



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

14 September 2017*

(Reference for a preliminary ruling — Standards for the reception of applicants for international protection — Directive 2013/32/EU — Article 9 — Right to remain in a Member State during the examination of the application — Directive 2013/33/EU — First subparagraph of Article 8(3)(a) and (b) — Detention — Verification of identity or nationality — Determination of the elements on which the application for international protection is based — Validity — Charter of Fundamental Rights of the European Union — Articles 6 and 52 — Restriction — Proportionality)

In Case C-18/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Den Haag zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem, Netherlands), made by decision of 13 January 2016, received at the Court on 13 January 2016, in the proceedings

K.

v

Staatssecretaris van Veiligheid en Justitie,

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, E. Juhász, C. Vajda, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M. Bulterman and M. Noort, acting as Agents,
- the Belgian Government, by M. Jacobs and C. Pochet, acting as Agents,
- the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,
- Ireland, by E. Creedon and L. Williams and by A. Joyce, acting as Agents,
- the European Parliament, by T. Lukácsi and R. van de Westelaken, acting as Agents,

* Language of the case: Dutch.

- the Council of the European Union, by M. Chavier F. Naert and K. Pleśniak, acting as Agents,
- the European Commission, by M. Condou-Durande and by H. Krämer and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 May 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).
- 2 The request has been made in proceedings between Mr K. and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) concerning his detention.

Legal context

The ECHR

- 3 Under the heading ‘Right to liberty and security’, Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’) provides, in paragraph 1:

‘Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.’

European Union law

The Charter

- 4 Article 6 of the Charter of Fundamental Rights of the European Union (‘the Charter’), entitled ‘Right to liberty and security’, provides:

‘Everyone has the right to liberty and security of person.’

- 5 Under Article 52 of the Charter, entitled ‘Scope and interpretation of rights and principles’:

‘(1) Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

...

(3) In so far as this Charter contains rights which correspond to rights guaranteed by the [ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

...

(7) The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.’

Directive 2011/95/EU

- 6 Under the heading ‘Assessment of facts and circumstances’, Article 4 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9), is worded as follows:

‘(1) Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.

(2) The elements referred to in paragraph 1 consist of the applicant’s statements and all the documentation at the applicant’s disposal regarding the applicant’s age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

...’

Directive 2013/32/EU

- 7 Under the heading ‘Definitions’, Article 2 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), provides:

‘For the purposes of this Directive:

...

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

...

(p) “remain in the Member State” means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;

...’

8 Article 9 of that directive, entitled ‘Right to remain in the Member State pending the examination of the application’, provides in paragraph 1:

‘Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.’

9 Article 13 of that directive, entitled ‘Obligations of the applicants’, provides in paragraph 1:

‘Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95/EU. ...’

Directive 2013/33

10 Directive 2013/33 states, in recitals 2, 12, 15, 17, 20 and 35:

‘(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union’s objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.

...

(12) The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.

...

(15) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva 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)), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967]. Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both the manner and the purpose of such detention. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority.

...

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

...

(20) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non-custodial alternative measures to detention have been duly examined. Any alternative measure to detention must respect the fundamental human rights of applicants.

...

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

11 Under Article 2 of Directive 2013/33, entitled 'Definitions':

'For the purposes of this Directive:

...

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

...

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

...'

12 Article 8 of that directive, entitled 'Detention', states:

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

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

(3) An applicant may be detained only:

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

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

...

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

...

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

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

13 Under Article 9 of Directive 2013/33, entitled ‘Guarantees for detained applicants’:

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

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

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

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

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

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

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

...’

Netherlands law

14 Article 8 of the Vreemdelingenwet 2000 (Law on Foreign Nationals 2000, ‘the Law on Foreign Nationals’) provides:

‘A foreign national is lawfully resident in the Netherlands only:

...

(f) pending a decision on an application for the issue of a [residence permit of limited duration issued to persons granted asylum], where, pursuant to this Law or a provision adopted under this Law or pursuant to a judicial decision, deportation of the applicant is not to take place until a decision has been taken on the application;

...

(h) if, pending the decision on an objection or appeal, a provision adopted on the basis of that application or a court order provides that the deportation of the applicant should be deferred until a decision has been taken on the objection or the appeal;

...'

15 Article 28 of the Law on Foreign Nationals provides:

'The Minister shall be authorised:

... to approve applications for the grant of residence permits of limited duration, ...

...'

16 Article 59b of the Law on Foreign Nationals provides:

'(1) A foreign national who is lawfully resident on the basis of Article 8(f) ..., may, in so far as an application for the issue of a residence permit [on grounds of asylum for a fixed period] is concerned ..., be detained by the Minister, if:

(a) detention is necessary in order to determine the identity or nationality of the foreign national;

(b) the detention is necessary to collect information needed for assessing an application for a residence permit for a fixed period, as referred to in Article 28, in particular if there is a risk of the foreign national absconding;

...

(2) The detention under paragraph 1(a), (b) or (c) shall not last longer than four weeks, unless Article 39 of the Law on Foreign Nationals is applied. In that case the detention shall not last longer than six weeks.

...'

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

17 The applicant in the main proceedings, a third-country national, arrived at Schiphol Airport, Amsterdam (Netherlands), on 30 November 2015 on a flight from Vienna (Austria). His intention was to fly to Edinburgh (United Kingdom) on the same day.

18 During a control of documents carried out before boarding the Edinburgh flight, he was suspected of using a false passport and he was, accordingly, detained.

19 On 15 December 2015, the criminal court declared the action brought by the criminal prosecution against the applicant in the main proceedings to be inadmissible. By means of an 'immediate release' order dated 16 December 2015, his release from detention was ordered.

- 20 On 17 December 2015, the applicant in the main proceedings made an application for asylum. By decision of that day, he was detained, in accordance with Article 59b(1)(a) and (b) of the Law on Foreign Nationals, adopted in transposition of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33. That decision was based on the need to resort to such a measure in order to establish the identity or nationality of that applicant, and to obtain data necessary for the assessment of his application, as there was a risk of him absconding.
- 21 On 17 December 2015, the applicant in the main proceedings lodged an appeal against the decision ordering his detention and applied for compensation.
- 22 At the time of the hearing before the referring court, on 28 December 2015, K. had been heard once in relation to his application for asylum without a decision having been taken on that application. Therefore, at the time the order for reference was made, no return decision had been adopted in relation to him.
- 23 In the main proceedings, K. claims that the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 is contrary to Article 5 of the ECHR and, therefore, to Article 6 of the Charter.
- 24 The referring court points out the similarity between the main proceedings and the case giving rise to the judgment of 15 February 2016, *N.* (C-601/15 PPU, EU:C:2016:84), which concerned the validity of the first subparagraph of Article 8(3)(e) of that directive.
- 25 Endorsing, *mutatis mutandis*, the issues raised by the Raad van State (Council of State, Netherlands) in the case giving rise to that judgment, in the main proceedings, the referring court questions the validity of the first subparagraph of Article 8(3)(a) and (b) of that directive in the light of Article 6 of the Charter.
- 26 Like the Raad van State (Council of State), the rechtbank Den Haag zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem, Netherlands) states, first, that according to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the rights provided for in Article 6 correspond to those guaranteed by Article 5 of the ECHR and, in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the actual wording of Article 5 of the ECHR.
- 27 The referring court invokes, secondly, paragraph 29 of the judgment of the European Court of Human Rights of 22 September 2015, *Nabil and Others v. Hungary* (CE:ECHR:2015:0922JUD006211612), according to which any deprivation of liberty under the second limb of Article 5(1)(f) of the ECHR is justified only for as long as deportation or extradition proceedings are in progress. If those proceedings are not prosecuted with due diligence, the detention ceases to be permissible under Article 5(1)(f) of the ECHR. In the main proceedings, no deportation or extradition proceedings are currently in progress.
- 28 In those circumstances, the rechtbank Den Haag zittingsplaats Haarlem (District Court, The Hague, sitting in Haarlem) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 valid in the light of Article 6 of the Charter:

- (1) in a situation where a third-country national is detained under the first subparagraph of Article 8(3)(a) and (b) of that directive and, under Article 9 of Directive 2013/32, has the right to remain in a Member State until a decision on his asylum application has been made at first instance, and

(2) given the Explanation relating to the Charter of Fundamental Rights that the limitations which may legitimately be imposed on the rights in Article 6 of the Charter may not exceed those permitted by the ECHR in the wording of Article 5(1)(f), and the interpretation by the European Court of Human Rights of the latter provision in, inter alia, the judgment of 22 September 2015, *Nabil and Others v. Hungary* (CE:ECHR:2015:0922JUD006211612), that the detention of an asylum-seeker is contrary to the aforementioned Article 5(1)(f) if such detention was not imposed with a view to deportation?’

29 On 1 February 2016, the referring court informed the Court that, by a judgment of 25 January 2016, it declared the action brought by applicant in the main proceedings against the detention measure then in force to be well founded and ordered that measure to be lifted as from the latter date.

Procedure before the Court

30 At the request of the referring court, the designated Chamber examined the need to deal with the present case under the urgent preliminary ruling procedure provided for in Article 107 of the Court’s Rules of Procedure. On 1 February 2016, after hearing the Advocate General, the Chamber decided not to accede to that request.

Consideration of the question referred

31 By its question, the referring court asks, in essence, the Court to consider the validity of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 in the light of Article 6 of the Charter.

32 First of all, it should be noted that whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of EU law and whilst Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by that convention, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law (judgments of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 44, and of 5 April 2017, *Orsi and Baldetti*, C-217/15 and C-350/15, EU:C:2017:264, paragraph 15 and the case-law cited). Therefore, the examination of the validity of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 must be undertaken solely in the light of the fundamental rights guaranteed by the Charter (see, to that effect, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 46 and the case-law cited, and of 28 July 2016, *Council of Ministers*, C-543/14, EU:C:2016:605, paragraph 23).

33 It must be noted, in that regard, that the first subparagraph of Article 8(3)(a) and (b) of that directive allows an applicant for international protection to be detained in order to determine or verify his identity or nationality, or to determine the elements on which his application is based which could not be obtained in the absence of detention, in particular when there is a risk of the applicant absconding. By authorising such a measure, that provision provides for a limitation on the exercise of the right to liberty enshrined in Article 6 of the Charter.

34 Under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. In observance of the principle of proportionality, limitations may be imposed on the exercise of those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

- 35 In that regard, it should be noted that the limitation on the exercise of the right to liberty resulting from the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 is provided for by EU legislation and that it does not affect the essence of the right to liberty laid down in Article 6 of the Charter. The first subparagraph of Article 8(3)(a) and (b) of that directive does not render the guarantee of that right less secure and — as is apparent from the wording of the provision and recital 15 of the directive — the power that it confers on Member States enables them to detain an applicant only on the basis of his individual conduct and under the exceptional circumstances referred to in the same provision, those circumstances also being circumscribed by all the conditions set out in Articles 8 and 9 of the directive (see, by analogy, judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraphs 51 and 52).
- 36 As was stated by the Advocate General in points 56 and 58 of her Opinion, it is apparent from Article 78 TFEU that the proper functioning of the Common European Asylum System, based on the application of criteria common to the Member States, is an objective of general interest recognised by the European Union. According to recital 2 of Directive 2013/33, that system, moreover, contributes to the achievement of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union. A measure based on the grounds set out in the first subparagraph of Article 8(3)(a) and (b) of that directive meets the objective of ensuring the proper functioning of the Common European Asylum System, in so far as it allows the persons applying for international protection to be identified and for it to be established whether they satisfy the conditions to qualify for such protection, so as to avoid, in the event that it does not do so, that they enter or stay in the territory of the European Union illegally.
- 37 As regards the proportionality of the interference with the right to liberty that has been found to exist, it should be recalled that the principle of proportionality requires, according to the settled case-law of the Court, that measures adopted by the EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question, since the disadvantages caused by the legislation must not be disproportionate to the aims pursued (judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 54 and the case-law cited, and of 9 June 2016, *Pesce and Others*, C-78/16 and C-79/16, EU:C:2016:428, paragraph 48 and the case-law cited).
- 38 In the assessment of the proportionality of that interference, it is necessary to take account, in accordance with Article 13(1) of Directive 2013/33, of the fact that applicants for international protection are obliged to cooperate with the competent authorities, in particular for the purpose of determining their identity, their nationality, and the grounds justifying their application, which amounts to supplying, as far as possible, the required supporting documents and, where appropriate, the explanations and information requested.
- 39 In those circumstances, the detention of an applicant in order to determine or verify his identity or nationality, or in order to determine the elements on which the application for international protection is based which could not be obtained without that detention, in particular where there is a risk that that applicant will abscond, allows the applicant to be available to the national authorities so that they are able, inter alia, to interview him and, consequently, to contribute to the prevention of possible secondary movements of applicants referred to in recital 12 of Directive 2013/33 and pursued by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31) (see, to that effect, judgment of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraph 52). It follows that that measure is, by its very nature, able to ensure the proper functioning of the Common European Asylum System and also capable of contributing to the achievement of the objective pursued by the first subparagraph of Article 8(3)(a) and (b) of that directive, as identified in paragraph 36 of the present judgment.

- 40 As regards the power which that provision confers on Member States to detain an applicant, the Court stresses that, in view of the importance of the right to liberty enshrined in Article 6 of the Charter and the gravity of the interference with that right which detention represents, limitations on the exercise of the right must apply only in so far as is strictly necessary (judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 56 and the case-law cited).
- 41 In that regard, it is apparent both from the wording and context of Article 8 of Directive 2013/33 and from its legislative history that that power is subject to compliance with a series of conditions whose aim is to create a strictly circumscribed framework in which such a measure may be used.
- 42 First, the first subparagraph of Article 8(3) of Directive 2013/33 lists exhaustively the various grounds which may justify recourse to detention and each of those grounds meets a specific need and is self-standing (see, to that effect, judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 59). In that regard, it is apparent from the wording of the first subparagraph of Article 8(3)(a) of that directive that an applicant may be subject to such a measure only where he has failed to communicate his identity or nationality or the identification papers justifying that, notwithstanding his obligation to cooperate. Likewise, it results from the first subparagraph of Article 8(3)(b) of that directive that an applicant may be detained only where certain elements on which his application for international protection is based ‘could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant’.
- 43 The second subparagraph of Article 8(3) of Directive 2013/33 provides, in addition, that the grounds for detention are to be laid down in national law. It should be recalled in that regard that, when a directive allows the Member States discretion to define transposition measures adapted to the various situations possible, they must, when implementing those measures, not only interpret their national law in a manner consistent with the directive in question but also ensure that they do not rely on an interpretation of the directive that would be in conflict with fundamental rights or with the other general principles of EU law (judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 60 and the case-law cited).
- 44 Secondly, the Court has already held that the other paragraphs of Article 8 of Directive 2013/33 place significant limitations on the Member States’ power to detain a person. Article 8(1) of the directive makes clear that Member States may not hold a person in detention for the sole reason that he has made an application for international protection. Furthermore, under Article 8(2) of the directive, detention may be ordered only when it proves necessary and on the basis of an individual assessment of each case, if other less coercive alternative measures cannot be applied effectively. Article 8(4) of Directive 2013/33 provides that Member States are to ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law (see judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 61).
- 45 Similarly, Article 9(1) of Directive 2013/33 provides that an applicant is to be detained only for as short a period as possible and may be kept in detention only for as long as the grounds set out in Article 8(3) of that directive are applicable. Moreover, in accordance with Article 9(2) to (5) of that directive, when a decision is taken to detain an applicant, significant procedural and legal safeguards must be observed. Thus, under Article 9(2) and (4) of Directive 2013/33, the decision must state, in writing, the reasons in fact and in law on which it is based and certain information must be provided to the applicant in a language he understands or is reasonably supposed to understand. Article 9(3) and (5) of Directive 2013/33 sets out the procedures which the Member States must establish for review by a judicial authority of the legality of the detention (see judgment of 15 February 2016, *N.*, C 601/15 PPU, EU:C:2016:84, paragraph 62).

- 46 Thirdly, the Court has also held that the grounds for detention provided for in the first subparagraph of Article 8(3)(a) to (c) of Directive 2013/33 are based on the Recommendation of the Committee of Ministers of the Council of Europe on measures of detention of asylum seekers of 16 April 2003 and on the United Nations High Commissioner for Refugees' (UNHCR) Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers of 26 February 1999, from which it is clear, in the version adopted in 2012, that, first, detention may be used only exceptionally and that, secondly, detention is to be used only as a last resort, when it is determined to be necessary, reasonable and proportionate to a legitimate purpose (see, to that effect, judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 63).
- 47 The limitations on the exercise of the right conferred by Article 6 of the Charter contained in the first subparagraph of Article 8(3)(a) and (b) of that directive are also not disproportionate to the aims pursued. In that regard, it should be noted that the first subparagraph of Article 8(3)(a) and (b) is based on a fair balance between the general interest objective pursued, namely the proper functioning of the Common European Asylum System, allowing applicants who are genuinely in need to be granted international protection and refusing, on the one hand, applications from those who do not satisfy the conditions and, on the other hand, interference with the right to liberty resulting from a detention measure.
- 48 Although the proper functioning of the Common European Asylum System requires, in practice, that the competent national authorities have at their disposal reliable information relating to the identity or nationality of the applicant for international protection and to the elements on which his application is based, that provision cannot justify detention measures being decided without those national authorities having previously determined, on a case-by-case basis, whether they are proportionate to the aims pursued. Such a determination involves ensuring that all of the conditions referred to in paragraphs 44 to 46 of the present judgment are satisfied and, in particular, that, in each individual case, detention is used only as a last resort. Moreover, it must be ensured that that detention does not exceed, in any case, as short a period as possible.
- 49 In the light of the above, it must be concluded that, in adopting the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33, the EU legislature struck a fair balance between, on the one hand, the applicant's right to liberty and, on the other, the requirements relating to the identification of that applicant or of his nationality, or to the determination of the elements on which his application is based, which are necessary for the proper functioning of the Common European Asylum System.
- 50 Finally, it should be noted that, in so far as the Charter contains rights corresponding to the rights guaranteed by the ECHR, Article 52(3) of the Charter seeks to ensure the necessary consistency between the rights contained in it and the corresponding rights guaranteed by the ECHR, without thereby adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union (see, to that effect, judgment of 28 July 2016, *JZ*, C-294/16 PPU, EU:C:2016:610, paragraph 50 and the case-law cited). Account must therefore be taken of Article 5(1) of the ECHR for the purpose of interpreting Article 6 of the Charter. By adopting the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33, the EU legislature did not disregard the level of protection afforded by the second limb of Article 5(1)(f) of the ECHR.
- 51 In this case, although it is apparent from the request for a preliminary ruling that the referring court enquires about the influence of the second limb of Article 5(1)(f) of the ECHR on the first subparagraph of Article 8(3)(a) and (b) of that directive, that request does not, however, contain elements allowing it to be concluded that the facts at issue in the main proceedings are covered by that provision of the ECHR or to establish to what degree the case-law deriving from the judgment of the European Court of Human Rights of 22 November 2015, *Nabil and Others v. Hungary* (CE:ECHR:2015:0922JUD006211612), could affect the examination of the first subparagraph of Article 8(3)(a) and (b) of that directive in the present case. On the contrary, the information in that

request, according to which the applicant in the main proceedings was not subject to a return decision, would appear to exclude that action is being taken against him with a view to deportation or extradition, for the purposes of that second limb.

- 52 As regards the guarantee enshrined in the first limb of Article 5(1)(f) of the ECHR, in accordance with which no one is to be deprived of his liberty, except in the case of the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country, as interpreted by the European Court of Human Rights, it should be noted that that guarantee does not preclude necessary detention measures being taken against third-country nationals who have made an application for international protection, provided that such a measure is lawful and implemented in accordance with the objective of protecting the individual from arbitrariness (see, to that effect, ECtHR, 29 January 2008, *Saadi v. United Kingdom*, CE:ECHR:2008:0129JUD001322903, paragraphs 64 to 74, and 26 November 2015, *Mahamed Jama v. Malta*, CE:ECHR:2015:1126JUD001029013, paragraphs 136 to 140).
- 53 As is apparent from the reasoning set out in connection with the examination of the validity, in the light of Article 52(1) of the Charter, of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33, that provision, whose scope is strictly circumscribed, satisfies those requirements.
- 54 It follows from all the foregoing considerations that the answer to the question referred is that the examination of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 has disclosed nothing capable of affecting the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter.

Costs

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

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

The examination of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection has disclosed nothing capable of affecting the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.

[Signatures]