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*Commissaire Général aux Réfugiés et aux Apatrides:*  
Preserving Refugee Rights Under the Geneva Convention

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I. OVERVIEW

XXX is a third-country national, residing in Belgium since February of 2007.<sup>1</sup> In December of 2010, XXX was sentenced to twenty-five years of prison by the Brussels Assize Court in Belgium for aggravated theft and intentional homicide.<sup>2</sup> This conviction led the Commissioner General of Belgium to revoke XXX’s refugee status in May of 2016.<sup>3</sup> XXX appealed this decision in the Council for asylum and immigration proceedings in Belgium, but it dismissed the appeal, finding that XXX posed a danger to Belgium, stemming from his conviction, which was the basis of the revocation of his refugee status.<sup>4</sup> Furthermore, the court held that the burden was on XXX, rather than the Commissioner General to demonstrate that he did not constitute a genuine danger to the community of Belgium.<sup>5</sup> XXX brought an appeal in September of 2019 on this point of law before the Belgian Council of State.<sup>6</sup> The Council stayed the proceedings and referred this case to the Court of Justice.<sup>7</sup> On appeal, XXX argues that the burden is on the Commissioner General to prove that there is a genuine, present, and sufficiently serious danger to the

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1. Case C-8/22, XXX v. Commissaire general aux réfugiés et aux apatrides, 2023 E.C.R. 00000, ¶ 19 (July 6, 2023).

2. *Id.* at ¶ 20.

3. *Id.* at ¶ 21.

4. *Id.* at ¶¶ 22-23.

5. *Id.* at ¶ 23.

6. *Id.* at ¶ 22.

7. *Id.* at ¶¶ 24-26.

community forming the basis of the revocation of his refugee status, and that a proportionality test should be conducted in order to determine whether such a danger would constitute a justification for withdrawal of his status.<sup>8</sup>

The issues of law on appeal before the Court of Justice can be summarized as the following: whether Article 14(4)(b) of EU Directive 2011/95 must be interpreted as providing that (1) a third-country national's danger to the community is established by the mere fact that they have been convicted by final judgement of a particularly serious crime; (2) the burden is on the Member State to show that the third-country national continues to pose a potential threat to the community; and (3) the potential danger the third-country national poses to the Member State must be weighed in proportion to the consequences of the revocation of the refugee's status.<sup>9</sup> The Court of Justice *held* that: (1) a third-country national must have been convicted of a final judgement and it must be established that they constitute a danger to the community in order for their refugee status to be revoked; (2) the Commissioner General must prove that the convicted refugee poses a genuine, present, and sufficiently serious danger to the community; and (3) if the above conditions are satisfied, the Member State must weigh the proportionality of any consequences resulting from removing refugee status from the third-country national against the danger they present to the Member community.<sup>10</sup> Case C-8/22, *XXX v. Commissaire general aux réfugiés e aux apatrides*, 2023 E.C.R. 00000 (July 6, 2023).

## II. BACKGROUND

### A. *International Law*

The original Geneva Convention, as updated after World War II, was established in order to protect the neutral status of medical services and volunteers in wars, and now forms the body of International Law, also known as the Humanitarian Law of Armed Conflicts.<sup>11</sup> This, and later Conventions, provide the minimum protections for vulnerable populations such as civilians, prisoners of war, soldiers, and other victims of armed conflict.<sup>12</sup> The 1951 Geneva Convention relating to the Status

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8. *Id.* at ¶ 25.

9. *Id.* at ¶ 26.

10. *Id.* at ¶¶ 45, 60, and 71.

11. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces, Aug. 12, 1949, 75 U.N.T.S. 31.

12. *Id.*

of Refugees is grounded in the Universal Declaration of Human rights of 1948, which recognizes the right of people seeking asylum from persecution in their home nations.<sup>13</sup> This protection for refugees entered into effect in 1994 and has since been supplemented by other refugee and subsidiary protection protocols.<sup>14</sup>

The 1951 Convention provides for the protection of refugees against discrimination, penalization, and unlawful expulsion from their safe haven country, as well as lays down minimum standards for the treatment of refugees, balanced against the rights of the State in which they are residing.<sup>15</sup> Article 33 of the Convention, which provides for prohibition of expulsion of refugees (“refoulement”), highlights the humanitarian idea that came from the original Geneva Convention that no Member State may expel a refugee whose wellbeing upon expulsion would be threatened on account of their race, religion, nationality, or social or political membership.<sup>16</sup> However, Article 33 also considers the interest of the Member State in keeping a safe community and provides that reasonable grounds for expulsion may be established if “the refugee, having been convicted by final judgement of a particularly serious crime, constitutes a danger to the community of that country.”<sup>17</sup> A refugee is regarded as a third-country national seeking asylum in another country, but the Convention does not apply to refugees who have committed war crimes, crimes against humanity, or serious non-political crimes.<sup>18</sup> All countries that entered into the Convention must comply with its substantive provisions regardless of their own laws.<sup>19</sup>

### B. *European Law*

European Union (EU) Directive 2004/38, also referred to as The Free Movement of Persons, was enacted by the European Parliament in 2004, to provide for the rights of EU citizens and their family members to move and reside freely within the EU.<sup>20</sup> This directive also provides for the rights of third-country nationals residing as refugees within a Member

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13. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

14. Geneva Convention Relating to the Status of Refugees, April 22, 1954, 189 U.N.T.S. 137 [hereinafter 1951 Convention]; Case C-8/22, 2023 E.C.R. ¶ 3.

15. Geneva Convention, *supra* note 11.

16. *Id.* art. 33.

17. *Id.* art. 33, §2.

18. *Id.* art. I, §§ A, F.

19. *Id.* art. I, § B.

20. Council Directive 2004/38, 2004 O. J. (L 158) 78-80 (EC).

State.<sup>21</sup> Chapter VI of the directive states the restrictions on right of entry and residence for both citizens and non-citizens, balanced against the interest of the Member State in maintaining public policy, security, and health.<sup>22</sup> Article 27 introduces the concept that any measures taken on grounds of public policy or security against a third-country national residing in a Member State shall comply with a “principle of proportionality,” such that said measures must be proportional to the individual conduct of the refugee.<sup>23</sup> In particular, an individual’s previous criminal convictions alone cannot constitute grounds for taking measures against the individual. Furthermore, a refugee’s conduct must represent a “genuine, present, and sufficiently serious threat affecting one of the fundamental interests of society” in order to sanction the individual on such grounds.<sup>24</sup>

Seven years after Directive 2004/38, the Parliament enacted EU Directive 2011/95, which revised and added to the principles and law of Directive 2004/38 by providing uniform standards for the qualification of third-country nationals as beneficiaries of international protection.<sup>25</sup> This directive was enacted to establish uniform principles to guide the Member States in their identification of third-country nationals seeking refugee status under the Geneva Convention, as well as to consolidate the case law of the Court of Justice into EU legislation.<sup>26</sup> The main objective of this directive, as stated by Recital 12, is not only to provide uniform criteria for Member States, but also to ensure a minimum level of benefits are available to third-country nationals in need of international protection.<sup>27</sup> In this way, Directive 2011/95 broadens the benefits and subsidiary protections available to asylum-seekers in Directive 2004/38.<sup>28</sup>

Chapter III of Directive 2011/95 provides the qualifications for becoming a refugee in a Member State.<sup>29</sup> This includes consideration of whether there are serious reasons for the Member State to believe that the individual has committed a war crime, crime against humanity, or serious non-political crime prior to their admission to the Member State as a refugee.<sup>30</sup> Similarly, Chapter VI provides for the newly added subsidiary

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21. *Id.*

22. *Id.* arts. 27-33.

23. *Id.* art. 27.

24. *Id.* art. 27, § 2.

25. Council Directive 2011/95, 2011 O.J. (L 337) 9-12 (EU).

26. *Id.*

27. *Id.*

28. *Id.*; Directive 2004/38, *supra* note 20.

29. Directive 2011/95, *supra* note 25, ch. III.

30. *Id.*, art. 12, § 2(b).

protection status for refugees, which includes protection from expulsion from their safe haven country.<sup>31</sup> Article 21 states that a refugee may not be expelled unless the individual “having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.”<sup>32</sup> The rest of the directive provides other rights for refugees, such as maintaining family unity, residence permits, travel documents, and access to employment and education.<sup>33</sup>

Finally, in 2013, the European Parliament enacted Directive 2013/32 on common procedures for granting and withdrawing international protection.<sup>34</sup> The Directive was enacted after comprehensively assessing the needs of third-country national applicants under Directive 2011/95/EU and determining that it was necessary for the Parliament to further develop the standards for Member States to grant and withdraw protection status to asylum-seekers.<sup>35</sup> The directive governs the procedural rules for a Member State to grant refugee status, as well as the minimal guarantees of protection to which a refugee is entitled.<sup>36</sup>

### C. Case Law

The Court of Justice’s settled case law holds that the provisions of Article 14(4) of Directive 2011/95 regarding revocation or granting of refugee status to a third-country national correspond to those regarding expulsion in Article 21(2) of the same directive, as well as expulsion in Article 33(2) of Geneva Convention 1951.<sup>37</sup> Furthermore, the Court has held that Article 21(2)(b) of Directive 2011/95 is subject to two separate conditions being satisfied, such that a third-country national may not be expelled from the Member State unless they are both convicted by final judgement of a particularly serious crime and the Member State proves that they constitute a danger to its community.<sup>38</sup> Even if both conditions are satisfied, expulsion is only one option the Member State has to remedy the situation, whereas the consequences of expulsion may be drastic for

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31. *Id.*, ch. VI.

32. *Id.*, art. 21, § 2(b).

33. *Id.*, arts. 23-27.

34. Council Directive 2013/32, 2013 O.J. (L 180) 60-65 (EU).

35. *Id.*

36. *Id.*

37. Joined Cases C-391/16, C-77/17 and C-78/17, *M v Ministerstvo vnitra and X, X v. Commissaire general aux réfugiés et aux apatrides*, EU:C:2019:403, ¶ 93 (May 14, 2019).

38. Case C-373/13, *H.T. v. Land Baden-Württemberg*, EU:C:2015:413, ¶ 72 (June 24, 2015).

the third-country national, and the State may opt for other less rigorous options first.<sup>39</sup>

In determining what constitutes a danger to the community of the Member State, it is clear from the settled case law of the Court of Justice that a Union Citizen who has exercised their right to free movement can be regarded as posing a threat to public policy only if their conduct represents a genuine, present, and sufficiently serious threat to a fundamental interest of the society of the Member State concerned.<sup>40</sup> Thus, a Member State may refuse to issue a residence permit only where the third-country national constitutes a genuine, present, and sufficiently serious threat to one of the fundamental interests of its society.<sup>41</sup> When assessing whether a refugee poses a genuine, present, and sufficiently serious threat to one of the fundamental interests of the society of the Member State, the Court of Justice's settled case law holds that the Member State must undergo an assessment of all the circumstances of the case concerned and state all of the reasons on which their decision is based.<sup>42</sup> More importantly, the case law states that whether the refugee poses such a danger cannot be determined solely from the fact that they have been convicted of any crimes.<sup>43</sup>

Finally, the case law provides that if the Member State, undergoing all of the above considerations, establishes both conditions referred to in Article 14(4)(b) of Directive 2011/95 and decides to exercise the option of expulsion, it must apply the principle of proportionality.<sup>44</sup> This principle is used to determine whether a measure is appropriate to ensure the achievement of an objective and does not go beyond what is necessary to attain it.<sup>45</sup> Here, the principle refers to the idea that when exercising the option of expulsion, a Member State must weigh the threat that the third-country national represents to the Member State against the rights to which a refugee is entitled and potential consequences they may face upon

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39. *Id.*

40. Joined Cases C-381/18 and C-382/18, G.S., V.G. v. Staatssecretaris van Justitie en Veiligheid, EU:C:2019:1072, ¶ 53 (Dec. 12, 2019).

41. *Id.*; H.T., EU:C:2015:413, ¶¶ 77-79.

42. Case C-159/21, GM v. Országos Idegenrendészeti Főigazgatóság, EU:C:2022:708, ¶¶ 72, 80, and 92 (Sept. 22, 2022).

43. Case C-304/14, Secretary of State for the Home Department v. CS, EU:C:2016:674, ¶ 41 (Sept. 13, 2016).

44. Case C-402/2, Staatssecretaris van Justitie en Veiligheid v S and E, C v. Staatssecretaris van Justitie en Veiligheid, EU:C:2023:77, ¶ 72 (Feb. 9, 2023).

45. Joined Cases C-331/16 and C-366/16, K. v. Staatssecretaris van Ceiligheid en Justitie and H.F. v. Belgische Staat, EU:C:2018:296, ¶¶ 61-62 (May 2, 2018).

expulsion.<sup>46</sup> These consequences include consideration that a refugee must be granted, at a minimum, the rights enshrined in the 1951 Geneva Convention, which are referred to in Article 14(6) of Directive 2011/95.<sup>47</sup>

### III. COURT'S DECISION

In the noted case, the Court of Justice did extensive statutory analysis of the 1951 Geneva Convention, EU Directives, and Court of Justice case law in order to balance the rights of the third-country national as a refugee in the Member State, and the Member State's interest in keeping a safe community. First, the Court addressed whether Article 14(4)(b) of Directive 2011/95 should be interpreted to mean that the mere fact that a third-country national is convicted of a particularly serious crime establishes that they pose a significant danger to the community.<sup>48</sup> In analyzing the text of Article 14(4)(b), the Court points out that if the final conviction of a particularly serious crime were enough to justify revocation of refugee status, the legislators would not have written in the provision regarding whether the third-party national poses a danger to the community of the Member State.<sup>49</sup> While Article 12(2)(b) of the same directive allows for a Member State to refuse to grant refugee status to a third-country national who has committed a serious crime without showing that they represent a danger to the community, Article 14(4)(a) states that a Member State may revoke refugee status from a third-country national if they show danger to the community without a final conviction.<sup>50</sup> Since the considerations of an individual's final conviction and their potentially dangerous conduct are used to come to different outcomes in different Articles, the Court states that they must have different meanings and therefore must be considered as two separate criteria in Article 14(4)(b).<sup>51</sup>

The Court has previously held that Article 14(4) of the EU directive corresponds directly to Article 33(2) of the Geneva Convention, which also details guidelines for the revocation of refugee status.<sup>52</sup> As Article 33(2) requires both conditions of the existence of a conviction by final judgement of a serious crime and an individual's danger to the community to be considered separately, Article 14(4)(b) should be interpreted

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46. Staatssecretaris, EU:C:2023:77, ¶¶ 72-73.

47. M, EU:C:2019:403, ¶ 107.

48. XXX, 2023 E.C.R. 00000, ¶ 27.

49. *Id.* at ¶¶ 30-31.

50. *Id.*

51. *Id.* at ¶¶ 34 and 40.

52. *Id.* at ¶ 35 (citing M, EU:C:2019:403, at ¶ 93).

consistently.<sup>53</sup> The Court reasons further that this statutory interpretation must be viewed in light of the main objective of Directive 2011/95, which is to provide for the identification of those in need of international protection in Member States.<sup>54</sup> Therefore, it follows that 14(4)(b) should be interpreted to provide that the Member State must establish that the third-country national was both convicted of a serious crime and poses a sufficient danger to the Member State community for their refugee status to be revoked.<sup>55</sup>

Next, the Court considered the second and third questions together by asking whether Article 14(4)(b) must be interpreted to mean that the Member State has the burden to prove that the refugee convicted of a serious crime represents a present, genuine, and serious danger to the community; and, if so, whether revocation of their refugee status is a measure proportionate to the danger they pose.<sup>56</sup> In doing so, the Court sought to define how to determine whether a refugee poses a “danger to the community” of a Member State.<sup>57</sup> Settled case law holds that a citizen can pose a threat to public order only if their individual conduct represents a genuine, present, and sufficiently serious threat to one of the fundamental interests of society.<sup>58</sup> This definition may be used within the context of Article 14(4)(b) in regard to refugees, but it first must be understood in light of the rest of Directive 2011/95.<sup>59</sup> The Court pointed out that Article 27(2) of the same directive expressly requires that the conduct of a third-party national represents a threat which affects one of the fundamental interests of society, and similarly, Articles 23(4), 24, and 25 refer to the concept of “public order,” unlike Article 14(4)(b).<sup>60</sup> However, the Court found that just because Article 14(4)(b) contains the expression “danger to the community” rather than “public order” does not mean that it conveys a different definition of “public danger” than the case law.<sup>61</sup>

The Court then highlighted the fact that Article 21(2), which governs expulsion, and Article 14(4) have the same provision regarding revocation or expulsion of a refugee when they have been convicted by final judgement of a particularly serious crime and constitute a danger to

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53. *Id.* at ¶ 36.

54. *Id.* at ¶ 42.

55. *Id.* at ¶ 45.

56. *Id.* at ¶ 46.

57. *Id.* at ¶¶ 48-52.

58. *Id.* at ¶ 48 (citing G.S., EU:C:2019:1072, at ¶ 53).

59. *Id.*

60. *Id.* at ¶¶ 51 and 54.

61. *Id.* at ¶ 56.



the community of the Member State.<sup>62</sup> Under the Court's case law, these two articles are interpreted consistently, and both consider the present danger that a third-country national poses to the Member State, whereas Article 12(2)(b) considers the danger that a third country national may pose to the Member State before being admitted to a refugee.<sup>63</sup> Therefore, along with the objective of Directive 2011/95, the Court stated that it is clear that Article 14(4)(b) should be interpreted strictly to mean that revocation of refugee status may only be adopted when the refugee poses a genuine, present, and sufficiently serious threat to one of the fundamental interests of the society of the Member State.<sup>64</sup>

Finally, the Court turned its attention to the third consideration regarding the proportionality factor. The Court held that under its current case law, when assessing the threat of danger of a third country national, the totality of the circumstances must always be assessed.<sup>65</sup> Furthermore, Article 45(3) of Directive 2013/32, which lays out common procedures for granting and withdrawing international protection, states that when deciding to revoke refugee status, a Court must provide the reasons in fact and law on which that decision is based and include an assessment of all the circumstances and consequences of its decision.<sup>66</sup> Since the Member State must undertake this procedure, it follows that it is their burden to prove that they may revoke the refugee's status.<sup>67</sup> The Court also noted that since it has already been established that a final conviction on its own does not mean that a refugee constitutes a danger to the Member State, then the longer a Member State waits after the conviction to take its revocation into consideration, the more circumstances they have to take into account regarding the danger the refugee currently poses.<sup>68</sup> In accordance with the current case law, a Member State must weigh the threat that a third-country national presents to its society against the rights guaranteed to that refugee.<sup>69</sup> This includes considering whether it is possible for the Member State to adopt any other measures that are less prejudicial to the rights guaranteed to refugees for protection.<sup>70</sup> Finally,

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62. *Id.*

63. *Id.* at ¶ 58 (citing *Bunderepublik*, EU:C:2010:661 at ¶101).

64. *Id.* at ¶¶ 59-60.

65. *Id.* at ¶ 61 (citing *GM*, EU:C:2022:708, at ¶¶ 72 and 92).

66. *Id.* at ¶ 62 (citing *GM*, EU:C:2022:708, at ¶ 80).

67. *Id.* at ¶ 61.

68. *Id.* at ¶ 64.

69. *Id.* at ¶ 67 (citing *Staatssecretaris*, EU:C:2023:77, at ¶ 72 and *K*, EU:C:2018:296, at ¶ 62).

70. *Id.* at ¶ 68 (citing *K*, EU:C:2018:296, at ¶¶ 63 and 64).

the Court highlighted the importance of, at a minimum, taking into account the rights enshrined within the Geneva Convention (69-70).<sup>71</sup>

#### IV. ANALYSIS

The Court of Justice built upon its prior case law and affirmed the values within the 1951 Geneva Convention and most recent EU Directives on refugee rights by not only holding that the burden is on a Member State to prove beyond the final conviction of a third-country national the danger that they pose to the community, but also that if the revocation option is satisfied, the State must consider any consequences of removing refugee status.<sup>72</sup> This holding is incredibly important, especially as a rise in asylum-seekers in recent years has led to an increase in extreme far-right political groups, contributing to a dangerous global climate of xenophobia.<sup>73</sup> Although a country may certainly have strong interests in protecting its citizens, it is important to remember that asylum-seekers are some of the most vulnerable populations and face discrimination, trauma, and significant barriers to their wellbeing, not only from the nation in which they are seeking asylum, but also from the fact that they are forced to flee their home country in order to survive.<sup>74</sup> For the Court of Justice to highlight and reaffirm the importance of the 1951 Convention on the Status of Refugees is to bring to light this important and modern humanitarian issue.

The 1951 Convention provides that except for when a refugee poses a serious threat to the community of a Member State, no State may expel a refugee who, upon expulsion, would be threatened on account of their race, religion, nationality, or social or political membership.<sup>75</sup> This principle is reaffirmed in Directive 2004/38, which not only covers the free movement of Member State citizens, but also the requirements for entry and membership of refugees residing in those States.<sup>76</sup> The European Parliament wrote the principle of proportionality into EU law in this directive, a direct reflection of the objectives of the 1951 Convention.<sup>77</sup> Seven years later the EU enacted Directive 2011/95 and

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71. *Id.* at ¶¶ 69-70 (citing M, EU:C:2019:403, at ¶¶ 99 and 107).

72. *Id.* at ¶¶ 45, 60, and 71.

73. David Neil and Michelle Peterie, *Xenophobia Towards Asylum Seekers: A Survey of Social Theories*, J. OF SOCIO. (2019), <https://journals.sagepub.com/doi/pdf/10.1177/1440783319882526>.

74. *Id.*

75. Geneva Convention, *supra* note 11, art. 33.

76. Directive 2004/38, *supra* note 20.

77. *Id.*; Geneva Convention, *supra* note 11.

added Article 21 regarding “non-refoulement,” the idea that expulsion of a refugee is to be taken extremely seriously and considered as the last possible disciplinary circumstance.<sup>78</sup> Much of this case rests on the interpretation of Article 21 and its connection to the 1951 Convention, due to the circumstances of the revocation of XXX’s status. Although the Court did not state it directly, it is plausible that they took into account the fact that the Parliament added Article 21 governing expulsion to the 2011 Directive, as an indication that they intended to protect refugees from circumstances such as XXX’s. Since Articles 14 and 21 of that Directive are interpreted together they form the basis of the Court’s statutory analysis.<sup>79</sup>

While the Court tended to focus its statutory analysis on inquiries 2 and 3 (the conditions a Member State must prove in order to have the option of expulsion and the subsequent proportionality test it must undergo in order to exercise the expulsion) these factors seem fairly clear from EU statutes and settled case law.<sup>80</sup> In fact, the 1951 Convention and EU Directive 2004/38 explicitly provide that a third-country national’s final conviction cannot be the sole basis of the revocation of their status, and the Member State must prove that an individual poses a danger to the community.<sup>81</sup> The inquiry of the Court’s first holding instead is disposed of fairly quickly, as it is rather clear to the Court from a comparison between Directive 2011/95 and the 1951 Convention that a Member State may not revoke refugee status simply because they were convicted of a particularly serious crime.<sup>82</sup>

The Court, however, did not follow its straightforward pattern of comparative statutory analysis from the first consideration to the second inquiry. Rather than concluding that since Article 14(4)(b) does not contain any mention of the idea of public order or a threat that affects a fundamental interest of society and therefore should not be given the same meaning as the articles which do, the Court fell back on its settled case law and held that just because Article 14(4)(b) contains the expression “danger to the community” rather than “public order” does not mean that it conveys a different definition of “public danger.”<sup>83</sup> This marks a

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78. Directive 2011/95, *supra* note 25, art. 21.

79. *See* M, EU:C:2019:403, ¶ 93.

80. Directive 2004/38, *supra* note 20, art. 27, § 2; G.S., EU:C:2019:1072, ¶ 52; Directive 2011/95, *supra* note 25; Staatssecretaris, EU:C:2023:77, ¶ 72-73.

81. Geneva Convention, *supra* note 11, art. 33, § 2; Directive 2004/38 *supra* note 20, art. 28, § 2.

82. XXX, 2023 E.C.R. 00000, ¶ 46.

83. *Id.* at ¶ 56.

departure from the Court's previous reliance solely on the comparison of statutes within Directive 2011/95 and the 1951 Convention, to a new reliance on its settled case law.

The Court went on to rely on a mixture of its settled case law and statutory analysis in the third inquiry, while simultaneously disposing of the issue of who carries the burden of proving the existence of a third-country national's threat to the Member State in one sentence.<sup>84</sup> This is where the EU's most recent Directive 2013/32 comes into play, as it codifies case law by clearly stating that it is for the competent authority to undertake the burden of proof.<sup>85</sup> Finally, the principle of proportionality is also an issue easily disposed of by the Court as to them it was clear that this is a right enshrined in the 1951 Convention and the fundamental rights settled by the European Parliament in the EU Directives.<sup>86</sup>

It is concerning that in 2023, this issue would continue to be re-litigated in order to block a Member State from relying solely on a third-country national's felony conviction in order to revoke their refugee status or expel them from the country. Not only did the lower Belgian courts do this, but they also placed the burden on the refugee themselves to prove that they were not a danger to the community of the Member State, which runs in direct contradiction to the Court of Justice's settled case law and the provisions in Article 43 of Directive 2013/32. While certainly there may be instances in which revocation of refugee status may be justified, lower courts and those who make decisions on refugee statuses must continue to adhere to the binding case law, EU statutes, and international law if they are to make such a serious determination.

## V. CONCLUSION

The Court of Justice in this case highlights the importance of refugee rights by holding not only that a Member State has the burden of proving beyond the final conviction of a third-country national that they prove a genuine, sufficient, and present danger to its community, but also that expulsion is the last measure that should be taken.<sup>87</sup> The Court calls attention to the modern need to reaffirm the rights of asylum-seekers enshrined in the 1951 Geneva Convention, EU Directives, and its settled case law. Despite some inconsistencies, the Court relies on the interplay between these ruling authorities on refugee rights to come to this decision.

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84. *Id.* at ¶ 61.

85. *Id.* at ¶¶ 61-62.

86. *Id.* at ¶¶ 68-70.

87. XXX, 2023 E.C.R. 00000, ¶¶ 45, 60, and 71.

Moving forward it will be important to keep advocating for and highlighting the rights of refugees and asylum-seekers worldwide as was the objective of the 1951 Geneva Convention.<sup>88</sup>

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88. 1951 Convention, *supra* note 14.

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