Case C-454/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

18 July 2023

Referring court:

Dioikitiko Dikastirio Diethnous Prostasias (Cyprus)

Date of the decision to refer:

19 June 2023

Applicant:

K.A.M.

Defendant:

Republic of Cyprus

Subject matter of the main proceedings

Action by which the applicant in the main proceedings challenges the decision of the Anatheoritiki Archi Prosfygon (Refugee Review Authority, Cyprus) of 30 July 2019 rejecting his administrative appeal against the decision of the Ypiresia Asylou (Asylum Service, Cyprus) of 12 April 2019 revoking the refugee status granted to him by the Asylum Service.

Subject matter and legal basis of the request

Interpretation of Article 14(4)(a) of Directive 2011/95/EU in the light of primary EU law and international law – Article 267 TFEU

Questions referred for a preliminary ruling

(1) Can Article 14(4)(a) 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 (recast), which provides for refugee status to be revoked where there are reasonable grounds for regarding the person as a danger to the security of the State of refuge, be interpreted, in the light of the provisions of Article 78(1) TFEU, the Geneva Convention Relating to the Status of Refugees and Article 18 of the Charter of Fundamental Rights of the European Union on the right to asylum, as meaning that it allows refugee status to be revoked based on the past conduct or alleged acts of the refugee outside and prior to entering the State of refuge which are not included in the conduct which constitutes grounds for exclusion from being a refugee, having regard to the provisions of Article 1(F) of the Geneva Convention Relating to the Status of Refugees and Article 12 of Directive 2011/95/EU on exclusion, which explicitly set out the grounds on which a person may be excluded from being a refugee?

(2) If the answer [to the first question] is in the affirmative, is Article 14(4)(a), thus interpreted, compatible with Article 18 of the Charter and Article 78(1) TFEU, which provide, inter alia, that secondary [EU] legislation must comply with the Geneva Convention, the exclusion clause laid down in Article 1(F) of the Convention being exhaustively worded and requiring strict interpretation?

(3) How is the concept 'danger to the security of the Member State' to be interpreted for the purposes of Article 14(4)(a) of Directive 2011/95/EU, having regard to the extremely high standard established for that concept in Article 33(2) of the Geneva Convention and the serious consequences for a refugee whose status is revoked, and more specifically, can that article include an assessment of the danger in the light of alleged conduct or acts prior to entering the State of refuge? Does the concept 'danger to the security of the Member State' refer for the purposes of Article 14(4)(a) of Directive 2011/95/EU to the conduct or acts of the refugee outside that State?

Provisions of international law relied on

Convention Relating to the Status of Refugees, signed at Geneva on 28 July 1951 ('the Geneva Convention'), Article 1(F)

Provisions of European Union law and case-law relied on

Treaty on the Functioning of the European Union, Article 78(1).

Charter of Fundamental Rights of the European Union ('the Charter'), Article 18.

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), recitals 49 and 50 and Article 2(o).

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 12(2) and Article 14(4).

Judgments of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661; of 4 April 2017, *Fahimian*, C-544/15, EU:C:2017:255; of 14 May 2019, *M and Others* (Revocation of refugee status), C-391/16, C-77/17 and C-78/17, EU:C:2019:403; of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791; of 6 October 2021, *W.Ż.* (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment), C-487/19, EU:C:2021:798; and of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others*, C-159/21, EU:C:2022:708.

Provisions of national law relied on

O peri Prosfygon Nomos tou 2000 (Refugee Law of 2000, Law 6(I)/2000), 'the Refugee Law'), Article 6A(1), (1A) and (2).

Succinct presentation of the facts and procedure in the main proceedings

1 On 29 December 2018, the applicant entered the territory of the Republic of Cyprus illegally via the occupied areas. On 10 January 2019, he applied for international protection status. On 18 January 2019 and 20 March 2019, the applicant was interviewed while in detention for the purposes of examining his application.

2 On 28 January 2019, the Grafeio Katapolemisis tis Tromokratias (Counter Terrorism Office, Cyprus) sent a confidential letter to the Asylum Service setting out the danger posed by the applicant.

3 Having examined the applicant's application, the Asylum Service decided to grant the applicant refugee status. However, his application was rejected by the Head of the Asylum Service pursuant to Article 6A(1)(c) of the Refugee Law, which states that 'the status of a refugee is revoked when the Head … considers, on reasonable grounds, that the person concerned constitutes a danger to the security of the Republic'.

4 In particular, the Asylum Service refers in detail in its decision to the submissions relied on by the applicant at all stages of his asylum application, which were divided into three essential facts, namely that: (i) the applicant is a Moroccan national; (ii) he professes atheism; and (iii) as an atheist, he allegedly fears persecution should he be returned to Morocco.

5 Having assessed the applicant's personal credibility and researched information on the situation prevailing in Morocco in terms of religious life and the attitude towards atheists and other social minorities, the Asylum Service accepted the applicant's submissions in respect of all the essential facts.

6 However, the Asylum Service decided to revoke refugee status pursuant to Article 6A(1)(c) of the Refugee Law, based on letters from the Tmima Archeiou Plithysmou kai Metanastefsis (Civil Registry and Migration Department) and the Tmima Katapolemisis Egklimatos (Crime Prevention Department), which refer to the applicant as a person who is considered to pose a danger to the Cypriot community and the security of the Republic.

7 The letter from the Asylum Service rejecting the applicant's application was served on the applicant on 16 April 2019.

8 The applicant lodged an administrative appeal with the Anatheoritiki Archi Prosfygon (Refugee Review Authority), which delivered judgment on 30 July 2019 upholding the decision of the Asylum Service and concluding that the applicant had demonstrated that he fulfilled the requirements for refugee status on religious grounds. However, as the refugee is considered to be a person who poses a danger to the Cypriot community and the security of the Republic, that authority found that he did not deserve to be granted refugee status and that refugee status should therefore be revoked pursuant to Articles 6A(1)(c) and 6A(1A) of the Refugee Law.

9 On 14 October 2019, the applicant lodged an action with the Dioikitiko Dikastirio Diethnous Prostasias (International Protection Administrative Court, Cyprus) seeking annulment of the above decision of the Refugee Reviewing Authority.

10 The applicant, who was being held in detention, was released on 24 February 2020 further to his application to the Anotato Dikastirio (Supreme Court, Cyprus) for a *habeas corpus* writ.

11 On 21 April 2021, counsel for the applicant lodged an application seeking an order pursuant to Article 267 TFEU referring the questions listed in an annex to that application to the Court for a preliminary ruling.

The essential arguments of the parties in the main proceedings

12 The applicant's main submission is that a question should be referred to the Court for a preliminary ruling as to whether Article 14(4)(a) of Directive 2011/95, which provides for refugee status to be revoked when there are reasonable grounds for regarding the refugee as a danger to the security of the State of refuge, can be interpreted as meaning that it allows refugee status to be revoked based on past conduct or alleged acts of the refugee outside and prior to entering the State of refuge which are not included in the conduct which constitutes grounds for exclusion from being a refugee and cannot be subsumed under Article 33 of the

Geneva Convention as past conduct prior to the refugee entering the country of refuge.

13 If that question is answered in the affirmative, a preliminary ruling is sought on the question of whether that interpretation widens the exhaustive list of instances in which it is allowed to exclude the person from being a refugee under the Geneva Convention.

14 The Republic of Cyprus, via the Asylum Service ('the defendant'), contends that the application should be dismissed. It argues that none of the requirements laid down in Article 267 TFEU for a request for a preliminary ruling by the Court is fulfilled, especially the requirement that there must be no judicial remedy under national law.

15 It submits that Article 14(4)(a) of Directive 2011/95 is clear; that, in any case, Article 14(5) of the directive applies to this case; and, furthermore, that Article 6A of the Refugee Law, which is harmonised with the above directive, allows an applicant's refugee status to be revoked during examination of his or her application for international protection. Lastly, the defendant relies on the fact that the applicant can only ask the Court to review secondary law in accordance with the Treaties and primary law, not in accordance with the provisions of international law.

16 In addition, it submits that the concept 'danger to the security of the Member State' has been interpreted under EU law and that questions of national security fall within the exclusive competence of the Member States.

17 It further submits that, by his application, the applicant is seeking a review of the compatibility of national law with EU law and that this does not fall within the purview of the Court.

18 It also argues that review of the compatibility of EU law with the Geneva Convention, which is raised in the second question referred for a preliminary ruling, falls outside the scope of Article 78 TFEU, and that the third question referred for a preliminary ruling is irrelevant to the dispute.

19 The defendant also notes that, since there is case-law on the interpretation of the provision of EU law, the referring court is not obliged to refer a question to the Court for a preliminary ruling, as that would delay adjudication of the case and the proper dispensation of justice.

20 The applicant notes that, although the referral of questions for a preliminary ruling is made at the discretion of the referring court, it is necessary in order to enable it to give judgment, especially with regard to the interpretation of the provisions of Directive 2011/95, read in the light of the provisions of the TFEU and the Geneva Convention, as the entire common European asylum policy is based on that convention.

21 The applicant further states that the requirement that 'there must be no judicial remedy under national law' concerns cases in which a court whose judgments are not open to appeal is obliged to make an order for reference, not cases such as this in which it may do so. He clarifies in addition that 'it is for the Court, by contrast, to provide the national court that referred a question for a preliminary ruling with guidance on the interpretation of EU law that may be necessary for the outcome of the case in the main proceedings, while taking into account the indications contained in the order for reference as to the national law applicable to that case and to the facts characterising the latter' (judgment of 6 October 2021, *W.Ż.* (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment), C-487/19, EU:C:2021:798, paragraph 78).

22 The applicant further claims, in response to the defendant's argument that the second question referred for a preliminary ruling is an attempt to obtain a review of the compatibility of EU law with the Geneva Convention, that the TFEU itself stipulates in Article 78(1) that the common policy on asylum must be in accordance with the Geneva Convention, and he cites relevant case-law of the Court in which the Court ruled in part on the compatibility of Directive 2011/95 with the Geneva Convention (judgment of 14 May 2019, *M and X* (Revocation of refugee status), C-391/16, C-77/17 and C-78/17, EU:C:2019:403). He also insists that the purpose of the specific questions referred for a preliminary ruling is to obtain an interpretation of EU law, not of national law or of the compatibility of national law with EU law.

23 The applicant claims with regard to the concept 'danger to the security of the Member State' that, although the Court has in fact interpreted that particular concept on multiple occasions, it was always in the light of the circumstances and facts of each particular case and that there is therefore still room for interpretation of the scope of Article 14(4)(a) of Directive 2011/95. He further highlights the contradiction between the defendant's contentions, namely that, on the one hand, the Member States have exclusive competence in respect of that particular concept and, on the other hand, it has already been interpreted under EU law.

24 The defendant contends in response to the foregoing that Article 33 of the Geneva Convention does not apply to this particular case, as no deportation order appears to be in force against the applicant and the applicant retains the right to remain pending examination of his action; consequently, any finding as to the compatibility of that article with Article 14(4)(a) of Directive 2011/95 is irrelevant.

25 The defendant further expounds its contention that the Court has established case-law on the compatibility of the right to revoke international protection and whether that infringes the Geneva Convention, and it cites the case-law of the Court to support and substantiate that contention. First, it cites the judgment of 4 April 2017, *Fahimian*, C-544/15, EU:C:2017:255, and the Opinion of Advocate General Szpunar in *Fahimian*, C-544/15, EU:C:2016:908, points 47 to 79, on the concept of 'a threat to public security' and, second, it cites the judgment of

14 May 2019, *M and Others* (Revocation of refugee status), C-391/16, C-77/17 and C-78/17, EU:C:2019:403, paragraphs 105 to 112, in support of its contention that Article 33 of the Geneva Convention does not conflict with secondary law and, by extension, primary law. The defendant also refers to the Opinion of Advocate General Wathelet in joined cases *M and Others*, C-391/16, C-77/17 and C-78/17, EU:C:2018:486, points 95 to 103, concerning whether Article 14(4) of Directive 2011/95 is compatible with Article 18 of the Charter and Article 78(1) TFEU.

Succinct presentation of the reasoning in the request for a preliminary ruling

26 According to the referring court, the parties agree that the facts on which the decision to revoke the applicant's refugee status was based relate to evidence of the applicant's past conduct and/or acts prior to entering the Republic.

27 The referring court has taken account of the case-law of the Court cited by the applicant, from which it follows, in the opinion of the referring court, that, although similar questions have been raised in other cases, the specific questions raised in the main proceedings have not been answered.

28 The referring court refers in particular to the judgment of 14 May 2019, *M and Others* (Revocation of refugee status), C-391/16, C-77/17 and C-78/17, EU:C:2019:403. Those referring courts referred questions to the Court concerning whether the provisions of Directive 2011/95 allowing the Member States to revoke or to refuse to grant refugee status are tantamount to a cessation or exclusion clause which is not included in the Geneva Convention. The Court was asked if the contested provisions of Directive 2011/95 are valid in the light of the rules laid down in the Charter and the TFEU requiring EU asylum policy to be in accordance with the Geneva Convention.

29 The Court found that the provisions of Directive 2011/95 concerning revocation of or refusal to grant refugee status in order to protect the security or the community of the host Member State are valid. It held that revocation of or refusal to grant refugee status does not cause a person with a well-founded fear of persecution in their country of origin to lose or be deprived of either the status of being a refugee or the rights which the Geneva Convention associates with that status, thus proposing a distinction between the concept of 'refugee status' within the framework of the Geneva Convention and the concept of 'refugee status' as defined in Directive 2011/95.

30 By that judgment, the Court found, first, that, although Directive 2011/95 establishes an EU system of protection for refugees, it is based on the Geneva Convention and its purpose is to ensure that convention is complied with in full. Within that framework, the Court held that, where a third-country national or stateless person has a well-founded fear of persecution in their country of origin or residence, that person should qualify as a refugee within the meaning of Directive 2011/95 and the Geneva Convention, whether or not they have formally been

granted refugee status within the meaning of Directive 2011/95. The Court found in that regard, first, that Directive 2011/95 defines 'refugee status' as the recognition by a Member State of a person as a refugee and, second, that such recognition is purely declaratory and is not a constituent element of refugee status.

31 The Court then noted that the grounds for exclusion and for refusing to grant refugee status laid down in the directive correspond to the grounds which justify refoulement of a refugee under the Geneva Convention. Moreover, the Court highlighted the fact that, while in cases which fulfil the requirements for relying on the abovementioned grounds the application of the Geneva Convention may deny the refugee the benefit of the principle of non-refoulement to a country where his life or freedom would be threatened, the directive must be interpreted and applied in a way that observes the rights guaranteed by the Charter, which preclude any possible refoulement to such a country. In those circumstances, the Court found that, inasmuch as Directive 2011/95 grants the host Member State the possibility to revoke or to refuse to grant refugee status, in order to safeguard the protection of the security and community of that State, while the Geneva Convention permits the refoulement of a refugee to a country where his or her life would be threatened on precisely the same grounds, EU law provides more extensive international protection for the refugees concerned than that guaranteed by the Geneva Convention.

32 The Court also found that the effect of the revocation of or the refusal to grant refugee status is not that a person who has a well-founded fear of persecution in his or her country of origin is no longer a refugee. That is because, although that person will not or will no longer be entitled to all the rights and benefits afforded under the directive to persons entitled to refugee status, he or she is or continues to be entitled to a certain number of rights laid down in the Geneva Convention. Consequently, the Court concluded that the contested provisions of the directive are in accordance with the Geneva Convention and with the rules laid down in the Charter and the TFEU requiring compliance with that convention.

33 The referring court refers in particular to paragraphs 79, 80, 81 and 93 of that judgment.

34 By its judgment of 9 November 2010, *B and D* (C-57/09 and C-101/09, EU:C:2010:661), the Court found that the grounds for exclusion contested in that case (Article 12(2)(b) and (c)) are intended as a penalty for acts committed in the past, noting that any danger which the presence of a refugee may pose to the Member State concerned may be taken into consideration, not under Article 12(2), but only under Article 14(4) or Article 21(2).

35 The referring court referred in particular to paragraphs 100 to 105 of that judgment.

36 In light of the foregoing, the referring court finds that the questions need to be referred to the Court for a preliminary ruling.