Reports of Cases

Case C-8/22

XXX
v
Commissaire général aux réfugiés et aux apatrides

(Request for a preliminary ruling from the Conseil d'État (Belgium))

Judgment of the Court (First Chamber), 6 July 2023

(Reference for a preliminary ruling – Directive 2011/95/EU – Standards for granting refugee status or subsidiary protection status – Article 14(4)(b) – Revocation of refugee status – Third-country national convicted by a final judgment of a particularly serious crime – Danger to the community – Proportionality test)

1. *Border controls, asylum and immigration – Asylum policy – Refugee status or subsidiary protection status – Directive 2011/95 – Revocation of, ending of or refusal to renew refugee status – Danger to the community of the host Member State – Danger established by the mere fact that the person concerned has been convicted by a final judgment of a particularly serious crime – Not permissible*
(European Parliament and Council Directive 2011/95, recital 12 and Arts 1, 12(2)(b), 13, 14(4)(a) and (b), 17(1)(b) and (d) and 21(2)(b))

(see paragraphs 30-33, 37-45, operative part 1)

2. *Border controls, asylum and immigration – Asylum policy – Refugee status or subsidiary protection status – Directive 2011/95 – Conditions under which applicable – Danger to the community of the host Member State – Requirement that the danger be genuine, present and sufficiently serious – Obligation on the competent authority to carry out an assessment of all the circumstances of the individual case – Requirement that the revocation of refugee status constitute a measure that is proportionate to the danger – Criteria for assessment*
(Art. 78(1) TFEU; Charter of Fundamental Rights of the European Union, Art. 18; European Parliament and Council Directives 2011/95, Arts 2(d), 12(2)(b), 14(4)(b) and (6), 21(2), 23(4), 24(1) and 25, and 2013/32, Art. 45(3))

(see paragraphs 48-50, 52-71, operative part 2)

Résumé

In *Bundesamt für Fremdenwesen und Asyl (Refugee who has committed a serious crime)* (C-663/21), AA was granted, in December 2015, refugee status in Austria. Between March 2018 and October 2020, he received custodial sentences on a number of occasions and a fine for various offences including, inter alia, dangerous threatening behaviour, destroying or damaging the property of others, the unauthorised handling of drugs, drug trafficking, wounding, and aggressive behaviour towards a member of a public supervisory body.

By a decision adopted in September 2019, the competent Austrian authority withdrew AA's refugee status, issued a return decision accompanied by a prohibition on residence against him and set a period for voluntary departure, while stating that his removal was not permitted. Following an appeal brought by AA, the Bundesverwaltungsgericht (Federal Administrative Court, Austria), by judgment delivered in May 2021, annulled that decision of September 2019. That court found that AA had been convicted by a final judgment of committing a particularly serious crime and that he constituted a danger to the community. Nevertheless, it considered that it was necessary to weigh up the interests of the host Member State against those of the individual concerned as a beneficiary of international protection, taking into account the measures to which that person would be exposed in the event of revocation of that protection. Given that AA would be exposed, if returned to his country of origin, to a risk of torture or death, that court held that his interests outweighed those of Austria. The competent Austrian authority brought an appeal on a point of law against that judgment before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria).

In *Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime)* (C-8/22), XXX was granted, in February 2007, refugee status in Belgium. By a judgment delivered in December 2010, he was sentenced to 25 years' imprisonment for, inter alia, aggravated theft of multiple moveable objects and intentional homicide with a view to facilitating that theft or ensuring impunity.

By a decision adopted in May 2016, the competent Belgian authority withdrew his refugee status. XXX brought an appeal against that decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), which, by a judgment delivered in August 2019, dismissed that appeal. That court held that the danger which XXX represents to the community stems from his conviction for a particularly serious crime, with the result that it was not for that authority to demonstrate that he constitutes a genuine, present and sufficiently serious danger to the community. On the contrary, it was for XXX to establish that, despite that conviction, he no longer constitutes such a danger. XXX brought an appeal on a point of law against that judgment before the Conseil d'État (Council of State, Belgium).

In *Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)* (C-402/22), M.A. lodged, in July 2018, an application for international protection in the Netherlands. The competent Netherlands authority rejected that application in June 2020 on the ground that the applicant had been convicted, in 2018, to a term of imprisonment of 24 months for three sexual assaults, an attempted sexual assault and the theft of a mobile telephone, all committed on the same evening.

Following an appeal brought by M.A., the decision of June 2020 was annulled by a first instance court on the ground that an inadequate statement of reasons had been provided. The competent Netherlands authority brought an appeal against that judgment before the Raad van State (Council of State, Netherlands). It submits, first, that the acts of which M.A. was convicted should be regarded as a single offence constituting a particularly serious crime and, second, that the conviction for a particularly serious crime demonstrates in principle that M.A. represents a danger to the community.

In those three cases, the referring courts ask the Court, in essence, about the conditions governing the revocation of refugee status pursuant to Article 14(4)(b) of Directive 2011/95,[1] and the weighing up, in that context, of the interests of the host Member State and those of the individual concerned as a beneficiary of international protection.

By those three judgments delivered on the same day, the Court answers those questions by clarifying, first, the concepts of 'particularly serious crime' and 'danger to the community' and, second, the scope of the proportionality test to be carried out in that context. It also explains the relationship between the revocation of refugee status and the adoption of the return decision.

Findings of the Court

The Court finds, first of all, that the application of Article 14(4)(b) of Directive 2011/95 is subject to two separate conditions being satisfied, namely, first, that the third-country national concerned has been convicted by a final judgment of a particularly serious crime and, second, that it has been established that that third-country national constitutes a danger to the community of the Member State in which he or she is present. Therefore, it cannot be held that the fact that the first of those two conditions has been satisfied is sufficient to establish that the second has also been satisfied. Such an interpretation of that provision follows from its wording and from a comparison of that provision with Article 12(2)(b)[2] and Article 17(1) of Directive 2011/95.[3]

As regards the first of those conditions, in the absence of an express reference to the law of the Member States for the purpose of determining its meaning and scope, the concept of 'particularly serious crime' must normally be given an independent and uniform interpretation throughout the European Union. First, in accordance with its usual meaning, the term 'crime' characterises, in that context, an act or omission which constitutes a serious breach of the legal order of the community concerned and which is, therefore, criminally punishable as such within that community. Second, the expression 'particularly serious', in so far as it adds two qualifiers to that concept of 'crime', refers to a crime of exceptional seriousness.

[1] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9). Article 14(4)(b) of that directive provides: '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.'

[2] Article 12(2)(b) of Directive 2011/95 expressly provides that a third-country national is to be excluded from being a refugee where he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, without any requirement that that person represents a danger to the community of the Member State in which he or she is present.

[3] Article 17(1) of Directive 2011/95, concerning the granting of subsidiary protection, which can offer more limited protection than refugee status, refers, in (b), to the commission of a serious crime and, in (d), to the existence of a danger to the community, and those criteria are expressly presented as alternative conditions each of which, taken in isolation, entails the exclusion from eligibility for subsidiary protection.

As regards the context in which the term 'particularly serious crime' is used, first, account must be taken of the Court's case-law relating to Article 12(2)(b) of Directive 2011/95, which refers to a 'serious non-political crime', and Article 17(1)(b) of that directive, which refers to a 'serious crime', given that those articles are also intended to deprive of international protection a third-country national who has committed a crime of a certain degree of seriousness. Second, it is apparent from a comparison of Articles 12, 14, 17 and 21 of Directive 2011/95 that the EU legislature imposed different requirements as regards the degree of seriousness of the crimes which may be relied on in order to justify the application of a ground for exclusion or revocation of international protection or the refoulement of a refugee. Thus, Article 17(3) of Directive 2011/95 refers to the commission of 'one or more crimes' and Article 12(2)(b) and Article 17(1)(b) of that directive refer to the commission of a 'serious crime'. It follows that the use, in Article 14(4)(b) of Directive 2011/95, of the expression 'particularly serious crime' highlights the choice of the EU legislature to make the application of that provision subject to the satisfaction, inter alia, of a particularly strict condition relating to the existence of a final conviction for a crime of exceptional seriousness, more serious than the crimes which may justify the application of those provisions of that directive.

So far as concerns the assessment of the seriousness of a crime in the light of Article 14(4)(b) of Directive 2011/95, it is true that that assessment is to be carried out on the basis of a common standard and common criteria. However, in so far as the criminal law of the Member States is not the subject of general harmonisation measures, the assessment is to be carried out taking into account the choices made, within the framework of the criminal system of the Member State concerned, as regards the identification of the crimes which, in the light of their specific features, are exceptionally serious, in so far as they most seriously undermine the legal order of the community.

Still, given that that provision refers to a final conviction for a 'particularly serious crime' in the singular, the degree of seriousness of a crime cannot be attained by a combination of separate offences, none of which constitutes per se a particularly serious crime.

Lastly, in order to assess the degree of seriousness of such a crime, all the specific circumstances of the case concerned are to be examined. In that regard, of significant relevance are, inter alia, the grounds of the conviction, the nature and quantum of the penalty provided for and the penalty imposed, the nature of the crime committed, all of the circumstances surrounding the commission of that crime, whether or not that crime was intentional, and the nature and extent of the harm caused by that crime.

As regards the second condition, namely that it has been established that a third-country national constitutes a danger to the community of the host Member State, the Court finds, in the first place, that a measure referred to in Article 14(4)(b) of Directive 2011/95 may be adopted only where the third-country national concerned constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of that Member State. In that regard, the Court states, inter alia, that it is apparent from the very wording of that provision that it applies only where that national 'constitutes' a danger to the community, which suggests that that danger must be genuine and present. Accordingly, the later a decision under that provision is taken after the final conviction for a particularly serious crime, the more it is incumbent on the competent authority to take into consideration, inter alia, developments subsequent to the commission of such a crime in order to determine whether a genuine and sufficiently serious threat exists on the day on which it is to decide on the potential revocation of

refugee status. In that regard, the Court also relies on the fact that it is clear from a comparison of various provisions of Directive 2011/95 with Article 14(4)(b) of that directive that the application of the latter provision is subject to strict conditions.

In the second place, as regards the respective roles of the competent authority and the third-country national concerned in the assessment of whether a danger exists, it is for the competent authority, when applying Article 14(4)(b) of Directive 2011/95, to undertake, for each individual case, an assessment of all the specific circumstances of the case. In that context, that authority must have available to it all the relevant information and carry out its own assessment of the facts with a view to determining the tenor of its decision and providing a full statement of reasons for that decision.

Lastly, the Member State's option of adopting the measure provided for in Article 14(4)(b) of Directive 2011/95 is to be exercised in observance of, inter alia, the principle of proportionality, which entails that the threat that the third-country national concerned represents to the society of the Member State in which he or she is present, on the one hand, must be weighed against the rights which must be guaranteed to persons satisfying the substantive conditions of Article 2(d) of that directive, on the other. In that assessment, the competent authority must also take into account the fundamental rights guaranteed by EU law and, in particular, determine whether it is possible to adopt other measures less prejudicial to the rights guaranteed to refugees and to fundamental rights which would have been equally effective to ensure the protection of society in the host Member State.

However, when it adopts such a measure, that authority is not required to verify, in addition, that the public interest in the return of the third-country national to his or her country of origin outweighs that third-country national's interest in the continuation of international protection, in the light of the extent and nature of the measures to which that third-country national would be exposed if he or she were to return to his or her country of origin. The consequences, for the third-country national concerned or for the community of the Member State in which that third-country national is present, of that national's potential return to his or her country of origin are to be taken into account not when the decision to revoke refugee status is adopted but, as the case may be, where the competent authority considers adopting a return decision against that third-country national.

In that regard, the Court states that Article 14(4)(b) of Directive 2011/95 corresponds in part to the grounds for exclusion contained in Article 33 of the Geneva Convention.[4] In those circumstances, in so far as the first of those provisions provides, in the scenarios referred to therein, for the possibility for Member States to revoke refugee status, while the second permits the refoulement of a refugee covered by one of those scenarios to a country where his or her life or freedom would be threatened, EU law provides more extensive international protection for the refugees concerned than that guaranteed by the Geneva Convention. Consequently, in accordance with EU law, the competent authority may be entitled to revoke, pursuant to Article 14(4)(b) of Directive 2011/95, the refugee status granted to a third-country national,

[4] Article 33 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, Vol. 189, p. 150, No 2545 (1954)), which entered into force on 22 April 1954 and was supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967 ('the Geneva Convention') provides: '1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.'

without, however, necessarily being authorised to remove him or her to his or her country of origin. In addition, at a procedural level, such removal would involve the adoption of a return decision, in compliance with the substantive and procedural safeguards provided for in Directive 2008/115,[5] which provides, inter alia, in Article 5 thereof, that the Member States are required, when implementing that directive, to respect the principle of non-refoulement. Therefore, the revocation of refugee status, pursuant to Article 14(4) of Directive 2011/95, cannot be regarded as implying the adoption of a position on the separate question of whether that person can be deported to his or her country of origin. In that context, the Court further clarifies that Article 5 of Directive 2008/115 precludes the adoption of a return decision in respect of a third-country national where it is established that his or her removal to the intended country of destination is, by reason of the principle of non-refoulement, precluded for an indefinite period.

[5] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).