Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 16 February 2023 [1]

Case C-663/21

Bundesamt für Fremdenwesen und Asyl
other party:
AA
(Request for a preliminary ruling
from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria))
and
Case C-8/22
XXX
v
Commissaire général aux réfugiés et aux apatrides

(Request for a preliminary ruling
from the Conseil d'État (Council of State, Belgium))

(References for a preliminary ruling – Area of freedom, security and justice – Asylum policy – Directive 2011/95/EU – Standards for granting refugee status or subsidiary protection status – Article 14(4)(b) – Revocation of refugee status – Third-country national who has committed a particularly serious crime – Danger to the community – Proportionality test – Burden of proof – Directive 2008/115/EC – Return of illegally staying third-country nationals – Postponement of removal – Removal considered to be unlawful on account of the principle of non-refoulement – Impossibility of adopting a return decision)

I. Introduction

1. Article 14(4) and (5) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2] provides, in addition to grounds for cessation (Article 11) and exclusion (Article 12), that Member States may revoke or refuse to grant refugee status in the event of a danger to their security or their community.

[1] Original language: French.

[2] OJ 2011 L 337, p. 9. That directive is a recast of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12, and corrigenda OJ 2005 L 204, p. 24 and OJ 2011 L 278, p. 13).

2. The existence of that option, motivated by the desire of the Member States to have leverage over refugees who endanger their security or their community, but who cannot be refouled, has been criticised in so far as it was alleged not to correspond to the grounds for exclusion and cessation set out in Article 1(C) to (F) of the Convention relating to the Status of Refugees, [3] as supplemented by the Protocol relating to the Status of Refugees [4] ('the Geneva Convention').

3. However, in its judgment of 14 May 2019, *M and Others (Revocation of refugee status)*, [5] the Court found no factor of such a kind as to affect the validity of Article 14(4) to (6) of Directive 2011/95 in the light of Article 78(1) TFEU and Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter'). In order to reach that decision, the Court held, inter alia, that Article 14(4) and (5) of that directive had to be interpreted as meaning that, in the context of the system introduced by that directive, the effect of the revocation of refugee status or the refusal to grant that status cannot be that the third-country national or the stateless person concerned who satisfies the conditions set out in Article 2(d) of that directive, read in conjunction with the provisions of Chapter III thereof, is no longer a refugee for the purposes of Article 2(d) of that directive and Article 1(A) of the Geneva Convention. [6]

4. In the wake of the judgment in *M and Others (Revocation of refugee status)*, the present requests for a preliminary ruling now ask the Court to specify the conditions under which Member States may decide to revoke refugee status.

5. Those requests for a preliminary ruling concern, more specifically, the interpretation of Article 14(4)(b) of Directive 2011/95 and of Articles 5, 6, 8 and 9 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. [7]

6. In Case C-663/21, the request for a preliminary ruling has been made in the context of a dispute between AA, a third-country national, and the Bundesamt für Fremdenwesen und Asyl (Federal Office for Immigration and Asylum, Austria, 'the Office') concerning the latter's decision to withdraw his refugee status, to refuse to grant him subsidiary protection status or a residence permit on grounds worthy of consideration, to take a return decision with a prohibition on his stay, to set a deadline for his voluntary departure and to declare that his removal is not authorised.

7. In Case C-8/22, the request for a preliminary ruling has been made in the context of a dispute between XXX, a third-country national, and the Commissaire général aux réfugiés et aux apatrides (Office of the Commissioner General for Refugees and Stateless Persons, Belgium, 'the Commissioner General') concerning the latter's decision to withdraw his refugee status.

3 Signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)) and entered into force on 22 April 1954.

4 Concluded in New York on 31 January 1967, and entered into force on 4 October 1967. See Janku, L., '(In)Compatibility of Article 14(4) and (6) of the Qualification Directive with the 1951 Refugee Convention', speech delivered at the Nordic Asylum Law Seminar, 29 and 30 May 2017, available at: http://mhi.hi.is/sites/mhi.hi.is/files/nalsfiles/4/nals_paper_janku.pdf.

5 C-391/16, C-77/17 and C-78/17, 'the judgment in *M and Others (Revocation of refugee status)*', EU:C:2019:403.

6 See judgment in *M and Others (Revocation of refugee status)* (paragraph 97).

7 OJ 2008 L 348, p. 98.

8. The questions referred by the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) (Case C-663/21) and by the Conseil d'État (Council of State, Belgium) (Case C-8/22) are complementary and overlap in part, which is why I will consider them together in this Opinion. In particular, those questions call on the Court to clarify the conditions for revocation of refugee status under Article 14(4)(b) of Directive 2011/95.

9. That provision stipulates that 'Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when … he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State'.

10. That ground for revocation of refugee status is directly inspired by the wording of Article 33(2) of the Geneva Convention, from which it follows that the principle of non-refoulement may not be claimed by a refugee 'who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community [of the country in which he or she is present]'. That same exception to the principle of non-refoulement is found in Article 21(2) of Directive 2011/95. [8]

11. In this Opinion, I shall first defend the interpretation that Article 14(4)(b) of Directive 2011/95 lays down two cumulative conditions for the possibility for a Member State to revoke refugee status. In that regard, I shall explain why I consider that the existence of a conviction by a final judgment for a particularly serious crime is a necessary but not a sufficient condition for a Member State to revoke that status.

12. I shall then set out the reasons why I consider that the danger posed by the convicted person, at the time when a decision revoking refugee status is made, must be genuine, present and sufficiently serious for the community of the Member State concerned.

13. Finally, I shall clarify that a decision to revoke refugee status must, in my opinion, comply with the principle of proportionality and, more broadly, the fundamental rights of the person concerned, as guaranteed by the Charter.

14. Case C-663/21 raises a further issue concerning the interpretation of Directive 2008/115. In essence, the question is whether a return decision must be adopted where the third-country national concerned cannot be refouled to his or her country of origin. I will rely on the most recent case-law of the Court in order to propose that the Court should answer that question in the negative.

II. The facts of the disputes in the main proceedings and the questions referred for a preliminary ruling

A. Case C-663/21

15. AA entered Austria illegally on 10 December 2014 and lodged an application for international protection on the same day. By decision of the Office of 22 December 2015, he was granted refugee status.

[8] See judgment in *M and Others (Revocation of refugee status)* (paragraph 93).

16. On 22 March 2018, AA was given a custodial sentence of one year and three months and a fine of 180 on the scale of daily penalty units for committing the offences of dangerous threatening behaviour, destroying or damaging the property of others, the unauthorised handling of drugs and drug trafficking. On 14 January 2019, AA was given a custodial sentence of three months for the offences of intentional wounding and dangerous threatening behaviour. On 11 March 2019, he was sentenced to six months' imprisonment for the offences of attempted physical assault and dangerous threatening behaviour. All of those custodial sentences were suspended.

17. On 13 August 2019, AA was fined for aggressive behaviour towards a member of a public supervisory body.

18. By decision of 24 September 2019, the Office withdrew AA's refugee status and decided not to grant him subsidiary protection status or a residence permit on grounds worthy of consideration. The Office also stated that a return decision together with an entry ban would be adopted against him and that a period for voluntary departure would be set, while stating that his removal to Syria was not authorised.

19. AA lodged an appeal against the Office's decision of 24 September 2019 before the Bundesverwaltungsgericht (Federal Administrative Court, Austria). He subsequently stated that he was withdrawing that appeal in so far as it related to the part of the operative part of that decision which found that his removal would be unlawful.

20. On 16 June and 8 October 2020, AA was sentenced to four and five months' imprisonment without the previous suspended sentences being revoked.

21. By judgment of 28 May 2021, the Bundesverwaltungsgericht (Federal Administrative Court) annulled the Office's decision of 24 September 2019. That court stated that four conditions had to be met in order for refugee status to be withdrawn, namely the fact that the refugee has committed a particularly serious crime, that he or she has been convicted of that crime by a final judgment, that he or she constitutes a danger to the community and that the public interest in ending his or her residence outweighs his or her interests in the continuation of the protection afforded by the State of asylum.

22. That court found that AA satisfied the first three conditions, but with regard to the fourth condition it took the view that the interests of the Republic of Austria had to be weighed up against those of AA, taking into account the extent and nature of the measures to which he would be exposed in the event of revocation of international protection. Since AA would be exposed to the risk of torture or death if returned to his country of origin, the Bundesverwaltungsgericht (Federal Administrative Court) considered that his interests outweighed those of the Republic of Austria and that his refugee status should not be withdrawn.

23. The Office has brought an appeal on a point of law against that judgment before the Verwaltungsgerichtshof (Supreme Administrative Court).

24. In support of its action, the Office submits that the case-law of the Verwaltungsgerichtshof (Supreme Administrative Court) laying down the fourth condition referred to above was developed in a context which is not comparable to the current situation. Removal to the country of origin would no longer be permitted where the person concerned would be exposed to consequences leading to a violation of Articles 2 or 3 of the Convention for the Protection of

Human Rights and Fundamental Freedoms. [9] Therefore, the weighing up of interests carried out in the present case by the Bundesverwaltungsgericht (Federal Administrative Court) is not said to be necessary since that person is said to enjoy protection against removal as a result of a decision finding that refoulement is impossible. According to the Office, such a weighing up of interests could, moreover, undermine the credibility of the system of protection provided for by EU law in accordance with the Geneva Convention.

25. In the light of the arguments raised by the Office, the referring court asks whether it is necessary, for the purposes of applying Article 14(4)(b) of Directive 2011/95, to weigh up the interests involved, after it has been established that the person concerned has been convicted by a final judgment of a particularly serious crime and that he represents a danger to the community. It states, in particular, on the basis of the arguments put forward before it by the Office, [10] that such a weighing up could be disregarded on the ground that Article 14(4)(b) of that directive seeks to remove refugee status from persons who have been shown not to deserve to retain that status on account of the seriousness of their crimes and the danger which they therefore represent to the community.

26. Furthermore, that court notes that, in any event, the revocation of refugee status does not allow account to be taken of the need to avert the danger posed by a person who has been involved in mass delinquency since the removal of that person is unlawful on account of the prohibition on refoulement.

27. Relying on academic writing and on the statements of the European Asylum Support Office (EASO), the referring court states that there are differing views as to the need to weigh up the interests between the danger to the community posed by the third-country national concerned and the risks posed to that national by the return to his or her country of origin. That court also points out that Austrian case-law on that point appears to be removed from that of the European Union and that that case-law may make it impossible to deprive that national of his refugee status.

28. In addition, that court notes that Austrian law provides that, in cases where international protection has been withdrawn but removal to the country of origin is not possible, a return decision, together with an entry ban where appropriate, must be adopted. The residence of the third-country national concerned is therefore tolerated in Austria as long as his or her removal remains impossible, but is not lawful.

29. Such a practice could be considered incompatible with Directive 2008/115 in so far as it entails the adoption of a return decision which is ineffective for an indefinite period since the removal of the third-country national concerned is considered to be unlawful until the adoption of a contrary decision declaring the removal to be lawful. In that context, the referring court is unsure inter alia as to the scope of the judgment of 3 June 2021 in *Westerwaldkreis*. [11]

[9] Signed in Rome on 4 November 1950.

[10] The Office refers in particular to the judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661). In that judgment, the Court held, first, that exclusion from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on the person concerned representing a present danger to the host Member State (paragraph 105) and, secondly, that such an exclusion is not conditional on an assessment of proportionality in relation to the particular case (paragraph 111).

[11] C-546/19, EU:C:2021:432.

30. In those circumstances the Verwaltungsgerichtshof (Supreme Administrative Court) decided to stay the proceedings and to refer to the Court of Justice the following questions for a preliminary ruling:

'(1) In the assessment as to whether the asylum status previously granted to a refugee by the competent authority can be revoked on the ground set out in Article 14(4)(b) of [Directive 2011/95], must the competent authority carry out a weighing up of interests in such a way that revocation requires that the public interests in forced return must outweigh the refugee's interests in the continuation of the protection afforded by the State of refuge, whereby the reprehensibility of a crime and the potential danger to society must be weighed against the foreign national's interests in protection – including with regard to the extent and nature of the measures with which he or she is threatened?

(2) Do the provisions of [Directive 2008/115], in particular Articles 5, 6, 8 and 9 thereof, preclude a situation under national law in which a return decision is to be adopted in respect of a third-country national whose previous right of residence as a refugee is withdrawn [following]the revocation of asylum status, even if it is already declared at the time of adoption of the return decision that his or her removal is not permissible for an indefinite period of time on account of the principle of non-refoulement, and this is also declared capable of having legal force?'

31. The Austrian, Belgian, Czech, German and Netherlands Governments and the European Commission submitted written observations.

B. Case C-8/22

32. By decision of the Commissioner General of 23 February 2007, XXX was granted refugee status.

33. By judgment of 20 December 2010, the Cour d'assises de Bruxelles (Assize Court, Brussels, Belgium) sentenced XXX to 25 years' imprisonment. [12]

34. By decision of 4 May 2016, the Commissioner General withdrew his refugee status.

35. XXX lodged an appeal against that decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium).

36. By judgment of 26 August 2019, that court dismissed the appeal, taking the view that the danger posed by XXX to the community resulted from his conviction for a particularly serious offence. In that context, it was stated that it was not for the Commissioner General to demonstrate that XXX constitutes a genuine, present and sufficiently serious danger to the community. Rather it is for XXX to establish that he no longer represents a danger to the community.

37. On 26 September 2019, XXX lodged an appeal on a point of law before the Conseil d'État (Council of State, Belgium) against that judgment.

[12] Although the order for reference contains very few details with regard to the facts at issue in the main proceedings, the Belgian Government states that XXX was convicted, in essence, of violent robbery in concert with others and murder.

38. In support of his appeal, he argues, in essence, that it is for the Commissioner General to prove the existence of a genuine, present and sufficiently serious danger to the community and that a review of proportionality must be undertaken in order to determine whether the danger which he represents justifies the withdrawal of his refugee status.

39. In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) Must Article 14(4)(b) of [Directive 2011/95] be interpreted as providing that danger to the community is established by the mere fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime or must it be interpreted as providing that a conviction by a final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community?

(2) If a conviction by final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community, must Article 14(4)(b) of [Directive 2011/95] be interpreted as requiring the Member State to establish that, since his or her conviction, the applicant continues to constitute a danger to the community? Must the Member State establish that the danger is genuine and present or is the existence of a potential threat sufficient? Must Article 14(4)(b) of [that directive], taken alone or in conjunction with the principle of proportionality, be interpreted as allowing revocation of refugee status only if that revocation is proportionate and the danger represented by the beneficiary of that status sufficiently serious to justify that revocation?

(3) If the Member State does not have to establish that, since his or her conviction, the applicant continues to constitute a danger to the community and that the threat is genuine, present and sufficiently serious to justify the revocation of refugee status, must Article 14(4)(b) of [Directive 2011/95] be interpreted as meaning that danger to the community is established, in principle, by the fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime, but that he or she may establish that he or she does not constitute, or no longer constitutes, such a danger?'

40. XXX, the Belgian and Netherlands Governments and the Commission submitted written observations.

41. At the joint hearing for the two cases, held on 10 November 2022, XXX, the Belgian Government, the Netherlands Government and the Commission presented oral argument and responded to the questions for oral answer put by the Court.

III. Analysis

A. Interpretation of Article 14(4)(b) of Directive 2011/95

42. As regards the interpretation of Article 14(4)(b) of Directive 2011/95, the legal debate in the present cases concerns a number of points.

43. In the first place, must that provision be regarded as laying down two cumulative conditions for a Member State to be able to revoke refugee status, namely, first, the existence of a conviction by a final judgment for a particularly serious crime and, secondly, proof that the person who is the subject of that conviction represents a danger to the community of that Member State?

44. In the second place, if that first question is answered in the affirmative, what are the characteristics of that danger to the community? In particular, must a Member State demonstrate that, since his or her conviction, the third-country national concerned continues to constitute a danger to its community? Moreover, by analogy with the Court's findings with regard to other rules of EU law, must the danger be genuine, present and sufficiently serious?

45. In the third place, is the decision of a Member State to revoke refugee status under Article 14(4)(b) of Directive 2011/95 subject to compliance with the principle of proportionality? If so, between which elements must a balance be struck? In particular, must the competent authority weigh up the interest of the host Member State in protecting its community and the interest of the third-country national concerned in continuing to benefit from protection in that Member State?

46. Before examining those various points, I shall make some preliminary observations on the condition relating to a conviction by a final judgment for a particularly serious crime.

1. Preliminary observations on the condition relating to a conviction by a final judgment for a particularly serious crime

47. I note that none of the questions referred by the national courts concern what is meant by the fact that the third-country national concerned must have been 'convicted by a final judgment of a particularly serious crime'. However, that question has been raised specifically in the case of *Staatssecretaris van Justitie en Veiligheid* (C-402/22), currently pending before the Court, by the Raad van State (Council of State, Netherlands). Since that case will therefore provide the appropriate framework for defining the scope of that condition,[13] I shall confine myself here to making the following observations, which are motivated by the contrast between the respective convictions handed down in the present cases.

48. Thus, Case C-663/21 concerns a third-country national whose refugee status was revoked after he was sentenced to several suspended prison sentences for various offences. Case C-8/22 concerns a third-country national whose refugee status was revoked after he was sentenced to 25 years' imprisonment for committing various offences including murder.

49. Intuitively and subject to further definition of the concept of 'conviction for a particularly serious crime', a custodial sentence for the duration and for an offence such as those at issue in Case C-8/22 appears to fall within the scope of that definition or, at least, is not manifestly outside its scope.

[13] It will be necessary to determine, in particular, whether the requirements and parameters to be taken into account in concluding that a person has committed a 'serious crime' within the meaning of Article 17(1)(b) of Directive 2011/95 are also relevant for the purpose of deciding whether a person has committed a 'particularly serious crime' within the meaning of Article 14(4)(b) of that directive. With regard to the interpretation of Article 17(1)(b) of Directive 2011/95, see judgment of 13 September 2018, *Ahmed* (C-369/17, EU:C:2018:713).

50. By contrast, it is questionable, in the context of Case C-663/21, whether a number of suspended prison sentences for offences which, taken in isolation, might not be classified as a 'particularly serious crime', satisfy the condition laid down in Article 14(4)(b) of Directive 2011/95. That raises inter alia the question whether the cumulative effect of several offences may make it possible to reach the level of being particularly serious as stipulated in that provision.

51. I shall not take a decision on those questions here as they have not been the subject of debate in the context of the present cases, and shall merely draw the attention of the referring courts to the fact that, when they are prompted to draw the appropriate conclusions from the answers which the Court will give to their questions, they cannot waive the prior verification of whether or not the person has been convicted of a 'particularly serious crime' within the meaning of Article 14(4)(b) of Directive 2011/95. Indeed, this is an essential condition for exercising the power to revoke refugee status afforded by that provision.

52. However, is it a sufficient condition for exercising that power of revocation? The answer to that question requires clarification of the link which exists, for the purposes of applying Article 14(4)(b) of Directive 2011/95, between a conviction by a final judgment for a particularly serious crime and the existence of a danger to the community, in order to deduce whether or not these are two cumulative conditions.

2. The link between a conviction by a final judgment for a particularly serious crime and the existence of a danger to the community

53. By its first and third questions in Case C-8/22, the referring court asks, in essence, whether Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that the ground for revocation of refugee status laid down in that provision may be applied where it is established that the person concerned has been convicted by a final judgment of a particularly serious crime without it being necessary to determine, as a separate condition, whether that person constitutes a danger to the community of the Member State in which he or she is present.

54. Those questions require it to be determined whether the relationship between the two elements of, on the one hand, a conviction by a final judgment for a particularly serious crime and, on the other, the existence of a danger to the community of the Member State concerned is one of automatic causality, with the result that the first element necessarily entails the second, or whether they are two elements which, although linked to each other, must each be demonstrated separately.

55. In other words, must Article 14(4)(b) of Directive 2011/95 be regarded as laying down a single condition for the revocation of refugee status, namely that the danger to the community arises solely from the fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime? Or rather should that provision be regarded as laying down two conditions for such revocation, with the result that, in addition to the existence of a conviction by a final judgment for a particularly serious crime, a Member State would have to demonstrate that the refugee constitutes a danger to its community?

56. The Member States appear to differ on that point. Some consider that a conviction for a particularly serious crime is, in all cases, sufficient to consider that the person in question constitutes a danger to the community. Others take the view that it is also necessary to establish

the existence of such a danger as a separate condition. [14]

57. Like the Commission, I consider that, although a conviction by a final judgment for a particularly serious crime is a necessary condition for the revocation of refugee status under Article 14(4)(b) of Directive 2011/95, it is not, however, a sufficient condition. [15] From that perspective, it is also necessary to examine and establish whether the person concerned represents a danger to the community of the Member State in which he or she is present. That provision therefore lays down two conditions which, although connected, are separate and must be satisfied cumulatively. A conviction by a final judgment for a particularly serious crime is therefore both a condition for the existence of a danger to the community, in accordance with that provision, and a relevant factor for the assessment of that danger. That conviction is not, however, the only element for the purposes of such an assessment, as I shall explain below.

58. The wording of Article 14(4)(b) of Directive 2011/95, in my view, supports such an interpretation.

59. I note, in that regard, that, although there are differences between the language versions of that provision, [16] it expresses the idea that not only must the person in question have been convicted of a particularly serious crime, but it must also be established that there is a link between the crime in respect of which that person has been convicted and the danger that he or she represents. That person must therefore constitute a danger on account of the crime which he or she committed. [17]

60. Thus, the danger to the community required by Article 14(4)(b) of Directive 2011/95 is not established if it is based on allegations relating to offences committed by the person in question or his or her general conduct which have not resulted in a conviction by a final judgment for a particularly serious crime.

61. As the Court has stated in relation to the corresponding ground set out in Article 21(2) of Directive 2004/83, allowing the refoulement of a refugee, it must be held that Article 14(4)(b) of Directive 2011/95 subjects the revocation of refugee status to rigorous conditions since, in particular, only a refugee who has been convicted by a final judgment of a 'particularly serious crime' may be regarded as constituting a 'danger to the community of that Member State'. [18] Those rigorous conditions are commensurate with the significant consequences of the

[14] See, inter alia, the Commission report 'Evaluation of the application of the recast Qualification Directive (2011/95/EU)', 2019, p. 135, available at: https://www.statewatch.org/media/documents/news/2019/feb/eu-ceas-qualification-directive-application-evaluation-1-19.pdf.

[15] See, to that effect, Kraft, I., 'Article 14, Revocation of, ending of or refusal to renew refugee status', in Hailbronner, K., and Thym, D., *EU Immigration and Asylum Law: A Commentary*, 2nd edition, C.H. Beck, Munich, 2016, pp. 1225 to 1233, in particular p. 1231.

[16] See, for example, the German, Dutch and Finnish language versions which state that the refugee in question represents a danger to the community of the Member State concerned 'because' he or she has been convicted by a final judgment of a particularly serious crime.

[17] See, inter alia, EASO, *Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU) A Judicial Analysis*, 2018, p. 53, available at: https://euaa.europa.eu/sites/default/files/Ending%20International%20Protection_Articles%2011_14_16%20and%2019%20QD%20EASO%20Judicial%20Analysis%20FINAL.pdf.

[18] See judgment of 24 June 2015, T. (C-373/13, 'the judgment in *T.*', EU:C:2015:413, paragraph 72).

revocation of refugee status, namely that the person concerned will no longer be entitled to all the rights and benefits set out in Chapter VII of that directive since those rights and benefits are associated with that status. [19]

62. However, the existence of a link between the two elements set out in Article 14(4)(b) of that directive does not mean, in my view, that the existence of a danger to the community should in all cases be regarded as deriving automatically from a conviction for a particularly serious crime, thereby rendering the demonstration of such a danger unnecessary.

63. Irrespective of the language version and the way in which it expresses the link between a conviction by a final judgment for a particularly serious crime and the existence of a danger to the community, the fact that that provision refers to those two elements leads me to consider that the EU legislature thus provided that two cumulative conditions must be satisfied in order for refugee status to be revoked. If the danger to the community was not an autonomous condition, that legislature would logically have confined itself to allowing the revocation of refugee status solely on the basis of a conviction for a particularly serious crime. [20]

64. Moreover, that is what the EU legislature did by stipulating, for example, as one of the grounds for exclusion from refugee status, the commission of a 'serious non-political crime' in Article 12(2)(b) of Directive 2011/95 and as one of the grounds for exclusion from being eligible for subsidiary protection, the commission of a 'serious crime' in Article 17(1)(b) of that directive. I also note that, among the grounds for exclusion from being eligible for subsidiary protection, the serious reasons for considering that the person in question 'constitutes a danger to the community or to the security of the Member State in which he or she is present' constitutes a separate and autonomous ground for exclusion.

65. In comparison to those provisions, I infer from the specific wording of Article 14(4)(b) of Directive 2011/95 that the existence of a danger to the community cannot result automatically and in all cases from a conviction for a particularly serious crime, without rendering redundant the reference that the person concerned must constitute a danger to the community.

66. Contrary to the submissions of the Belgian Government, the interpretation which favours the existence of two cumulative conditions does not have the effect of depriving the other ground for the revocation of refugee status which is mentioned in Article 14(4)(a) of Directive 2011/95 of its effectiveness where there are reasonable grounds for regarding a refugee as 'a danger to the security of the Member State in which he or she is present'. That ground, in my view, has its own scope in that it covers both the internal security of a Member State and its external security. Consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to the

[19] See judgment in *M and Others (Revocation of refugee status)* (paragraph 99). In particular, the application of Article 14(4) or (5) of Directive 2011/95 has the consequence, inter alia, of depriving the person concerned of the residence permit which Article 24 of that directive attaches to having refugee status as defined in that directive (paragraph 103). Thus, a refugee concerned by a measure taken on the basis of Article 14(4) or (5) of Directive 2011/95 may be regarded as not or no longer staying lawfully in the territory of the Member State concerned (paragraph 104). However, as is explicitly stated in Article 14(6) of that directive, that person is, or continues to be, entitled to a certain number of rights laid down in the Geneva Convention, which confirms that he or she is, or continues to be, a refugee for the purposes of, inter alia, Article 1(A) of the Geneva Convention, in spite of the revocation status or the refusal to grant such status (paragraph 99).

[20] As the Commission has rightly pointed out, the express reference to a danger to the community of the Member State concerned in the wording of Article 14(4)(b) of Directive 2011/95 must not be regarded as being merely superfluous, but rather as a condition which must also be satisfied.

peaceful coexistence of nations, or a risk to military interests, may affect public security.[21] Thus construed, the danger to the security of a Member State, within the meaning of Article 14(4)(a) of Directive 2011/95, is different from the danger to the community of a Member State, which is referred to in Article 14(4)(b) of that directive, and which relates more to maintaining public order in the Member State concerned.[22]

67. The interpretation which involves requiring the competent authority not solely to take note of a previous conviction in order to be able to revoke refugee status under that provision is, in my view, supported by the need to adopt a strict interpretation of that provision, having regard to the objective of Directive 2011/95.

68. In accordance with recital 12 thereof, the objective of that directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other, to ensure that a minimum level of benefits is available for those persons in all Member States.

69. Refugee status must be granted to a person where he or she meets the minimum standards established by EU law. Thus, under Article 13 of Directive 2011/95, Member States are to grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III of that directive.

70. Article 14(4)(b) of Directive 2011/95 sets out a ground for the revocation of refugee status which constitutes an exception to the general rule laid down in Article 13 of that directive and which has the effect of limiting the rights and benefits set out in Chapter VII of the same directive. That ground for revocation must therefore, in my view, be interpreted strictly, which means that it can be applied only where the competent authority demonstrates, first, that the third-country national concerned has been convicted by a final judgment of a particularly serious crime and, secondly, that that national constitutes a danger to the community of the Member State in which he or she is present.

71. Such an interpretation also seems to me to be consistent with the interpretation adopted in Article 33(2) of the Geneva Convention, which provides inter alia that the principle of non-refoulement may not be claimed by a refugee 'who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community [of the country in which he or she is present]'. I note, in that regard, that, even though that provision has a different purpose, as it provides for exceptions to the principle of non-refoulement, it is common ground that it was the source of the grounds for the revocation of refugee status set out by the EU legislature in Article 14(4) of Directive 2011/95. It therefore seems to me appropriate to take into

[21] See, by analogy, with regard to Article 24(1) of Directive 2004/83, judgment in *T.* (paragraph 78 and the case-law cited). It also seems to me relevant to take into account the interpretation that has been given to the concept of 'danger to the security of the country' in which a refugee is, within the meaning of Article 33(2) of the Geneva Convention. That provision inspired both the wording of Article 14(4)(a) of Directive 2011/95 and that of Article 21(2)(a) of that directive. According to the commentary on this Convention published in 1997 by the Division of International Protection of the United Nations High Commissioner for Refugees (UNHCR), available at the following Internet address: https://www.unhcr.org/3d4ab5fb9.pdf, 'the notion of "national security" or "the security of the country" is invoked against acts of a rather serious nature endangering directly or indirectly the constitution (Government), the territorial integrity, the independence or the external peace of the country concerned' (p. 140).

[22] Here again, the interpretation of the Geneva Convention may help to clarify the concept of 'danger to the community' of a Member State within the meaning of Article 14(4)(b) of Directive 2011/95. I note, in this regard, that the commentary cited in the previous footnote, in relation to the corresponding notion of 'danger to the community' of the country where a refugee is located, within the meaning of Article 33(2) of that convention, defines that notion as follows: 'a danger to the peaceful life of the population in its many facets. In this sense a [person] will be a danger to the community if he sabotages means of communication, blows up or sets fire to houses and other constructions, assaults or batters peaceful citizens, commits burglaries, holdups or kidnapping etc., in short if he disrupts or upsets civil life, and particularly if this is done on a large scale, so that the person concerned actually becomes a public menace' (p. 143).

account the interpretation of Article 33(2) of that convention which, as is apparent from recitals 4, 23 and 24 of Directive 2011/95, constitutes the cornerstone of the international legal regime for the protection of refugees. [23]

72. More generally, I consider that, since the situations referred to in Article 14(4) and (5) of Directive 2011/95, in which Member States may revoke or refuse to grant refugee status correspond, in essence, to those in which Member States may refoule a refugee under Article 21(2) of that directive and Article 33(2) of the Geneva Convention, the grounds set out in those provisions should be interpreted in the same way.

73. In so far as the interpretation of Article 33(2) of the Geneva Convention appears to favour the existence of two conditions, namely a conviction by a final judgment for a particularly serious crime and the existence of a danger to the community of the country in which the refugee concerned is present, [24] this reinforces my conviction that the corresponding grounds in both Article 14(4)(b) of Directive 2011/95 and Article 21(2)(b) of that directive also require that those two cumulative conditions are met.

74. It follows from the foregoing that, in my view, Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that the ground for revocation of refugee status laid down in that provision may be applied by a Member State only where it establishes, first, that the person concerned has been convicted by a final judgment of a particularly serious crime and, secondly, that that person constitutes a danger to the community of that Member State.

75. It is now necessary to clarify the characteristics of that danger.

3. The characteristics of the danger to the community

76. By its second question in Case C-8/22, the referring court asks, in essence, whether Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that the revocation of refugee status on the basis of that provision is subject to the existence of a genuine, present and sufficiently serious danger to the community of that Member State.

77. In asking the Court whether the danger to the community referred to in Article 14(4)(b) of that directive must be genuine, present and sufficiently serious, that court asks whether the standard established by the Court in its case-law on threats to public policy should be transposed to that provision.

78. Particular reference is made to the case-law by which the Court has established a standard in relation to the free movement of Union citizens, under which a Union citizen who has exercised his or her right to free movement can be regarded as posing a threat to public policy only if his or her individual conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, [25] a standard subsequently codified in secondary

[23] See, inter alia, judgment in *M and Others (Revocation of refugee status)* (paragraph 81 and the case-law cited). See, also, as regards the need to interpret the provisions of Directive 2011/95 in compliance with the Geneva Convention, judgment of 13 September 2018, *Ahmed* (C-369/17, EU:C:2018:713, paragraph 41 and the case-law cited).

[24] See 'The refugee Convention, 1951: the Travaux préparatoires analysed with a Commentary by Dr Paul Weis', p. 246, available at: https://www.unhcr.org/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html.

[25] See, in particular, judgments of 27 October 1977, *Bouchereau* (30/77, EU:C:1977:172, paragraphs 28 and 35), and of 19 January 1999, *Calfa* (C-348/96, EU:C:1999:6, paragraphs 24 and 25).

legislation.[26] That standard has also been applied to third-country nationals who are not family members of Union citizens. Thus, it has been applied, on several occasions, to beneficiaries of rights conferred by association agreements,[27] then, to a certain extent, to long-term residents,[28] and to acknowledge that a voluntary period for departure is not granted in a return procedure,[29] that a residence permit granted to a refugee may be revoked,[30] the administrative detention of an asylum seeker,[31] the imposition of a ban on entry to supplement a return decision[32] or to justify the enforcement of detention in prison accommodation for the purpose of removal.[33]

79. By contrast, the standard relating to the existence of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society has been excluded in other contexts, in particular with regard to the refusal to grant visas to students.[34]

80. It has thus been held that any reference by the EU legislature to the concept of a 'threat to public policy' does not necessarily have to be understood as referring exclusively to individual conduct representing a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State concerned, and that it is necessary to take into account the wording of the provisions in question, their context and the objectives pursued by the legislation of which they form part.[35]

81. It is apparent from that brief description of the Court's case-law on the threat to public policy that the case-law moves in directions which may differ according to the rules of EU law which it is called upon to interpret, by taking into account in each case the wording of the provisions at issue, their context and the objective of the legislation of which they form part. In my view, it is therefore by taking into account the particular wording of Article 14(4)(b) of Directive 2011/95, the context of that provision and the objective of that directive, that the characteristics of the danger to the community referred to therein must be defined. I also note that, although the proximity between the two types of threat, namely a threat to the public policy of a Member State, on the one hand, and a danger to the community of that Member State, on the other, certainly allows for a

26 Article 27(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

27 See, inter alia, judgments of 10 February 2000, *Nazli* (C-340/97, EU:C:2000:77, paragraphs 57 and 58); of 20 November 2001, *Jany and Others* (C-268/99, EU:C:2001:616, paragraph 59); and of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809, paragraph 82).

28 See judgment of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949, paragraphs 25 to 28).

29 See judgment of 11 June 2015, *Zh. and O.* (C-554/13, EU:C:2015:377, paragraph 60).

30 See judgment in *T.* (paragraph 79).

31 See judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84, paragraph 67).

32 See judgment of 16 January 2018, *E* (C-240/17, EU:C:2018:8, paragraph 49).

33 See judgment of 2 July 2020, *Stadt Frankfurt am Main* (C-18/19, EU:C:2020:511, paragraph 45).

34 See judgment of 4 April 2017, *Fahimian* (C-544/15, EU:C:2017:255, paragraph 40).

35 See, with regard to the entry conditions for third-country nationals under 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), judgment of 12 December 2019, *E.P. (Threat to public policy)* (C-380/18, EU:C:2019:1071, paragraphs 31 to 33), and, with regard to family reunification, judgment of 12 December 2019, *G.S. and V.G. (Threat to public policy)* (C-381/18 and C-382/18, EU:C:2019:1072, paragraphs 54 and 55). In the latter judgment, the Court held that Article 6(1) and (2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) does not preclude the competent authorities, on grounds of public policy, first, from being able to reject an application, founded on that directive, for entry and residence, on the basis of a criminal conviction imposed during a previous stay on the territory of the Member State concerned and, secondly, from being able to withdraw a residence permit founded on that directive or refuse to renew it where a sentence sufficiently severe in comparison with the duration of the stay has been imposed on the applicant, provided that that practice is applicable only if the offence which warranted the criminal conviction at issue is sufficiently serious to establish that it is necessary to rule out residence of that applicant and that those authorities carry out the individual assessment provided for in Article 17 of that directive (paragraph 70). The Court stated that, to that end, those authorities did not have to establish that the individual conduct of that applicant represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the Member State concerned (paragraph 63).

comparison of the criteria for qualifying such a threat, which does not replace a specific examination of Article 14(4)(b) of that directive by means of a literal, contextual and purposive interpretation.

82. It follows, in that regard, from the wording of Article 14(4)(b) of Directive 2011/95 that the danger to the community to which that provision refers must be genuine. That provision stipulates that the person concerned 'constitutes' a danger to the community of the Member State in which he or she is present. That said, as the Commission rightly points out, the requirement that a threat is genuine does not mean being certain that this will occur in the future.

83. Moreover, the context of Article 14(4)(b) of Directive 2011/95 and the effectiveness of the condition that the person concerned constitutes a danger to the community mean, in my view, that it must be a present danger.

84. As regards the context of that provision, I note that the Court has already held that, in the scheme of Directive 2004/83, any danger which a refugee may currently pose to the Member State concerned is to be taken into consideration not under Article 12(2) of the directive but under (i) Article 14(4)(a) of that directive, pursuant to which Member States may revoke refugee status where, in particular, there are reasonable grounds for regarding the person concerned as a danger to the security of that Member State and (ii) Article 21(2) of the directive, which provides that the host Member State may – as it is also entitled to do under Article 33(2) of the Geneva Convention – refoule a refugee where there are reasonable grounds for considering him to be a danger to the security or the community of that Member State. [36]

85. There is, in my view, no reason to consider that Article 14(4)(b) of Directive 2011/95 differs, in the scheme of that directive, from Article 14(4)(a) and Article 21(2) thereof, which I would point out are identical to the corresponding provisions of Directive 2004/83, as regards the requirement that the person concerned represents a present danger to the Member State in which he or she is present. To adopt a different interpretation would lead to inconsistency in the interpretation of those various provisions.

86. I consider, in addition, that, in so far as a conviction for a particularly serious crime is evidence in itself that the refugee has caused a particularly serious disturbance to society which has necessitated the criminal sanctioning of the conduct giving rise to that disturbance, the reference to the existence of a danger to the community in Article 14(4)(b) of Directive 2011/95 must serve its own purpose, unless it appears to be redundant.

87. The practical effect of the reference to the fact that the person in question constitutes a danger to the community is therefore to oblige the competent authority to demonstrate that, at the time when it is contemplating revoking refugee status, a person who was previously convicted of a particularly serious crime still constitutes a danger to the community of the Member State in which he or she is present.

88. It follows from the foregoing that the person concerned by a procedure for the revocation of his or her refugee status must constitute a present danger to the community of the Member State in which he or she is present at the time when the competent authority is called upon to take its decision.

[36] See judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661, paragraph 101).

89. Moreover, the requirement under Article 14(4)(b) of Directive 2011/95 of a conviction of a particularly serious crime has the logical consequence, in my view, that the danger to the community which is linked to that conviction must itself be sufficiently serious, at the time when the decision to revoke refugee status is adopted, in order to justify such revocation.

90. The application of the standard relating to a genuine, present and sufficiently serious danger in the context of Article 14(4)(b) of Directive 2011/95 appears to me to be justified in the light of the fact that that provision derogates from the rule for granting refugee status laid down in Article 13 of that directive. The fact that it is a derogation means, as I stated above, that Article 14(4)(b) of that directive is to be interpreted strictly, which is all the more justified since its main objective is not to prevent threats to the security, public policy or the community of the Member States, but that mentioned in recital 12 thereof. [37]

91. In my view, the application of that standard can also be inferred from the Court's judgment in *T.* concerning the revocation of the residence permit issued to beneficiaries of refugee status for compelling reasons of national security or public order. The Court directly applied, in the context of Article 24(1) of Directive 2004/83, the standard resulting from its case-law on the free movement of Union citizens. [38] In that regard, the Court held that, while Directive 2004/38 pursues different objectives to those pursued by Directive 2004/83 and Member States retain the freedom to determine the requirements of public policy and public security in accordance with their national needs, which can vary from one Member State to another and from one era to another, the extent of the protection a society intends to afford to its fundamental interests cannot vary depending on the legal status of the person that undermines those interests. [39]

92. In that judgment, the Court established a scale of the measures to which a refugee may be subjected, depending on whether their consequences are more or less onerous for him or her. Thus, the refoulement of a refugee, the consequences of which are potentially very drastic, [40] is the last resort a Member State may use where no other measure is possible or is sufficient for dealing with the threat that that refugee poses to the security or to the public of that Member State. [41] The revocation of a residence permit on grounds of a threat to national security or public order, under Article 24(1) of Directive 2011/95, has less onerous consequences than the revocation of refugee status or the ultimate measure of refoulement. [42] That scale explains why, according to the Court, certain circumstances which do not exhibit the degree of seriousness authorising a Member State to take a refoulement decision under Article 21(2) of that directive can nevertheless permit that Member State, on the basis of Article 24(1) of the same directive, to deny the refugee concerned his or her residence permit. [43]

37 See point 68 of this Opinion.

38 See judgment in *T.* (paragraphs 78 and 79).

39 See judgment in *T.* (paragraph 77).

40 See judgment in *T.* (paragraph 72).

41 See judgment in *T.* (paragraph 71).

42 See, with regard to Directive 2004/83, judgment in *T.* (paragraph 74).

43 See, with regard to Directive 2004/83, judgment in *T.* (paragraph 75).

93. Although there are differences in the wording of that latter provision and Article 21(2) of Directive 2011/95, which sets out criteria similar to those used in Article 14(4) of that directive, [44] I am inclined to take the view that, logically, if a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society is required in order to be able to take the less severe measure of depriving the refugee of his or her residence permit pursuant to Article 24(1) of that directive, those same characteristics of the threat should be required a fortiori for the purposes of adopting decisions with more serious consequences and which involve revoking refugee status or returning the person concerned.

94. In order to determine whether a person constitutes a genuine, present and sufficiently serious danger to the community of the Member State concerned, account must be taken of any factual or legal matter relating to the refugee's situation which make it possible to establish whether his or her personal conduct poses such a danger. Consequently, in the case of a refugee who has been criminally convicted, the relevant matters in that regard include the nature and the seriousness of that act and the time which has elapsed since it was committed. [45] I therefore consider that it is necessary to take into account, beyond the assessment made by the criminal court, which is clearly a decisive factor in measuring the danger posed by the person concerned, the conduct of that person during the period between the criminal conviction and the time when the existence of a danger to the community is assessed. In that regard, account should be taken of the length of time that has elapsed since that conviction, the risk of reoffending and the efforts made by that person to reintegrate into society. [46] Where the refugee's behaviour shows that he or she continues to display an attitude that indicates a propensity to commit other acts that may seriously harm the fundamental interests of society, the existence of a genuine, present and sufficiently serious danger to society may, in my view, be established.

95. It should also be noted that it is for the competent authority which intends to revoke refugee status to demonstrate that the conditions laid down in Article 14(4)(b) of Directive 2011/95 have been met. Even though the wording of that paragraph is, in that regard, less explicit than paragraphs 2 and 3 of Article 14, which require Member States to demonstrate or establish, respectively, that the conditions laid down by those provisions are met, I see no reason to adopt a different position. [47] It is therefore not for the refugee to provide proof that his or her status must not be revoked.

96. Moreover, I am not in favour of the solution outlined by the third question referred for a preliminary ruling in Case C-8/22, which would be to consider that the existence of a danger to the community may be presumed once it has been established that the person concerned has been convicted by a final judgment of a particularly serious crime. Even though, as I explained

44 In particular, both Article 14(4)(b) and Article 21(2)(b) of Directive 2011/95 refer to a 'danger to the community' of the Member State concerned, whereas Article 24(1) of that directive refers to compelling reasons relating inter alia to the 'public order' of that Member State. Although those two concepts should not be regarded as identical, the nuances that could distinguish them do not seem to me to be sufficiently significant to exclude, for the purposes of the analysis, a comparison of the criteria which determine the application of those provisions.

45 See judgment of 11 June 2015, *Zh. and O.* (C-554/13, EU:C:2015:377, paragraphs 61 and 62).

46 It is clear that, if the competent authority takes a decision immediately after the third-country national has been convicted of a particularly serious crime, that conviction will be decisive in demonstrating that that national constitutes a danger to the community. However, when a greater period of time has elapsed between the decision to revoke refugee status and the conviction of that national, the conduct adopted by the latter since his or her conviction will play a more important role in assessing the existence of a danger to the community.

47 As the Commission has pointed out, the HCR also considers that the burden of proof for establishing that the criteria under Article 14(4) of Directive 2011/95 are fulfilled must be on the Member State applying that provision. See 'UNHCR Annotated Comments on [Directive 2004/83]', p. 31 and 32, available at: https://www.unhcr.org/uk/protection/operations/43661eee2/unhcr-annotated-comments-ec-council-directive-200483ec-29-april-2004-minimum.html.

earlier, in the inherent logic of the ground for revocation provided for in Article 14(4)(b) of Directive 2011/95, there is a link between a conviction by a final judgment for a particularly serious crime and the existence of a danger to the community, it is for the competent authority to establish in each case whether, depending on the individual circumstances and, in particular, the passage of time since that conviction and the conduct adopted by the refugee during that period, that conviction still constitutes, at the time when the revocation decision is taken, a decisive factor in order to establish the existence of such a danger. In that context, the procedural rules laid down in Article 45 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 [48] must be observed, in particular by allowing the person concerned to challenge the reasons why the competent authority considers that his or her refugee status should be withdrawn.

97. It follows from the foregoing that Article 14(4)(b) of Directive 2011/95 must, in my view, be interpreted as meaning that the ground for revocation of refugee status laid down in that provision may be applied by a Member State only where it demonstrates that the person concerned constitutes a genuine, present and sufficiently serious danger to the community of that Member State.

4. Application of the principle of proportionality

98. The first question in Case C-663/21 and the second question in Case C-8/22 seek to ascertain whether the implementation of the ground for revocation of refugee status under Article 14(4)(b) of Directive 2011/95 is subject to compliance with the principle of proportionality.

99. More specifically, the referring court in Case C-663/21 asks, in essence, whether that provision must be interpreted as meaning that it allows the refugee status granted to a third-country national to be revoked only if the public interest in returning that national to his or her country of origin outweighs the interest of that national in the continuation of the international protection, taking into account the extent and nature of the measures with which he or she is threatened. It is clear from the order for reference that, in referring to the measures with which the person concerned is threatened, the referring court intends inter alia to take into consideration the consequences for that person of a possible return to his or her country of origin.

100. In order to answer those questions, I shall begin by stating that, as regards the detailed rules for the examination which may lead the competent authority to find that there are grounds for exclusion from or the withdrawal of international protection, the Court has recently held, with regard to Article 14(4)(a) and Article 17(1)(d) of Directive 2011/95, that the application of each of those provisions presupposes that the competent authority undertake, for each individual case, an assessment of the specific facts brought to its attention with a view to determining whether there are serious reasons for considering that the situation of the person in question, who otherwise satisfies the qualifying conditions for obtaining or retaining international protection, falls within the scope of one of the cases referred to in those provisions. [49]

[48] OJ 2013 L 180, p. 60.

[49] See judgment of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others* (C-159/21, 'the judgment in *Országos Idegenrendészeti Főigazgatóság and Others*', EU:C:2022:708, paragraph 72 and the case-law cited).

101. According to the Court, that assessment is an integral part of the international protection procedure, since it must be conducted in accordance with Directives 2011/95 and 2013/32. [50] It is for the determining authority [51] alone to carry out, acting under the supervision of the courts, the assessment of the relevant facts and circumstances, including those relating to the application of Articles 14 and 17 of Directive 2011/95, following which assessment that authority will give its decision. [52]

102. The Court has thus ruled out any automaticity and any dependency on another authority where the determining authority is called upon to take a decision. [53] That authority must, on the contrary, have available to it all the relevant information and, in the light of that information, carry out its own assessment of the facts and circumstances with a view to determining the tenor of its decision and providing a full statement of reasons for that decision. [54]

103. In that regard, the Court emphasised that, as follows from the wording of Article 14(4)(a) of Directive 2011/95, the determining authority must have discretion to decide whether or not considerations relating to the national security of the Member State concerned should give rise to the revocation of refugee status, which precludes a finding that there is a danger to that security automatically entailing such revocation. [55]

104. In my view, the foregoing considerations can be transposed to Article 14(4)(b) of that directive. Thus, the competent authority must also have discretion to decide whether or not the existence of a danger to the community should give rise to the revocation of refugee status.

105. Just as, in the light of its functions, the determining authority must enjoy a degree of discretion with regard to the existence of a threat to national security, without being required to rely on a non-reasoned opinion given by bodies entrusted with specialist functions linked to national security, [56] the authority withdrawing refugee status must be free to assess whether a refugee who has been convicted of a particularly serious crime constitutes a danger to the community, in accordance with Article 14(4)(b) of Directive 2011/95.

106. I note, in that regard, that that provision provides that Member States have only the option to revoke refugee status. By analogy with the Court's ruling with regard to Article 21(2) of Directive 2004/83, concerning the possibility to refoule a refugee, it must be considered that, even where the conditions set out in Article 14(4)(b) of Directive 2011/95 are satisfied, the revocation of refugee status constitutes only one option at the discretion of the Member States, the latter being free to opt for other, less rigorous, options. [57] That provision therefore differs from Article 12 of that directive which lays down mandatory grounds for exclusion from refugee status.

[50] See judgment in *Országos Idegenrendészeti Főigazgatóság and Others* (paragraph 73).

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

[52] See judgment in *Országos Idegenrendészeti Főigazgatóság and Others* (paragraph 75 and the case-law cited).

[53] See judgment in *Országos Idegenrendészeti Főigazgatóság and Others* (paragraph 79).

[54] See judgment in *Országos Idegenrendészeti Főigazgatóság and Others* (paragraph 80).

[55] See judgment in *Országos Idegenrendészeti Főigazgatóság and Others* (paragraph 81). However, a different approach is adopted by the Court in that same judgment in respect of Article 17(1)(b) of Directive 2011/95, which provides that a third-country national is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she has committed a serious crime. According to the Court, the use, in that provision, of the phrase 'is excluded' means that the determining authority does not have discretion once it has found that the person concerned has committed a serious crime (paragraph 90).

[56] See judgment in *Országos Idegenrendészeti Főigazgatóság and Others* (paragraph 83).

[57] See judgment in *T.* (paragraph 72).

107. In exercising the option conferred on them in Article 14(4)(b) of Directive 2011/95, Member States implement EU law, which means that that option may not be used by them in a manner which would undermine the objective and the effectiveness of that directive and that the ground for revocation of refugee status laid down in that provision must be applied in a manner consistent with the fundamental rights enshrined in the Charter.[58] Moreover, recital 16 of that directive states that it respects the fundamental rights and observes the principles recognised by the Charter.[59] The Court has also held that the application of Article 14(4) to (6) of that directive is without prejudice to the obligation of the Member State concerned to comply with the relevant provisions of the Charter, such as those set out in Article 7 thereof, relating to respect for private and family life, Article 15 thereof, relating to the freedom to choose an occupation and the right to engage in work, Article 34 thereof, relating to social security and social assistance, and Article 35 thereof, relating to health protection.[60]

108. Furthermore, the implementation of the ground for revocation of refugee status provided for in Article 14(4)(b) of Directive 2011/95 must observe the principle of proportionality, which implies in particular that it must be appropriate for attaining the objective pursued by that provision and it must not go beyond what is necessary to attain that objective.[61] It should be recalled in that regard that the principle of proportionality, which constitutes a general principle of EU law, is binding on Member States when they are implementing that law.[62]

109. The principle of proportionality in fact permeates the entire procedure which may lead a Member State to revoke refugee status under Article 14(4)(b) of Directive 2011/95: first, when verifying the particularly serious nature of the crime which was the subject of a criminal conviction, then, when examining whether there is a sufficiently serious danger to the community and, lastly, in order to decide whether a less stringent measure than the revocation of refugee status should not be preferred, given the optional nature of the latter measure.

110. With regard to this last stage of assessment, I consider that it is necessary to depart, in relation to revocation of refugee status, from what the Court has held with regard to Article 12(2)(b) or (c) of Directive 2004/83, in respect of exclusion from refugee status, namely, in essence, that the competent authority is not required to carry out an additional assessment of proportionality in relation to the particular case where it establishes that the conditions laid down in those provisions have been satisfied.[63] As I pointed out earlier, those provisions provide grounds for exclusion which are mandatory and from which derogation is not possible,[64] which distinguishes them from the optional grounds for revocation provided for in Article 14(4) of Directive 2011/95.

58 See, by analogy, judgment of 12 December 2019, *Bevándorlási és Menekültügyi Hivatal (Family Reunification – Sister of a refugee)* (C-519/18, EU:C:2019:1070, paragraphs 61 and 64).

59 That recital also provides that that directive seeks not only to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members, but also to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and that it should therefore be implemented accordingly.

60 See judgment in *M and Others (Revocation of refugee status)* (paragraph 109).

61 See, by analogy, judgment of 12 December 2019, *Bevándorlási és Menekültügyi Hivatal (Family Reunification – Sister of a refugee)* (C-519/18, EU:C:2019:1070, paragraphs 66 and 67).

62 See, inter alia, judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)* (C-205/20, EU:C:2022:168, paragraph 31).

63 See judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661, paragraphs 109 and 111).

64 See judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661, paragraph 115). In that judgment, the Court held inter alia that the grounds for exclusion at issue were introduced with the aim of excluding from refugee status persons who are deemed to be undeserving of the protection which that status entails and of preventing that status from enabling those who have committed certain serious crimes to escape criminal liability (paragraph 104).

111. With regard to whether a less stringent measure than the revocation of refugee status should not be preferred, given the optional nature of the latter, the assessment to be carried out entails, in my opinion, a weighing up of the interests which must be carefully defined.

112. From the point of view of a Member State, the power to revoke refugee status is intended to protect its community against the danger that a refugee poses to it, by providing for the adoption of a measure which may be in addition to a criminal conviction for a particularly serious crime.

113. Since a person whose refugee status is revoked cannot, on account of the principle of non-refoulement,[65] be removed from the territory of the Member State in which he or she is present, the effectiveness of a decision to revoke that status for the purposes of neutralising the danger which that person poses to the community of that Member State may legitimately be questioned. That said, the possibility of revoking refugee status may have a function both of deterrence and of punishment. From that perspective, the option for a Member State to revoke refugee status gives it the possibility to draw the appropriate conclusions from a breach of the obligation on the person concerned to conform to laws and regulations as well as to measures taken for the maintenance of public order. In the spirit of Article 2[66] and Article 33(2) of the Geneva Convention, it seems to me legitimate to provide, at EU level, that the benefit of refugee status, with the advantages and rights attaching thereto, should be counterbalanced with respect for the security and public order of the Member State which has granted international protection.

114. From the point of view of the person who is the subject of a procedure for the revocation of refugee status, I would point out that the consequence of that procedure, if that person is not deprived of his or her refugee status and therefore continues to be entitled, in accordance with Article 14(6) of Directive 2011/95, to a certain number of rights laid down in the Geneva Convention,[67] is that that person will no longer have all the rights and benefits set out in Chapter VII of that directive.[68] That person will, in particular, be deprived of his or her right of residence which Article 24 of that directive attaches to having refugee status.[69] Consequently, it is, in my opinion, in the interest of the person concerned, in the light of his or her personal and family situation, to retain those rights and benefits which form the second component of the balancing exercise.

115. Thus, since what is at stake, by the application of Article 14(4)(b) of Directive 2011/95, where it is established that the person concerned cannot be refouled, is the retention of the rights and benefits provided for in Chapter VII of that directive, the competent authority must verify whether it is proportionate, having regard to the level of the danger that that person poses to the community and his or her personal and family situation, to deprive him or her of refugee status.

116. In that respect, that authority must take into consideration the fact that the removal of the rights and benefits attached to refugee status may, because of the precarious situation which such removal may cause for the person concerned, be such as to encourage new criminal behaviour once the sentence has been served, which could contribute to prolonging the existence

65 See judgment in *M and Others (Revocation of refugee status)* (paragraph 95), which states that the refoulement of a refugee covered by one of the scenarios referred to in Article 14(4) and (5) and Article 21(2) of Directive 2011/95 is prohibited where it would expose that refugee to the risk of his fundamental rights, as enshrined in Article 4 and Article 19(2) of the Charter, being infringed.

66 That article provides that 'every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order'.

67 See judgment in *M and Others (Revocation of refugee status)* (paragraph 107).

68 See judgment in *M and Others (Revocation of refugee status)* (paragraph 99).

69 See judgment in *M and Others (Revocation of refugee status)* (paragraph 103).

of a danger to the community rather than neutralising it. That finding supports an application of the possibility of revocation of refugee status afforded by Article 14(4)(b) of Directive 2011/95 which is limited to what is strictly necessary, so that the remedy is not worse than the disease.

117. Consequently, within the framework of the discretion afforded to it by that provision, a Member State may not only decide whether or not to revoke the refugee status of the person concerned, it may also grant a refugee whose status it wishes to revoke rights which extend beyond the lower limit provided for in Article 14(6) of that directive.[70] As I stated above, the exercise by a Member State of the option afforded to it by Article 14(4)(b) of that directive must, in particular, give rise to an assessment on a case-by-case basis of the compatibility of that option with certain fundamental rights guaranteed by the Charter.[71]

118. However, in so far as the principle of non-refoulement applies to the person concerned, it seems to me to be of little relevance to take into account, for the purposes of deciding whether or not to revoke refugee status, the dangers faced by that person in the event of return to his or her country of origin. The principle of proportionality therefore does not require, in my view, the competent authority to take those risks into account in the balancing exercise which it must carry out.

119. In the light of the foregoing, I propose that the Court should answer the first question referred for a preliminary ruling in Case C-663/21 and the second question referred for a preliminary ruling in Case C-8/22 to the effect that Article 14(4)(b) of Directive 2011/95 must be interpreted as meaning that, where it implements the option of revoking refugee status which is provided for in that provision, a Member State must respect the fundamental rights guaranteed by the Charter and the principle of proportionality. Consequently, before deciding to revoke refugee status under that provision, that Member State must weigh up, on the one hand, the interest in protecting its community and, on the other, the interest of the person in question in retaining his or her refugee status having regard to the consequences which the withdrawal of that status might have, in particular, for his or her personal and family situation. However, where the refoulement of a refugee is impossible because it would risk infringing the refugee's fundamental rights enshrined in Articles 4 and 19(2) of the Charter, Article 14(4)(b) of Directive 2011/95 does not require the revocation of refugee status to be weighed up against the interest of the Member State concerned in protecting its community and the dangers faced by that refugee in the event of return to his or her country of origin.

[70] See Opinion of Advocate General Wathelet in Joined Cases *M and Others (Revocation of refugee status)* (C-391/16, C-77/17 and C-78/17, EU:C:2018:486, point 129). It should be noted in that regard that Article 3 of Directive 2011/95 allows the Member States to provide for more favourable standards relating inter alia to the content of international protection, provided that they are compatible with that directive.

[71] As Advocate General Wathelet noted in his Opinion in Joined Cases *M and Others (Revocation of refugee status)* (C-391/16, C-77/17 and C-78/17, EU:C:2018:486), 'in the event that, as a result of exercising [the options provided for in Article 14(4) and (5) of Directive 2011/95], a Member State were to deny a refugee access to certain medical treatment, such denial could infringe Article 35 of the Charter (concerning the right to health)'. Moreover, that Member State must take account of the fact that 'it cannot be ruled out, in particular, that the refusal to allow a refugee to enter the labour market after his release from prison, even though he cannot be removed to a third country and must therefore remain indefinitely in the Member State of refuge, may, depending on the circumstances, infringe Article 7 of the Charter' (point 134).

B. The possibility of adopting a return decision where the principle of non-refoulement is applied

120. By its second question in Case C-663/21, the referring court asks, in essence, whether Directive 2008/115 must be interpreted as meaning that it precludes the adoption of a return decision in respect of a third-country national whose refugee status has been revoked where it is established that removal of that national is precluded for an indefinite period by virtue of the principle of non-refoulement.

121. Article 6(1) of Directive 2008/115 provides that Member States are to issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5 of that article.

122. Article 8(1) of that directive stipulates that Member States are to take all necessary measures to enforce the return decision if no period for voluntary departure has been granted or if the obligation to return has not been complied with within the period granted.

123. Article 9(1)(a) of that directive states that Member States must postpone removal when it would violate the principle of non-refoulement.

124. More generally, Article 5 of Directive 2008/115 also requires that, when implementing that directive, Member States respect the principle of non-refoulement. On a practical level, Article 14 of that directive introduces a number of safeguards pending return which benefit inter alia third-country nationals whose removal has been postponed and which offer a form of minimum status during the period covered by such a postponement.

125. As the referring court rightly points out, where a third-country national cannot be removed for an indefinite period, a return decision taken in his or her regard is, so to speak, ineffective from the moment of its adoption until further notice, which explains the doubts expressed by that court as to the possibility of adopting such a decision.

126. In order to defend the view that a return decision should nevertheless be adopted in that situation, the parties to the proceedings in Case C-663/21 rely on the judgment of 3 June 2021, *Westerwaldkreis*,[72] in which the Court held that a Member State which decides not to issue a residence permit to an illegally staying third-country national is obliged to take a return decision, including where that third-country national is covered by the principle of non-refoulement. That factor is said to justify only the postponement of his or her removal, in accordance with Article 9(1) of Directive 2008/115, and the 'intermediate status' of third-country nationals who are in the territory of a Member State without a right to stay or a residence permit and, where applicable, are the subject of an entry ban, but in respect of whom no return decision subsists should be avoided.[73] However, it is important to point out that that judgment concerned a specific situation in which the central issue was that a third-country national was the subject of an entry ban, whereas the return decision taken in his regard, which that ban was intended to supplement, had been withdrawn. The Court's reasoning was based on that situation, which is different from that at issue in Case C-663/21.

[72] C-546/19, EU:C:2021:432.

[73] See judgment of 3 June 2021, *Westerwaldkreis* (C-546/19, EU:C:2021:432, paragraphs 57 to 59).

127. Furthermore, while Directive 2008/115 aims, with due regard for the fundamental rights and dignity of the persons concerned, to establish an effective removal and repatriation policy for illegally staying third-country nationals,[74] the Court has ruled out the adoption of a return decision in certain circumstances.

128. Thus, the Court has clarified that the right to family life may, in accordance with Article 5 of Directive 2008/115, preclude the very adoption of a return decision rather than its enforcement.[75]

129. Moreover, in the specific case of single minors, the Court held that the adoption of a return order should be excluded on the basis of factors liable to prevent the removal of a minor.[76]

130. Furthermore, in the case of third-country nationals benefiting from international protection in another Member State, the Court took the view that, in the absence of any possibility of designating a third country to which removal could be carried out, no return decision could be adopted.[77]

131. With that in mind, in order to answer directly the second question referred by the national court in Case C-663/21, reference must be had to the most recent case-law of the Court.

132. In its judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*,[78] the Court has, in my view, settled the issue raised by that court.

133. The Court recalled that, where a third-country national falls within the scope of Directive 2008/115, he or she must, in principle, be subject to the common standards and procedures laid down by that directive for the purpose of his or her removal, as long as his or her stay has not, as the case may be, been regularised.[79]

134. From that point of view, it follows, first, from Article 6(1) of Directive 2008/115 that, once the unlawful nature of residence has been established, any third-country national must, without prejudice to the exceptions provided for in paragraphs 2 to 5 of that article and in strict compliance with the requirements laid down in Article 5 of that directive, be the subject of a return decision, which must identify, among the third countries referred to in Article 3(3) of that directive, the country to which the third-country national must return.[80] Secondly, a Member State may not remove an illegally staying third-country national under Article 8 of Directive 2008/115 unless a return decision in respect of that third-country national has first been adopted in compliance with the substantive and procedural safeguards established by that directive.[81]

74 See, inter alia, judgment of 20 October 2022, *Centre public d'action sociale de Liège (Withdrawal or suspension of a return decision)* (C-825/21, EU:C:2022:810, paragraph 49 and the case-law cited).

75 See judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)* (C-82/16, EU:C:2018:308, paragraph 104).

76 See judgment of 14 January 2021, *Staatssecretaris van Justitie en Veiligheid (Return of an unaccompanied minor)* (C-441/19, EU:C:2021:9, paragraphs 51 to 56). In particular, the Court held that, 'before issuing a return decision, the Member State concerned must carry out an investigation in order to verify specifically that adequate reception facilities are available for the unaccompanied minor in question in the State of return' and that, 'if such reception facilities are not available, that minor cannot be the subject of a return decision under Article 6(1) of [Directive 2008/115]' (paragraphs 55 and 56).

77 See judgment of 24 February 2021, *M and Others (Transfer to a Member State)* (C-673/19, EU:C:2021:127, paragraphs 42 and 45).

78 C-69/21, 'the judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*', EU:C:2022:913.

79 See, inter alia, judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 52 and the case-law cited).

80 See, inter alia, judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 53 and the case-law cited).

81 See, inter alia, judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 54 and the case-law cited).

135. However, the Court also stated that Article 5 of Directive 2008/115, which is a general rule binding on the Member States as soon as they implement that directive, obliges the competent national authority to observe, at all stages of the return procedure, the principle of non-refoulement, which is guaranteed, as a fundamental right, in Article 18 of the Charter, read in conjunction with Article 33 of the Geneva Convention, and in Article 19(2) of the Charter. That is the case, in particular, where that authority is contemplating, after hearing the person concerned, the adoption of a return decision in relation to that person. [82]

136. The Court concluded that Article 5 of Directive 2008/115 precludes a third-country national from being the subject of a return decision where that decision concerns, as the country of destination, a country in respect of which substantial grounds have been shown for believing that, if that decision is implemented, that third-country national would be exposed to a real risk of treatment contrary to Article 18 or Article 19(2) of the Charter. [83]

137. In that regard, the Court recalled that, under the latter provision, no one may be removed to a State where there is a serious risk that he or she would be subjected not only to the death penalty but also to torture or inhuman or degrading treatment within the meaning of Article 4 of the Charter. The prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the Charter, is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter. [84]

138. According to the Court, it follows that, where there are substantial grounds for believing that a third-country national staying illegally on the territory of a Member State would be exposed, if he or she were returned to a third country, to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, read in conjunction with Article 1 thereof, and Article 19(2) of the Charter, that national cannot be the subject of a return decision to that country, while such a risk persists. [85] Similarly, that national cannot be removed during that period, as is expressly provided for in Article 9(1) of Directive 2008/115. [86]

139. It seems to me to be clear from the judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* that Article 5 of Directive 2008/115, read in conjunction with Articles 1 and 4 of the Charter as well as Article 19(2) thereof, must be interpreted as meaning that it precludes the adoption of a return decision in respect of a third-country national whose refugee status has been revoked where it is established that the removal of that national is precluded for an indefinite period by virtue of the principle of non-refoulement.

82 See, inter alia, judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 55 and the case-law cited).

83 See judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 56).

84 See, inter alia, judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 57).

85 See judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 58).

86 See judgment in *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)* (paragraph 59).

IV. Conclusion

140. Having regard to all the foregoing considerations, I propose that the Court should answer the questions referred for a preliminary ruling by the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) in Case C-663/21 and by the Conseil d'État (Council of State, Belgium) in Case C-8/22 as follows:

(1) Article 14(4)(b) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

must be interpreted as meaning that:

– the ground for revocation of refugee status laid down in that provision may be applied by a Member State only where it establishes, first, that the person concerned has been convicted by a final judgment of a particularly serious crime and, secondly, that that person constitutes a danger to the community of that Member State;

– the ground for revocation of refugee status laid down in that provision may be applied by a Member State only where it demonstrates that the person concerned constitutes a genuine, present and sufficiently serious danger to the community of that Member State; and

– where it implements the option of revoking refugee status which is provided for in Article 14(4)(b) of Directive 2011/95, a Member State must respect the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and the principle of proportionality. Consequently, before deciding to revoke refugee status under that provision, that Member State must weigh up, on the one hand, the interest in protecting its community and, on the other, the interest of the person in question in retaining his or her refugee status having regard to the consequences which the withdrawal of that status might have, in particular, for his or her personal and family situation. However, where the refoulement of a refugee is impossible because it would risk infringing the refugee's fundamental rights enshrined in Article 4 and Article 19(2) of the Charter of Fundamental Rights, Article 14(4)(b) of Directive 2011/95 does not require the revocation of refugee status to be weighed up against the interest of the Member State concerned in protecting its community and the dangers faced by that refugee in the event of return to his or her country of origin.

(2) Article 5 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 conjunction with Articles 1 and 4 of the Charter of Fundamental Rights as well as Article 19(2) thereof,

must be interpreted as meaning that:

it precludes the adoption of a return decision in respect of a third-country national whose refugee status has been revoked where it is established that the removal of that national is precluded for an indefinite period by virtue of the principle of non-refoulement.