Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 May 2020*

Table of contents

* Language of the case: Hungarian.

(Reference for a preliminary ruling — Asylum and immigration policy — Directive 2013/32/EU — Application for international protection — Article 33(2) — Grounds of inadmissibility — Article 40 — Subsequent applications — Article 43 — Border procedures — Directive 2013/33/EU — Article 2(h) and Articles 8 and 9 — Detention — Whether lawful — Directive 2008/115/EU — Article 13 — Effective remedies — Article 15 — Detention — Whether lawful — Right to an effective remedy — Article 47 of the Charter of Fundamental Rights of the European Union — Principle of primacy of EU law)

In Joined Cases C-924/19 PPU and C-925/19 PPU,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary), made by decisions of 18 December 2019, received at the Court on the same date, in the proceedings

FMS,

FNZ (C-924/19 PPU)

SA,

SA junior (C-925/19 PPU)

v

Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság,

Országos Idegenrendészeti Főigazgatóság,

THE COURT (Grand Chamber),

Composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, E. Regan, S. Rodin, P.G. Xuereb and I. Jarukaitis, Presidents of Chambers, E. Juhász, M.Ilešič, D.Šváby, F. Biltgen, K. Jürimäe, C. Lycourgos (Rapporteur) and N. Wahl, Judges,

Advocate General: P. Pikamäe,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 13 March 2020,

after considering the observations submitted on behalf of:

– FNZ and FMS, by T. Kovács, B. Pohárnok and G. Matevžič, ügyvédek,

– SA and SA junior, by B. Pohárnok and G. Matevžič, ügyvédek,

– the Hungarian Government, by M.Z. Fehér and M.M. Tátrai, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 23 April 2020,

gives the following

Judgment

1 The requests for a preliminary ruling concern the interpretation of:

– Articles 13, 15 and 16 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);

– Articles 6, 26, 33 and 35, Article 38(4) and Articles 40 and 43 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);

– Article 2(h) and Articles 8 and 9 of 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), and

– Articles 1, 4, 6, 18, 47 and Article 52(3) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in two sets of proceedings between (i) FMS and FNZ and the Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság (National Directorate-General of the aliens police, Regional Directorate, Dél-alföld, Hungary) ('the aliens policing authority at first instance'),

formerly the Bevándorlási és Menekültügyi Hivatal Dél-alföldi Regionális Igazgatósága (Immigration and Asylum Office, Regional Directorate, Dél-alföld, Hungary), and the Országos Idegenrendészeti Főigazgatóság (National Directorate-General of the aliens police, Hungary) ('the asylum authority), formerly the Bevándorlási és Menekültügyi Hivatal (Immigration and Asylum Office, Hungary) (C-924/19 PPU) and (ii) SA and SA junior and the aliens policing authority at first instance and the asylum authority (C-925/19 PPU), concerning the decisions taken by those authorities rejecting the applications for asylum made by FMS and FNZ and those made by SA and SA junior as inadmissible and ordering their removal, together with a prohibition on entering and remaining on Hungarian territory for a period of one year.

3 Since 1 April 2020, these two disputes have come within the jurisdiction of the Szegedi Törvényszék (Szeged High Court, Hungary), as that court has informed this Court, although it has not withdrawn the questions which had been referred by the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary).

Legal context

International law

4 The Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, annexed to the Council Decision of 8 November 2007 (OJ 2007 L 334, p. 45, 'the Agreement on readmission concluded between the Union and Serbia'), provides in Article 3, entitled 'Readmission of third-country nationals and stateless persons':

'1. Serbia shall readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the legal conditions in force for entry to, presence in, or residence on, the territory of the Requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons:

(a) hold, or at the time of entry held, a valid visa or residence permit issued by Serbia; or

(b) illegally and directly entered the territory of the Member States after having stayed on, or transited through, the territory of Serbia.

…'

European Union law

Directive 2008/115

5 Recitals 6, 13, 16, 17 and 24 of Directive 2008/115 state:

'(6) Member States should ensure that the ending of illegal stay of third-country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay. When using standard forms for decisions related to return, namely return decisions and, if issued, entry-ban decisions and decisions on removal, Member States should respect that principle and fully comply with all applicable provisions of this Directive.

…

(13) The use of coercive measures should be expressly subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued. …

…

(16) The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.

(17) Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Without prejudice to the initial apprehension by law-enforcement authorities, regulated by national legislation, detention should, as a rule, take place in specialised detention facilities.

…

(24) This Directive respects the fundamental rights and observes the principles recognised in particular by [the Charter].'

6 Article 3 of that directive provides:

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

…

3. "return" means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

– his or her country of origin, or

– a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

– another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

4. "return decision" means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

…'

7 Article 5 of that directive provides:

'When implementing this Directive, Member States shall take due account of:

(a) the best interests of the child;

(b) family life;

(c) the state of health of the third-country national concerned;

and respect the principle of *non-refoulement*.'

8 Article 8 of that directive states:

'1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

…

3. Member States may adopt a separate administrative or judicial decision or act ordering the removal.

…'

9 In the words of Article 9(1) of Directive 2008/115:

'Member States shall postpone removal:

(a) when it would violate the principle of *non-refoulement* …

…'

10 Article 12(1) of that directive provides:

'Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies.'

11 Article 13 of that directive, entitled 'Remedies', provides:

'1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of [Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13)].'

12 Article 15 of Directive 2008/115, entitled 'Detention', provides:

'1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case, Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.

The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or *ex officio*. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

(a) a lack of cooperation by the third-country national concerned, or

(b) delays in obtaining the necessary documentation from third countries.'

13 Article 16 of that directive, entitled 'Conditions of detention', is worded as follows:

'1. Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.

2. Third-country nationals in detention shall be allowed — on request — to establish in due time contact with legal representatives, family members and competent consular authorities.

3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.

4. Relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities, as referred to in paragraph 1, to the extent that they are being used for detaining third-country nationals in accordance with this Chapter. Such visits may be subject to authorisation.

5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations. Such information shall include information on their entitlement under national law to contact the organisations and bodies referred to in paragraph 4.'

Directive 2013/32

14 Recitals 34 and 38 of Directive 2013/32 state:

'(34) Procedures for examining international protection needs should be such as to enable the competent authorities to conduct a rigorous examination of applications for international protection.

…

(38) Many applications for international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for admissibility and/or substantive examination procedures which would make it possible for such applications to be decided upon at those locations in well-defined circumstances.'

15 Article 2 of that directive provides:

'For the purposes of this Directive:

…

(c) "applicant" means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…

(e) "final decision " means a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)] and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;

(f) "determining authority" means 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;

…

(q) “subsequent application” means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).’

16 Article 6 of Directive 2013/32, entitled ‘Access to the procedure’, provides:

‘1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days.’

17 Article 26 of that directive, entitled ‘Detention’, provides:

‘1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive [2013/33].

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive [2013/33].’

18 In the words of Article 33 of that directive, entitled ‘Inadmissible applications’:

‘1. In addition to cases in which an application is not examined in accordance with 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)], Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive [2011/95] where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

(a) another Member State has granted international protection;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;

(d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of [Directive 2011/95] have arisen or have been presented by the applicant; or

(e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.'

19 Article 35 of Directive 2013/32, entitled 'The concept of first country of asylum', is worded as follows:

'A country can be considered to be a first country of asylum for a particular applicant if:

(a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or

(b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*,

provided that he or she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.'

20 Article 38 of that directive, entitled 'The concept of safe third country', provides:

'1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive [2011/95];

(c) the principle of *non-refoulement* in accordance with the [Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954)), as amended by the Protocol relating to the Status of Refugees, concluded at New York on 31 January 1967)] is respected;

(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the [Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954)), as amended by the Protocol relating to the Status of Refugees, concluded at New York on 31 January 1967)].

2. The application of the safe third country concept shall be subject to rules laid down in national law, including:

(a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

…

4. Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

…’

21 Article 40 of Directive 2013/32, entitled ‘Subsequent application’, is worded as follows:

‘1. Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, in so far as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive [2011/95].

3. If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive [2011/95], the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

4. Member States may provide that the application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations set forth in paragraphs 2 and 3 of this Article in the previous procedure, in particular by exercising his or her right to an effective remedy pursuant to Article 46.

5. When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

6. The procedure referred to in this Article may also be applicable in the case of:

(a) a dependant who lodges an application after he or she has, in accordance with Article 7(2), consented to have his or her case be part of an application lodged on his or her behalf; and/or

(b) an unmarried minor who lodges an application after an application has been lodged on his or her behalf pursuant to Article 7(5)(c).

In those cases, the preliminary examination referred to in paragraph 2 will consist of examining whether there are facts relating to the dependant's or the unmarried minor's situation which justify a separate application.

7. Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation [No 604/2013] makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.'

22 Article 43 of Directive 2013/32, entitled 'Border procedures', is worded as follows:

'1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on:

(a) the admissibility of an application, pursuant to Article 33, made at such locations; and/or

(b) the substance of an application in a procedure pursuant to Article 31(8).

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant shall be granted entry to the territory of the Member State in order for his or her application to be processed in accordance with the other provisions of this Directive.

3. In the event of arrivals involving a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it impossible in practice to apply there the provisions of paragraph 1, those procedures may also be applied where and for as long as these third-country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.'

Directive 2013/33

23 Recital 17 of Directive 2013/33 states:

'The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national's or stateless person's application for international protection.'

24 Article 2 of that directive provides:

'For the purposes of this Directive:

…

(b) "applicant": means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…

(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;

(h) "detention": means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

…'

25 In the words of Article 7 of that directive, entitled 'Residence and freedom of movement':

'1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.

3. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.

4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

5. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.'

26 Article 8 of that directive, entitled 'Detention', is worded as follows:

'1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive [2013/32].

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under Directive [2008/115] in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so requires;

(f) in accordance with Article 28 of Regulation [No 604/2013].

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.'

27 Article 9 of Directive 2013/33, entitled 'Guarantees for detained applicants', provides:

'1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the applicant. When conducted *ex officio*, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review *ex officio* and/or the judicial review at the request of the applicant shall be conducted.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, *ex officio* and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

7. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

9. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

10. Procedures for access to legal assistance and representation shall be laid down in national law.'

28 Article 10 of that directive, entitled 'Conditions of detention', provides in paragraph 1:

'Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

…'

29 In the words of Article 17 of that directive, which is entitled 'General rules on material reception conditions and health care':

'1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

…

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

…'

30 Article 18 of Directive 2013/33, which lays down the 'modalities for material reception conditions', provides, in paragraph 1:

'Where housing is provided in kind, it should take one or a combination of the following forms:

(a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;

(b) accommodation centres which guarantee an adequate standard of living;

(c) private houses, flats, hotels or other premises adapted for housing applicants.'

31 Entitled 'Appeals', Article 26 of that directive provides, in paragraph 1:

'Member States shall ensure that decisions relating to the granting, withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, before a judicial authority shall be granted.'

Hungarian law

The Fundamental Law

32 Article XIV(4) of the Alaptörvény (Fundamental Law) is worded as follows:

'Hungary shall, upon request, grant asylum to non-Hungarian nationals who are persecuted in their country or in the country of their habitual residence for reasons of race, nationality, membership of a particular social group, religious or political beliefs, or have a well-founded reason to fear direct persecution if they do not receive protection from their country of origin, nor from any other country. A non-Hungarian national shall not be entitled to asylum if he or she arrived in the territory of Hungary via any country where he or she was not persecuted or directly threatened with persecution.'

Law on the right to asylum

33 Article 5(1) of the menedékjogról szóló 2007. évi LXXX. törvény (Law No LXXX of 2007 on the right to asylum) (*Magyar Közlöny* 2007/83, 'the Law on the right to asylum) provides:

'An applicant for asylum shall be entitled:

(a) to reside, in accordance with the conditions laid down in this Law, on Hungarian territory and, in accordance with the specific regulations, to receive an authorisation to reside on Hungarian territory;

(b) in accordance with the conditions laid down in this Law and the specific legislation, to receive benefits, assistance and accommodation;

(c) to occupy a post at the place where the reception centre is located or at a place of work determined by the public employer within nine months following the lodging of the application for asylum then, after that period, in accordance with the general rules applicable to foreign nationals. …'

34 Article 6(1) of that law is worded as follows:

'Hungary shall grant refugee status to a foreign national who fulfils the conditions defined in the first sentence of Article XIV(4) of the Fundamental Law.'

35 Article 12(1) of the Law on the right of asylum provides:

'Hungary shall grant the status conferred by subsidiary protection to a foreign national who does not fulfil the conditions to be recognised as a refugee but who is at risk of serious harm if he or she returns to his or her country of origin and who cannot or, in fear of that risk, does not wish to seek the protection of his or her country of origin.'

36 In the words of Article 45(1) of that law:

'The principle of *non-refoulement* shall apply when the applicant would, in his or her country of origin, be exposed to a risk of persecution or of being subjected to the treatment referred to in Article XIV(3) of the Fundamental Law on the grounds of race, religion, nationality, membership of a particular social group or political beliefs and there is no safe third country that would accept him or her.'

37 Article 51(2)(f) of the Law on the right of asylum, in the version in force since 1 July 2018, establishes a new ground of inadmissibility of the application for asylum, defined as follows:

'The application is inadmissible when the applicant has arrived in Hungary via a country in which he or she is not exposed to persecution within the meaning of Article 6(1) or to the risk of serious harm, within the meaning of Article 12(1), or in which a sufficient level of protection is guaranteed.'

38 Article 51/A of that law provides:

'If the safe country of origin or the safe third country refuses to admit or readmit the applicant, the competent asylum authority shall withdraw its decision and conduct the asylum procedure.'

39 Article 71/A of the Law on the right of asylum, which governs border procedures, provides in paragraphs 1 to 7:

'(1) If the foreign national makes his or her application in a transit zone

(a) before having been authorised to enter the territory of Hungary, or

(b) after having been taken to the entrance of the facility serving to protect order at the border, as referred to in [the államhatárról szóló 2007. évi LXXXIX. törvény (Law No LXXXIX of 2007 on the State borders)] after having been intercepted inside a strip of eight kilometres from the delineation of the external border of Hungarian territory as defined in Article 2(2) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) [(OJ 2016 L 77, p. 1)], or from the signs indicating the border

this chapter shall apply subject to the provisions set out below.

(2) In the context of a border procedure, the applicant shall not benefit from the rights provided for in Article 5(1)(a) and (c).

(3) The competent asylum authority shall determine as a priority the admissibility of the application, by no later than eight days from the lodging of the application. The competent asylum authority shall take promptly the necessary measures to notify the decision delivered during the procedure.

(4) If four weeks have elapsed since the lodging of the application, the authority competent for migration control shall authorise entry, in accordance with the applicable legal rule.

(5) If the application is admissible, the authority competent for migration control shall authorise the entry, in accordance with the applicable legal rule.

(6) If the applicant has been authorised to enter the territory of Hungary, the competent asylum authority shall conduct the procedure in accordance with the general rules.

(7) The rules on the border procedure shall not apply to vulnerable persons.

…'

40 Chapter IX/A of the Law on the right of asylum, which refers to the situation of crisis caused by mass immigration, contains, in particular, Article 80/I(i), which excludes the application of Article 71/A of that law.

41 Chapter IX/A of that law also contains Article 80/J, which provides:

'1. The application for asylum must be lodged in person before the competent authority and solely in the transit zone, unless the asylum applicant is:

(a) subject to a coercive measure, a measure or a conviction restrictive of individual freedom;

(b) subject to a detention measure ordered by the competent asylum authority;

(c) legally resident on Hungarian territory and not seeking accommodation in a reception centre.

…

4. During the procedure, asylum applicants residing in the transit zone shall not benefit from the rights referred to in Article 5(1)(a) and (c).

…'

42 Chapter IX/A of that law contains Article 80/K, which provides:

'1. A rejection decision taken on the ground that the application is inadmissible, or delivered in an expedited procedure, may be contested within three days. The competent asylum authority shall communicate to the court, within three days, the application, together with the documents relating to the case and a defence.

2. The competent asylum authority shall take a decision on the basis of the information before it, or shall close the procedure, if the asylum applicant:

…

(d) leaves the transit zone.

…

4. The decision terminating the procedure in application of paragraph 2 above cannot be contested in a contentious administrative procedure.'

Law No LXXXIX of 2007 on the State borders

43 Article 15/A of the államhatárról szóló 2007. évi LXXXIX. törvény (*Magyar Közlöny* 2007. évi 88. száma, Law No LXXXIX of 2007 on the State borders), on the establishment of a transit zone, provides:

'(1) A transit zone may be created in the zone referred to in Article 5(1) to serve as a place of temporary residence for persons seeking asylum or subsidiary protection … and as a place in which asylum and migration supervision procedures take place and which contains the installations necessary for that purpose.

(2) An asylum seeker who is in a transit zone may enter Hungarian territory:

(a) if the competent asylum authority takes a decision granting him or her international protection;

(b) if the conditions for the conduct of an asylum procedure, in accordance with the general rules, are satisfied, or

(c) if it is appropriate to apply Article 71/A(4) and (5) of the Law on the right of asylum.

(2a) In a crisis situation created by mass immigration, an asylum seeker in a transit zone may be authorised to enter Hungarian territory in the cases referred to in paragraph 2(a) and (b)

…

(4) Contrary to the provisions referred to in paragraph 1, in a crisis situation created by mass immigration an installation in a place other than that indicated in Article 5(1) may also be designated as a transit zone.'

The Law on entry and residence by third-country nationals

44 In the words of Article 47(9)(a) of the harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló törvény (Law No II of 2007 on entry and residence by third-country nationals) (*Magyar Közlöny* 2007. évi 1. száma, 'the Law on entry and residence by third-country nationals'):

'The competent authority for migrant supervision may — *ex officio* or upon application — waive a prohibition on entry and residence if that prohibition was ordered against a third-country national … in conjunction with a return decision taken by the competent asylum authority, or following such a decision, and if that third-country national is able to demonstrate that he has left the territory of the Member States of the European Union in full compliance with that return decision …'

45 Article 62 of that law, relating to the designation of a specific place of residence, provides:

'(1) The authority competent for migration supervision may order a third-country national to reside in a specific place when:

…

(f) that third-country national is subject to a return decision and has neither the material resources necessary for his or her subsistence nor accommodation

…

(3) The third-country national may be allocated a mandatory place of residence in a collective accommodation structure or in a reception centre where he or she is not in a position to provide for his or her needs, where he or she does not have either suitable accommodation, or adequate material resources or income, or an invitation from a person required to assume responsibility for him or her, or family members who might be required to provide for his or her maintenance.

(3a) In a crisis situation created by mass immigration, a transit zone may also be designated as a mandatory place of residence.'

46 Article 65(3b) and (4) of the Law on entry and residence by third-country nationals, which governs return, provides:

'(3b) Where the competent migration supervision authority alters the country of destination stated in the return decision owing to conduct attributable to the person concerned, in particular where the third-country national has provided the authority with facts not consistent with the truth as regards his or her nationality, or because such a change is justified by other facts having an impact on the country of return, the decision or the amending order may be challenged. That challenge may be lodged within 24 hours of service of the decision with the competent migration supervision authority that issued it. No appeal shall lie against the decision delivered on the challenge to enforcement.

(4) The competent migration supervision authority shall communicate the challenge to enforcement with the case file promptly to the authority competent to determine the challenge, which shall make a determination within eight days.'

47 The Hungarian Government had initially introduced, in the national legislation, the provisions relating to the crisis situation created by large-scale immigration for the counties in the south of Hungary adjoining the Serbian border, then extended them to the entire national territory and continually extended their validity, pursuant to the tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról szóló 41/2016 (III. 9.) Korm. Rendelet (Government Decree 41/2016 (III.9) relating to the declaration of the crisis situation caused by mass immigration on the entire territory of Hungary, and also to the rules relating to the declaration, existence and cessation of a crisis situation).

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

Case C-924/19 PPU

48 FMS and FNZ, who are adult Afghan nationals, are a married couple. On 5 February 2019, they applied for asylum to the asylum authority in the Röszke transit zone (Hungary).

49 In support of their application, FMS and FNZ declared that, around three years earlier, they had, for political reasons, left Afghanistan for Turkey, in possession of a visa issued for a period of one month, which was valid, and that that visa had been extended for six months by the Turkish authorities. They also claimed that they passed through Bulgaria and Serbia before first entering Hungary, that they had not sought asylum in another country and that they had not been ill-treated or subject to any serious harm within the meaning of Article 15 of Directive 2011/95 in those countries.

50 On the same day, the asylum authority designated the Röszke transit zone as the place of residence of FMS and FNZ. They are still there.

51 By administrative decision of 25 April 2019, the asylum authority rejected the application for asylum made by FMS and FNZ, without examining its substance, as inadmissible on the basis of Article 51(2)(f) of the Law on the right of asylum, on the ground that the applicants had arrived in Hungary via a third country on whose territory they were not exposed to persecution justifying recognition of refugee status or to a risk of serious harm justifying the grant of subsidiary protection and that they were guaranteed sufficient protection in the countries through which they had travelled before arriving in Hungary. By that same decision, the asylum authority asserted that the principle of *non-refoulement* did not apply in the case of those applicants in connection with Afghanistan and ordered that they be removed to Serbia.

52 FMS and FNZ brought an action against that decision before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court, Hungary), which dismissed it by decision of 14 May 2019, without examining the substance of their application for asylum.

53 By decision of 17 May 2019, the aliens policing authority at first instance ordered FMS and FNZ to reside in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected, in application of Article 62(3 bis) of the Law on the entry and residence of third-country nationals. It is apparent from the order for reference in Case C-924/19 PPU that that decision did not state the grounds on which it was based and that only failure to comply with the obligation to provide information, placed on that authority by the relevant regulations, could be challenged before the ordinary courts, in the form of an objection.

54 On the same day, the aliens policing authority at first instance contacted the policy body competent for removal to Serbia so that it might take the necessary steps for FMS and FNZ to be readmitted to Serbia.

55 On 23 May 2019, the competent police body informed the aliens policing authority at first instance that Serbia had decided not to readmit FMS and FNZ to its territory on the ground that, as they had not entered Hungarian territory illegally from Serbian territory, the conditions for the application of Article 3(1) of the Agreement on readmission concluded between the Union and Serbia were not satisfied.

56 It is apparent from the order for reference in Case C-924/19 PPU that subsequently, although Serbia did not readmit FMS and FNZ to its territory, the asylum authority refused to examine the substance of their application for asylum, on the ground that, under Article 51/A of the Law on the right of asylum, examination of the application for asylum is pursued, in the event of refusal to readmit to the territory of a third country, only if the decision whereby that application was rejected as inadmissible is based on the concept of 'safe country of origin' or that of 'safe third country'.

57 By decisions of 3 and 6 June 2019, the aliens policing authority at first instance amended the return decision contained in the asylum authority's decision of 25 April 2019 as regards the country of destination and ordered that FMS and FNZ be removed under escort to Afghanistan.

58 FMS and FNZ lodged an objection to those amending decisions before the asylum authority, acting as a migration supervision authority. By orders of 28 June 2019, their objection was rejected; no appeal lies against those orders, in accordance with Article 65(3 ter) of the Law on entry and residence by third-country nationals.

59 FMS and FNZ brought an action before the referring court, requesting it to annul those orders and to order the asylum authority to conduct a fresh procedure, claiming, first of all, that those orders constitute return decisions which must be amenable to a judicial action and, next, that those return decisions are illegal. FMS and FNZ claim that the asylum authority ought to have examined the

substance of their application for asylum since they had not been readmitted to the territory of Serbia and since Article 51(2)(f) of the Law on the right of asylum introduces a new concept of 'safe country of transit', which is contrary to EU law.

60 In addition, FMS and FNZ brought an administration action for failure to act before the referring court against the aliens policing authority at first instance, seeking a declaration that that authority failed to fulfil its obligations by not assigning them accommodation outside the Röszke transit zone.

61 The referring court joined the two actions.

62 It considers, in the first place, that the ground of inadmissibility on which the application for asylum made by FMS and FNZ was rejected is contrary to EU law.

63 However, it observes, in the second place, that there is no rule expressly requiring the automatic resumption of the examination of the application for asylum of FMS and FNZ, although Serbia's refusal to admit them rendered the ground of inadmissibility on which the rejection of that application was based null and void.

64 Furthermore, although, in any fresh examination, the competent asylum authority may rely on a ground of inadmissibility provided for in Article 33(1) and (2)(b) and (c) of Directive 2013/32, the referring court considers that the application for asylum could be declared inadmissible on the grounds referring to Articles 35 and 38 of that directive only in so far as the person concerned is readmitted to the territory of the third country concerned. It follows that, if there is no doubt that the country to which that person must be removed will not readmit him or her, the asylum authority cannot declare the application for asylum inadmissible.

65 In the light of the foregoing, the referring court considers that FMS and FNZ are entitled to have their application for asylum re-examined and that they remain within the scope of Directive 2013/32.

66 It therefore wonders, in the third place, whether FMS and FNZ must be considered to be in detention, within the meaning of Directive 2013/32, and, if so, whether such detention is legal, as the four-week period referred to in Article 43(2) of that directive has been exceeded in their case.

67 However, and on the assumption that FMS and FNZ are not entitled to have their application for asylum examined again, the referring court wonders, in the fourth place, whether they must be considered to be in detention within the meaning of Directive 2008/115 and whether, if so, that detention is compatible with Article 15 of that directive.

68 In that regard, the referring court observes that the Röszke transit zone, which is situated at the border between Hungary and Serbia, is surrounded by a high fence and barbed wire; inside that zone are metal containers intended to accommodate the third-country nationals present in the zone. The floor area of the container in which FMS and FNZ are staying is no more than 13 m^2 and it contains bunk beds and cupboards. Police officers or armed guards are permanently present inside and outside that transit zone and in the immediate vicinity of that fence.

69 The Röszke transit zone is divided into a number of sectors intended to accommodate, separately, asylum seekers and third-country nationals whose applications for asylum have been rejected. Those sectors are separated from each other by fences, so that the possibility of going from one sector to another is extremely limited. In addition, it is apparent from the order for reference in Case C-924/19 PPU that it is possible to leave a sector only twice per week, for around one hour, in order to visit the other sectors.

70 FMS and FNZ are able to leave their sector only when their presence is required for the purposes of procedural acts relating to them or when, escorted by police officers or armed guards, they receive medical checks or treatment in a container in the transit zone reserved for that purpose. The possibility of being in contact with persons outside that zone — including with their lawyers — is subject to prior authorisation. FMS and FNZ cannot leave the Röszke transit zone for another place in Hungary.

71 Furthermore, the referring court considers that the situation of FMS and FNZ is distinguished from the situation that gave rise to the judgment of the ECtHR of 21 November 2019, *Ilias and Ahmed v. Hungary* (CE:ECHR:2019:1121JUD 004728715).

72 It thus observes, in particular, that at the time when FMS and FNZ were placed in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected, they were not asylum seekers, according to the Hungarian authorities, and that they did not enter that sector voluntarily or from Serbia, but from the sector of that transit zone reserved for asylum seekers.

73 Furthermore, they were placed in the Röszke transit zone without a reasoned decision being taken, without an assessment of its necessity or its proportionality, and there is no judicial review enabling them to challenge its legality. Nor does any national legal rule limit the duration of their stay in the sector of the transit zone reserved for third-country nationals whose applications for asylum have been rejected.

74 Still according to the referring court, FMS and FNZ cannot lawfully leave the Röszke transit zone, as their departure is possible only by air to their country of origin, which is beset by internal armed conflict and is not a party to the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (*United Nations Treaty Collection*, vol. 189, p. 150, No 2545 (1954)), as amended by the Protocol relating to the Status of Refugees, concluded at New York on 31 January 1967. Their departure therefore depends solely on cooperation between the Hungarian authorities and the authorities of their country of origin, since those applicants cannot go to Serbia, as they are now subject to a decision that they are to return to their country of origin and the Serbian authorities have decided not to readmit them.

75 The referring court considers that the placing of FMS and FNZ in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected constitutes detention that is not consistent with the requirements imposed by EU law. It therefore considers that, under Article 47 of the Charter, it should be able, by way of interim relief, to compel the responsible authority to allocate FMS and FNZ a place of accommodation outside that transit zone, which is not a place of detention, pending the close of the contentious administrative proceedings.

76 In the fifth place, the referring court questions the effectiveness of the action against the decision whereby the aliens policing authority at first instance amended the country of destination stated in the return decisions to which FMS and FNZ were subject.

77 The referring court observes, first, that an objection to that decision is examined by the asylum authority, although that authority comes under the authority of the Minister responsible for the police, is part of the executive and is therefore not an independent and impartial body, and, second, that the relevant Hungarian legislation does not allow the referring court to review the administrative decision determining that objection, as the only review relating to that decision consists in the supervisory power of the public prosecutor's office, which may, where appropriate, challenge an administrative decision in such matters before a court.

78 Such a situation, according to the referring court, has the effect that the decision altering the country of destination stated in the return decision may ultimately be upheld although, if a new asylum procedure concerning FMS and FNZ should be carried out, they would come not within the scope of Directive 2008/115 but of Directive 2013/32.

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

'(1) [New ground of inadmissibility]

Must the provisions on inadmissible applications in Article 33 of [Directive 2013/32] be interpreted as precluding a Member State's legislation under which an application made in the context of the asylum procedure is inadmissible when the applicant reached Hungary via a country where he or she was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed?

(2) [Conduct of an asylum procedure]
(a) Must Article 6 and Article 38(4) of [Directive 2013/32], and recital 34 thereof, which imposes an obligation to examine applications for international protection, read in the light of Article 18 of the Charter, be interpreted as meaning that the competent asylum authority of a Member State must ensure that the applicant has the opportunity to initiate the asylum procedure if it has not examined the substance of the application for asylum by relying on the ground of inadmissibility mentioned in [Question 1] and has subsequently ordered the return of the applicant to a third country which has however refused to readmit him or her [to its territory]?
(b) If the answer to Question 2(a) is in the affirmative, what is the exact extent of that obligation? Does it imply an obligation guaranteeing the possibility to submit a new application for asylum, thereby excluding the negative consequences of subsequent applications referred to in Article 33(2)(d) and Article 40 of [Directive 2013/32], or does it imply the automatic start or conduct of the asylum procedure?
(c) If the answer to Question 2(a) is in the affirmative, taking account also of Article 38(4) of [Directive 2013/32], can the Member State — the factual situation remaining unchanged — re-examine the inadmissibility of the application in the context of that new procedure (thereby giving it the possibility of applying any type of procedure provided for in Chapter III, for example reliance once again on a ground of inadmissibility) or must it examine the substance of the application for asylum in the light of the country of origin?
(d) Does it follow from Article 33(1) and (2)(b) and (c) and Articles 35 and 38 of [Directive 2013/32], read in the light of Article 18 of the Charter, that readmission by a third country is one of the cumulative conditions for the application of a ground of inadmissibility, that is to say, for the adoption of a decision based on such a ground, or is it sufficient to verify that that condition is satisfied at the time of the enforcement of such a decision?

(3) [Transit zone as a place of detention in the context of an asylum procedure] [Question 3 is relevant] if, in accordance with the answer to Question 2, an asylum procedure must be conducted.
(a) Must Article 43 of [Directive 2013/32] be interpreted as precluding legislation of a Member State under which the applicant may be detained in a transit zone for more than four weeks?
b) Must Article 2(h) of [Directive 2013/33], applicable pursuant to Article 26 of [Directive 2013/32], read in the light of Article 6 and Article 52(3) of the Charter, be interpreted as meaning that accommodation in a transit zone in circumstances such as those in the main proceedings (a zone which an applicant cannot lawfully leave on a voluntary basis regardless of his destination) for a period exceeding the four-week period referred to in Article 43 of [Directive 2013/32] constitutes detention?

(c) Is the fact that the detention of the applicant for a period exceeding the four-week period referred to in Article 43 of [Directive 2013/32] takes place only because he cannot meet his needs (accommodation and food) due to a lack of material resources to cover those needs compatible with Article 8 of [Directive 2013/33], applicable pursuant to Article 26 of [Directive 2013/32]?

(d) Is the fact that (i) accommodation which constitutes de facto detention for a period exceeding the four-week period referred to in Article 43 of [Directive 2013/32] has not been ordered by a detention order, (ii) no guarantee that the lawfulness of the detention and its continuation may be challenged before the courts has been provided, (iii) the de facto detention takes place without any examination of the necessity or proportionality of that measure, or whether there are any alternative measures and (iv) the exact duration of the de facto detention is not fixed, including the date on which it ends, compatible with Articles 8 and 9 of [Directive 2013/33], applicable pursuant to Article 26 of [Directive 2013/32]?

(e) Can Article 47 of the Charter be interpreted as meaning that, when a manifestly unlawful detention is brought for consideration before a court of a Member State, that court may, as an interim measure, until the administrative proceedings come to an end, require the authority to designate for the benefit of the third-country national a place of stay outside the transit zone which is not a place of detention?

(4) [Transit zone as place of detention in the context of an asylum procedure] [Question 4 is relevant] if, in accordance with the answer to Question 2, there is a need to conduct not an asylum procedure but a procedure within the field of competence of the Aliens Police:

(a) Must recitals 17 and 24 and Article 16 of [Directive 2008/115], read in the light of Article 6 and Article 52(3) of the Charter, be interpreted as meaning that accommodation in a transit zone in circumstances such as those in the main proceedings (a zone which an applicant cannot lawfully leave on a voluntary basis regardless of his destination) constitutes deprivation of liberty for the purposes of those provisions?

(b) Is the fact that the detention of an applicant, national of a third country, takes place solely because he is subject to a return order and cannot meet his needs (accommodation and food) due to a lack of material resources to cover those needs compatible with recital 16 and Article 15(1) of [Directive 2008/115], read in the light of Articles 6 and 52(3) of the Charter?

(c) Is the fact that (i) accommodation which constitutes de facto detention has not been ordered by a detention order, (ii) no guarantee that the lawfulness of the detention and its continuation may be challenged before the courts has been provided and (iii) the de facto detention takes place without any examination of the necessity or proportionality of that measure, or whether there are any alternative measures, compatible with recital 16 and Article 15(2) of [Directive 2008/115], read in the light of Articles 6, 47 and Article 52(3) of the Charter?

(d) Can Article 15(1) and (4) to (6) and recital 16 of [Directive 2008/115], read in the light of Articles 1, 4, 6 and 47 of the Charter, be interpreted as precluding detention from taking place without its exact duration being fixed, including the date on which it ends?

(e) Can EU law be interpreted as meaning that, when a manifestly unlawful detention is brought for consideration before a court of a Member State, that court may, as an interim measure, until the administrative proceedings come to an end, require the authority to designate for the benefit of the third-country national a place of stay outside the transit zone which is not a place of detention?

(5) [Effective judicial protection with regard to the decision amending the country of return]

Must Article 13 of [Directive 2008/115], under which a third-country national is to be afforded an effective remedy to appeal against or seek review of "decisions related to return", read in the light of Article 47 of the Charter, be interpreted as meaning that, where the remedy provided for under domestic law is not effective, a court must review the application lodged against the decision amending the country of origin at least once?'

Case C-925/19 PPU

80 SA and his infant child, SA junior, are Iranian nationals. On 5 December 2018, they made an application for asylum to the asylum authority, in the Röszke transit zone.

81 In support of their application, SA claimed that he had left the Islamic Republic of Iran two and a half years previously, on the ground that he had been divorced from his wife, that he had become interested in Christianity, although he had not been baptised, and that during his childhood he had suffered sexual violence by members of his family. He also stated that the reasons that had obliged him to leave his country of origin were not political or linked to membership of a minority ethnic or religious community and that he had reached Hungary via Turkey, Bulgaria and Serbia.

82 SA also stated that, after leaving the Islamic Republic of Iran for Turkey and spending 10 days there, without seeking asylum in that country, he had spent around three months in Bulgaria. He also maintained that, after being informed that he would be sent back to Iran if he did not apply for international protection in Bulgaria, he had made an application for asylum in Bulgaria, against his wishes. He asserted, moreover, that he had also resided in Serbia for more than two years, without applying for asylum in that country.

83 On 5 December 2018, the asylum authority designated the Röszke transit zone as the place of accommodation for SA and SA junior. They are still there.

84 By administrative decision of 12 February 2019, the asylum authority rejected, on the basis of Article 51(2)(f) of the Law on the right to asylum, the application for asylum made by SA and SA junior as inadmissible, without examining the substance of the application, and asserted that the principle of *non-refoulement* did not apply in their case. It ordered that they be removed to Serbia, observing that they were not exposed to a risk of serious harm or persecution in Turkey, Bulgaria or Serbia and that they were guaranteed a sufficient degree of protection in those countries.

85 SA and SA junior brought an action against that decision before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court), which dismissed the action by decision of 5 March 2019, without adjudicating on the substance of their application for asylum.

86 By decision of 27 March 2019, the aliens policing authority at first instance ordered SA and SA junior to stay in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected, in application of Article 62(3 bis) of the Law on the entry and residence of third-country nationals. According to the referring court, the grounds for that decision were not stated in the decision.

87 On the same day, the aliens policing authority at first instance contacted the police body responsible for removal to Serbia so that it might take the necessary steps for SA and SA junior to be readmitted to Serbia.

88 On 1 April 2019, the competent police body informed the aliens policing authority at first instance that Serbia had decided not to readmit SA and SA junior to its territory for the same reasons as those set out in paragraph 55 of this judgment.

89 It is apparent from the order for reference in Case C-925/19 PPU that, although Serbia did not readmit SA and SA junior to its territory, the asylum authority did not examine the substance of their application for asylum.

90 By decision of 17 April 2019, the aliens policing authority at first instance amended the return decision contained in the asylum authority's decision of 12 February 2019, as regards the country of destination, and ordered that SA and SA junior be removed, under escort, to the Islamic Republic of Iran.

91 SA and SA junior lodged an objection to that decision before the asylum authority, acting as the aliens police authority. By order of 17 May 2019, their objection was rejected.

92 SA and SA junior brought two actions before the referring court, identical to the actions brought by the applicants in the main proceedings in Case C-924/19 PPU, as mentioned in paragraphs 59 and 60 of this judgment.

93 The referring court joined those two actions and decided, for reasons essentially identical to those set out in paragraphs 62 to 78 of this judgment, to stay proceedings and to refer to the Court the same questions for a preliminary ruling as those referred in the context of Case C-924/19 PPU, as set out in paragraph 79 of this judgment.

The urgent procedure

94 The referring court has requested that the present references for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.

95 In support of its request, the referring court claimed that FMS, FNZ, SA and SA junior ('the applicants in the main proceedings') are currently de facto deprived of their liberty.

96 In addition, according to that court, the conditions of FMS's and FNZ's detention are even more difficult because FMS and FNZ are 63 years old and 58 years old respectively, one of them is diabetic and their de facto detention has lasted since 17 May 2019. The referring court also observed that SA junior is an infant child whose mental and physical health has deteriorated while he has been staying with his father in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected.

97 Furthermore, the referring court stated that the Court's answers to the questions referred to it will have a direct and decisive impact on the outcome of the cases in the main proceedings, and in particular on the continuing detention of the applicants in the main proceedings.

98 In that regard, it should be stated, in the first place, that the present references for a preliminary ruling concern the interpretation of Directives 2008/115, 2013/32 and 2013/33, which come under Title V of Part Three of the FEU Treaty, on the area of freedom, security and justice. The references are therefore capable of being dealt with under the urgent preliminary ruling procedure.

99 As regards, in the second place, the condition relating to urgency, it should be emphasised, first, that that condition is satisfied, in particular, when the person concerned in the main proceedings is currently deprived of his or her liberty and when his or her continuing detention depends on the outcome of the dispute in the main proceedings. In that regard, the situation of the person concerned must be assessed as it stood at the time when consideration was given to whether the reference should be dealt with under the urgent procedure (judgment of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraph 34 and the case-law cited).

100 According to settled case-law, the placing of a third-country national in a detention centre, whether in the course of his or her application for international protection or with a view to his or her removal, constitutes a measure that deprives the person concerned of his or her freedom (judgments of 19 July 2012, *Adil*, C-278/12 PPU, EU:C:2012:508, paragraphs 34 and 35; of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533, paragraphs 23 and 25; of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraphs 40 and 41; of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraphs 31 and 35; and order of 5 July 2018, *C and Others*, C-269/18 PPU, EU:C:2018:544, paragraphs 35 and 37).

101 In this instance, the applicants in the main proceedings in Case C-924 PPU and those in Case C-925 PPU have been staying, since 17 May 2019 and 27 March 2019 respectively, in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected.

102 The present references for a preliminary ruling concern, in particular, whether keeping the applicants in the main proceedings in that sector constitutes 'detention' within the meaning of Directive 2008/115 or Directives 2013/32 and 2013/33 and, if so, whether such detention complies with the guarantees laid down by those directives.

103 It follows that the question of the existence of a deprivation of freedom, on which the triggering of the urgent preliminary ruling procedure in the present cases depends, is inseparably linked to the examination of the questions submitted in these cases and, moreover, that whether the applicants in the main proceedings will continue to be kept in the sector of the transit zone reserved for third-country nationals whose applications for asylum have been rejected depends on the answer to those questions.

104 Second, it follows from the orders for reference that the applicants in the main proceedings are at present the subject of decisions ordering them to return to their countries of origin and are therefore liable to be sent there at short notice even though, according to the referring court, the substance of the reasons on which their applications for asylum are based has never been examined by a court.

105 Thus, it cannot be precluded that, in application of those decisions, which were confirmed by orders the annulment of which is being sought before the referring court, the applicants in the main proceedings will be removed to their countries of origin before the outcome of a preliminary ruling procedure which is not dealt with under the urgent preliminary ruling procedure, and that their removal might expose them to treatment contrary to Article 18 and Article 19(2) of the Charter.

106 Third, it also follows from the order for reference in Case C-925/19 PPU that one of the applicants in the main proceedings in that case is an infant child, whose mental and physical health is deteriorating because he is staying in the Röszke transit zone. It follows that a delay in taking a judicial decision would prolong the current situation and would thereby risk causing serious, possibly irreparable, harm to that child's development (see, to that effect, judgment of 17 October 2018, *UD*, C-393/18 PPU, EU:C:2018:835, paragraph 26).

107 In those circumstances, and having regard to the content of the questions submitted by the referring court, which are capable of having a decisive impact both on whether the applicants in the main proceedings will continue to be kept in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected and on the judicial review of the decisions ordering them to return to their countries of origin, the Fifth Chamber of the Court decided, on 22 January 2020, acting on a proposal of the Judge-Rapporteur and after hearing the Advocate General, to grant the referring court's request that the present references for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

108 It was also decided that the present cases should be referred to the Court with a view to being assigned to the Grand Chamber.

Consideration of the questions for a preliminary ruling

The fifth question

109 By its fifth question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 13 of Directive 2008/115, read in the light of Article 47 of the Charter, must be interpreted, first, as precluding the legislation of a Member State under which the amendment, by an administrative authority, of the country of destination stated in an earlier return decision can be challenged by the third-country national concerned only by means of an action brought before an administrative authority, whose decisions are not amenable to judicial review, and, second, as requiring that court in such circumstances to recognise that it has jurisdiction to adjudicate on the action before it challenging the legality of such an amendment.

110 In this instance, it should be observed, as a preliminary point, that, according to the orders for reference, after the asylum authority rejected as inadmissible the applications for international protection made by the applicants in the main proceedings and at the same time adopted the return decisions ordering them to leave Hungarian territory for Serbia, the aliens policing authority at first instance amended those decisions and ordered the applicants to leave Hungarian territory for their countries of origin, namely Afghanistan in the case of FMS and FNZ and Iran in the case of SA and SA junior. The referring court states, moreover, that those applicants were able to challenge those amending decisions only by lodging an objection against them with the authority referred to in Article 65(3 ter) of the Law on entry and residence by third-country nationals and that, in accordance with the last sentence of that provision, the decisions whereby the asylum authority, acting as an aliens policing authority, rejected the objections lodged by the applicants are not amenable to appeal.

111 Article 13(1) of Directive 2008/115 guarantees the third-country national concerned an effective remedy to challenge return decisions, decisions banning entry to the territory of the Member States and decisions on removal before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

112 In the first place, it is appropriate to examine whether the decision amending the country of destination stated in an earlier return decision constitutes one of the decisions against which that provision guarantees an effective remedy.

113 According to settled case-law, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context, the objectives pursued by the rules of which it is part and, where appropriate, its origins (judgment of 19 December 2019, *Nederlands Uitgeversverbond and Groep Algemene Uitgevers*, C-263/18, EU:C:2019:1111, paragraph 38 and the case-law cited).

114 In that regard, it should be observed that, under Article 3(4) of Directive 2008/115, a ‘return decision’ means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return. In accordance with Article 3(3) of that directive, that obligation to return requires the person concerned to return either to his or her country of origin, or to a country of transit, or to another third country to which he or she voluntarily decides to return and in which he or she will be accepted.

115 It therefore follows from the very wording of paragraph 4 of Article 3 of Directive 2008/115 that the actual imposition or declaration of an obligation to return constitutes one of the two components of a return decision, such an obligation to return being inconceivable, in the light of paragraph 3 of that article, unless a destination, which must be one of the countries referred to in paragraph 3, is identified.

116 It follows that, when the competent national authority amends the country of destination stated in an earlier return decision, it makes an amendment to that return decision that is so substantial that that authority must be considered to have adopted a new return decision, within the meaning of Article 3(4) of Directive 2008/115.

117 Such an interpretation is confirmed by an analysis of the context of that provision.

118 Thus, under Article 5 of Directive 2008/115, when the competent national authority is contemplating the adoption of a return decision, that authority must necessarily observe the principle of *non-refoulement* (see, to that effect, judgments of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 49, and of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 103).

119 As the Advocate General has observed, in essence, in point 84 of his Opinion, observance of such a principle must be assessed by reference to the country to which it is envisaged that the person concerned will be ordered to be returned. It follows that, before an amendment of the country of destination can be made, the competent national authority must carry out a fresh evaluation of observance of the principle of *non-refoulement*, separate from that which it had to carry out when adopting the earlier return decision.

120 In addition, contrary to what the Hungarian Government appears to suggest, the amendment of an earlier return decision cannot be regarded as a removal decision taken after that return decision, within the meaning of Article 8 of Directive 2008/115. It is clear from Article 8 of that directive that a removal decision is taken for the purpose of implementing the return decision and must therefore respect the content of the latter decision. It follows that a removal decision cannot amend the country of destination stated in the return decision which it implements.

121 The interpretation set out in paragraph 116 of this judgment is also consistent with the objective pursued by Directive 2008/115, which is the establishment of an effective removal and repatriation policy that fully respects the fundamental rights and dignity of the persons concerned (judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 48 and the case-law cited).

122 The treatment of the decision amending the country of destination stated in an earlier return decision as a new return decision has the consequence that the competent national authority must, when it envisages such an amendment of the return decision, ensure that it complies with all the procedural rules laid down in Directive 2008/115 applicable to the adoption of a return decision. Such treatment therefore makes it possible to ensure an implementation of the removal and repatriation policy that is effective and also observes the fundamental rights of the person concerned.

123 It follows from the foregoing that an amendment of the country of destination stated in an earlier return decision constitutes a new return decision, within the meaning of Article 3(4) of Directive 2008/115, against which the third-country national concerned must be afforded an effective remedy, within the meaning of Article 13(1) of that directive.

124 It is therefore appropriate, in the second place, to determine the nature of the remedy guaranteed by Article 13(1) of that directive.

125 In that regard, first, it is clear from the very wording of that provision that such a remedy must be capable of being exercised by the person subject to the return decision. Therefore, contrary to what the Hungarian Government seems to contend, the existence, in national law, of a general power to review the legality of return decisions, recognised to the Public Prosecutor's Office and authorising only the latter to challenge such a decision, where appropriate, before a court does not constitute a remedy that satisfies the requirements of Article 13(1) of Directive 2008/115.

126 Second, while it follows from the wording of Article 13(1) of Directive 2008/115 that return decisions must be capable of being appealed against or reviewed before a competent judicial or administrative authority or a body composed of members who are impartial and independent, that wording does not in itself allow further inferences to be drawn as regards the characteristics of the 'administrative authority' that may be required to determine such an action against a return decision.

127 However, it follows from the Court's case-law that the characteristics of the effective remedy referred to in Article 13(1) of Directive 2008/115 must be determined in a manner that is consistent with Article 47 of the Charter, which provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article (judgments of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 45, and of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 52).

128 Thus, while it is true that, according to Article 13(1) of Directive 2008/115, Member States may provide in their legislation that return decisions may be contested before authorities other than judicial authorities, when exercising such an option they must nonetheless comply with Article 47 of the Charter, which requires, as the Advocate General observed, in essence, in point 94 of his Opinion, that the decision of an authority that does not itself satisfy the conditions laid down in that article be subject to subsequent control by a judicial body that must, in particular, have jurisdiction to consider all the relevant issues (see, by analogy, judgments of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 55, and of 13 December 2017, *El Hassani*, C-403/16, EU:C:2017:960, paragraph 39).

129 Accordingly, Article 47 of the Charter requires the Member States to guarantee, at a certain stage of the proceedings, the possibility for the third-country national concerned to bring any dispute relating to a return decision adopted by an administrative authority before a court (see, by analogy, judgment of 13 December 2017, *El Hassani*, C-403/16, EU:C:2017:960, paragraph 41).

130 It follows that national legislation under which the addressee of an administrative return decision cannot challenge the regularity of that decision before at least one judicial body does not comply with the requirements of Article 13(1) of Directive 2008/115 and of Article 47 of the Charter (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 57 and the case-law cited).

131 In this instance, it is apparent from the orders for reference that, under the relevant national legislation, an objection against an administrative decision amending an initial return decision can be lodged only with the asylum authority and that no appeal lies against the decision whereby that authority rejects that objection.

132 It follows that such legislation would be compatible with Article 13(1) of Directive 2008/115 only if the authority that determined such objections could be regarded as a court or tribunal for the purposes of Article 47 of the Charter, which assumes that that authority satisfies the requirement of independence, within the meaning of that article (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 37 and 41; of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the judicial system)*, C-216/18 PPU, EU:C:2018:586, paragraphs 52 and 53; of 19 November 2019, *A.K. and Others (Independence of the Disciplinary*

Chamber of the Supreme Court), C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 120 and the case-law cited; and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraphs 56 and 57).

133 It is clear from the case files submitted to the Court that that is not the position.

134 In fact, it is apparent from the orders for reference that the asylum authority comes under the authority of the Minister responsible for the police and is thus part of the executive.

135 The external aspect of the requirement of independence that characterises a court within the meaning of Article 47 of the Charter requires that the body concerned exercise its functions wholly autonomously, without receiving orders or instructions from any source whatsoever, being thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions (judgments of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 121, and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 57 and the case-law cited).

136 More particularly, and in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive (judgment of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 124).

137 It follows that national legislation which provides that a decision, such as that described in paragraph 123 of this judgment, must be contested by the person concerned before an authority that does not satisfy the conditions laid down in Article 47 of the Charter, without a subsequent judicial review of the decision of that authority being guaranteed, is incompatible with Article 13(1) of Directive 2008/115 and, moreover, fails to comply with the essential content of the right provided for in Article 47 of the Charter, in that it deprives the person concerned of any judicial remedy against a return decision relating to him or her (see, by analogy, judgments of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 72, and of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 165).

138 In the third place, it is appropriate to examine whether in such circumstances EU law authorises the referring court to consider that it has jurisdiction to hear the appeals brought before it by the applicants in the main proceedings and seeking annulment of the decisions whereby the asylum authority, acting in the capacity of aliens police authority, rejected their objections to the administrative decisions ordering them to return to their countries of origin.

139 In that regard, it should be emphasised, first, that, in the light of the principle of primacy of EU law, where it is impossible for it to interpret national legislation in compliance with the requirements of EU law, any national court, acting in the exercise of its jurisdiction, has, as a body of a Member State, the obligation to disapply any provision of national law which is contrary to a provision of EU law with direct effect in the case before it (judgments of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 58 and 61, and of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraphs 160 and 161).

140 It is clear from the Court's case-law that Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right on which they may rely as such (judgments of 17 April 2018, *Egenberger*, C-414/16,

EU:C:2018:257, paragraph 78; of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 56; and of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 162).

141 The same applies to Article 13(1) of Directive 2008/115, since the characteristics of the action provided for in that provision must be determined in accordance with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection (see, by analogy, judgments of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraphs 55 and 56, and of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 163).

142 Second, when there are no EU rules governing the matter, although it is for the domestic legal system of every Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, the Member States are, however, to ensure compliance in every case with the right to effective judicial protection of those rights as enshrined in Article 47 of the Charter (judgment of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 115).

143 In that regard, it should be borne in mind that, although EU law does not, in principle, require Member States to establish before their national courts, in order to ensure the safeguarding of the rights which individuals derive from EU law, remedies other than those established by national law (see, to that effect, judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 40, and of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 51), the position is otherwise if it is apparent from the overall scheme of the national legal system in question that no legal remedy exists that would make it possible to ensure, even indirectly, respect for the rights that individuals derive from EU law, or again if the sole means whereby individuals can obtain access to a court is by breaking the law (see, to that effect, judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 41, and of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 104).

144 It is therefore for the national courts to declare that they have jurisdiction to determine the action brought by the person concerned in order to defend the rights guaranteed to him by EU law if the domestic procedural rules do not provide for such an action in such a case (see, by analogy, judgments of 3 December 1992, *Oleificio Borelli* v *Commission*, C-97/91, EU:C:1992:491, paragraph 13, and of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraph 46).

145 Thus, the absence, in the laws of the Member State concerned, of a judicial remedy permitting a review of the lawfulness, under EU law, of an administrative return decision, such as that described in paragraph 123 of this judgment, cannot relieve the national court of its obligation to ensure the full effectiveness of Article 13(1) of Directive 2008/115 which, having direct effect, may constitute in itself a directly applicable basis for jurisdiction, when it has not been properly transposed into the national legal order.

146 It follows that the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter, require the referring court to declare that it has jurisdiction to hear the actions brought by the applicants in the main proceedings against the decisions of the asylum authority rejecting their objections to the administrative decisions ordering them to return to their countries of origin and to disapply, if necessary, any national provision prohibiting it from proceeding in that way (see, by analogy, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 74 and the case-law cited).

147 In the light of all of the foregoing considerations, the answer to the fifth question is that Article 13 of Directive 2008/115, read in the light of Article 47 of the Charter, must be interpreted as precluding the legislation of a Member State under which the amendment by an administrative authority of the country of destination stated in an earlier return decision can be contested by the third-country national concerned only by means of an action brought before an administrative authority, without a subsequent judicial review of the decision of that authority being guaranteed. In such a situation, the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter, must be interpreted as requiring the national court dealing with an action contesting the legality, under EU law, of the return decision consisting in such an amendment of the country of destination to declare that it has jurisdiction to hear that action.

The first question

148 By its first question, the referring court asks, in essence, whether Article 33 of Directive 2013/32 must be interpreted as precluding national legislation under which an application for international protection may be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via the territory of a State in which he or she was not exposed to persecution or to a risk of serious harm, within the meaning of the national provision transposing Article 15 of Directive 2011/95, or in which a sufficient degree of protection is guaranteed.

149 In the words of Article 33(1) of Directive 2013/32, in addition to cases in which an application is not examined in accordance with Regulation No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95 where an application is considered inapplicable pursuant to that provision. In that regard, Article 33(2) of Directive 2013/32 sets out an exhaustive list of the situations in which Member States may consider an application for international protection to be inadmissible (judgments of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 76, and of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 29).

150 It is therefore appropriate to ascertain whether national legislation, such as that at issue in the main proceedings, may be regarded as implementing one of the grounds of inadmissibility set out in Article 33(2) of Directive 2013/32.

151 In that regard, it must be precluded at the outset that the national legislation at issue in the main proceedings, namely Article 51(2)(f) of the Law on the right of asylum, may constitute the implementation of the grounds of inadmissibility set out in Article 33(2)(a),(d) and (e) of that directive, as only the grounds of inadmissibility relating to the first country of asylum and the safe third country, set out, respectively, in Article 33(2)(b) and (c) of that directive, may be taken into consideration to that end (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 33).

152 In that context, as regards the ground of inadmissibility relating to the safe third country, provided for in Article 33(2)(c) Directive 2013/32, it should be borne in mind that, according to that provision, Member States may consider an application for international protection to be inadmissible where a country which is not a Member State is considered to be a safe third country for the applicant, pursuant to Article 38 of that directive.

153 As the Court has already held, it is clear from Article 38 of Directive 2013/32 that the application of the concept of 'safe third country', for the purposes of Article 33(2)(c) of that directive, is subject to compliance with the cumulative conditions laid down in Article 38(1) to (4) (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraphs 36, 40 and 41).

154 In this instance, as regards, in the first place, the condition laid down in Article 38(1) of Directive 2013/32, in the light of the wording itself of the national legislation at issue in the main proceedings, it would appear — and this is a matter for the referring court to determine — that the application of the ground of inadmissibility relating to the first situation referred to in that legislation is subject to compliance, in the third country concerned, with only some of the principles laid down in Article 38(1) of that directive, the requirement of compliance in that country with the principle of *non-refoulement*, in particular, being absent. The condition laid down in Article 38(1) of that directive has not, therefore, been satisfied (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 42).

155 As regards the ground of inadmissibility based on the second situation referred to in the national legislation at issue in the main proceedings, the referring court has not provided any indication as to the content of the 'sufficient degree of protection' required by that legislation or, in particular, as to whether such a degree of protection includes compliance, in the third country concerned, with all of the principles laid down in Article 38(1) of Directive 2013/32. It is for the referring court to determine whether that is the case.

156 As regards, in the second place, the conditions laid down in Article 38(2) of Directive 2013/32 and, in particular, that relating to the existence of a connection between the applicant for international protection and the third country concerned, the connection that the national legislation at issue in the main proceedings establishes between such an applicant and the third country concerned is based simply on that applicant's transit through the territory of that country (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 44).

157 The Court has held that the fact that an applicant for international protection has transited through the territory of a third country cannot alone constitute a connection for the purposes of Article 38(2) (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraphs 45 to 47).

158 Furthermore, the obligation imposed on Member States by Article 38(2) of Directive 2013/32, for the purposes of applying the concept of 'safe third country', to adopt rules providing for the methodology applicable for assessing, on a case-by-case basis, whether the third country concerned satisfies the conditions for being regarded as safe for the applicant, and the possibility for the applicant to challenge the existence of a connection with that third country, cannot be justified if the mere fact that the applicant for international protection transited through the third country concerned constituted a sufficient or significant connection for those purposes (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraphs 48 and 49).

159 It follows from the foregoing that the transit by an applicant for international protection through the third country concerned cannot constitute a 'connection' within the meaning of Article 38(2)(a) of Directive 2013/32.

160 Consequently, the national legislation at issue in the main proceedings cannot constitute an application of the ground of inadmissibility relating to a safe third country, provided for in Article 33(2)(c) of that directive (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 51).

161 Nor, last, can such national legislation constitute an application of the ground of inadmissibility relating to the first country of asylum, laid down in Article 33(2)(b) of Directive 2013/32 (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 52).

162 It is sufficient to observe that, according to the very wording of subparagraphs (a) and (b) of the first paragraph of Article 35 of Directive 2013/32, a country can be considered to be a first country of asylum for a particular applicant for international protection only if that person has been recognised in that country as a refugee and can still avail him- or herself of that protection; or if he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*, provided that that person will be readmitted to that country (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 53).

163 It is clear from the case files submitted to the Court that the application of the ground of inadmissibility laid down in the national legislation at issue in the main proceedings is not subject to the applicant for international protection benefiting, in the country concerned, from refugee status or otherwise sufficient protection, with the result that there is no need to examine the need for protection in the European Union.

164 Accordingly, it must be held that national legislation, such as Article 51(2) of the Law on the right of asylum, cannot be regarded as implementing one of the grounds of inadmissibility laid down in Article 33(2) of Directive 2013/32 (judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C-564/18, EU:C:2020:218, paragraph 55).

165 Having regard to the foregoing considerations, the answer to the first question is that Article 33 of Directive 2013/32 must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person was not exposed to persecution or a risk of serious harm within the meaning of the national provision transposing Article 15 of Directive 2011/95, or in which a sufficient degree of protection is guaranteed.

The second question

Admissibility

166 By its second question, the referring court seeks, in essence, to determine the inferences to be drawn, as regards the treatment to be given to applications for asylum, from the refusal by the third country concerned to readmit the applicants to its territory after those applications have been declared inadmissible on the basis of Article 51(2)(f) of the Law on the right of asylum. The referring court wonders, in particular, whether, in such a situation, the 'determining authority' within the meaning of Article 2(f) of Directive 2013/32 is required to examine *ex officio* the applications for asylum already made by the applicants in the main proceedings or whether, if it is not, the applicants may re-submit fresh applications for asylum and, if so, whether those applications may again be considered inadmissible on other grounds.

167 According to a consistent line of decisions, although questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance, the fact nonetheless remains that the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. The justification for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute. As is apparent from the actual words of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give

judgment' in the case before it (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny zastępowany przez Prokuraturę Krajową (Disciplinary régime concerning judges)*, C-558/18 and C-563/18, EU:C:2020:234, paragraphs 43 to 45 and the case-law cited).

168 Furthermore, under Article 94(c) of the Rules of Procedure, the referring court must set out precisely the reasons for its uncertainty as to the interpretation of EU law (judgment of 20 December 2017, *Asociación Profesional Elite Taxi*, C-434/15, EU:C:2017:981, paragraph 28).

169 In this instance, the referring court has before it (i) actions for annulment of the decisions ordering the applicants in the main proceedings to return to their countries of origin and (ii) actions for failure to act connected with their being placed in the Röszke transit zone.

170 However, although the disputes before the referring court thus do not directly have as their subject matter the applications for asylum made by the applicants in the main proceedings, it is apparent from the explanations provided by the referring court that that court considers it necessary to examine whether the applicants may still be considered to be applicants for international protection, within the meaning of Directives 2013/32 and 2013/33, for the purpose of determining whether their detention in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected must be examined in the light of the rules governing the detention of applicants for international protection laid down in those directives.

171 It follows that Question 2(a) and (b), where the referring court asks whether the 'determining authority', within the meaning of Article 2(f) of Directive 2013/32, is required to resume *ex officio* the examination of the applications for asylum made by the applicants in the main proceedings or whether, if it is not, those applicants are nonetheless authorised to resubmit an application for asylum, is relevant for the outcome of the disputes in the main proceedings and is therefore admissible.

172 On the other hand, Question 2(c) and (d) relates, in essence, to whether the applications for asylum made by the applicants in the main proceedings may be rejected again on a ground of inadmissibility unrelated to the preceding procedure, in particular on one of the grounds set out in Article 33(2)(b) and (c) of Directive 2013/32, and, if so, whether the rejection of their applications on one of those two grounds of inadmissibility assumes that it was first ascertained that the third country to which those two grounds refer agrees to readmit them to its territory.

173 However, the referring court has failed to explain the reason why it considers that it cannot adjudicate on the disputes before it without having obtained an answer to Question 2(c) and (d).

174 It follows that Question 2(c) and (d) must be declared inadmissible.

Substance

175 By Question 2(a) and (b), the referring court asks, in essence, whether Article 6 and Article 38(4) of Directive 2013/32, read in the light of Article 18 of the Charter, must be interpreted as meaning that, when an application for international protection is, under the law of a Member State, declared inadmissible, on the ground that the applicant arrived on the territory of that Member State via a third country in which he or she was not exposed to persecution or to a risk of serious harm, or in which he or she was guaranteed a sufficient degree of protection, and that, subsequently, the latter country decides not to readmit the applicant to its territory, that application must be re-examined *ex officio* by the 'responsible authority', within the meaning of Article 2(f) of Directive 2013/32, or as meaning that, in such circumstances, the application could not be declared inadmissible, in application of Article 33(2)(d) of that directive, as a 'subsequent application', within the meaning of Article 2(q) of that directive.

176 In this instance, it should be observed that, after the applications for asylum made by the applicants in the main proceedings were rejected by the asylum authority, on the basis of Article 51(2)(f) of the Law on the right of asylum, and that rejection was confirmed by a judicial decision that had become final, the Hungarian authorities took steps to have the applicants readmitted to Serbian territory. However, that third country refused to grant that request on the ground that, in its view, the applicants in the main proceedings had legally entered Hungarian territory, for the purposes of Article 3(1)(b) of the Agreement on readmission concluded between the Union and Serbia.

177 It should also be borne in mind that, in accordance with paragraph 165 of this judgment, a ground of inadmissibility of an application for international protection, such as that set out in Article 51(2)(f) of the Law on the right of asylum, is contrary to Article 33 of Directive 2013/32.

178 The Court cannot therefore be called upon to examine, as the referring court suggests, the consequences that, under EU law, might necessarily arise from the fact that the country to which, in connection with that ground, the applicants in the main proceedings should have been sent does not agree to readmit them to its territory.

179 However, according to settled case-law, it is for the Court, in the procedure laid down by Article 267 TFEU providing for cooperation with the national courts, to provide the national courts with an answer which will be of use to it and enable it to decide the case before it and, to that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraph 27 and the case-law cited).

180 Therefore, it is necessary, in order to provide the referring court with an answer which will be of use to it, to take Question 2(a) and (b) as seeking to ascertain whether Directive 2013/32, read in conjunction with Article 18 of the Charter and the principle of sincere cooperation arising under Article 4(3) TEU, must be interpreted as meaning that, when an application for asylum has been the subject of a rejection decision based on a ground of inadmissibility that is contrary to EU law and has been confirmed by a final judicial decision, the 'responsible authority', within the meaning of Article 2(f) of Directive 2013/32, is required to examine that application *ex officio* or as meaning that, in such circumstances, if a fresh application was made by the person concerned, it could not be declared inadmissible, in application of Article 33(2)(d) of that directive, as a 'subsequent application', within the meaning of Article 2(q) of that directive.

181 In order to answer that question, it is necessary, in the first place, to determine whether Directive 2013/32, read in conjunction with Article 18 of the Charter and the principle of sincere cooperation arising under Article 4(3) TEU, requires the determining authority to re-examine *ex officio* an application for international protection which was the subject of a rejection decision based on a ground of inadmissibility that was contrary to Article 33 of Directive 2013/32 and confirmed by a judicial decision which has acquired the authority of *res judicata*.

182 In that regard, it should be observed that since Article 33 of Directive 2013/32, as observed in paragraph 149 of this judgment, sets out an exhaustive list of the cases in which an application for international protection may be rejected as inadmissible, that article sets out a rule whose content is unconditional and sufficiently precise to be relied on by an individual and applied by a court. It follows that that article has direct effect (see, by analogy, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 98 and 99 and the case-law cited).

183 The duty to disapply, if necessary, national legislation that is contrary to a provision of EU law which has direct effect is owed not only by the national courts but also by all organs of the State, including the administrative authorities, called on, in the exercise of their respective powers, to apply EU law (see, to that effect, judgments of 22 June 1989, *Costanzo*, 103/88, EU:C:1989:256, paragraphs 30

and 31; of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 38; and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 78).

184 It follows that an administrative or judicial authority of a Member State which is bound by Directive 2013/32 cannot declare an application for international protection inadmissible on a ground such as that provided for in Article 51(2)(f) of the Law on the right of asylum.

185 It is necessary to bear in mind, however, the importance, both in the legal order of the European Union and in the national legal orders, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become final after all rights of appeal have been exhausted or after the time limits prescribed for such appeals have expired can no longer be called into question (judgments of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 38; of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 52; and of 2 April 2020, *CRPNPAC and Vueling Airlines*, C-370/17 and C-37/18, EU:C:2020:260, paragraph 88).

186 It should also be emphasised that, according to a consistent line of decisions, although a rule of EU law interpreted by the Court must be applied by an administrative body within the sphere of its competence even to legal relationships which arose and were formed before the Court gave its ruling on the request for interpretation, the fact nonetheless remains that, in accordance with the principle of legal certainty, EU law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final following the expiry of reasonable time limits for legal remedies or by exhaustion of domestic remedies. Compliance with that principle prevents administrative acts which produce legal effects from being called into question indefinitely (judgments of 13 January 2004, *Kühne & Heitz*, C-453/00, EU:C:2004:17, paragraphs 22 and 24; of 19 September 2006, *i-21 Germany and Arcor*, C-392/04 and C-422/04, EU:C:2006:586, paragraph 51; and of 12 February 2008, *Kempter*, C-2/06, EU:C:2008:78, paragraphs 36 and 37).

187 However, it is also apparent from the Court's case-law that the administrative authority responsible for the adoption of an administrative decision is, in accordance with the principle of sincere cooperation arising under Article 4(3) TEU, nonetheless under an obligation to review and possibly to reopen that decision if four conditions are fulfilled. First, the administrative body must, under national law, have the power to reopen that decision. Second, the administrative decision in question must have become final as a result of a judgment of a national court ruling at last instance. Third, that judgment must, in the light of a decision given by the Court subsequent to it, be based on a misinterpretation of EU law which was adopted without a question being referred to the Court for a preliminary ruling in the circumstances set out in the third paragraph of Article 267 TFEU. Fourth, the person concerned must have complained to the administrative body immediately after becoming aware of that decision of the Court (see, to that effect, judgments of 13 January 2004, *Kühne & Heitz*, C-453/00, EU:C:2004:17, paragraph 28, and of 19 September 2006, *i-21 Germany and Arcor*, C-392/04 and C-422/04, EU:C:2006:586, paragraph 52).

188 The Court has further made clear, with regard to the fourth of those conditions, that the Member States may, on the basis of the principle of legal certainty, require an application for review of an administrative decision that has become final and is contrary to EU law as interpreted subsequently by the Court to be made to the competent administrative authority within a reasonable period (judgment of 12 February 2008, *Kempter*, C-2/06, EU:C:2008:78, paragraph 59).

189 It follows that, even on the assumption that national law allows the asylum authority to re-examine a decision declaring, contrary to EU law, that an application for international protection is inadmissible, the fact nonetheless remains that EU law does not require that authority to re-examine such an application *ex officio*.

190 It follows from the foregoing that Directive 2013/32, read in conjunction with Article 18 of the Charter and the principle of sincere cooperation arising under Article 4(3) TEU, does not require the 'determining authority', within the meaning of Article 2(f) of Directive 2013/32, to re-examine *ex officio* an application for international protection that was the subject of a rejection decision confirmed by a judicial decision which became final before that rejection decision was found to be contrary to EU law.

191 In the second place, it must be determined whether those provisions of EU law preclude, where a first application for international protection has been the subject of a rejection decision, contrary to EU law, which has been confirmed by a judicial decision that has become final, a new application for asylum made by the same applicant being declared inadmissible on the basis of Article 33(2)(d) of Directive 2013/32, as a 'subsequent' application, within the meaning of Article 2(q) of that directive.

192 In that regard, it should be emphasised that the existence of a judicial decision which has become final whereby the rejection of an application for international protection on a ground contrary to EU law has been confirmed does not prevent the person concerned from lodging a 'subsequent application', within the meaning of Article 2(q) of Directive 2013/32. Thus, notwithstanding such a decision, the person concerned may still exercise his or her right, as enshrined in Article 18 of the Charter and given concrete form by Directives 2011/95 and 2013/32, to qualify as a beneficiary of international protection, provided that the conditions required by EU law are met.

193 Admittedly, it follows from Article 33(2)(d) of Directive 2013/32 that such an application may be declared inadmissible where no new elements or findings relating to the examination of the conditions that must be satisfied in order to qualify as a beneficiary of international protection arise or have been presented by the applicant.

194 However, the existence of a judgment of the Court finding that national legislation that allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which he or she was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed, is incompatible with EU law constitutes a new element relating to the examination of an application for international protection, within the meaning of Article 33(2)(d) of that directive, and the subsequent application cannot therefore be rejected on the basis of that provision.

195 Such a conclusion must be reached even in the absence of a reference by the applicant referred to in the preceding paragraph to the existence of such a judgment of the Court.

196 Moreover, the practical effect of the right recognised to an applicant for international protection and referred to in paragraph 192 of this judgment would be seriously compromised if a subsequent application could be declared inadmissible on the ground referred to in Article 33(2)(d) of Directive 2013/32, when the rejection of the first application constituted an infringement of EU law.

197 In fact, such an interpretation of that provision would have the consequence that the incorrect application of EU law might be repeated in each new application for international protection without any possibility of providing the applicant with an examination of his or her application that was not vitiated by the infringement of EU law. Such an obstacle to the effective application of the rules of EU law in relation to the procedure for the grant of international protection cannot reasonably be justified by the principle of legal certainty (see, by analogy, judgment of 2 April 2020, *CRPNPAC* v *Vueling Airlines*, C-370/17 and C-37/18, EU:C:2020:260, paragraphs 95 and 96).

198 In that regard, Article 33(2)(d) of Directive 2013/32 must be interpreted as not applying to a 'subsequent application', within the meaning of Article 2(q) of that directive, when the determining authority, within the meaning of Article 2(f) of that directive, finds that the definitive rejection of the

earlier application is contrary to EU law. Such a finding must necessarily be made by that determining authority when that incompatibility arises, as in the present cases, from a judgment of the Court or was established, as an ancillary finding, by a national court.

199 It should be made clear that, in the judicial review of the lawfulness of the return decision, which was adopted after the rejection of an application for international protection which was confirmed by a judicial decision which has become final, the national court hearing an action against the return decision may examine, by virtue of EU law and without the authority which the judicial decision confirming the rejection has acquired precluding it from examining, as an ancillary matter, the validity of such a rejection when it is based on a ground that is contrary to EU law.

200 Last, it should be added that, in this instance, that determining authority adopted, in each of the two cases in the main proceedings, a decision rejecting the applications for asylum made by the applicants in the main proceedings and a decision ordering them to leave Hungarian territory for Serbia, in a single act, as permitted under Article 6(6) of Directive 2008/115 (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 49). It is apparent from the case files submitted to the Court that those concomitant decisions were confirmed by judicial decisions that became final.

201 In such circumstances, it must be made clear, in the event that the decisions amending the initial return decisions and ordering the applicants in the main proceedings to return to their countries of origin should eventually be annulled, that the authority of *res judicata* attaching to the judicial decisions confirming both the decisions rejecting the applications for asylum and the return decisions adopted together with those rejection decisions, cannot prevent the removal of those applicants from being postponed, as required, moreover, by Article 9(1)(a) of Directive 2008/115, where that removal is decided on in breach of the principle of *non-refoulement*.

202 The same must apply, even where no new circumstance has arisen since the adoption of the initial return decisions, where it is apparent that, contrary to the requirements of Article 5 of Directive 2008/115, neither the administrative authority that rejected the applications for international protection and ordered the applicants' return nor the court that adjudicated on the validity of those decisions correctly examined whether the third country referred to in those initial return decisions complies with the principle of *non-refoulement*.

203 It follows from all of the foregoing considerations that the answer to Question 2(a) and (b) is that Directive 2013/32, read in conjunction with Article 18 of the Charter and the principle of sincere cooperation arising under Article 4(3) TEU, must be interpreted as meaning that, when an application for asylum has been the subject of a rejection decision that was confirmed by a judicial decision that became final before that rejection was found to be incompatible with EU law, the determining authority, within the meaning of Article 2(f) of Directive 2013/32, is not required to re-examine that application *ex officio*. Article 33(2)(d) of Directive 2013/32 must be interpreted as meaning that the existence of a judgment of the Court finding that national legislation, which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which he or she was not exposed to persecution or to a risk of serious harm or in which a sufficient degree of protection is guaranteed, is incompatible with EU law constitutes a new element relating to the examination of an application for international protection, within the meaning of that provision. Furthermore, that provision is not applicable to a subsequent application, within the meaning of Article 2(q) of that directive, where the determining authority finds that the definitive rejection of the earlier application is contrary to EU law. Such a finding must necessarily be made by that authority when that incompatibility arises from a judgment of the Court or was established, as an ancillary finding, by a national court.

The third and fourth questions

Preliminary observations

204 By its third and fourth questions, which it is appropriate to answer together, the referring court wonders about the interpretation of, respectively, the provisions of Directives 2013/32 and 2013/33 relating to the detention of applicants for international protection and the provisions of Directive 2008/115 relating to the detention of illegally staying third-country nationals, in the context of the examination of the legality of the detention of the applicants in the main proceedings in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected.

205 The referring court makes clear, moreover, that there is no need to answer its third question unless the Court considers that, since the date on which they were placed in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected, the applicants in the main proceedings have continued to come within the scope of Directives 2013/32 and 2013/33 and, conversely, that there is no need to answer its fourth question unless the Court considers that, since being placed in that sector, the applicants have come within the scope of Directive 2008/115.

206 It is therefore necessary to determine whether, with effect from the date on which they were placed in that sector of the Röszke transit zone, the situation of the applicants in the main proceedings must be apprehended in the light of Directive 2008/115 or of Directives 2013/32 and 2013/33.

207 In that regard, it should be observed, in the first place, that the administrative decisions whereby the applications for asylum made by the applicants in the main proceedings were rejected were no longer amenable to appeal, within the meaning of Chapter V of Directive 2013/32, on the date on which they were placed in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected. It must therefore be considered that on that date their applications for international protection had been the subject of a final decision, within the meaning of Article 2(e) of Directive 2013/32.

208 It follows that, with effect from that date, the applicants in the main proceedings were no longer applicants for international protection, within the meaning of Article 2(c) of Directive 2013/32 and Article 2(b) of Directive 2013/33, and that they thus no longer came within the scope of those directives.

209 In the second place, it should be emphasised that, unless he or she has been granted a right to stay or a residence permit as referred to in Article 6(4) of Directive 2008/115, a third-country national is staying illegally on the territory of a Member State, within the meaning of Directive 2008/115, as soon as his or her application for international protection is rejected at first instance by the determining authority, irrespective of the existence of an authorisation to remain pending the outcome of an appeal against that rejection (judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 59, and order of 5 July 2018, *C and Others*, C-269/18 PPU, EU:C:2018:544, paragraph 47).

210 In so far as it is not apparent from the case files submitted to the Court that the applicants in the main proceedings have a right to stay or a residence permit within the meaning of Article 6(4) of Directive 2008/115, they must be considered, with effect from the date of the decision rejecting their applications for asylum at first instance, to be staying illegally on Hungarian territory. They have therefore come within the scope of Directive 2008/115 since that date, as the referring court has made clear that none of the exceptions provided for in Article 2(2) of that directive applies to them.

211 Furthermore, since the administrative decisions rejecting their applications for asylum were confirmed by judicial decisions, the applicants in the main proceedings are in principle liable to be placed in detention for removal purposes provided that the relevant conditions set out in Directive 2008/115 are satisfied.

212 However, in the third place, it must be emphasised that, at the hearing before the Court, the applicants in the main proceedings in Case C-925/19 PPU referred to the submission of a new application for asylum by one of them. That application was rejected as inadmissible and the applicant concerned contested its rejection by lodging an appeal, which is still pending, before a court other than the referring court.

213 If those facts are correct, which it is for the referring court to ascertain, that applicant must, with effect from the date on which he made his new application for asylum, be again considered to be an applicant for international protection, coming within the scope of Directives 2013/32 and 2013/33. It should be further stated, moreover, that, even though he has come, with effect from the date on which his application for asylum was rejected at first instance, within the scope of Directive 2008/115, that applicant cannot be the subject of a detention measure on the basis of Article 15 of that directive while the appeal lodged against such a rejection is pending (judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraphs 61 and 62).

214 In those circumstances, it is necessary, in order to provide the referring court with an answer that will be useful to it, to answer both the third and the fourth questions.

The existence of 'detention'

215 By Question 3(b) and Question 4(a), the referring court asks, in essence, whether Article 2(h) of Directive 2013/33 and Article 16 of Directive 2008/115 must be interpreted as meaning that the obligation for a third-country national to remain permanently in a transit zone, situated at the external border of a Member State and which he cannot legally leave voluntarily, in any direction whatsoever, constitutes 'detention' within the meaning of those directives.

– *The concept of detention*

216 As regards, in the first place, the concept of 'detention', within the meaning of Directive 2013/33, it is appropriate, in the light of the case-law referred to in paragraph 113 of this judgment, to emphasise, first, that, in accordance with Article 2(h) of that directive, that concept extends to any confinement of an applicant for international protection by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement.

217 It therefore follows from the actual wording of that provision that detention assumes a deprivation, and not a mere restriction, of freedom of movement, which is characterised by the fact that the person concerned is isolated from the rest of the population in a particular place.

218 Such an interpretation is confirmed, second, by the origins of that provision. Thus, it is apparent from Title 3, paragraph 4 of the explanatory memorandum of the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers in the Member States (COM(2008) 815 final), which gave rise to Directive 2013/33, that the legal regime of detention, established by that directive, is based on the Recommendation of the Committee of Ministers of the Council of Europe on measures of detention of asylum seekers, of 16 April 2003, and on the United Nations High Commissioner for Refugees (HCR) Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers of 26 February 1999 (see, to that effect, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 63, and of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 46).

219 On the one hand, that recommendation defines measures of detention of asylum seekers as 'any confinement of asylum seekers within a narrowly bounded or restricted location, where they are deprived of liberty', while making clear that 'persons who are subject to restriction on domicile or residence are not generally considered to be subject to detention measures'.

220 On the other hand, the HCR Guidelines define the detention of asylum seekers as 'the deprivation of liberty or confinement in a closed place which an asylum seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities' and that '[the distinction] between deprivation of liberty (detention) and lesser restrictions on movement is one of "degree or intensity and not one of nature or substance"'.

221 Third, the context of Article 2(h) of Directive 2013/33 also reveals that detention must be understood as referring to a coercive measure of last resort which is not satisfied with limiting the movement of an applicant for international protection.

222 Thus, Article 8(2) of that directive provides that a detention measure may be ordered only if other less coercive alternative measures cannot be applied effectively. Under Article 8(4) of that directive, moreover, Member States are to ensure that they lay down in national law the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place. This last alternative to detention must be taken to refer to the restrictions on the freedom of movement of the applicant for international protection which are authorised by Article 7 of Directive 2013/33, it being understood that, in accordance with that article, such restrictions may not affect the unalienable sphere of private life and are to allow the person concerned sufficient scope for guaranteeing access to all benefits under that directive.

223 It follows from the foregoing that the detention of an applicant for international protection, within the meaning of Article 2(h) of Directive 2013/33, constitutes a coercive measure that deprives that applicant of his or her freedom of movement and isolates him or her from the rest of the population, by requiring him or her to remain permanently within a restricted and closed perimeter.

224 As regards, in the second place, the concept of 'detention', for the purposes of Directive 2008/115, it should be observed that neither Article 16 nor any other provision of that directive contains a definition of that concept. However, there is nothing to support the view that the EU legislature intended to give the concept of 'detention', in the context of Directive 2008/115, a different meaning from that which it has in the context of Directive 2013/33. Directive 2013/33, moreover, and in particular Article 8(3)(d), refers expressly, among the permissible cases of 'detention', within the meaning of that directive, to a case in which the third-country national concerned is already detained subject to a return procedure under Directive 2008/115, which supports the interpretation according to which the concept of 'detention', within the meaning of those two directives, covers one and the same reality.

225 It follows from the foregoing that the 'detention' of a third-country national who is illegally staying on the territory of a Member State, within the meaning of Directive 2008/115, constitutes a coercive measure of the same nature as that defined in Article 2(h) of Directive 2013/33 and described in paragraph 223 of this judgment.

– *The conditions of detention at issue in the main proceedings*

226 As stated in paragraphs 68 to 70 of this judgment, it is apparent from the orders for reference that the applicants in the main proceedings have been required, since the date on which they entered Hungarian territory, to stay permanently in the Röszke transit zone, which is surrounded by a high fence and barbed wire. According to the referring court, the applicants are housed in containers with

a floor area of not more than 13 m^2. They cannot, without permission, receive visits from persons from outside that zone and their movements within the zone are limited and monitored by the members of the law-enforcement services permanently present in the zone and its immediate vicinity.

227 As the Advocate General observed, in essence, in point 167 of his Opinion, it thus follows from the case files submitted to the Court that the placing of the applicants in the main proceedings in the Röszke transit zone cannot be distinguished from a regime of detention.

228 In that regard, it should be emphasised that the argument raised by the Hungarian Government, in its written observations and at the hearing, that the applicants in the main proceedings are free to leave the Röszke transit zone to travel to Serbia cannot call into question the assessment that the placing of those applicants in that transit zone cannot be distinguished from a regime of detention.

229 In fact, and although it is not for the Court, in the context of the present cases, to rule on whether the Serbian authorities' conduct is compatible with the Agreement on readmission concluded between the Union and Serbia, it explicitly follows from the orders for reference — and it has not been disputed by the Hungarian Government — that any entry by the applicants in the main proceedings into Serbia would be considered illegal by that third country and that, consequently, the applicants would be exposed to penalties there. Accordingly, and in particular for that reason, the applicants cannot be considered to have an effective possibility of leaving the Röszke transit zone.

230 Furthermore, as the applicants in the main proceedings in Case C-925/19 PPU maintain in essence, by leaving Hungarian territory they would risk losing any chance of obtaining refugee status in Hungary. According to Article 80/J of the Law on the right of asylum, the applicants can submit a new application for asylum only in one of the two transit zones of Röszke and Tompa (Hungary). In addition, it is apparent from Article 80/K of that law that the asylum authority may decide to close the international protection procedure if the applicant leaves one of those two zones, and its decision cannot be contested in a contentious administrative procedure.

231 It follows from all of the foregoing considerations that the answer to Question 3(b) and Question 4(a) is that Directives 2008/115 and 2013/33 must be interpreted as meaning that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that national's movements are limited and monitored, and which he or she cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterised by 'detention' within the meaning of those directives.

The conditions of detention laid down in Directives 2013/32 and 2013/33

– Article 43 of Directive 2013/32

232 By Question 3(a), the referring court asks, in essence, whether Article 43 of Directive 2013/32 must be interpreted as precluding the detention of an applicant for international protection in a transit zone for more than four weeks.

233 As a preliminary point, it should be made clear that the Hungarian Government denies that the applications for asylum made by the applicants in the main proceedings were the subject of an examination procedure on the basis of the national provisions transposing Article 43 of Directive 2013/32.

234 It should be borne in mind, however, that the referring court has exclusive jurisdiction to interpret national law and to assess the facts of the dispute before it and establish the consequences which they have for the judgment which it is required to deliver (see, to that effect, judgments of 11 December 2007, *Eind*, C-291/05, EU:C:2007:771, paragraph 18, and of 30 January 2020, *I.G.I.*, C-394/18,

EU:C:2020:56, paragraph 50). It follows that, with regard to the application of the relevant national legislation, the Court must proceed on the basis of the situation which the referring court considers to be established and that it cannot be bound by suppositions raised by one of the parties to the main proceedings (see, to that effect, judgments of 8 June 2016, *Hünnebeck*, C-479/14, EU:C:2016:412, paragraph 36, and of 2 April 2020, *Coty Germany*, C-567/18, EU:C:2020:267, paragraph 22).

235 With the benefit of that clarification, it must be pointed out, in the first place, that Article 43(1) of Directive 2013/32 gives Member States the possibility to provide, at their borders or in their transit zones, for specific procedures in order to decide on the admissibility, under Article 33 of that directive, of an application for international protection made at such locations or on the substance of that application in one of the cases provided for in Article 31(8) of that directive, provided that those procedures comply with the basic principles and fundamental guarantees set out in Chapter II of that directive. Under Article 43(2) of Directive 2013/32, those specific procedures must be carried out within a reasonable time, it being understood that if a decision rejecting the application for international protection has not been taken within a period of four weeks, the Member State concerned must grant the applicant entry to its territory and the application must be dealt with after that four-week period in accordance with the normal procedure.

236 It also follows from recital 38 of Directive 2013/32 that such a procedure at the border is intended to enable Member States to take a decision on applications for international protection made at the border or in a transit zone of a Member State prior to a decision on an applicant's entry to its territory.

237 Member States are thus authorised to require applicants for international protection to remain, for a maximum period of four weeks, at their borders or in one of their transit zones, in order to examine, before taking a decision on their right to enter their territory, whether their applications are inadmissible, pursuant to Article 33 of Directive 2013/32, or whether they must be declared unfounded in accordance with Article 31(8) of that directive.

238 Such a situation is envisaged by Article 8(3)(c) of Directive 2013/33, under which Member States may detain an applicant for international protection in order to decide, in the context of a procedure, on his or her right to enter its territory. Furthermore, Article 10(5) and Article 11(6) of Directive 2013/33 make express reference to the procedures for detaining an applicant for international protection at a border post or in a transit zone in the context of the application of the specific procedures referred to in Article 43 of Directive 2013/32.

239 It follows that Article 43 of Directive 2013/32 authorises Member States to place in 'detention', within the meaning of Article 2(h) of Directive 2013/33, applicants for international protection arriving at their borders, on the conditions set out in Article 43 and in order to ensure the effectiveness of the procedures for which that article provides.

240 It is clear from Article 43(1) and (2) that detention based on those provisions cannot exceed four weeks. Although the date from which that period begins to run is not specified, it should be considered that such a period begins to run on the date on which the application for international protection was made, within the meaning of Article 6(2) of Directive 2013/32, and that date should therefore be considered to be the starting date of the procedure for examination of such an application.

241 It follows that the detention of an applicant for international protection in a transit zone beyond a period of four weeks which begins to run when the application is made, within the meaning of Article 6(2) of Directive 2013/32, cannot be justified under Article 43(1) and (2) of that directive.

242 However, it should be observed, in the second place, that, pursuant to Article 43(3) of Directive 2013/32, where arrivals of large numbers of applicants for international protection make it impossible to apply the specific procedures put in place by the Member States, pursuant to Article 43(1) of that directive, at their borders or in transit zones, those procedures may continue to be applied where and for as long as the applicants for international protection concerned are accommodated normally at locations in proximity to those borders or transit zones.

243 Article 43(3) of Directive 2013/32 therefore allows Member States, in the specific situation of arrivals of large numbers of applicants for international protection, to continue to apply the procedures provided for in Article 43(1), even where the four-week period within which those procedures should normally be carried out, in accordance with Article 43(2), is exceeded.

244 It follows from the actual wording of Article 43(3) of that directive, however, that such procedures can be maintained only for as long as the applicants for international protection are, at the end of the four-week period provided for in Article 43(2), accommodated normally at locations in proximity to the border or transit zone.

245 By requiring that those applicants be accommodated in normal conditions, Article 43(3) of Directive 2013/32 necessarily precluded their remaining in detention. Those conditions of normal accommodation of applicants for international protection are governed by Articles 17 and 18 of Directive 2013/33, under which any applicant for international protection is to be entitled to a financial allowance allowing him or her to be accommodated or to housing in kind in a place other than a detention centre.

246 It follows that Article 43(3) of Directive 2013/32 does not authorise a Member State to place applicants for international protection in detention at its borders or in one of its transit zones beyond the four-week period referred to in paragraph 241 of this judgment, even where arrivals of a large number of applicants make it impossible to apply the procedures referred to in Article 43(1) of that directive within that period.

247 However, it should be added that although, pursuant to Article 43(2) of Directive 2013/32, those applicants are, in principle, free to enter the territory of the Member State concerned after such a four-week period, Article 43(3) nonetheless authorises that Member State to restrict their freedom of movement to an area in proximity to its borders or its transit zones, in accordance with Article 7 of Directive 2013/33.

248 It follows from all of the foregoing considerations that the answer to Question 3(a) is that Article 43 of Directive 2013/32 must be interpreted as not authorising the detention of an applicant for international protection in a transit zone for a period of more than four weeks.

– *Articles 8 and 9 of Directive 2013/33*

249 By Question 3(c) and (d), the referring court asks, in essence, whether Articles 8 and 9 of Directive 2013/33 must be interpreted as precluding, first, an applicant for international protection being placed in detention on the sole ground that he or she cannot provide for his or her needs; second, such detention taking place without the prior adoption of a decision ordering that the applicant be placed in detention and without the necessity and the proportionality of such a measure being examined; third, the applicant thus detained having no remedy available to contest the legality of his or her detention; and, fourth, the precise duration of his or her detention being indeterminate.

250 In the first place, it should be observed that the first subparagraph of Article 8(3) of Directive 2013/33 lists exhaustively the various grounds that may justify the detention of an applicant for international protection and that each of those grounds meets a specific need and is self-standing (judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 59, and of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 42).

251 As the Advocate General observes in point 189 of his Opinion, none of the grounds set out in the first subparagraph of Article 8(3) of that directive refers to the situation of an applicant for international protection who is unable to provide for his or her subsistence.

252 In addition, while it is true, as recital 17 of that directive states, that the grounds for detention set out in that directive are without prejudice to other grounds of detention, in particular the grounds of detention in the context of criminal proceedings, which are applicable under national law, independently of the application for international protection lodged by the third-country national or stateless person, the fact nonetheless remains that the Member States must ensure, when establishing such grounds of detention, that they comply with the principles and the objective of Directive 2013/33 (see, by analogy, judgment of 6 December 2011, *Achughbabian*, C-329/11, EU:C:2011:807, paragraph 46).

253 It is apparent from Article 17(3) of Directive 2013/33 that the Member States must provide access to the material reception conditions to any applicants for international protection who do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

254 It follows that an applicant for international protection who does not have the means of subsistence must be given either a financial allowance enabling him or her to be housed or housing in kind in one of the places referred to in Article 18 of that directive, which cannot be confused with the detention centres referred to in Article 10 of that directive. Accordingly, the grant to an applicant for international protection without the means of subsistence of housing in kind, within the meaning of Article 18, cannot have the effect of depriving that applicant of his or her freedom of movement, subject to penalties that may be imposed on him pursuant to Article 20 of that directive (see, to that effect, judgment of 12 November 2019, *Haqbin*, C-233/18, EU:C:2019:956, paragraph 52).

255 Accordingly, and without there being any need to consider whether the detention of an applicant for international protection, on the ground that he or she is unable to provide for his or her needs, is a ground of detention independent of his or her status as an applicant for international protection, it is sufficient to observe that such a ground, in any event, undermines the essential content of the material reception conditions that must be provided to that applicant during the examination of his or her application for international protection and therefore does not comply with either the principles or the objective of Directive 2013/33.

256 It follows from the foregoing that the first subparagraph of Article 8(3) of Directive 2013/33 precludes an applicant for international protection being placed in detention on the sole ground that he or she is unable to provide for his or her needs.

257 In the second place, in accordance with Article 9(2) of Directive 2013/33, detention of an applicant for international protection is to be ordered in writing by a judicial or administrative authority and the detention order is to state the reasons in fact and in law on which it is based.

258 In addition, Article 8(2) of that directive provides that detention may be applied only when it proves necessary, on the basis of an individual assessment of each case and if other less coercive alternative measures cannot be applied effectively. It follows that the national authorities cannot place an applicant for international protection in detention without having previously determined, on a case-by-case basis, whether such detention is proportionate to the aims which it pursues (judgment of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 48).

259 It follows from the foregoing that Article 8(2) and (3) and Article 9(2) of Directive 2013/33 preclude an applicant for international protection being placed in detention without the necessity and proportionality of that measure having first been examined and without an administrative or judicial decision stating the reasons in fact and in law for which such detention is ordered having been adopted.

260 In the third place, the first subparagraph of Article 9(3) of Directive 2013/33 requires that where detention of the applicant for international protection is ordered by an administrative authority, Member States are to provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the person detained. In addition, Article 9(5) of that directive provides that detention is to be reviewed by a judicial authority at reasonable intervals of time, *ex officio* or at the request of the applicant concerned.

261 It follows from the foregoing that Article 9(3) and (5) of Directive 2013/33 precludes a Member State making no provision for any judicial review of the lawfulness of the administrative decision ordering the detention of an applicant for international protection.

262 In the fourth place, Article 9(1) of Directive 2013/33 provides that an applicant for international protection is to be detained only for as short a period as possible and only for so long as the ground for his or her detention is applicable, while the administrative procedures relevant to the ground for detention are to be executed with due diligence and delays in those procedures that cannot be attributed to that applicant are not to justify a continuation of detention.

263 Conversely, no provision of Directive 2013/33 sets a specific period beyond which Member States are required to put an end to the detention of applicants for international protection. In that regard, it should be observed that, whereas Article 9 of the Proposal for a Directive (COM(2008) 815 final) expressly provided that the detention order was to state the maximum duration of the detention, that requirement does not appear in the final text of Directive 2013/33.

264 It should be added, however, that the failure to fix a maximum duration of the detention of an applicant for international protection respects his or her right to liberty, as enshrined in Article 6 of the Charter, only in so far as that applicant enjoys, as required by Article 9 of Directive 2013/33, effective procedural safeguards that allow his or her detention to be ended as soon as it ceases to be necessary or proportionate in the light of the objective which it pursues. In particular, when the detention of an applicant for international protection is not limited in time, the determining authority, within the meaning of Article 2(f) of Directive 2013/32, must act with appropriate due diligence (see, by analogy, ECtHR, 22 June 2017, *S.M.M. v. United Kingdom*, CE:ECHR:2017:0622JUD 007745012, § 84 and the case-law cited).

265 It follows that Article 9 of Directive 2013/33 does not preclude legislation of a Member State which does not specify a period after which the detention of an applicant for international protection would be automatically considered unlawful, provided that that Member State ensures that, first, the detention lasts only so long as the ground on which it was ordered continues to apply and, second, the administrative procedures linked with that ground are carried out diligently.

266 It follows from all of the foregoing considerations that the answer to Question 3(c) and (d) is that Articles 8 and 9 of Directive 2013/33 must be interpreted as precluding, first, an applicant for international protection being detained on the sole ground that he or she is unable to provide for his or her needs; second, such detention taking place without a reasoned decision ordering the detention having first been adopted and without the necessity and proportionality of such a measure having been examined; and, third, there being no judicial review of the lawfulness of the administrative decision ordering the detention of that applicant. Conversely, Article 9 of that directive must be interpreted as not requiring Member States to set a maximum period for continuing detention provided that their

national law guarantees that the detention lasts only so long as the ground on which it was ordered continues to apply and that the administrative procedures linked with that ground are carried out diligently.

The conditions of detention laid down in Directive 2008/115

267 By Question 4(b), (c) and (d), the referring court asks, in essence, whether Articles 15 and 16 of Directive 2008/115 must be interpreted as precluding, first, a third-country national being detained on the sole ground that he or she is the subject of a return decision and cannot provide for his or her needs; second, such detention taking place without a decision ordering detention having first been adopted and without the necessity and proportionality of such a measure having been examined; third, the detained person having no remedy available to contest the legality of his or her initial detention and continuing detention; and, fourth, the precise duration of his or her detention being indeterminate.

268 In the first place, it follows expressly from Article 15(1) of Directive 2008/115 that the detention of a third-country national who is illegally staying on the territory of a Member State can, in the absence of other sufficient but less coercive measures that could be applied effectively, be justified only in order to prepare the return of that national and/or to carry out the removal process, in particular where there is a risk of absconding or where the national avoids or hampers the preparation of return or the removal process.

269 Thus, it is only where, in the light of an assessment of each specific situation, the enforcement of the return decision in the form of removal risks being compromised by the conduct of the person concerned that the Member States many deprive that person of his or her liberty and detain him or her (judgment of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraph 39).

270 Therefore, the fact that the third-country national is the subject of a return decision and is not capable of providing for his or her needs is not sufficient reason to place him or her in detention on the basis of Article 15 of Directive 2008/115.

271 That circumstance is not one of those that would be liable to threaten the effectiveness of the return and removal procedures if a detention measure were not ordered (see, to that effect, judgment of 30 November 2009, *Kadzoev*, C-357/09 PPU, EU:C:2009:741, paragraphs 68 and 70).

272 It follows from the foregoing that Article 15 of Directive 2008/115 precludes a third-country national being detained on the sole ground that he or she is the subject of a return decision and is unable to provide for his or her needs.

273 In the second place, it follows from Article 15(2) of Directive 2008/115 that the detention is to be ordered by administrative or judicial authorities, in writing, with reasons being given in fact and in law. The obligation to communicate those reasons is necessary both to enable the third-country national concerned to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his or her applying to the court having jurisdiction, and also to put that court fully in a position to carry out the review of the lawfulness of the decision in question (judgment of 5 June 2014, *Mahdi*, C-146/14 PPU, EU:C:2014:1320, paragraphs 41 and 45).

274 Furthermore, as stated in recitals 13, 16 and 24 of Directive 2008/115, every detention ordered which is within the scope of the directive is strictly circumscribed by the provisions of Chapter IV thereof so as to ensure, on the one hand, compliance with the principle of proportionality with regard to the means used and objectives pursued and, on the other, observance of the fundamental rights of the third-country nationals concerned. Thus, it follows from the first subparagraph of Article 15(1) of that

directive that detention may be ordered only after an examination of whether other less coercive measures were sufficient. In addition, as confirmed in recital 6 of that directive, decisions taken under that directive, including detention decisions, should, in accordance with the general principles of EU law, be adopted on a case-by-case basis and be based on objective criteria (see, to that effect, judgment of 5 June 2014, *Mahdi*, C-146/14 PPU, EU:C:2014:1320, paragraphs 55 and 70).

275 It follows from the foregoing that Article 15(1) and (2) of Directive 2008/115 precludes a third-country national who is staying illegally on the territory of a Member State being detained without the necessity and proportionality of that measure having first been examined and without a detention decision, stating the reasons in fact and in law on which it is based, having been taken.

276 In the third place, the third subparagraph of Article 15(2) of Directive 2008/115 provides that, where detention has been ordered by administrative authorities, Member States are to provide for a speedy judicial review of the lawfulness of the detention, either *ex officio* or upon application by the third-country national concerned. In addition, according to Article 15(3) of that directive, in the case of prolonged detention periods, reviews of detention, which must take place at reasonable intervals, are to be subject to the supervision of a judicial authority.

277 It follows from the foregoing that Article 15(2) and (3) of Directive 2008/115 preclude a Member State making no provision for judicial review of the lawfulness of the administrative decision ordering the detention of a third-country national illegally staying on the territory of that Member State.

278 In the fourth place, it follows from the last subparagraph of Article 15(1) and Article 15(4) of Directive 2008/115 that the detention of an illegally staying third-country national is to be for as short a period as possible and maintained only as long as removal arrangements are in progress and executed with due diligence, it being understood that, when it appears that a reasonable prospect of removal no longer exists or that the conditions that justified the detention no longer exist, detention ceases to be justified and the person concerned is to be released immediately.

279 In addition, Article 15(5) and (6) of that directive provides that each Member State is to set a limited period of detention, which may not exceed six months, and which may not be extended except for a limited period not exceeding a further 12 months and only in cases where, regardless of all the reasonable efforts of the national authorities, the removal operation is likely to last longer owing to a lack of cooperation by the third-country national concerned or delays in obtaining the necessary documents from third countries. As that maximum period can in no case be exceeded, the detained person must be released immediately as soon as the maximum detention period of 18 months is reached (see, to that effect, judgment of 30 November 2009, *Kadzoev*, C-357/09 PPU, EU:C:2009:741, paragraphs 60 and 69).

280 It follows that Article 15(1) and (4) to (6) of Directive 2008/115 precludes legislation of a Member State which, on the one hand, does not provide that the detention of an illegally staying third-country national must be automatically considered unlawful at the end of a maximum period of 18 months and, on the other hand, does not ensure that that detention is maintained only for as long as removal arrangements are in progress and executed with due diligence.

281 It follows from all of the foregoing considerations that the answer to Question 4(b), (c) and (d) is that Article 15 of Directive 2008/115 must be interpreted as precluding, first, a third-country national being detained for the sole reason that he or she is the subject of a return decision and is unable to provide for his or her needs; second, such detention taking place without a reasoned decision ordering detention having first been adopted and without the necessity and proportionality of such a measure having been examined; third, there being no judicial review of the lawfulness of the administrative decision ordering detention; and, fourth, such detention being capable of exceeding 18 months and being maintained when the removal arrangements are no longer in progress or are no longer being executed with due diligence.

The consequences of unlawful detention

282 By Question 3(e) and Question 4(e), the referring court asks, in essence, whether EU law, and in particular Article 47 of the Charter, must be interpreted as meaning that, when the detention of an applicant for international protection or a third-country national illegally staying on the territory of a Member State is manifestly contrary to the rules of EU law, a court of a Member State may, by way of interim relief, require the competent national authority to assign to the illegally detained person accommodation which is not a place of detention.

283 As a preliminary point, it should be emphasised that, according to the referring court, neither the administrative decision that ordered the applicants in the main proceedings to be placed in the sector of the Röszke transit zone reserved for asylum seekers nor the administrative decision ordering that they be placed in the sector of that transit zone reserved for third-country nationals whose applications for asylum have been rejected can form the subject matter of a judicial review.

284 At the hearing before the Court, the Hungarian Government nonetheless mentioned certain procedural provisions which, in its submission, would allow detention in that transit zone to be the subject matter of judicial review that meets the requirements of EU law.

285 It is ultimately for the referring court, which alone has jurisdiction to interpret national law, to ascertain whether under national law a court is able to review the legality of the applicants in the main proceedings being placed and kept in the Röszke transit zone.

286 However, as was stated, in essence, in paragraph 234 of this judgment, the Court must proceed on the basis of the situation which the referring court considers to be established and it cannot be bound by suppositions raised by one of the parties to the main proceedings.

287 It is therefore for the Court to determine, in the first place, whether, on the assumption that the referring court considers that the placing of the applicants in the main proceedings in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected constitutes detention, it may, by virtue of EU law, declare that it has jurisdiction to review the lawfulness of such detention, notwithstanding the absence of any national provision allowing such judicial review to be carried out.

288 In that regard, it should be observed, first, that Article 15 of Directive 2008/115 is unconditional and sufficiently precise and that it therefore has direct effect (see, to that effect, judgments of 28 April 2011, *El Dridi*, C-61/11 PPU, EU:C:2011:268, paragraph 46 and 47, and of 5 June 2014, *Mahsdi*, C-146/14 PPU, EU:C:2014:1320, paragraph 54). For similar reasons, Article 9 of Directive 2013/33 must also be considered to have direct effect.

289 In addition, the third subparagraph of Article 15(2) of Directive 2008/115 and Article 9(3) of Directive 2013/33 give concrete form, in the sphere in question, to the right to effective judicial protection safeguarded in Article 47 of the Charter. As stated in paragraph 140 of this judgment, Article 47 is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right on which they may rely as such.

290 Second, national legislation which does not guarantee any judicial review of the lawfulness of an administrative decision ordering the detention of an applicant for international protection or an illegally staying third-country national not only constitutes, as observed in paragraphs 261 and 277 of this judgment, an infringement of the third subparagraph of Article 15(2) of Directive 2008/115 and Article 9(3) of Directive 2013/33, but also undermines the essential content of the right to effective judicial protection, guaranteed in Article 47 of the Charter, in that it absolutely prevents a court from ruling on respect for the rights and freedoms guaranteed by EU law to the third-country national placed in detention.

291 Accordingly, and for reasons similar to those stated in paragraphs 138 to 146 of this judgment, the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter, require the referring court, if it considers that the applicants in the main proceedings are subject to detention, to declare that it has jurisdiction to examine the lawfulness of such detention, disapplying, where necessary, any national provision which prohibits it from proceeding in that way.

292 It should be emphasised, in the second place, that the last subparagraph of Article 15(2) of Directive 2008/115 and the last subparagraph of Article 9(3) of Directive 2013/33 expressly provide that where detention is held to be unlawful, the person concerned is to be released immediately.

293 It follows that, in such a case, the national court must be able to substitute its own decision for that of the administrative authority that ordered the detention and to order either an alternative measure to detention or the release of the person concerned (see, to that effect, judgment of 5 June 2014, *Mahdi*, C-146/14 PPU, EU:C:2014:1320, paragraph 62). However, an alternative measure to detention can be envisaged only if the reason that justified the detention of the person concerned was and remains valid, but that detention does not seem or no longer seems necessary or proportionate in the light of that reason.

294 Therefore, Article 15(2) of Directive 2008/115 and Article 19(3) of Directive 2013/33, in the absence of any other court with jurisdiction under national law, authorise the referring court to order the immediate release of the applicants in the main proceedings if it considers that their being placed in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected constitutes detention contrary to the provisions of EU law applicable to them.

295 In the third place, as regards the possibility of ordering, by way of interim relief, the competent administrative authority to assign housing to the applicants in the main proceedings, it should be observed, as regards, first, the applicant for international protection that, although the last subparagraph of Article 9(3) of Directive 2013/33 merely requires that such an applicant be released immediately where it appears that his or her detention is unlawful, the fact nonetheless remains that, following his or her release, that applicant continues to benefit from his or her status as applicant for international protection and may thus rely on material reception conditions, in accordance with Article 17 of that directive. As stated in paragraph 245 of this judgment, those material reception conditions include the grant of a financial allowance allowing the applicant to be accommodated or the grant of housing in kind.

296 Furthermore, it follows from Article 26 of Directive 2013/33 that an appeal must be available to the applicant for international protection against decisions relating to the granting of material reception conditions. It is therefore for the court with jurisdiction, under national law, to hear and determine such an appeal to ensure respect for the right to housing of the applicant for international protection during the examination of his application, it being understood that, as observed in paragraph 254 of this judgment, such housing cannot consist in de facto detention.

297 Last, it should be borne in mind that, according to settled case-law, a national court seised of a dispute governed by European Union law must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under European Union law (see, in particular, judgments of 19 June 1990, *Factortame and Others*, C-213/89, EU:C:1990:257, paragraph 21, and of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 107).

298 It follows that Article 26 of Directive 2013/33 requires that the applicant for international protection whose detention has come to an end may rely, before the court with jurisdiction under national law, on his or her right to receive either a financial allowance enabling that applicant to house himself or herself, or housing in kind, as that court has, under EU law, the possibility to grant interim relief pending its final decision.

299 It should further be added that, for reasons similar to those stated in paragraphs 138 to 146 of this judgment, the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter, require the referring court to declare that it has jurisdiction to hear and determine the appeal referred to in the preceding paragraph of this judgment, if no other court has, under national law, jurisdiction to hear and determine it.

300 As regards, second, the third-country nationals whose applications for asylum have been rejected, it should be observed that the last subparagraph of Article 15(2) of Directive 2008/115, like the last subparagraph of Article 9(3) of Directive 2013/33, merely requires that the person concerned be released immediately if his or her detention is unlawful.

301 It follows from all of the foregoing considerations that the answer to Question 3(e) and Question 4(e) is as follows:

– The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the lawfulness of an administrative decision ordering the detention of applicants for international protection or of third-country nationals whose applications for asylum have been rejected, to declare that it has jurisdiction to rule on the legality of such detention and permit that court to release the persons concerned immediately if it considers that such detention constitutes detention contrary to EU law,

– Article 26 of Directive 2013/33 must be interpreted as requiring that an applicant for international protection whose detention, which is held to be unlawful, has come to an end may rely, before the court with jurisdiction under national law, on his or her right to receive either a financial allowance enabling that applicant to house himself or herself, or housing in kind, as that court has, under EU law, the possibility to grant interim relief pending its final decision,

– The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the right to housing, within the meaning of Article 17 of Directive 2013/33, to declare that it has jurisdiction to hear and determine the action seeking to guarantee such a right.

Costs

302 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 (Grand Chamber) hereby rules:

1. **Article 13 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, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding legislation of a Member State under which the amendment by an administrative authority of the country of destination stated in an earlier return decision can be contested by the third-country national concerned only by means of an action brought before an administrative authority, without a subsequent judicial review of the decision of that authority being guaranteed. In such a situation, the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter of Fundamental Rights, must be interpreted as requiring the national court dealing with an action contesting the legality, under EU law, of the return decision consisting in such an amendment of the country of destination to declare that it has jurisdiction to hear that action.**

2. **Article 33 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 must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person was not exposed to persecution or a risk of serious harm, within the meaning of the national provision transposing Article 15 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, or in which a sufficient degree of protection is guaranteed.**

3. **Directive 2013/32, read in conjunction with Article 18 of the Charter of Fundamental Rights of the European Union and the principle of sincere cooperation arising under Article 4(3) TEU must be interpreted as meaning that, when an application for asylum has been the subject of a rejection decision that was confirmed by a judicial decision that became final before the incompatibility of that rejection with EU law was found, the determining authority, within the meaning of Article 2(f) of Directive 2013/32, is not required to re-examine that application *ex officio*. Article 33(2)(d) of Directive 2013/32 must be interpreted as meaning that the existence of a judgment of the Court finding that national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which he or she was not exposed to persecution or to a risk of serious harm or in which a sufficient degree of protection is guaranteed is incompatible with EU law constitutes a new element relating to the examination of an application for international protection, within the meaning of that provision. Furthermore, that provision is not applicable to a subsequent application, within the meaning of Article 2(q) of that directive, where the determining authority finds that the definitive rejection of the earlier application is contrary to EU law. Such a finding must necessarily be made by that authority when that incompatibility arises from a judgment of the Court or was established, as an ancillary finding, by a national court.**

4. **Directive 2008/115 and 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 must be interpreted as meaning that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and**

closed, within which that national's movements are limited and monitored, and which he or she cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterised by 'detention' within the meaning of those directives.

5. **Article 43 of Directive 2013/32 must be interpreted as not authorising the detention of an applicant for international protection in a transit zone for a period of more than four weeks.**

6. **Articles 8 and 9 of Directive 2013/33 must be interpreted as precluding, first, an applicant for international protection being detained on the sole ground that he or she is unable to provide for his or her needs; second, such detention taking place without a reasoned decision ordering the detention having first been adopted and without the necessity and proportionality of such a measure having been examined; and, third, there being no judicial review of the lawfulness of the administrative decision ordering the detention of that applicant. Conversely, Article 9 of that directive must be interpreted as not requiring Member States to set a maximum period for continuing detention provided that their national law guarantees that the detention lasts only so long as the ground on which it was ordered continues to apply and that the administrative procedures linked with that ground are carried out diligently.**

7. **Article 15 of Directive 2008/115 must be interpreted as precluding, first, a third-country national being detained for the sole reason that he or she is the subject of a return decision and is unable to provide for his or her needs; second, such detention taking place without a reasoned decision ordering detention having first been adopted and without the necessity and proportionality of such a measure having been examined; third, there being no judicial review of the lawfulness of the administrative decision ordering detention; and, fourth, such detention being capable of exceeding 18 months and being maintained when the removal arrangements are no longer in progress or are no longer being executed with due diligence.**

8. **The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the lawfulness of an administrative decision ordering the detention of applicants for international protection or of third-country nationals whose applications for asylum have been rejected, to declare that it has jurisdiction to rule on the lawfulness of such detention and permit that court to release the persons concerned immediately if it considers that such detention constitutes detention contrary to EU law.**

   Article 26 of Directive 2013/33 must be interpreted as requiring that an applicant for international protection whose detention, which is held to be unlawful, has come to an end may rely, before the court with jurisdiction under national law, on his or her right to receive either a financial allowance enabling that applicant to house himself or herself, or housing in kind, as that court has, under EU law, the possibility to grant interim relief pending its final decision.

   The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the right to housing, within the meaning of Article 17 of Directive 2013/33, to declare that it has jurisdiction to hear and determine the action seeking to guarantee such a right.

[Signatures]