Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

25 June 2020 (*)

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Asylum and immigration policy – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 6 – Access to the procedure – Application for international protection made to an authority competent under national law to register such applications – Application made to other authorities that are likely to receive such applications but are not, under national law, competent to register them – Definition of 'other authorities' – Article 26 – Detention – Standards for the reception of applicants for international protection – Directive 2013/33/EU – Article 8 – Detention of the applicant – Grounds for detention – Decision to hold an applicant in detention on account of a lack of capacity at humanitarian reception centres)

In Case C-36/20 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Instrucción n° 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3 of San Bartolomé de Tirajana, Spain), made by decision of 20 January 2020, received at the Court on 25 January 2020, in the proceedings concerning

VL,

intervening party:

Ministerio Fiscal,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, S. Rodin, D. Šváby (Rapporteur), K. Jürimäe and N. Piçarra, Judges,

Advocate General: M. Szpunar,

Registrar: M. M. Ferreira, Administrator,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– VL, by M. T. Macías Reyes, abogada,

– the Ministerio Fiscal, by T. García,

– the Spanish Government, by S. Centeno Huerta, acting as Agent,

– the European Commission, by M. Condou-Durande and I. Galindo Martín, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2020,

gives the following

Judgment

1 This request for a preliminary ruling relates to the interpretation of the Article 6(1), second subparagraph, and Article 26 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 8 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 the context of a procedure relating to the detention of VL and the application for international protection that he made at that time.

Legal context

European Union law

Directive 2008/115/EC

3 Recital 9 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) states:

‘In accordance with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [(OJ 2005 L 326, p. 13)], a third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.’

4 Article 2 of Directive 2008/115, headed ‘Scope’, provides in paragraph 1 thereof:

‘This Directive applies to third-country nationals staying illegally on the territory of a Member State.’

5 Article 6 of that directive, which covers the ‘return decision’, provides in paragraph 1 thereof:

‘Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.’

6 Article 15 of Directive 2008/115, headed ‘Detention’ and set out in Chapter IV of the directive – itself headed ‘Detention for the purpose of removal’ – states in paragraph 1 thereof:

‘Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.'

Directive 2013/32

7 Recitals 8, 12, 18, 20, and 25 to 28 of Directive 2013/32 state:

'(8) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme affirmed that people in need of international protection must be ensured access to legally safe and efficient asylum procedures. In accordance with the Stockholm Programme, individuals should be offered the same level of treatment as regards procedural arrangements and status determination, regardless of the Member State in which their application for international protection is lodged. The objective is that similar cases should be treated alike and result in the same outcome.

…

(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.

…

(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 or where there are serious national security or public order concerns, 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.

…

(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 Geneva Convention 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.

(26) With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, inter alia, taking due account of relevant guidelines developed by [European Asylum Support Office (EASO)]. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined in accordance with this Directive.

(27) Given that third-country nationals and stateless persons who have expressed their wish to apply for international protection are applicants for international protection, they should comply with the obligations, and benefit from the rights, under this Directive and [Directive 2013/33]. To that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.

(28) In order to facilitate access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to apply for international protection should be ensured through interpretation arrangements.'

8 Article 1 of Directive 2013/32, headed 'Purpose', is worded as follows:

'The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to 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)].'

9 Article 2 of Directive 2013/32, headed 'Definitions', provides:

'For the purposes of this Directive:

…

(b) "application for international protection" or "application" means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another

kind of protection outside the scope of Directive [2011/95], that can be applied for separately;

(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;

…

(f) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;

…'

10 Article 3 of Directive 2013/32, headed 'Scope', states in paragraph 1 thereof:

'This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.'

11 Article 4 of that directive, headed 'Responsible authorities', provides in paragraph 1 thereof:

'Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.'

12 Article 6 of the directive, headed 'Access to the procedure', is worded as follows:

'1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days.'

13 Article 8 of that directive, headed 'Information and counselling in detention facilities and at border crossing points', provides in paragraph 1 thereof:

'Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.'

14 Article 26 of Directive 2013/32, which relates to 'detention', provides:

'1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive [2013/33].

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive [2013/33].'

15 Article 38 of that directive, headed 'The concept of safe third country', states in paragraph 1 thereof:

'Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

…

(b) there is no risk of serious harm as defined in Directive [2011/95];

…'

Directive 2013/33

16 Recitals 15 and 20 of Directive 2013/33 state:

'(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. 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 to 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.

…

(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.'

17 Under Article 2 of that directive, headed 'Definitions':

'For the purposes of this Directive:

(a) "application for international protection": means an application for international protection as defined in Article 2(h) of Directive [2011/95];

(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;

…'

18 Article 3 of the directive, headed 'Scope', states in paragraph 1 thereof:

'This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.'

19 In accordance with Article 8 of that directive, which relates to 'detention':

'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;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under Directive [2008/115], in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

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

(f) in accordance with Article 28 of 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)].

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

…'

20 Article 9 of Directive 2013/33, headed 'Guarantees for detained applicants', provides in paragraph 1 thereof:

'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.'

21 Article 17 of the directive, headed 'General rules on material reception conditions and health care', provides in paragraph 1 thereof:

'Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.'

22 Article 18 of that directive, headed 'Modalities for material reception conditions', provides in paragraph 9 thereof:

'In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

…

(b) housing capacities normally available are temporarily exhausted.

Such different conditions shall in any event cover basic needs.'

Spanish law

23 Article 58 of the Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social (Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration) of 11 January 2000 (BOE No 10 of 12 January 2000, p. 1139), in the version applicable at the material time ('Organic Law 4/2000'), concerns the removal of foreign nationals without a legal right of residence.

24 Article 58 of Organic Law 4/2000 provides, in paragraph 3 thereof, for a simplified procedure for removing foreign nationals attempting to enter Spain illegally. It states, in paragraph 4 thereof, that the persons referred to in paragraph 3 may not be removed for as long as any application for international protection has not been declared inadmissible, and provides, in paragraph 6, that where the foreign national cannot be removed within 72 hours, an order for his or her detention is to be sought from the judicial authorities.

25 Article 61 of Organic Law 4/2000 lays down interim measures in relation to removal procedures. Article 62 of that law covers detention and Article 64(5) of the law provides for removal decisions to be suspended for so long as an application for international protection has not been declared inadmissible.

26 Articles 2 and 3 of the Ley 12/2009 reguladora del derecho de asilo y de la protección subsidiaria (Law 12/2009 regulating the right to asylum and subsidiary protection) of 30 October 2009 (BOE No 263 of

31 October 2009, p. 90860), in the version applicable at the material time, define the right to asylum and refugee status, respectively. Under Article 5 of that law, a person who has been granted subsidiary protection may not be removed. Lastly, Article 30 of that law makes provision for applicants for international protection who require social and reception services to have access to those services.

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

27 At 19:05 on 12 December 2019, a vessel carrying 45 men from sub-Saharan Africa, including VL, a Malian national, was intercepted by the Salvamento Marítimo (Marine Rescue Service, Spain) off the Spanish coast. The Marine Rescue ship embarked those 45 third-country nationals and disembarked them dockside at the southern end of the island of Gran Canaria (Spain) at 21:30.

28 Having received first aid, the third-country nationals were handed over to the Brigada Local de Extranjería y Fronteras (Local Foreign Nationals and Borders Brigade) of the Comisaría de Policía Nacional de Maspalomas (National Police Commissariat of Maspalomas, Spain). On 13 December 2019 at 00:30, they were transferred to the Jefatura Superior de Policía de Canarias (Upper Prefecture of Police of the Canary Islands, Spain).

29 By decision of 13 December 2019, the Subdelegación del Gobierno en Las Palmas (Provincial Office of the Spanish Government in Las Palmas, Spain) ordered the removal of those third-country nationals. Given that this decision could not be implemented within the 72-hour time limit laid down in Article 58(6) of Organic Law 4/2000, an application for placement in a detention centre was made to the Juzgado de Instrucción n° 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3 of San Bartolomé de Tirajana, Spain).

30 It is apparent from the order for reference that, in the course of a preliminary investigation, that court gave three decisions on 14 December 2019 in the case in the main proceedings.

31 By its first decision, the court granted VL the right to make a statement, having been informed as to his rights, with the assistance of a lawyer and a Bambara interpreter, Bambara being the language that VL stated he spoke and understood. In that statement, of which a record was drawn up, VL stated his intention to apply for international protection because he feared persecution on grounds of his race or membership of a social group. In particular, he pointed out that, on account of the ongoing war in Mali, a return to that country would expose him to the risk of being killed there.

32 Since, under Spanish law, it is not regarded as the determining authority within the meaning of Article 2(f) of Directive 2013/32, the Juzgado de Instrucción n° 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3 of San Bartolomé de Tirajana), by way of a second decision, communicated, first, to the Brigada Provincial de Extranjería y Fronteras (Provincial Foreign Nationals and Borders Brigade) and, second, to the United Nations High Commission for Refugees (UNHCR), the statement in which VL had stated his wish to apply for international protection. That decision also asked the Provincial Office of the Spanish Government in the Canary Islands, the Provincial Foreign Nationals and Borders Brigade and the Ministerio de Trabajo, Migraciones y Seguridad Social (Ministry for Work, Immigration and Social Security, Spain), to find places in humanitarian reception centres for VL and 25 other applicants for international protection.

33 Finding that, on account of a lack of availability, only 12 of the 26 applicants could be placed in humanitarian reception centres, the Juzgado de Instrucción n° 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3of San Bartolomé de Tirajana) ordered, by way of a third decision, that the remaining 14 applicants, including VL, be placed in a detention centre for foreign nationals and that

their applications for international protection be processed at that detention centre.

34 The referring court states that, before VL was transferred to a detention centre, an official from the Provincial Foreign Nationals and Borders Brigade informed him that an appointment had been fixed for the interview relating to his application for international protection.

35 The lawyer acting for VL brought an appeal against the decision to detain VL, on the ground that that decision was incompatible with Directives 2013/32 and 2013/33.

36 In those circumstances, the Juzgado de Instrucción n° 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3 of San Bartolomé de Tirajana) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) The second subparagraph of Article 6(1) of Directive [2013/32] provides for the situation where applications for international protection are made before other authorities that are not competent to register them under national law, in which event Member States are to ensure that the registration takes place no later than six working days after the application is made.

Is the foregoing to be interpreted as meaning that examining magistrates who are competent to adjudicate on the detention or otherwise of foreign nationals under Spanish national law are to be regarded as one of those “other authorities”, which are not competent to register an application for international protection but before which applicants may nonetheless indicate their intention to make such an application?

(2) If an examining magistrate is deemed to be one of those authorities, is Article 6(1) of Directive [2013/32] to be interpreted as meaning that he or she must provide applicants with information on where and how to make an application for international protection, and, if such an application is made, transfer it to the body competent under national law to register and process it, as well as to the competent administrative body, so that the applicant can be granted the reception measures provided for in Article 17 of Directive [2013/33]?

(3) Are Article 26 of Directive [2013/32] and Article 8 of Directive [2013/33] to be interpreted as meaning that a third-country national may not be held in detention unless the conditions laid down in Article 8(3) of Directive [2013/33] are met, on the ground that the applicant is protected by the principle of non-refoulement from the point at which he indicates his intention [to apply for international protection]?’

The urgent procedure

37 The referring court requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure laid down in Article 107(1) of the Rules of Procedure.

38 In support of its request, it indicated, inter alia, that VL had been deprived of his liberty as a result of his being held in a detention centre and that he was the subject of a removal decision that could be enforced at any time.

39 In that connection, it should be observed, first, that the present reference for a preliminary ruling concerns the interpretation of Directives 2013/32 and 2013/33, which come within the scope of Title V, Part III of the FEU Treaty, relating to the area of freedom, security and justice; and, second, that the placing of a third-country national in a detention centre, be it during the procedure for examining his or her application for international protection or with a view to his or her removal, constitutes a measure

involving deprivation of liberty which is such as to justify the initiation of the urgent preliminary ruling procedure (see, to that effect, judgment of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraphs 31 and 35, and order of 5 July 2018, *C and Others*, C-269/18 PPU, EU:C:2018:544, paragraphs 35 and 37).

40 Furthermore, the criterion of urgency in seeking an answer from the Court as soon as possible must be assessed as it stood at the time when consideration was given to whether the reference should be dealt with under the urgent procedure (judgments of 17 March 2016, *Mirza,* C-695/15 PPU, EU:C:2016:188, paragraph 34, and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 99).

41 In the light of the foregoing, on 6 February 2020, the Fourth Chamber of the Court decided, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to grant the request made by the referring court that the present reference for a preliminary ruling be dealt with under the urgent procedure.

Consideration of the questions referred

Admissibility

42 In its written observations, the Spanish Government claimed that the Court did not have jurisdiction to deal with the present request for a preliminary ruling on the ground that, under Spanish law, the referring court has jurisdiction only to rule on the detention of a third-country national for the purposes of enforcing a refoulement decision and not to deal with applications for international protection. Under those circumstances, the questions referred by the referring court are unrelated to the subject matter of the dispute in the main proceedings.

43 It should be borne in mind that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling. It follows that the Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, most recently, judgment of 26 March 2020, *A. P. (Probation measures)*, C-2/19, EU:C:2020:237, paragraphs 25 and 26).

44 In that connection, the claim made by the Spanish Government that, under Spanish law, the referring court is not an authority competent to deal with applications for international protection does not preclude that court being regarded as an 'other authority' within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32. Consequently, the assessment of that argument is to be carried out as part of the substantive examination of the questions referred by the referring court, with the result that it cannot be found that those questions are unrelated to the subject matter of the dispute in the main proceedings.

45 It is therefore apparent that there is not enough force in that argument to rebut the presumption of

relevance attaching to questions referred by the national courts for a preliminary ruling. That is possible only in exceptional cases (judgment of 7 September 1999, *Beck and Bergdorf*, C-355/97, EU:C:1999:391, paragraph 22).

46 Furthermore, it should be pointed out that, subsequent to the submission of the present request for a preliminary ruling, the Court took cognisance of the enforcement of the removal decision against VL. Under those circumstances, the Court sent a request for clarification to the referring court, pursuant to Article 101(1) of the Rules of Procedure, in order to establish whether the main proceedings had become devoid of purpose.

47 In its reply, received at the Court on 23 April 2020, the Juzgado de Instrucción n° 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3 of San Bartolomé de Tirajana) stated, first, that on 21 January 2020, the day after the submission of its request for a preliminary ruling, it had received information suggesting that the decision to remove VL had been enforced and, second, that irrespective of that enforcement, the dispute in the main proceedings retained its purpose in so far as the referring court is required to give a ruling, on the basis of the Court's answers to the questions referred, on the lawfulness of its earlier decision which gave rise to the deprivation of liberty suffered by VL over the period from 14 December 2019 to 21 January 2020, the date of his removal, and that the outcome of the dispute in the main proceedings could potentially lead to VL bringing an action for compensation.

48 In that regard, it is apparent from both the wording and the scheme of Article 267 TFEU that the preliminary ruling procedure assumes, in particular, that a case is in fact pending before the national courts, since the preliminary ruling sought must be 'necessary' in order to enable the referring court to 'give judgment' in the case before it. The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (see, to that effect, judgment of 26 March 26 mars 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraphs 44 to 46 and the case-law cited).

49 A reference by a national court can be rejected only if it appears that the procedure laid down by Article 267 TFEU has been misused and a ruling from the Court elicited by means of a contrived dispute, or it is obvious that EU law cannot apply, either directly or indirectly, to the circumstances of the case referred to the Court (judgment of 28 November 2018, *Amt Azienda Trasporti e Mobilità and Others*, C-328/17, EU:C:2018:958, paragraph 34).

50 In the present case, the referring court has stated that an answer from the Court to the questions referred for a preliminary ruling remains necessary in order for it to rule on the lawfulness of the deprivation of liberty suffered by VL. Inasmuch as the procedure established by Article 267 TFEU is a tool for cooperation between the Court and national courts and tribunals, whereby the former provides the latter with the elements of interpretation of EU law that they require to resolve the dispute on which they are called upon to rule, such a statement on the part of the referring court is, in principle, binding on the Court (see, to that effect, judgment of 27 February 2014, *Pohotovost'*, C-470/12, EU:C:2014:101, paragraph 32), particularly where the exceptional circumstances referred to in the preceding paragraph are not made out.

51 It follows that the present request for a preliminary ruling is admissible.

The first question

52 By its first question, the referring court is asking, in essence, whether the second subparagraph of Article 6(1) of Directive 2013/32 must be interpreted as meaning that examining magistrates called

upon to adjudicate on the detention of a third-country national without a legal right of residence with a view to that person's refoulement are among the 'other authorities' referred to in that provision which are likely to receive applications for international protection but are not competent, under national law, to register such applications.

53 As is clear from the Court's settled case-law, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard not only to its wording but also to the context of the provision and the objective pursued by the legislation in question (judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 7 November 2019, *K.H.K. (Account preservation)*, C-555/18, EU:C:2019:937, paragraph 38).

54 In that connection, the first subparagraph of Article 6(1) of Directive 2013/32 provides that where a person makes an application for international protection to an authority competent under national law for registering such applications, the application is to be registered no later than three working days after the application is made. The second subparagraph of Article 6(1) of that directive states that if the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the purpose of registering them under national law, Member States are to ensure that the applications are registered no later than six working days after the application is made.

55 As is clear from the phrase 'authority competent under national law' in the first subparagraph of Article 6(1) of Directive 2013/32, it is for the Member States to designate the authority that is competent for registering applications for international protection.

56 However – as the Advocate General notes, in essence, in point 56 of his Opinion – by referring to the concept of 'other authorities which are likely to receive such applications [for international protection], but not competent for the registration under national law', the second subparagraph of Article 6(1) of that directive makes no reference to national law and therefore does not require Member States to designate those 'other authorities'.

57 In that regard, it is clearly apparent from the wording of that provision that the EU legislature intended to adopt a broad definition of those authorities which, although not competent to register applications for international protection, may nevertheless receive such applications. The choice of the adjective 'other' testifies to an intention to opt for an open definition of authorities which can receive applications for international protection.

58 The third subparagraph of Article 6(1) of Directive 2013/32 also confirms that broad definition by requiring all authorities that are only 'likely' to receive applications for international protection actually to receive such applications when they are made.

59 Accordingly, as it is plausible that a third-country national without a legal right of residence may make an application for international protection to a judicial authority that is called upon to adjudicate on a request for detention made by national authorities, in particular with a view to the refoulement of that third-country national, it must be concluded that the term 'other authorities', within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32, encompasses such a court or tribunal.

60 Furthermore, no valid argument can be made that the third subparagraph of Article 6(1) of Directive 2013/32 refers only to the police, border guards, immigration authorities and personnel of detention facilities as authorities likely to receive applications for international protection. As that list is

introduced by the phrase ‘for example’, it cannot be exhaustive.

61 Moreover, the fact that the second subparagraph of Article 6(1) of Directive 2013/32 gives no indication as to the judicial or administrative nature of those ‘other authorities’ specifically provides, as the Advocate General observes in point 58 of his Opinion, an indication as to the intention of the EU legislature, in choosing that term, to cover a variety of authorities, which may be judicial authorities, and not to confine itself solely to administrative authorities.

62 Lastly, that literal interpretation of Article 6(1) of Directive 2013/32 is supported by a contextual interpretation.

63 In fact, first, as the Advocate General observes in points 60 and 61 of his Opinion, it should be borne in mind that one of the objectives pursued by Directive 2013/32 is to guarantee effective access, namely access that is as straightforward as possible, to the procedure for granting international protection, as follows, inter alia, from recitals 8, 20, 25 and 26 of that directive. For the purposes of ensuring such access, Article 6(2) of that directive mentions the requirement that Member States ensure that any person who has made an application for international protection ‘has an effective opportunity to lodge it as soon as possible’.

64 Second, that interpretation also follows from recital 25 of that directive, which states that a third-country national without a legal right of residence should have sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure.

65 As the European Commission argues in its written submissions and as the Advocate General observes in point 64 of his Opinion, in a very rapid procedure, such as that at issue in the main proceedings, in which (i) the removal decision is made within 24 hours of the arrival of a third-country national without a legal right of residence and (ii) that third-country national is heard by an examining magistrate the following day, that hearing – which is conducted in the presence of a lawyer and an interpreter who speaks a language which the person concerned understands – is the appropriate time for an application for international protection to be made. That hearing may even, depending on the circumstances, be the first opportunity for such an application to be made.

66 In the present case, it is apparent from the indications given by the referring court that VL was not informed of the possibility of applying for international protection prior to the hearing before the examining magistrate. Consequently, the fact, referred to by the Spanish Government and the Ministerio Fiscal (Public Prosecutor’s Office, Spain), that the person concerned could make his application later at the detention centre provides no justification for the claim that that person was not entitled to make his application before the examining magistrate competent to adjudicate on his detention.

67 It follows that, in circumstances such as those in the main proceedings, to prohibit a judicial authority, such as the Juzgado de Instrucción n° 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3 of San Bartolomé de Tirajana), from receiving applications for international protection would be to hinder the achievement of the objective of guaranteeing effective access to the procedure for granting international protection, mentioned in paragraph 63 above.

68 The answer to the first question is therefore that the second subparagraph of Article 6(1) of Directive 2013/32 must be interpreted as meaning that examining magistrates called upon to adjudicate on the detention of a third-country national without a legal right of residence with a view to that person’s refoulement are among the ‘other authorities’ referred to in that provision which are likely to receive applications for international protection but are not competent, under national law, to register such

applications.

The second question

69 By its second question, the referring court is asking, in essence, whether the second and third subparagraphs of Article 6(1) of Directive 2013/32 must be interpreted as meaning that examining magistrates, as 'other authorities' within the meaning of that provision, must (i) inform third-country nationals without a legal right of residence as to the procedure for lodging an application for international protection, and (ii) where a third-country national has expressed his or her intention to make such an application, send the file to the competent authority for the purposes of registering that application, in order that that third-country national may benefit from the material reception conditions and health care provided for in Article 17 of Directive 2013/33.

70 With a view to answering the first part of the question, it should be recalled that, under the third subparagraph of Article 6(1) of Directive 2013/32, Member States are to ensure that the 'other authorities' referred to in that provision, which are likely to receive applications for international protection, have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

71 As it follows from the answer to the first question that examining magistrates called upon to adjudicate on the detention of a third-country national without a legal right of residence with a view to his or her refoulement are among the 'other authorities' referred to in the second subparagraph of Article 6(1) of Directive 2013/32, it also follows that examining magistrates are similarly required, pursuant to the third subparagraph of Article 6(1) of that directive, to provide applicants for international protection with information on the specific procedures for lodging an application for international protection.

72 That interpretation of the third subparagraph of Article 6(1) of Directive 2013/32 is supported by Article 6(2) of that directive, which requires Member States to ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible.

73 While those provisions bear witness to the EU legislature's intention to safeguard the effectiveness of the right of third-country nationals without a legal right of residence to apply for international protection, such effectiveness would be thwarted if, at each stage of the procedure, an 'other authority' within the meaning of the second and third subparagraphs of Article 6(1) of Directive 2013/32 were able to refrain from informing the third-country national concerned of the possibility of seeking international protection on the pretext that that person has most probably been given that information before or is likely to receive it at a later stage.

74 Thus, by informing a third-country national without a legal right of residence of the specific procedures for lodging an application for international protection, an examining magistrate called upon to adjudicate on the detention of that third-country national with a view to his or her refoulement is acting, as required under recital 18 of Directive 2013/32, in the interest both of the Member States and applicants for international protection in a decision being made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination of those applications.

75 The Spanish Government takes the view, however, that an 'other authority' within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32 may not, on its own initiative, inform a third-country national without a legal right of residence of the possibility of applying for international protection.

76 In that connection, it should be observed that recital 28 of that directive states that, in order to facilitate access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility of applying for international protection. Article 8(1) of Directive 2013/32 requires, where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States are to provide them with information on the possibility of doing so.

77 As the third subparagraph of Article 6(1) of Directive 2013/32 thus provides that the 'other authorities which are likely to receive applications for international protection' and which are involved both before and after the examining magistrate must be able to provide applicants with information on the specific procedures for lodging an application for international protection, it must be found that the obligation to make information available to third-country nationals without a legal right of residence on the possibility of applying for international protection is also incumbent on examining magistrates, such as the examining magistrate at issue in the main proceedings, as it is on any other authorities likely to receive such applications.

78 Consequently, examining magistrates called upon to adjudicate on the detention of a third-country national without a legal right of residence with a view to that person's refoulement is acting in accordance with the requirements under the second and third subparagraphs of Article 6(1) and Article 8(1) of Directive 2013/32 where, on their own initiative, they inform third-country nationals of their right to apply for international protection.

79 With a view to answering the second part of the question, it is important to bear in mind that recital 27 of Directive 2013/32 states, inter alia, that third-country nationals who have expressed a wish to apply for international protection should comply with the obligations, and benefit from the rights, under that directive and Directive 2013/33. To that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.

80 If an application for international protection has been made before 'other authorities', within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32, the latter provision requires that the Member State concerned ensure that the application is registered no later than six working days after the application is made.

81 In order to comply with that particularly short time limit, it is imperative, particularly in order to guarantee the efficiency and speed of the procedure for examining applications for international protection, that such an authority transfer the file in its possession to the authority which is competent under national law to register the application.

82 In the absence of such a step, the very aim of Directive 2013/32, in particular that of Article 6(1) thereof, which consists in guaranteeing effective, simple and straightforward access to the international protection procedure, would be seriously undermined, as the Advocate General observes in point 72 of his Opinion.

83 The answer to the second question is therefore that the second and third subparagraphs of Article 6(1) of Directive 2013/32 must be interpreted as meaning that examining magistrates, as 'other authorities' within the meaning of that provision, must, first, inform third-country nationals without a legal right of residence of the procedure for lodging an application for international protection and, second, where a third-country national has expressed his or her wish to make such an application, send the file to the competent authority for the purposes of registering that application, in order that that third-country national may benefit from the material reception conditions and health care provided for in Article 17

of Directive 2013/33.

The third question

84 By its third question, the referring court is asking, in essence, whether Article 26 of Directive 2013/32 and Article 8 of Directive 2013/33 must be interpreted as meaning that a third-country national without a legal right of residence who has expressed his or her wish to apply for international protection before an 'other authority', within the meaning the second subparagraph of Article 6(1) of Directive 2013/32, may be detained only on the grounds laid down in Article 8(3) of Directive 2013/33.

85 In that connection, it should be observed that both Article 26(1) of Directive 2013/32 and Article 8(1) of Directive 2013/33 provide that Member States are not to hold a person in detention for the sole reason that he or she is an applicant for international protection.

86 It is therefore necessary to determine, in the first place, whether a third-country national with no legal right of residence who has expressed his or her wish to apply for international protection is an applicant for international protection for the purposes of Article 2(c) of Directive 2013/32.

87 From the outset, it should be noted, as the Advocate General observed in point 78 of his Opinion, that Article 6 of Directive 2013/32 makes a distinction between making and lodging an application for international protection.

88 In that regard, it is clear from the wording of Directive 2013/32 that it repeatedly associates the status of applicant for international protection with the fact of having made such an application. Article 2(c) of that directive defines 'applicant' as meaning 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. Similarly, Article 2(b) of the directive defines 'application' as the request 'made' by a third-country national or a stateless person for protection from a Member State. The same applies to Article 2(b) of Directive 2013/33, which defines the 'applicant' as meaning 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, while Article 2(a) of that directive defines 'application for international protection' or 'application' as a request 'made' by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status.

89 That broad definition of the term 'applicant for international protection' is also reflected in the terms employed in Article 3(1) of Directive 2013/32, from which it follows that that directive applies to all applications for international protection 'made' in the territory of the Member States, as well as the wording of Article 3(1) of Directive 2013/33, from which it may be inferred that that directive applies to all third-country nationals and stateless persons who make an application for international protection.

90 Moreover, the first and second subparagraphs of Article 6(1) of Directive 2013/32 require that all Member States register applications for international protection at the latest three or six working days after such an application is 'made', depending on whether the application is made to the authority competent under national law to register that application or to other authorities which are likely to receive such application but are not competent under national law to register the application. Article 6(2) of that directive also requires that Member States ensure that a person who has 'made' an application for international protection has an effective opportunity to 'lodge' it as soon as possible.

91 Lastly, it is important to note again that recital 27 of that directive states that third-country nationals and stateless persons who have expressed a wish to apply for international protection are applicants for

international protection, and that they should therefore comply with the obligations, and benefit from the rights, under Directives 2013/32 and 2013/33. The second sentence of that recital further states that, to that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.

92 It follows from all of the foregoing that a third-country national acquires the status of an applicant for international protection, within the meaning of Article 2(c) of Directive 2013/32, from the point when he or she 'makes' such an application.

93 Whilst it is for the Member State concerned to register the application for international protection, pursuant to the first and second subparagraphs of Article 6(1) of that directive, and the lodging of that application requires, in principle, that the applicant for international protection complete a form provided for that purpose, in accordance with Article 6(3) and (4) of that directive, the act of 'making' an application for international protection does not entail any administrative formalities, as the Advocate General observes in point 82 of his Opinion, since those formalities must be observed when the application is 'lodged'.

94 It follows, first, that acquisition of the status of applicant for international protection cannot be subject either to the registration or to the lodging of the application and, second, that the fact that a third-country national has expressed his or her wish to apply for international protection before 'other authorities' within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32, such as an examining magistrate, is sufficient to confer the status of applicant for international protection on that person and, accordingly, trigger the time limit of six working days within which the Member State concerned must register the application.

95 It is therefore necessary, in the second place, to assess whether an applicant for international protection can be held in detention on grounds other than those laid down in Article 8(3) of Directive 2013/33.

96 From the outset, it must be noted that Article 2(1) of Directive 2008/115, read in conjunction with recital 9 thereof, must be interpreted as meaning that that directive does not apply to a third-country national who has lodged an application for international protection, within the meaning of Directive 2013/32, during the period from the lodging of that application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known (see, by analogy, judgment of 30 May 2013, *Arslan*, C-534/11, EU:C:2013:343, paragraph 49).

97 Moreover, the protection inherent in the right to an effective remedy and in the principle of non-refoulement must be guaranteed by affording the applicant for international protection the right to an effective remedy which has automatic suspensory effect, before at least one judicial body, against a return decision or a possible removal decision, within the meaning of Directive 2008/115. It is for the Member States to ensure the full effectiveness of an appeal against a decision rejecting the application for international protection by suspending all the effects of the return decision during the period prescribed for bringing the appeal and, if such an appeal is brought, until resolution of the appeal (see, to that effect, judgment of 26 September 2018, *Belastingdienst/Toeslagen (Suspensory effect of the appeal)*, C-175/17, EU:C:2018:776, paragraph 33 and the case-law cited).

98 Given that a third-country national who has expressed, before 'other authorities', within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32, his or her wish to apply for international protection enjoys the status of applicant for international protection, as found in paragraph 94 above, that person's situation cannot fall within the scope of Directive 2008/115 at that stage.

99 It follows in the present case, as the Advocate General notes in paragraph 106 of his Opinion, that although the conditions for VL's detention were governed by Directive 2008/115 up to the date on which he made his application for international protection, Article 26(1) of Directive 2013/32 and Article 8(1) of Directive 2013/33 became applicable to him as of that date (see, by analogy, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraphs 210 and 213).

100 It follows from a combined reading of the two latter provisions that the Member States cannot hold a person in detention on the sole ground that he or she is an applicant for international protection, and that the grounds for and conditions of detention, together with the guarantees given to applicants held in detention, must comply with Directive 2013/33.

101 In that connection, Articles 8 and 9 of that directive, read in conjunction with recitals 15 and 20 thereof, place significant limitations on the Member States' power to hold a person in detention (see, to that effect, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraphs 61 and 62, and of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraphs 44 and 45).

102 Thus, under Article 8(2) of that directive, an applicant for international protection may be held in detention only where, following an assessment carried out on a case-by-case basis, that is necessary and where other less coercive measures cannot be applied effectively. It follows that national authorities may hold an applicant for international protection in detention only after having determined, on the basis of an individual assessment, whether such detention is proportionate to the aims pursued by detention (judgments of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 48, and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 258).

103 Admittedly, in accordance with the second subparagraph of Article 8(3) of Directive 2013/33, the grounds for detention are to be laid down in national law.

104 Nevertheless, it follows from the Court's settled case-law that the first subparagraph of Article 8(3) of Directive 2013/33 lists exhaustively the various grounds which may justify recourse to detention and that each of those grounds meets a specific need and is self-standing (judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 59; of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 42; and of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, point 250).

105 Furthermore, 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 (judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 56, and of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 40).

106 The ground put forward in the case in the main proceedings to justify VL's detention, namely the fact that it was not possible to find him a place in a humanitarian reception centre, does not correspond to any of the six grounds for detention referred to in the first subparagraph of Article 8(3) of Directive 2013/33.

107 Such a ground for detention is, as a consequence, contrary to the requirements of Article 8(1) and (3) of Directive 2013/33, in that it infringes the essential content of the material reception conditions which an applicant for international protection must enjoy during the examination of his or her application for international protection, and does not comply with either the principles or the aims of that directive

(see, by analogy, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 252).

108 Admittedly, Article 18(9)(b) of Directive 2013/33 provides that in duly justified cases, Member States may exceptionally set modalities for material reception conditions which differ from those provided for in this Article, for a reasonable period, which is to be as short as possible, when, in particular, housing capacities normally available are temporarily exhausted. However, detention, as a measure involving deprivation of liberty, cannot be regarded as being a different material reception condition, within the meaning of that provision.

109 Furthermore, Article 8(3)(d) of Directive 2013/33 allows the Member States to detain an applicant for international protection where that person is subject to a return procedure under Directive 2008/115 in order to prepare the return and/or carry out the removal process, only where the Member State concerned can substantiate on the basis of objective criteria, including that the applicant has already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision.

110 As regards, in the first place, the opportunity to access the asylum procedure, in the present case, as the Advocate General observes in point 109 of his Opinion, it is clear from the statements by the referring court – which, in that respect, are based on the record of the detention decision and of the information on rights and essential aspects of remedies against the detention decision – that VL had not, until his hearing before the examining magistrate, been informed of the possibility of making an application for international protection. That hearing therefore appears to have been the sole opportunity for VL to apply for international protection before being sent to a detention centre for foreign nationals. It is therefore irrelevant, as noted in paragraph 66 above, that, as the Spanish Government claims, that person may have had the later opportunity to make that application at that centre.

111 In the second place, it is not apparent from either the order for reference or the information before the Court that there were, in the present case, reasonable grounds to believe that the applicant made the application for international protection merely in order to delay or frustrate the enforcement of the return decision.

112 Lastly, it should be borne in mind that Article 9(1) of Directive 2013/33 provides that an applicant for international protection 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 (judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 62).

113 Accordingly, the answer to the third question is that Article 26 of Directive 2013/32 and Article 8 of Directive 2013/33 must be interpreted as meaning that a third-country national with no legal right of residence who has expressed his or her wish to apply for international protection before 'other authorities', within the meaning of the second subparagraph of Directive 2013/32, cannot be detained on grounds other than those laid down in Article 8(3) of Directive 2013/33.

Costs

114 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:

1. **The second subparagraph of Article 6(1) 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 must be interpreted as meaning that examining magistrates called upon to adjudicate on the detention of a third-country national without a legal right of residence with a view to that person's refoulement are among the 'other authorities' referred to in that provision, which are likely to receive applications for international protection but are not competent, under national law, to register such applications.**

2. **The second and third subparagraphs of Article 6(1) of Directive 2013/32 must be interpreted as meaning that examining magistrates, as 'other authorities' within the meaning of that provision, must, first, inform third-country nationals without a legal right of residence of the procedure for lodging an application for international protection and, second, where a third-country national has expressed his or her wish to make such an application, send the file to the competent authority for the purposes of registering that application, in order that that third-country national may benefit from the material reception conditions and health care provided for in Article 17 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.**

3. **Article 26 of Directive 2013/32 and Article 8 of Directive 2013/33 must be interpreted as meaning that a third-country national without a legal right of residence who has expressed his or her wish to apply for international protection before 'other authorities', within the meaning of the second subparagraph of Directive 2013/32, cannot be detained on grounds other than those laid down in Article 8(3) of Directive 2013/33.**

[Signatures]

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* Language of the case: Spanish.