national suffering from a serious illness, pending return, where such a person lacks the means to make such provision for himself.

28 See, in that regard, judgment of 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218, paragraph 92), in which the Court held that the most basic needs cover, inter alia, food, personal hygiene and a place to live.

29 See, in that regard, recital 12, of Directive 2013/33.

30 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).

31 It is in order to ensure the rapid and effective processing of the application for international protection, moreover, that Article 7(2) of Directive 2013/33 allows the host Member State to decide on the applicant's residence.

2. *The nature of the measures applicable in the context of Article 20(4) of Directive 2013/33*

(a) *The meaning and scope of the withdrawal of material reception conditions in the context of Article 20(1) and (3) of Directive 2013/33*

60. The withdrawal of material reception conditions is a decision which the EU legislature envisages strictly in Article 20 of Directive 2013/33, since that decision results in the applicant being wholly deprived of public assistance in the form of housing, food, clothing and the daily allowance which he enjoys.<sup>32</sup>

61. The EU legislature allows the host Member State to adopt such a decision in two situations.

62. The first situation is that referred to in Article 20(1) of Directive 2013/33 and covers the situation in which there is an abuse of right. Withdrawal may be envisaged in exceptional and duly justified cases when the applicant fails to fulfil the obligations necessary for the examination of his application for international protection because he has left the mandatory place of residence or where he does not report to the authorities, or where the applicant has lodged a subsequent application for the sole purpose of benefiting from reception conditions.

63. The second situation is that referred to in Article 20(3) of Directive 2013/33 and covers the situation in which the applicant has concealed his financial resources and in reality is able to provide for his own needs. That provision must be read in the light of Article 17(3) of that directive, which states that the host Member State may make the provision of all or some of the material reception conditions and health care subject to the condition that the applicant does not have sufficient means to have a standard of living adequate for his health and to enable his subsistence.

64. The EU legislature therefore displayed caution when determining the situations in which the host Member State may withdraw material reception conditions.

65. The same caution should be employed in the context of Article 20(4) of Directive 2013/33, since, unlike in the two situations mentioned above, the applicant is still *prima facie* a beneficiary of the right to reception and does not have resources to provide for his basic needs. Those circumstances therefore call for the measure of withdrawal of material reception conditions to be subject to strict conditions, which take into account not only the seriousness of the act committed but also the age, situation and special needs of the unaccompanied minor.

(b) *The meaning and scope of the withdrawal of material reception conditions in the context of Article 20(4) of Directive 2013/33*

66. Every applicant has duties vis-à-vis the Member State from which he seeks international protection. Those duties mean, in particular, that he must respect the laws and regulations of that State and comply with any measure intended to maintain security and public order.<sup>33</sup> It is thus permissible for the host Member State to adopt provisions in order to ensure the physical and mental security of the staff and residents of the reception centre, in particular when the act committed has given rise to serious risks for their security and for respect for public order in that centre.

<sup>32</sup> Where the material reception conditions take the form of a financial allowance, withdrawal means that payment of that allowance is discontinued.

<sup>33</sup> See, in that regard, opinion shared by the HCR in its comments cited in footnote 16 of the present Opinion (<https://www.refworld.org/docid/5746b44b4.html>, paragraph 20).



67. That act implies the adoption of a sanction, but it demonstrates above all the need to organise support distinct from that offered in the context of the reception, especially where the act is violent and repeated. In fact, irrespective of the situation of the minor concerned and the seriousness of the act committed, his minority requires that he be protected.

68. The reduction of material reception conditions may not be a measure appropriate to the situation of that minor or satisfy his specific needs.<sup>34</sup>

69. The adaptation of those conditions may also not be an appropriate measure. The combined provisions laid down, in that regard, in Article 18(9)(a)<sup>35</sup> and Article 22(1) and (3) of Directive 2013/33<sup>36</sup> are primarily addressed to persons whose vulnerability may be increased as a result of their condition, such as pregnant women, persons with serious illnesses or mental disorders, or victims of rape or of human trafficking. Those provisions are not in my view applicable in the situation of an unaccompanied minor of whom it may be supposed, in the light of the repeated violence which he has committed, that the conditions of his education and development are compromised.

70. In those circumstances, withdrawal of material reception conditions is a decision that may be imposed in so far as the unaccompanied minor must be provided with support which, owing to the means which it requires and the objectives which it pursues, cannot be provided in the context of the reception mechanism provided for in Directive 2013/33.

71. The decision for withdrawal of the material conditions initially granted can therefore be understood only in so far as it is accompanied by the involvement of the assistance services and/or the judicial authorities responsible for child protection, who are best placed to assess the specific needs of that minor, by ordering, inter alia, assistance measures implemented by qualified staff in the context of appropriate accommodation.

72. That evaluation framework applies a fortiori when the act committed in breach of the laws and regulations of the host Member State constitutes a criminal offence. In fact, the commission of a minor or a more serious offence entails per se the involvement of the judicial authorities responsible for child protection and also the placing or detention of the minor in an appropriate centre and, at the same time, the withdrawal of material reception conditions. That withdrawal takes place here in the context of criminal proceedings capable of ensuring all the rights of the minor and is therefore accompanied by educational and coercive measures justified by the situation of the minor and the seriousness of the act.

## ***B. The second question***

73. By its second and third questions, the referring court wonders about the steps which the competent national authority must actually take on the basis of Article 20(5) and (6) of Directive 2013/33 in order to ensure a dignified standard of living for an unaccompanied minor who is temporarily excluded from a reception centre.

<sup>34</sup> In Belgium, where material support covers a broader range of services than those coming within the material reception conditions defined in Directive 2013/33, that reduction may relate to access to certain services. Article 45 of the Law on reception thus authorises Fedasil to restrict access to certain services or indeed to discontinue or reduce, on a temporary basis, the daily allowance. That sanction relates to less serious acts than the acts at issue here.

<sup>35</sup> Under that provision, the host Member State may, exceptionally and in duly justified cases, set different modalities for reception conditions where it is necessary to assess the specific needs of a vulnerable person.

<sup>36</sup> Under that provision, the host Member State is required to monitor the applicant's situation in an appropriate manner and to take his special needs into account if they become apparent at a later stage in the asylum procedure in order to afford him specific assistance.



74. In particular, it asks the Court whether (a) the obligation referred to in Article 20(5) of that directive is satisfied when the competent national authority annexes to its decision for exclusion from the accommodation centre a list of the reception places for the homeless which the applicant might approach or (b) whether, on the other hand, that authority must find an alternative accommodation solution before adopting such a decision.

75. The answer to that question may be found in Article 20(6) of Directive 2013/33, according to which ‘Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5 [of that provision]’,<sup>37</sup> and is binding in the light of the general scheme and the purpose of that directive.

76. Article 20(6) of Directive 2013/33 is above all a provision of a procedural nature that makes it possible to ensure, following a sanction which the host Member State has adopted, ongoing support that respects the dignity of the applicant, in accordance with the requirements referred to in Article 20(5) of that directive<sup>38</sup>.

77. The principle of the continuity of the support provided is also apparent from recital 8 of that directive, which states that that directive ‘should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants’.

78. That principle is intended not only to ensure respect for the applicant’s fundamental rights, but also to ensure the practical effect of Directive 2013/33. As I have already pointed out, the rights which the applicant enjoys and the obligations imposed on him under Directives 2011/95 and 2013/32 would be deprived of genuine effect if at the same time provision were not made to support his most essential needs, even during a very short period, in particular where the applicant is an unaccompanied minor.

79. The Court had already stated that principle in the judgment of 27 February 2014, *Saciri and Others*,<sup>39</sup> concerning the interpretation of Article 13 of Directive 2003/9/EC.<sup>40</sup> It held that ‘the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the [Charter], under which human dignity must be respected and protected, preclude the asylum seeker from being deprived — *even for a temporary period of time* after the making of the application for asylum ... — of the protection of the minimum standards laid down by that directive’.<sup>41</sup>

80. That principle is also found in the case-law of the European Court of Human Rights. In the judgment in *Winterstein and others v. France*,<sup>42</sup> which concerned the legality of an eviction procedure initiated against travellers, that Court held that the consequences of the removal and the applicants’ vulnerability must be taken into account by the authorities before the eviction procedure is initiated.

81. Article 20(6) of Directive 2013/33 therefore does not countenance any break in the continuity of the support provided for the minor, since it requires that the minor is not deprived, even during a very brief period, of the guarantees conferred on him by Article 20(5) of that directive.

<sup>37</sup> Emphasis added.

<sup>38</sup> See, to that effect, judgment of the ECtHR, 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609, §§ 252 to 263), where the European Court of Human Rights considered that the situation of an asylum seeker who ‘found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs’, reached the threshold of gravity required by Article 3 of the ECHR. See also ECtHR, 18 June 2009, *Budina v. Russia*, (CE:ECHR:2009:0618DEC004560305).

<sup>39</sup> C-79/13, EU:C:2014:103.

<sup>40</sup> Council Directive of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18).

<sup>41</sup> Judgment of 27 February 2014, *Saciri and Others* (C-79/13, EU:C:2014:103, paragraph 35 and the case-law cited), emphasis added.

<sup>42</sup> Judgment of the ECtHR, 17 October 2013 (CE:ECHR:2013:1017JUD002701307, § 161).

82. Compliance with those requirements means that the host Member State must ensure, before even adopting a decision for reduction or withdrawal of material reception conditions or a sanction referred to in Article 20(4) of Directive 2013/33, that support is provided for the applicant's basic needs, in such a way as to ensure his subsistence and a dignified standard of living that is appropriate for his health, allowing him, in particular, to house, feed and clothe himself, and taking account, where appropriate, of his special needs.

83. In the context of the exclusion of an unaccompanied minor from a reception centre, the competent national authority must, before adopting the exclusion decision, refer the matter to the assistance services and/or the judicial authorities responsible for child protection, in such a way that they are in a position to place the minor in a centre appropriate for his needs and, if the facts and the minor's situation justify it, to order measures of assistance.

84. It is therefore not sufficient, as Fedasil suggests, to attach to the exclusion decision a list of the reception places for the homeless to which the unaccompanied minor or his representative might approach.

85. Such a procedure does not afford the consideration required by the best interests of the child. It entails a risk of a break in the continuity of the support provided for the minor, as illustrated by the case in point. To expect the minor to find accommodation on the basis of a list of reception places, even with the help of his guardian, is something of a gamble, since, if possibilities of accommodation exist, it is still necessary that that accommodation is available and appropriate for the situation of an unaccompanied foreign minor. Reception places for the homeless provide no guarantee that that minor will be housed, fed and clothed throughout the duration of his exclusion, or that the special needs which his age, status and situation require will be met.<sup>43</sup>

86. The interpretation defended by Fedasil before the referring court does not take account of the precarious, vulnerable and deprived situation in which the unaccompanied minor may well find himself and does not ensure respect for the rights which he enjoys under Directive 2013/33 and the Charter.

87. In the light of all of those factors, I am of the view that, where an unaccompanied minor commits a serious breach of the rules of a reception centre or engages in seriously violent behaviour giving rise to serious risks for respect for public order in that centre or for the security of the staff or the other residents of that centre, Article 20(5) and (6) of Directive 2013/33 must be interpreted as meaning that before adopting the decision for exclusion, the competent national authority must refer the matter to the assistance services and/or the judicial authorities responsible for child protection, in such a way as to ensure that that minor will receive ongoing support appropriate for the specific needs which his age, status and situation require.

## V. Conclusion

88. Having regard to the foregoing considerations, I propose that the Court answer the questions for a preliminary ruling referred by the *arbeidshof te Brussel* (Higher Labour Court, Brussels, Belgium) as follows:

In circumstances such as those at issue, where an unaccompanied minor has committed a particularly violent act giving rise to serious risks for respect for order and security within a reception centre, Article 20(4) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013

<sup>43</sup> As is apparent from Article 18 of the Law on reception, a stay in an emergency reception centre cannot exceed 10 days and the fundamental needs of the beneficiary of reception are met there. These include all necessary assistance, and in particular food, housing, access to sanitary facilities and medical support.

laying down standards for the reception of applicants for international protection must be interpreted as not precluding national legislation which allows the withdrawal of material reception conditions, provided that that decision is accompanied by the prior involvement of the assistance services and/or the judicial authorities responsible for child protection, in such a way as to ensure that that minor will receive ongoing support appropriate for the specific needs which his age, status and situation require.