JUDGMENT OF THE COURT (First Chamber)

9 September 2020(*)

(Reference for a preliminary ruling – Asylum policy – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 46 – Charter of Fundamental Rights of the European Union – Article 47 – Right to an effective remedy – Action brought against a subsequent application for international protection as being inadmissible – Time limit for bringing proceedings – Rules governing notification)

In Case C-651/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 1 August 2019, received at the Court on 2 September 2019, in the proceedings

JP

v

Commissaire général aux réfugiés et aux apatrides,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, M. Safjan, L. Bay Larsen and N. Jääskinen, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– JP, by D. Andrien, avocat,

– the Belgian Government, by C. Pochet, M. Van Regemorter and C. Van Lul, acting as Agents,

– the French Government, by D. Dubois and A.-L. Desjonquères, acting as Agents,

– the European Commission, by M. Condou-Durande and A. Azema, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 46 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), and of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between JP and the Commissaire général aux réfugiés et aux apatrides (Commissioner-General for Refugees and Stateless Persons, Belgium; 'the CGRS'), concerning the decision of the CGRS declaring the subsequent application of JP for international protection to be inadmissible.

Legal context

European Union law

3 Recitals 18, 20, 23, 25, 50 and 60 of Directive 2013/32 state:

'(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

…

(20) In well-defined circumstances, where an application is likely to be unfounded … Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this directive.

…

(23) In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors admitted or permitted as such under national law.

…

(25) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 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)], as supplemented and amended by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967] or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.

…

(50) It reflects a basic principle of Union law that the decisions taken on an application for

international protection … are subject to an effective remedy before a court or tribunal.

…

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24 and 47 of the Charter and has to be implemented accordingly.'

4 Article 11 of that directive provides:

'1. Member States shall ensure that decisions on applications for international protection are given in writing.

2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

…'

5 Article 12(1) of that directive provides:

'With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

…

(e) they shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant.

(f) they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).'

6 Under Article 13(2)(c) of that directive, Member States may provide that 'applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he or she indicated accordingly'.

7 Article 20(1) of Directive 2013/32 provides:

'Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. …'

8 Article 22 of that directive recognises the right of applicants for international protection to legal assistance and representation at all stages of the procedure.

9 Article 23(1) of that directive states

'Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be

made.’

10 Article 33(2) of that directive states:

‘Member States may consider an application for international protection as inadmissible only if:

…

(d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue 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)] have arisen or have been presented by the applicant; …

…’

11 Article 40 of Directive 2013/32, headed ‘Subsequent application’, provides:

‘1. Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, in so far as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of [Directive 2011/95].

3. If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of [Directive 2011/95], the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

4. Member States may provide that the application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations set forth in paragraphs 2 and 3 of this Article in the previous procedure, in particular by exercising his or her right to an effective remedy pursuant to Article 46.

5. When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

6. The procedure referred to in this Article may also be applicable in the case of:

(a) a dependant who lodges an application after he or she has, in accordance with Article 7(2), consented to have his or her case be part of an application lodged on his or her behalf; and/or

(b) an unmarried minor who lodges an application after an application has been lodged on his or her behalf pursuant to Article 7(5)(c).

In those cases, the preliminary examination referred to in paragraph 2 will consist of examining

whether there are facts relating to the dependant's or the unmarried minor's situation which justify a separate application.

7. Where a person with regard to whom a transfer decision has to be enforced pursuant to [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)] makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.'

12 Article 46(1) and (4) of that directive state:

'1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

…

(ii) considering an application to be inadmissible pursuant to Article 33(2);

…

…'

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.'

Belgian law

13 Article 39/2(1) of the loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Law on access to the territory, residence, establishment and removal of foreign nationals) of 15 December 1980 (*Moniteur belge* of 31 December 1980, p. 14584), in the version applicable at the material time in the main proceedings ('the Law of 15 December 1980'), provides:

'The Council [for asylum and immigration proceedings] shall give a ruling, by way of judgments, on actions brought against decisions of the [CGRS].

…'

14 Article 39/57 of the Law of 15 December 1980 provides:

'§ 1. The actions referred to in Article 39/2 shall be brought by way of an application made within 30 days of service of the contested decision.

In the following circumstances, the application shall be made within 10 days of service of the contested decision:

…

3º where the action is brought against a decision declaring the application inadmissible, referred to in the first subparagraph of Article 57/6(3). The action shall, nonetheless, be brought within five days of the service of the decision challenged, where that decision concerns a decision declaring an application inadmissible taken on the basis of point 5° of the first subparagraph

of Article 57/6(3), and the foreign national finds himself or herself, at the time of his or her application, in a specific place referred to in Articles 74/8 and 74/9 or is held at the disposal of the authorities.

…

§ 2. The time limits for bringing actions referred to in paragraph (1) shall start to run:

…

2º where service is made by registered post or by ordinary post, on the third working day following that on which the letter was delivered to the postal service, unless evidence to the contrary is adduced by the person to whom notice is addressed;

…

The time limit shall include the day on which it expires. However, where that day is a Saturday, a Sunday or a public holiday, the day on which the time limit expires shall be the next working day.

…'

15 Article 51/2 of that law states:

'A foreign national who lodges an application for international protection under Article 50(3) shall specify an address for service in Belgium.

If no address for service is specified, the applicant shall be deemed to have specified an address for service at the Office of the [CGRS].

…

Any change of the specified address for service must be notified by registered post to the [CGRS] and to [the Ministry responsible for access to the territory, residence, establishment and removal of foreign nationals].

Without prejudice to service in person, all services are validly made to the specified address for service by registered post or by messenger with acknowledgement of receipt. Where the foreign national has specified an address for service at his or her lawyer's official address, the service may also be validly sent by fax or by any other means of service authorised by Royal Decree.

…'

16 Article 57/6(3) of that law provides:

'The [CGRS] may declare an application for international protection to be inadmissible where:

…

5º the applicant lodges a subsequent application for international protection for which no new information or facts within the meaning of Article 57/6/2 arise or are presented by the applicant;

…'

17 Under Article 57/6/2(1) of that law, 'after receipt of a subsequent application transmitted by the Minister or his or her deputy on the basis of Article 51/8, the [CGRS] shall prioritise examination of whether new information or facts arise or are presented by the applicant, which significantly

increase the probability that he or she can claim recognition as a refugee under Article 48/3 or subsidiary protection under Article 48/4. In the absence of such information or facts, the [CGRS] shall declare the application to be inadmissible'.

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

18 After the rejection of an initial application for asylum, the appellant in the main proceedings made a second application for international protection which was declared to be inadmissible by a decision of 18 May 2018 of the CGRS, on the basis of Article 57/6/2 of the Law 15 December 1980 ('the contested decision').

19 Since the appellant in the main proceedings had not specified an address for service in Belgium, under national law, notice of the contested decision was sent to him, on Tuesday 22 May 2018, by registered post to the head office of the CGRS.

20 In accordance with Belgian law, the time limit of 10 days to bring an action against that decision started to run on the third working day following that when the letter was delivered to the postal services, namely Friday 25 May 2018. Since the day when that period expired was a Sunday, the expiry date was postponed to Monday 4 June 2018.

21 The appellant in the main proceedings attended at the head office of the CGRS on 30 May 2018 and, on that date, acknowledged receipt of the registered letter concerning the contested decision.

22 On 7 June 2018 the appellant in the main proceedings brought an action challenging that decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium). By a judgment of 9 October 2018, that court dismissed that action on the ground that it was out of time.

23 On 18 October 2018 the appellant in the main proceedings brought an appeal on a point of law against that judgment before the referring court, the Conseil d'État (Council of State, Belgium).

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

'Must Article 46 of [Directive 2013/32], by virtue of which applicants must be given a right to an effective remedy against decisions "taken on their application for international protection", and Article 47 of [the Charter] be interpreted as precluding a rule of national procedure, such as Article 39/57 of [the Law of 15 December 1980], read in conjunction with Article 51/2, point 5° of the first subparagraph of Article 57/6(3) and Article 57/6/2(1) of that law, establishing a time limit of 10 "calendar" days, starting from the service of the administrative decision, for bringing an action against a decision declaring a subsequent application for international protection lodged by a third-country national to be inadmissible, in particular where that service was made at the head office of [the CGRS] where the applicant is "deemed" by law to have specified a place for service?'

Consideration of the question referred

25 By its question, the referring court seeks, in essence, to ascertain whether Article 46 of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as precluding legislation of a Member State which provides that an action brought against a decision declaring a subsequent application for international protection to be inadmissible is subject to a limitation period of 10 days, including public holidays, as from the service of such a decision, even where, when the applicant concerned has not specified a address for service in that Member State, such service is made at the head office of the national authority responsible for the examination of those applications.

26 Article 46 of Directive 2013/32 requires Member States to ensure the right to an effective remedy before a court or tribunal against a decision rejecting an application for international protection, including decisions declaring the application to be inadmissible.

27 The characteristics of the remedy provided for in Article 46 of Directive 2013/32 must be determined in a manner consistent with Article 47 of the Charter, which states that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article (judgment of 18 October 2018, *E.G.*, C-662/17, EU:C:2018:847, paragraph 47 and the case-law cited).

Service at the head office of the responsible authority

28 It must, first, be determined whether Article 46 of Directive 2013/32 precludes national legislation which provides that notice of decisions concerning applicants for international protection who have not specified an address for service in the Member State concerned is to be served at the head office of the national authority responsible for the examination of those applications, the effect of that service being that the statutory time limit for bringing proceedings against those decisions starts to run.

29 Notification of decisions relating to applications for international protection to the applicants concerned is essential if their right to an effective remedy is to be ensured, in that it permits the applicants to become aware of those decisions, and, where necessary, if the decision notified is negative, to challenge that decision by legal proceedings within the time limit for doing so prescribed by national law.

30 While Directive 2013/32 mentions, in recital 25, the fact that applicants for international protection should be granted the right to appropriate notification of the decisions relating to their applications, that directive does not however lay down any specific detailed rules governing notification of those decisions.

31 First, in Article 11(1) and (2) of Directive 2013/32, that directive does no more than state that the Member States are to ensure that the decisions on applications for international protection and information of how to challenge a negative decision are communicated in writing to the applicants concerned. Second, among the guarantees provided by that directive for the benefit of those applicants, that directive is limited to mentioning, with no other detail, in points (e) and (f) respectively of Article 12 of the directive, in the first place, the guarantee of being given notice in reasonable time of the decision made by the responsible authority concerning their applications, and, in the second place, the guarantee of being informed of the result of the decision made by the responsible authority, in a language that they understand, and of how to challenge a negative decision, in accordance with Article 11(2) of that directive.

32 Further, it must be observed that Article 13(2)(c) of Directive 2013/32 permits Member States to impose on applicants for international protection the obligation to state their place of residence or their address for the purposes of communications concerning their applications. However, there is no provision of that directive that prescribes what action should be taken by Member States which make use of that possibility when no such information is provided for the purposes of such communications.

33 Last, Article 46(4) of Directive 2013/32 leaves to Member States the task of providing the necessary rules for applicants for international protection to be able to exercise their right to an effective remedy.

34 It must be recalled that, in accordance with the Court's settled case-law, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those

governing similar domestic situations (the principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (the principle of effectiveness) (judgment of 19 March 2020, *LH (Tompa)*, C-564/18, EU:C:2020:218, paragraph 63 and the case-law cited).

35 Accordingly, the procedural rules concerning service of decisions relating to applications for international protection fall within the scope of the principle of the procedural autonomy of the Member States, subject to regard for the principles of equivalence and effectiveness.

36 As regards, first, the principle of equivalence, in accordance with the Court's settled case-law, regard for that principle requires equal treatment of claims based on a breach of national law and of similar claims based on a breach of EU law (judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C-180/17, EU:C:2018:775, paragraph 37 and the case-law cited).

37 It is therefore appropriate, on the one hand, to identify the comparable procedures or actions and, on the other hand, to determine whether the actions based on national law are handled in a more favourable manner than comparable actions concerning the safeguarding of the rights which individuals derive from EU law (judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C-180/17, EU:C:2018:775, paragraph 38 and the case-law cited).

38 With regard to the comparability of actions, it is for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C-180/17, EU:C:2018:775, paragraph 39 and the case-law cited).

39 So far as concerns the similar handling of the actions, it must be borne in mind that every case in which the question arises as to whether a national procedural rule governing actions based on EU law is less favourable than those governing similar domestic actions must be analysed by the national court taking into account the role played by the rules concerned in the procedure as a whole, as well as the operation and any special features of those rules before the various national bodies (judgment of 26 September 2018, *Staatssecretaris van Veiligheid en justitie (Suspensory effect of the appeal)*, C-180/17, EU:C:2018:775, paragraph 40 and the case-law cited).

40 In this instance, the appellant in the main proceedings claims that the national legislation at issue in the main proceedings is in breach of the principle of equivalence in that, first, there is nothing in the case-law of the Conseil d'État (Council of State) to indicate, other than in the area of asylum, that notification at the address for service which is deemed to have been specified, by virtue of national legislation, at the head office of a national authority, is enough to start running a limitation period, and, second, in accordance with that case-law, when a measure does not have to be either published or served, it is sufficient knowledge of that measure that causes the limitation period to start running.

41 It is for the referring court to determine, in the light of the Court's case-law cited in paragraphs 36 to 39 of the present judgment, whether the national legislation at issue in the main proceedings has due regard to the principle of equivalence.

42 As regard, second, whether national legislation such as that at issue in the main proceedings complies with the condition inherent in the principle of effectiveness, it must be recalled that, in accordance with the Court's settled case-law, every case in which the question arises as to whether a national procedural provision renders the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary, inter alia, to take into consideration, where relevant, the protection of the rights of the

defence, the principle of legal certainty and the proper conduct of the procedure (judgment of 24 October 2018, *XC and Others*, C-234/17, EU:C:2018:853, paragraph 49 and the case-law cited).

43 In that regard, it must be observed that where a national procedural rule provides that, where an applicant for international protection has not specified an address for service, notice of the decision adopted concerning him or her will be served at the head office of the national authority responsible for the examination of those applications, the effect of that service being that the time limit prescribed by national law for bringing proceedings against that decision starts to run, that rule may, in principle, be justified on grounds relating to legal certainty and the smooth progress of the procedure for the examination of applications for international protection.

44 Were there not to be such a rule, the decisions concerning the applicants who had not specified an address for service could not be officially served on them and accordingly could not produce their effects. Further, if service made at the head office of that authority were not to start running the prescribed time limits for bringing proceedings with respect to decisions concerning those applicants, those decisions could for an indefinite period be the subject of challenge in legal proceedings, and never become definitive, with the result that the responsible national authorities would be prevented from taking the necessary action following negative decisions, in relation to, inter alia, the residence of the applicants concerned.

45 Moreover, as the Belgian Government stated in its written observations, national legislation such as that at issue in the main proceedings offers to applicants who are not in a position to provide to the responsible authorities a secure postal address the possibility of remedying that major difficulty, since those applicants have the benefit of a legal mechanism which ensures that the decisions, invitations to attend and other requests for information concerning them are made available to them at a safe place, where they have, as a general rule, already been. From that perspective, such legislation makes it easier for those applicants to exercise their right to an effective remedy and helps to ensure respect for their rights of defence.

46 That legislation may, however, have such an effect only if each of two conditions are met, namely, first, that the applicant is properly informed that, where he or she has not provided an address in the Member State concerned, the letters which the responsible authorities in connection with the examination of his or her application for international protection may send will be addressed to him or her at the head office of the CGRS and, second, the conditions for access to that head office are not such that the receipt of those letters is excessively difficult.

47 It follows from the foregoing that Article 46 of Directive 2013/32 does not preclude national legislation which provides that notice of decisions concerning the applicants for international protection who have not specified an address for service in the Member State concerned are to be served at the head office of the national authority responsible for the examination of those applications, provided that (i) those applicants are informed that, where they have not specified an address for service for the purposes of notification of the decision concerning their application, they will be deemed to have specified an address for service for those purposes at the head office of the national authority responsible for the examination of those applications; (ii) the conditions for access of those applicants to that head office are not such that their receipt of the decisions concerning them is excessively difficult, and (iii) the principle of equivalence is respected. It is for the referring court to determine whether the national legislation at issue in the main proceedings meets those requirements.

The limitation period of 10 days for bringing proceedings, including public holidays

48 It must, second, be determined whether Article 46 of Directive 2013/32 precludes national legislation that prescribes a limitation period of 10 days, including public holidays, for bringing proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible.

49 Article 46(4) of Directive 2013/32 leaves to the Member States the task of providing for reasonable time limits for applicants for international protection to exercise their right to an effective remedy, subject to the qualification that the prescribed time limits must not render such exercise impossible or excessively difficult.

50 As stated in paragraph 34 of the present judgment, the setting of time limits in connection with the procedure for international protection falls within the scope of the principle of the procedural autonomy of the Member States, subject to regard for the principles of equivalence and effectiveness.

51 In this instance, as regards, first, respect for the principle of equivalence, the appellant in the main proceedings claims that the national legislation which sets at 10 days, including public holidays, the time limit for bringing proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible is in breach of that principle, in that, in accordance with national law, first, actions brought for the annulment of administrative decisions of individual application, other than those adopted under the legislation on entry to the territory, residence, establishment and removal of foreign nationals, must be brought within a time limit of 60 days after the decision concerned has been published or served, or has become known to the person concerned, and, second, the decisions adopted concerning the reception of asylum applicants are subject to challenge before an employment tribunal within a time limit of three months from the date of their service.

52 It is for the referring court to determine, in the light of the Court's case-law cited in paragraphs 36 to 39 of the present judgment, whether the national legislation at issue in the main proceedings, in that it, first, prescribes a period of 10 days for bringing proceedings, and, second, provides that that period includes public holidays, complies with the principle of equivalence.

53 Second, as regards the principle of effectiveness, it must be recalled that the Court has recognised the compatibility with EU law of reasonable time limits for bringing proceedings, laid down in the interests of legal certainty, where such time limits are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law. The Court has also held that, in respect of national legislation that comes within the scope of EU law, it is for the Member States to establish time limits in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration (judgment of 29 October 2009, *Pontin*, C-63/08, EU:C:2009:666, paragraph 48 and the case-law cited).

54 In that regard, the fact that actions brought against the decisions declaring a subsequent application for international protection to be inadmissible are subject to a shorter time limit is consistent with the objective that applications for international protection should be dealt with expeditiously, that being in the interests of both the Member States and the applicants for such protection, in accordance with recital 18 of Directive 2013/32.

55 Further, in so far as it ensures the more expeditious processing of applications for international protection that are inadmissible, the curtailment of such a time limit for bringing proceedings makes possible a more efficient processing of applications submitted by individuals whose claims to be granted refugee status are well founded (see, to that effect, judgment of 28 July 2011, *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 65) and contributes, thereby, to the smooth progress of the procedure for the examination of applications for international protection.

56 Accordingly, national legislation which provides that the time limit for bringing an action challenging a decision declaring an application for international protection to be inadmissible is to be set at 10 days, including public holidays, may, as a general rule, be justified in the light of the objective of expedition pursued by Directive 2013/32, the principle of legal certainty, and the

smooth progress of the procedure for the examination of applications for international protection.

57 However, as is clear from the Court's case-law, in order to meet the requirements of the principle of effectiveness, that time limit must be sufficient in practical terms to enable an effective remedy to be prepared and submitted (see, to that effect, judgment of 26 September 2013, *Texdata Software*, C-418/11, EU:C:2013:588, paragraph 80 and the case-law cited).

58 In that regard, it must, first, be observed, in the first place, that any subsequent application for international protection has been preceded by an initial application which has been definitively rejected, in relation to which the responsible authority has undertaken an exhaustive examination in order to determine whether the applicant concerned qualified for international protection. In the second place, before the rejection decision could become definitive, that applicant will have had a right to challenge that decision.

59 In that context, it must be observed that, as is apparent from Article 40 of Directive 2013/32, a subsequent application for international protection is intended for the submission, by the applicant concerned, of elements or findings that are new, as compared with those examined in relation to the preceding application, and that significantly increase the probability that that applicant is eligible for international protection. Where the preliminary examination to which such an application is subject reveals that new elements or findings of that kind have arisen or been presented by the applicant, the application is to be further examined, in accordance with the provisions of Chapter II of that directive. However, where that preliminary examination does not reveal elements or findings of that kind, that application is to be declared to be inadmissible, in accordance with Article 33(2)(d) of that directive.

60 Accordingly, a court hearing an action challenging a decision declaring a subsequent application for international protection to be inadmissible must confine itself to determining whether, contrary to the decision of the responsible authority, the preliminary examination of that application reveals elements or findings that are new, in the sense indicated in the preceding paragraph. It follows that, in the initiating application before that court, the applicant needs, in essence, to do no more than establish that there were grounds for the position that there were elements or findings that were new as compared with those examined in relation to his preceding application.

61 Consequently, the essential content of the initiating application in such an action is not only limited to the matters referred to in the preceding paragraph, but is also closely linked to the essential content of the subsequent application that gave rise to the rejection decision, with the result that, contrary to what is claimed by the appellant in the main proceedings in his written observations, the drafting of such an initiating application is not, a priori, of such particular complexity as to require a period greater than 10 days, including public holidays.

62 Second, it must be borne in mind that, in relation to the court proceedings provided for in Article 46 of Directive 2013/32, a certain number of specific procedural rights are guaranteed to those bringing such proceedings, including, in particular, as is clear from Articles 20 and 22 of Directive 2013/32, read in the light of recital 23 thereof, the possibility of free legal assistance and representation, and access to a legal adviser. Further, Article 23 of that directive ensures that the legal adviser of the applicant has access to the information in the applicant's file on the basis of which a decision is or will be made.

63 Consequently, a period within which proceedings must be brought can be considered to be sufficient in practical terms to enable an effective remedy to be prepared and submitted only in so far as the applicant's right to the procedural safeguards mentioned in the preceding paragraph can be ensured within such a period, which it is for the referring court to determine.

64 In that regard, and subject to what that court may determine, a period of 10 days, including public holidays, does not appear to be insufficient in practical terms to enable an effective remedy to be prepared and submitted challenging a decision declaring a subsequent application for international

protection to be inadmissible.

65 That is all the more the case, in this instance, when, as is clear from paragraph 14 of the present judgment, the national legislation at issue in the main proceedings provides that, on the one hand, where service is made by registered post, that period is to be increased by three working days and, on the other, where the expiry date of that period is a Saturday, a Sunday or a public holiday, that expiry date is to be postponed to the next working day, those rules having moreover been applied in this instance.

66 In such circumstances, Article 46 of Directive 2013/32 does not preclude national legislation that prescribes a limitation period of 10 days, including public holidays, for bringing an action challenging a decision declaring a subsequent application for international protection to be inadmissible, provided that the genuine access of the applicants affected by such a decision to the procedural safeguards granted by EU law to applicants for international protection is ensured within that period, which it is for the referring court to determine.

67 In the light of the foregoing, the answer to the question referred is that Article 46 of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as not precluding legislation of a Member State which provides that proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible are subject to a limitation period of 10 days, including public holidays, as from the date of service of such decision, even where, when the applicant concerned has not specified an address for service in that Member State, that service is made at the head office of the national authority responsible for the examination of those applications, provided that (i) those applicants are informed that, where they have not specified an address for service for the purposes of notification of the decision concerning their application, they will be deemed to have specified their address for service for those purposes at the head office of that national authority; (ii) the conditions for access of those applicants to that head office do not render receipt by those applicants of the decisions concerning them excessively difficult, (iii) genuine access to the procedural safeguards granted to applicants for international protection by EU law is ensured within such a period, and (iv) the principle of equivalence is respected. It is for the referring court to determine whether the national legislation at issue in the main proceedings meets those requirements.

Costs

68 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 (First Chamber) hereby rules:

Article 46 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, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State which provides that proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible are subject to a limitation period of 10 days, including public holidays, as from the date of service of such decision, even where, when the applicant concerned has not specified an address for service in that Member State, that service is made at the head office of the national authority responsible for the examination of those applications, provided that (i) those applicants are informed that, where they have not specified an address for service for the purposes of notification of the decision concerning their application, they will be deemed to have specified an address for service for those purposes at the head office of that national authority; (ii) the conditions for access of those applicants to that head office do not render

receipt by those applicants of the decisions concerning them excessively difficult, (iii) genuine access to the procedural safeguards granted to applicants for international protection by EU law is ensured within such a period, and (iv) the principle of equivalence is respected. It is for the referring court to determine whether the national legislation at issue in the main proceedings meets those requirements.

[Signatures]

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* Language of the case: French.