



## PRESS RELEASE No 115/23

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Judgments of the Court in Cases C-8/22 | Commissaire général aux réfugiés et aux apatrides (Refugee who has committed a serious crime), C-663/21 | Bundesamt für Fremdenwesen und Asyl (Refugee who has committed a serious crime) and C-402/22 | Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)

### **Revocation and refusal of refugee status: the Court of Justice clarifies the conditions for adopting such a measure with regard to a third-country national who is convicted of a crime**

*The individual concerned must, inter alia, constitute a genuine, present and sufficiently serious threat to one of the fundamental interests of society and the decision must observe the principle of proportionality*

Three separate requests for a preliminary ruling were brought before the Court of Justice in proceedings (in Belgium, Austria and the Netherlands) between third-country nationals and a national authority. More specifically, the proceedings relate to challenges to decisions to withdraw or refuse refugee status in respect of third-country nationals who have been convicted of a crime considered by the competent authorities to be particularly serious.

That possibility to revoke/refuse is provided for by EU law <sup>1</sup> where, having been convicted by a final judgment of a 'particularly serious' crime, the individual concerned constitutes a danger to the community of the Member State in which he or she is present.

In Case C-8/22, the questions referred to the Court by the Conseil d'État (Council of State, Belgium) concern the connection between a conviction by a final judgment for a particularly serious crime and the existence of a danger to the community, and the scope and extent of the assessment of whether such a danger exists.

The Court holds that the existence of a **danger to the community** of the Member State in which the third-country national concerned is present **cannot be regarded as established by the mere fact that he or she has been convicted by a final judgment of a particularly serious crime**. A revocation measure 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**, secondly, 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.

The Court clarifies that the revocation measure at issue may be adopted only where the third-country national concerned constitutes a **genuine, present and sufficiently serious** threat to one of the fundamental interests of the society of the Member State in which he or she is present. The Court adds that it **is for the competent authority** to undertake, for each individual case, an assessment of all the circumstances of the case concerned.

<sup>1</sup> Article 14(4)(b) 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 (OJ 2011 L 337, p. 9).

Where the two conditions laid down by EU law are satisfied, a Member State has the option to revoke refugee status **without, however, being required to exercise that option**: it must be exercised in observance of, inter alia, the principle of **proportionality**.

It is precisely in relation to that principle and the necessary weighing up of the interests of the refugee against those of the Member State, having regard to the danger which the individual concerned might represent to the community, that the Administrative Court (Austria) refers questions to the Court in Case C-663/21.

As regards that balancing exercise, the Court states that the revocation of refugee status is conditional on the competent authority establishing that such a measure is **proportionate having regard to the danger posed by the third-country national concerned to a fundamental interest of the society of the Member State** in which he or she is present. It clarifies, however, that the competent authority is not required to take into consideration, in the context of that balancing exercise, 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.

Lastly, in Case C-402/22, the Conseil d'État (Council of State, Netherlands) expressly asks the Court about the concept of 'conviction by a final judgment for a particularly serious crime' and the criteria on the basis of which a crime may be regarded as such.

The Court states in that regard that a revocation/refusal measure may be applied only to a third-country national who has been convicted by a final judgment of a crime the specific features of which enable it to be regarded as of **exceptional seriousness**, in so far as it is **one of the crimes which most seriously undermine the legal order of the community concerned**. That degree of seriousness cannot, moreover, be attained by a combination of separate offences, none of which constitutes *per se* a particularly serious crime. The assessment of that degree of seriousness entails an **assessment of all the specific circumstances** of the case concerned, such as, inter alia, the **nature** and **quantum** of the penalty provided for and, *a fortiori*, of the penalty imposed, **the nature of the crime** committed, any mitigating or aggravating circumstances, whether or not that crime was intentional, the nature and extent of the harm caused by that crime and the nature of the criminal procedure applied to punish that crime.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text and the résumé of the judgments ([C-8/22](#), [C-663/21](#) and [C-402/22](#)) are published on the CURIA website on the day of delivery.

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