Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 March 2020*

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Common procedures for granting international protection — Directive 2013/32/EU — Article 46(3) — Full and *ex nunc* examination — Article 47 of the Charter of Fundamental Rights of the European Union — Right to an effective remedy — Powers and obligations of the first-instance court or tribunal — No power to vary the decisions of the authorities competent in the area of international protection — National legislation providing for an obligation to adjudicate within a time limit of 60 days)

In Case C-406/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary), made by decision of 4 June 2018, received at the Court on 20 June 2018, in the proceedings

PG

v

Bevándorlási és Menekültügyi Hivatal,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber (Rapporteur), R. Silva de Lapuerta, Vice-President of the Court, acting as Judge of the First Chamber, M. Safjan, L. Bay Larsen and C. Toader, Judges,

Advocate General: M. Bobek,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 11 September 2019,

after considering the observations submitted on behalf of:

– PG, by Sz. M. Sánta, ügyvéd,

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

– the German Government, initially by T. Henze and R. Kanitz, and subsequently by the latter, acting as Agents,

* Language of the case: Hungarian.

– the European Commission, by M. Condou-Durande and by A. Tokár and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 December 2019,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 46(3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between PG and the Bevándorlási és Menekültügyi Hivatal (Immigration and Asylum Office, Hungary) ('the Office') following the latter's decision to reject PG's application for international protection and ordering his removal, together with a two-year prohibition on entry and residence.

Legal context

EU law

3 Recitals 18, 50 and 60 of Directive 2013/32 are worded as follows:

'(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

…

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection … are subject to an effective remedy before a court or tribunal.

…

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.'

4 According to Article 1 of Directive 2013/32, its objective is to lay down common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

5 Article 2(f) of Directive 2013/32 defines 'determining authority' as 'any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases'.

6 Under Article 46(1), (3), (4) and (10) of that directive:

‘1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:
(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

…

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. …

…

10. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.’

Hungarian law

7 Article 68(2), (3), (5) and (6) of the menedékjogról szóló 2007. évi LXXX. törvény (Law No LXXX of 2007 on the right to asylum) reads as follows:

‘2. The court shall give its decision within 60 days of receipt of the application to the court.

…

4. … The court shall carry out a full examination of both the facts and law on the date of the court’s decision.

…

5. The court may not overturn the decision of the authority competent in matters of asylum;

6. The court’s decision on substance adopted in conclusion of the proceedings is final, no appeal lies against it.’

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

8 PG, an Iraqi Kurd, presented himself without an identity document in a transit zone of Hungary on 22 August 2017 and submitted an application for international protection there on account of alleged risks to his life in his country of origin. The Hungarian authorities rejected that request on 14 March 2018 and ‘declared the principle of non-refoulement inapplicable to him’. A measure that he be returned together with a two-year residence ban was issued against him.

9 He brought an action before the referring court against the refusal to grant him international protection.

10 It is apparent from the documents before the Court that a Hungarian court other than the referring court has already annulled two previous decisions of the Office, one of 25 October 2017 and the other of 18 January 2018, both rejecting the application for international protection made by the same person. Thus, the decision of 14 March 2018 is the third decision rejecting PG's application for international protection, after two successive annulments.

11 The referring court states that, since 2015, Hungarian law has no longer permitted courts to amend administrative decisions relating to international protection and to grant one or other form of protection themselves. Such decisions are able to be solely annulled, should the need arise, since the person concerned will then be placed in the position of an applicant before the Office. It takes the view that, for that reason, the cycle of rejection by the Office, followed by an annulment by the court, is liable to recur *ad libitum*. It wonders whether such a risk does not render the new Hungarian procedural rules incompatible with the requirements of Directive 2013/32 as regards the right to an effective remedy.

12 Furthermore, the referring court has the issue of the maximum period of 60 days for trial laid down by Hungarian law. It takes the view that, in certain cases, of which the case in the main proceedings appears to be representative, such a period is not sufficient to gather the necessary information, determine the factual context, hear the interested party and, therefore, give a properly reasoned judicial decision. It therefore questions whether that time limit is compatible with the right to an effective remedy provided for in Directive 2013/32 and in Article 47 of the Charter.

13 In those circumstances, the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can Article 47 of the [Charter] and Article 31 of Directive 2013/32 … be interpreted, in the light of Articles 6 and 13 of the [Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950], as meaning that it is possible for effective judicial protection to be guaranteed in a Member State even if its courts cannot amend decisions given in asylum procedures but may only annul them and order that a new procedure be conducted?

(2) Can Article 47 of the [Charter] and Article 31 of Directive 2013/32 … be interpreted, again in the light of Articles 6 and 13 of the [Convention for the Protection of Human Rights and Fundamental Freedoms], as meaning that legislation of a Member State which lays down a single mandatory time limit of 60 days in total for judicial proceedings in asylum matters, irrespective of any individual circumstances and without regard to the particular features of the case or any potential difficulties in relation to evidence, is compatible with those provisions?'

Procedure before the Court

14 The referring court requested that the case be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union. On 31 July 2018, the First Chamber decided, after hearing the Advocate General, not to grant that request.

Consideration of the questions referred

Preliminary observations

15 It must be observed that, although the questions referred for a preliminary ruling as formulated by the referring court concern the interpretation of Article 31 of Directive 2013/32, concerning the administrative procedure for examining applications for international protection, the request for a preliminary ruling relates, in fact, to the implementation of the right to an effective remedy provided for in Article 46 of that directive. It is therefore the latter provision, and in particular paragraph 3 thereof, which must be interpreted in order to provide a useful answer to the referring court.

The first question

16 By its first question, the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as precluding national legislation which confers solely on courts or tribunals the power to annul decisions of the competent authorities in matters of international protection, to the exclusion of the power to amend those decisions.

17 As the Advocate General stated in points 21 and 31 of his Opinion, the Court, subsequent to the registration of the present request for a preliminary ruling, ruled on such a question in its judgments of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584), and of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626).

18 The Court thus noted, in paragraphs 145 and 146 of the judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584), that Article 46(3) of Directive 2013/32 concerns only the 'examination' of the action and therefore does not concern the consequences of any annulment of the contested decision. Thus, by adopting that directive, the EU legislature did not intend to introduce any common rule to the effect that the quasi-judicial or administrative body referred to in Article 2(f) of that directive should be deprived of its powers following the annulment of its initial decision concerning an application for international protection. It therefore remains open to the Member States to provide that the file must, following such an annulment, be referred back to that body for a new decision.

19 In paragraphs 147 and 148 of that judgment, the Court stated that, however, Article 46(3) of Directive 2013/32 would be deprived of any practical effect if it were accepted that, after delivery of a judgment by which the court or tribunal of first instance conducted, in accordance with that provision, a full and *ex nunc* assessment of the international protection needs of the applicant by virtue of Directive 2011/95, that body could take a decision that ran counter to that assessment or could allow a considerable period of time to elapse, which could increase the risk that evidence requiring a new up-to-date assessment might arise. Consequently, even though the purpose of Directive 2013/32 is not to establish a common standard in respect of the power to adopt a new decision on an application for international protection after the annulment of the initial decision, it nevertheless follows from its purpose of ensuring the fastest possible processing of applications of that nature, from the obligation to ensure that Article 46(3) is effective, and from the need, arising from Article 47 of the Charter, to ensure an effective remedy, that each Member State bound by that directive must order its national law in such a way that, following annulment of the initial decision and in the event of the file being referred back to the quasi-judicial or administrative body referred to in Article 2(f) of that directive, a new decision is adopted within a short period of time and complies with the assessment contained in the judgment annulling the initial decision.

20 Thus, where a court annuls a decision of an administrative authority following an exhaustive and updated examination of the international protection needs of an applicant in the light of all the relevant elements of law and of fact and finds that that applicant must be granted international

protection and then refers the case back to the administrative authority for a new decision to be taken, that administrative authority is required to grant the international protection requested, subject to the emergence of elements of fact or of law that objectively require a new up-to-date assessment, in the absence of which Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, and Articles 13 and 18 of Directive 2011/95 would be deprived of all their practical effect(see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 66).

21 As regards the review of the decision adopted by that administrative authority following such a judgment, the Court has stated that, although Article 46(3) of Directive 2013/32 does not oblige the Member States to confer a power to alter decisions on the courts with jurisdiction to hear and determine actions under that provision, those courts must nevertheless ensure, in each case and taking account of the specific circumstances of each case, that the right to an effective remedy enshrined in Article 47 of the Charter is observed (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraphs 69 and 70).

22 The Court inferred from this, as regards the procedural rules implemented in the main proceedings, that if a judicial decision in which the court has carried out a full and *ex nunc* examination of the international protection needs of the person concerned, at the end of which it held that such protection must be granted to him, is contradicted by the subsequent decision of the competent administrative authority, that court must, where national law does not provide it with any means of ensuring that its judgment is complied with, amend that decision of the national authority and substitute its own decision by disapplying, if necessary, the national law that prohibits it from proceeding in that way (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraphs 68, 72 and 77).

23 Consequently, the answer to the first question is that Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as not precluding national legislation which confers solely on courts or tribunals the power to annul decisions of the competent authorities in matters of international protection, to the exclusion of the power to amend those decisions. However, if the file is referred back to the competent administrative authority, a new decision should be adopted within a short period of time and in compliance with the assessment contained in the judgment annulling the decision. Moreover, where a national court has found — after making a full and *ex nunc* examination of all the relevant elements of fact and law submitted by an applicant for international protection — that, under the criteria laid down by Directive 2011/95, the applicant concerned must be granted such protection on the ground that he or she relied on in support of his or her application, but after which the administrative authority adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court must, where national law does not provide it with any means of ensuring that its judgment is complied with, amend that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, by disapplying, if necessary, the national law that prohibits it from proceeding in that way.

The second question

24 By its second question, the referring court asks, in essence, whether Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as precluding national legislation which/that sets a period of 60 days within which a court hearing an appeal against a decision rejecting an application for international protection must adjudicate.

25 It should be noted that Directive 2013/32 not only does not lay down harmonised rules on time limits for judgment, but also authorises the Member States to lay down such time limits in Article 46(10).

26 Moreover, as follows from settled case-law of the Court, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgment of 15 March 2017, *Aquino*, C-3/16, EU:C:2017:209, paragraph 48 and the case-law cited).

27 As regards compliance with the condition relating to the principle of equivalence as regards a time limit for adjudicating such as that at issue in the main proceedings, it should be noted, subject to the checks which are a matter for the referring court, that it is not apparent from the documents before the Court, nor has it been claimed, that similar situations are governed by national procedural arrangements more favourable than those which are laid down for implementation of Directive 2013/32 and applied in the main proceedings (see, by analogy, judgment of 7 November 2019, *Flausch and Others*, C-280/18, EU:C:2019:928, paragraph 28).

28 As regards observance of the principle of effectiveness, it should be borne in mind that Article 46(1) of Directive 2013/32 guarantees applicants for international protection the right to an effective remedy before a court or tribunal against decisions taken on their application. Article 46(3) of that directive defines the scope of the right to an effective remedy by specifying that Member States bound by it must ensure that the court or tribunal before which the decision relating to the application for international protection is contested carries out 'a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95]' (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 51).

29 It is, moreover, settled case-law that every decision on whether to grant refugee status or subsidiary protection status must be based on an individual assessment (judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 41 and the case-law cited), which aims to determine whether, in the light of the applicant's personal circumstances, the conditions for granting such status are satisfied (judgment of 5 September 2012, *Y and Z*, C-71/11 and C-99/11, EU:C:2012:518, paragraph 68).

30 In addition, it must be borne in mind, as did the Advocate General in points 62 and 63 of his Opinion, that, in the context of the judicial remedy provided for in Article 46(3) of Directive 2013/32, a certain number of specific procedural rights are guaranteed to applicants by virtue of Article 12(2) of that directive, namely the right to an interpreter, the possibility of communicating, inter alia, with the United Nations High Commissioner for Refugees, and access to certain information, of Article 20 of the directive, that is to say, the possibility of legal assistance and the possibility of access to free legal representation, of Article 22 of that directive, concerning access to a legal adviser, and of Article 24 and 25 of that directive, relating to the rights of persons having particular needs and unaccompanied minors.

31 The Court has also had occasion to point out that it is in principle necessary to provide, at the judicial stage, for a hearing of the applicant, except where certain cumulative conditions are satisfied (see, to that effect, judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraphs 37 and 44 to 48). It may also prove useful to order other measures of inquiry, in particular the medical examination referred to in the first subparagraph of Article 18(1) of Directive 2013/32.

32 In the present case, according to the referring court, it may be that, in view of its burden and working conditions or a particular difficulty in certain cases, the court hearing an action against a decision rejecting an application for international protection is not, in practical terms, in a position to ensure, within the period of 60 days granted to it, compliance with all the rules referred to in paragraphs 27 to 31 of the present judgment in respect of each of the cases submitted for its examination.

33 At the same time, it should be noted that the referring court has described that period as 'mandatory'.

34 In such a situation, in the absence of any national rule intended to ensure that the case is heard within a reasonable period, such as a rule providing that, at the end of the 60-day period, the file is to be assigned to another court, the principle of effectiveness of EU law implies an obligation on the part of the court to disapply the national legislation which considers it to be mandatory.

35 However, it should also be noted that Article 46(4) of Directive 2013/32 also requires the Member States to establish a reasonable time period for adjudication. Those objectives contribute, as the Advocate General noted in point 48 of his Opinion, to achieving the overall objective of dealing with applications for international protection as soon as possible, laid down in recital 18 of that directive.

36 Thus, the obligation on a court to disapply national legislation laying down a period for adjudicating which is incompatible with the principle of effectiveness of EU law cannot relieve it of all obligation to act expeditiously, but merely requires it to consider the period given to it as indicative, it being for it to give a ruling as quickly as possible if that period is exceeded.

37 Consequently, the answer to the second question is that Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as not precluding national legislation which sets a period of 60 days for the court hearing an action against a decision rejecting an application for international protection to give a ruling, provided that that court is able to ensure, within that period, that the substantive and procedural rules which EU law affords to the applicant are effective. If that is not the case, that court must disapply the national legislation laying down the period for adjudication and, once that period has elapsed, deliver its judgment as promptly as possible.

Costs

38 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 46(3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which confers solely on courts or tribunals the power to annul decisions of the competent authorities in matters of international protection, to the exclusion of the power to amend those decisions. However, if the file is referred back to the competent administrative authority, a new decision should be adopted within a short period of time and in compliance with the assessment contained in the judgment annulling the decision. Moreover, where a national court has found — after making a full and *ex nunc* examination of all the relevant elements of fact and law submitted by an applicant for international protection — that, under the criteria laid down by 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, the applicant concerned must be granted such protection on the ground that he or she relied on in support of his or her application, but after which the administrative authority adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court must, where national law does not provide it with any means of ensuring that its judgment is complied with, amend that**

decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, by disapplying, if necessary, the national law that prohibits it from proceeding in that way.

2. **Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights, must be interpreted as not precluding national legislation which sets a period of 60 days for the court hearing an action against a decision rejecting an application for international protection to give a ruling, provided that that court is able to ensure, within that period, that the substantive and procedural rules which EU law affords to the applicant are effective. If that is not the case, that court must disapply the national legislation laying down the period for adjudication and, once that period has elapsed, deliver its judgment as promptly as possible.**

[Signatures]