Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 16 February 2023 [1] [i]

**Case C-756/21**

**X**
**v**
**International Protection Appeals Tribunal,**
**Minister for Justice and Equality,**
**Ireland,**
**Attorney General**

(Request for a preliminary ruling from the High Court, Ireland)

(Reference for a preliminary ruling – Conditions for granting refugee status – Application for subsidiary protection – Assessment of applications for international protection – Duty of the Member State to cooperate with the applicant – Scope – Judicial review – Scope – Reasonable time to take a decision – Disregard – Consequences – General credibility of an applicant – Assessment criteria)

## I. Introduction

1. This request for a preliminary ruling concerns the interpretation of Article 4 of Directive 2004/83/EC [2] and Articles 8 and 23 of Directive 2005/85/EC. [3]

2. The request has been made in the context of an appeal brought by the applicant in the main proceedings, X, a third-country national, against the decision of the International Protection Appeals Tribunal (Ireland) ('the IPAT'), by which it dismissed his appeals against the decisions rejecting his applications for asylum and for subsidiary protection. The dispute is between the applicant in the main proceedings and the IPAT, the Minister for Justice and Equality (Ireland), Ireland and the Attorney General (Ireland) (together, 'the respondents').

3. The High Court (Ireland) raises seven questions for a preliminary ruling which are structured around three issues: first, the scope of the duty of the determining authority to cooperate with the applicant for international protection and the consequences of a possible breach of that duty; second, the consequences of failure to take a decision on applications for asylum and for

[1] Original language: French.

[2] Council Directive of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

[3] Council Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

international protection within a reasonable period of time; and, third, the impact on the general credibility of an applicant of a false statement made in his or her application initially, which the applicant subsequently retracted at the first opportunity after having explained himself or herself.

## II. Legal framework

### *A. International law*

4. Under the first subparagraph of Article 1(A)(2) of the Convention relating to the Status of Refugees,[4] the term 'refugee' is to apply to any person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'.

### *B. European Union law*

5. In addition to certain provisions of primary law, namely Articles 41 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), Article 4 and Article 15(c) of Directive 2004/83[5] and Article 8(2) and (3), Article 23(1) and (2) and Article 39(1)(a) of Directive 2005/85[6] are relevant to the present case.

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

6. The applicant in the main proceedings is a Pakistani national who entered Ireland on 1 July 2015 after residing in the United Kingdom from 2011 to 2015 without making an application for international protection.

7. On 2 July 2015, the applicant in the main proceedings lodged an application for refugee status in Ireland. That application, initially based on a false statement which the applicant in the main proceedings subsequently retracted, was founded on the fact that he had been in the immediate vicinity of a bomb explosion in a terrorist attack which took place during a funeral in Pakistan and killed around 40 people, including two people known to him. The applicant claimed to have been deeply affected by that event, with the result that he was afraid to live in Pakistan and feared serious harm if he were sent back. He stated that he suffered from anxiety, depression and sleep disorders. His application was rejected on 14 November 2016 by the Office of the Refugee Applications Commissioner (Ireland).

4 Convention signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), which entered into force on 22 April 1954, as supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967 ('the Geneva Convention').

5 Directive 2004/83 was replaced and repealed by 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). However, since Ireland is not taking part in the latter directive, Directive 2004/83 continues to apply to that Member State. See recital 50 and Article 40 of Directive 2011/95.

6 Directive 2005/85 was repealed and replaced by 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). However, since Ireland is not taking part in the latter directive, Directive 2005/85 continues to apply to that Member State. See Article 53 of Directive 2013/32.

8. On 2 December 2016, the applicant in the main proceedings brought an appeal against that decision before the Refugee Appeals Tribunal (Ireland). The proceedings relating to that appeal were suspended on account of legislative amendments made on 31 December 2016 as a result of the entry into force of the International Protection Act 2015 which unified the various international protection procedures previously laid down and created, in particular, the International Protection Office ('the IPO') and the IPAT.

9. On 13 March 2017, the applicant in the main proceedings lodged an application for subsidiary protection, which was rejected by the IPO on 29 February 2018. On 13 February 2018, he brought an appeal against that decision before the IPAT.

10. By decision of 7 February 2019, the IPAT dismissed both appeals.

11. On 7 April 2019, the applicant in the main proceedings brought an appeal before the High Court seeking annulment of that decision of the IPAT.

12. In support of that action, the applicant in the main proceedings submitted, first, that the country of origin information consulted by the IPAT, dating from 2015 to 2017, was incomplete and out of date, with the result that the IPAT did not take account of the situation prevailing in Pakistan at the time when the decision of 7 February 2019 was adopted. Moreover, the applicant in the main proceedings states that the IPAT did not properly examine the information available to it.

13. Second, the applicant in the main proceedings submits that the time taken to rule on the application of 2 July 2015 is manifestly unreasonable and infringes the principle of effectiveness, Article 47 of the Charter and the minimum standards established by EU law.

14. Third, the applicant in the main proceedings submits that the IPAT was informed of the state of his mental health, but failed to ensure that it had before it all the necessary evidence in order to be able to adjudicate correctly on the applications. In particular, the applicant states that the IPAT ought to have requested an expert medical opinion, referred to as a medico-legal report, which is generally used to support the asylum application of a person who has been subjected to acts of torture, or even another expert's report on the state of his mental health.

15. Fourth, in respect of other elements relevant to his application, the applicant in the main proceedings states that he was not given the benefit of the doubt, even though the state of his mental health had not been duly established and taken into consideration. Thus, he argues that a number of elements relevant to his claim were not verified or were disregarded and there was no cooperation between himself and the competent institutions, in particular with regard to that medico-legal report.

16. Fifth, in the circumstances of the case, which are characterised by the fact that the applicant in the main proceedings has admitted that his earlier account of events was false and that there is a possibility that he is suffering from mental health problems, the applicant in the main proceedings argues that it is unreasonable to conclude that he is not credible as regards essential aspects of his claim.

17. The High Court found, first of all, that the IPAT had failed in its duty to cooperate in that it had not obtained adequate information on the country of origin or a medico-legal report. However, it questions whether the IPAT was required under EU law to obtain such a report and

whether it is compatible with EU law to require, in accordance with national law, the applicant in the main proceedings to establish, in order to have the IPAT's decision annulled, that harm resulted from that failure.

18. That court then asks what consequences it should draw from the fact that more than three and a half years elapsed between the submission of the application on 2 July 2015 and the adoption of the IPAT's decision on 7 February 2019, a decision-making period which it considers to be unreasonable.

19. Finally, the referring court has doubts as to whether a single false statement, which the applicant in the main proceedings retracted at the first opportunity after having explained himself, may justify calling into question his general credibility.

20. It was in that context that, by decision of 23 November 2021, received at the Court Registry on 9 December 2021, the High Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In circumstances where there has been a complete breach of the duty of cooperation as described at paragraph 66 of [the judgment in *M.*,[7]] in an applicant's application for subsidiary protection, has the consideration of that application been rendered "totally ineffective" in the sense considered in [the judgment in *Commission* v *Germany*]? [[8]]

(2) If the answer to [the first question] is positive, should the aforesaid breach of the duty of cooperation, without more, entitle an applicant to annulment of the decision?

(3) If the answer to [the second question] is in the negative, then and if applicable, on whom does the onus lie to establish that the refusal decision might have been different had there been proper cooperation by the decision maker?

(4) Should the failure to provide a decision on an applicant's application for international protection within a reasonable time entitle an applicant to annulment of a decision when issued?

(5) Does the time taken in effecting … change to the applicable asylum protection framework within a Member State operate to excuse that Member State from operating an international protection scheme, which would have provided a decision on such protection application within a reasonable time?

(6) Where insufficient evidence is before a protection decision maker as to the state of an applicant's mental health but where some evidence of the possibility of an applicant suffering from such difficulties is present, is the international protection decision maker, in accordance with the duty of cooperation mentioned in [the judgment in *M.*, (paragraph 66)], or otherwise, under a duty to make further enquiry, or any other duty, prior to arriving at a final decision?

(7) Where a Member State is carrying out its duty pursuant to Article 4(1) of [Directive 2004/83] to assess the relevant elements of an application is it permissible to declare the general credibility of an applicant not to have been established by reason of one lie, explained and withdrawn at the first reasonably available opportunity thereafter, without more?'

7 Judgment of 22 November 2012 (C-277/11, EU:C:2012:744; 'the judgment in *M.*').

8 Judgment of 15 October 2015 (C-137/14, EU:C:2015:683).

## IV. The procedure before the Court

21. The referring court has requested that the present case be dealt with under the urgent preliminary ruling procedure provided for in Article 107(1) of the Rules of Procedure of the Court.

22. On 17 December 2021, the First Chamber of the Court decided, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, not to grant that request.

23. Written observations were submitted by the applicant in the main proceedings, the respondents, the German and Netherlands Governments and the European Commission. The applicant in the main proceedings, the Irish Government and the Commission participated in the hearing held on 16 November 2022.

24. By a request for clarification of 20 September 2022, the Court asked the referring court to clarify the applicable legislation and the role assigned to the IPAT. That court replied by document dated 21 October 2022.

## V. Admissibility

25. The respondents contest the admissibility of the seven questions referred for a preliminary ruling.

26. First, they argue that the first question is hypothetical in so far as it is based on a premiss which is not substantiated by the referring court, for two reasons. First, contrary to what the wording of that question may suggest, the referring court did not find a 'complete breach of the duty of cooperation' and could not make such a finding on the basis of the facts of the case. Second, the respondents argue that that question invites the Court to make a conclusive decision on the facts of the case, which is not within its jurisdiction. According to the respondents, those considerations also apply to the second and third questions on account of their connection with the first question.

27. Second, the respondents submit that the fourth and fifth questions are also hypothetical since the referring court did not find a breach of the obligation to take a decision within a reasonable time.

28. Third, the respondents take the view that the sixth question is not necessary for the resolution of the dispute in the main proceedings since the IPAT took account of the medical evidence provided by the applicant in the main proceedings without challenging it.

29. Finally, fourth, the respondents submit that the seventh question is hypothetical in nature and therefore need not be answered, since the applicant in the main proceedings has stated that he is not challenging the findings of the IPAT relating to his credibility and, contrary to what is suggested by the wording of that question, the false statement was not the only factor which led the IPAT to consider that the credibility of the applicant in the main proceedings had not been established. In that regard, other relevant elements related to the fact that he had mentioned only at a very late stage key elements relating to past events and had not applied for international protection in his initial application.

30. I am not convinced by those objections.

31. I would point out that it is settled case-law that the request for a preliminary ruling is inadmissible 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. [9]

32. In that context, it is difficult to assert that the questions referred for a preliminary ruling bear no relation to the actual facts, are hypothetical or do not provide the necessary factual evidence.

33. In the present case, with regard to the alleged hypothetical nature of the first, second, third and sixth questions, it is, admittedly, true that the facts set out by the referring court do not point to a 'complete breach of the duty of cooperation' by the IPAT. [10] However, it is clear from those questions that the referring court is asking specifically whether those facts amount to a breach of the duty of the competent authorities to cooperate with the applicant and what consequences, if any, it should draw from such a finding, in the light of the limits imposed on those authorities by national law. [11]

34. As regards the fourth and fifth questions, the fact that the referring court has not yet found that there has been a breach of the obligation to take a decision within a reasonable time but that it intends to do so is also not a sufficient reason to conclude in this case that those questions are hypothetical.

35. In addition, it is apparent from the order for reference that the sixth question concerns the possible obligation to obtain a medico-legal report as a supplement to those reports provided by the applicant in the main proceedings. The fact that the IPAT took into account the medical evidence adduced by the interested party, without challenging it, has no bearing on that obligation and cannot call into question the relevance of the sixth question.

36. As regards, finally, the seventh question, it should be noted that the respondents dispute the findings of fact made by the referring court and its assessment of the relevance of that question for the resolution of the dispute in the main proceedings. It is not for the Court but rather for the referring court to establish and assess the facts relating to the credibility of the applicant in the main proceedings.

37. To sum up, it is for the referring court to identify the legal issues in a case which calls for an interpretation of EU law.

38. Consequently, it is appropriate to consider the questions referred for a preliminary ruling to be admissible and to carry out a substantive analysis of them.

[9] See recent judgment of 20 September 2022, *VD and SR* (C-339/20 and C-397/20, EU:C:2022:703, paragraph 57).

[10] With regard to the wording of the first question, I note that it begins with the phrase 'in circumstances where'.

[11] With regard to those limits, see point 17 of the present Opinion.

## VI. Substance

### *A. General considerations on the interpretation of Directives 2004/83 and 2005/85*

39. Before addressing the examination of the questions referred for a preliminary ruling, I believe it is useful to recall briefly the context of Directives 2004/83 and 2005/85.

40. In the first place, I would like to state that it is clear from recital 3 of Directive 2004/83 that the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees. Similarly, it follows from recitals 16 and 17 of that directive that the provisions for determining who qualifies for refugee status and the content of that directive were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria.[12] In addition, with regard to Directive 2005/85, it follows from recitals 2, 3, 5 and 7 thereof that it establishes a common framework of safeguards to ensure full compliance with that convention. Article 33 of the Geneva Convention enshrines the principle of non-refoulement. That principle is guaranteed as a fundamental right in Article 18 and Article 19(2) of the Charter.[13]

41. It follows that the provisions of Directives 2004/83 and 2005/85 must be interpreted in the light of the general scheme and purpose of each of those directives, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU.[14] In addition, as is apparent from recital 10 of Directive 2004/83 and recital 8 of Directive 2005/85, those directives must also be interpreted in a manner consistent with the rights recognised by the Charter.[15]

42. In the second place, I would also like to state that, while the purpose of Directive 2004/83 is to lay down minimum standards for the conditions which third-country nationals must meet to be able to obtain international protection and the content of that protection, the purpose of Directive 2005/85 is to establish minimum standards applicable to procedures for examining applications, while also setting out the rights of applicants for asylum.

43. It is in that context that I shall address the questions raised by the referring court. I will first examine the scope of the duty of the determining authority to cooperate with the applicant for international protection, in accordance with Article 4 of Directive 2004/83, and the consequences to be drawn from a possible breach of that duty (Section B). I will then consider the consequences of the failure to take a decision on applications for asylum and for international protection within a reasonable time, in the light of Article 23 of Directive 2005/85 (Section C). Finally, I will examine the question relating to the general credibility of an applicant (Section D).

[12] See judgments of 2 March 2010, *Salahadin Abdulla and Others* (C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 52), and of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)* (C-349/20, EU:C:2022:151, paragraph 39).

[13] Judgment of 19 June 2018, *Gnandi* (C-181/16, EU:C:2018:465, paragraph 53 and the case-law cited).

[14] Formerly Article 63, first paragraph, point 1 of the EC Treaty.

[15] With regard to Directive 2004/83, see, inter alia, judgments of 2 March 2010, *Salahadin Abdulla and Others* (C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 53 and 54), and of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)* (C-349/20, EU:C:2022:151, paragraph 40). With regard to Directive 2005/85, see, inter alia, judgments of 28 July 2011, *Samba Diouf* (C-69/10, EU:C:2011:524, paragraph 34), and of 31 January 2013, *D. and A.* (C-175/11, EU:C:2013:45, paragraph 58).

### *B. The scope of the duty to cooperate and the consequences of a breach of that duty (first, second, third and sixth questions)*

44. By its first, second, third and sixth questions, which I propose to answer together, the referring court seeks to ascertain, in essence, whether the duty to cooperate laid down in Article 4(1) of Directive 2004/83 requires the determining authority to obtain up-to-date information on the country of origin of an applicant for asylum and for international protection and, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country, a medico-legal report on that applicant's mental health. It also asks whether a breach of that obligation may, in itself, result in the decision rejecting those applications being set aside or whether the applicant may be required to demonstrate that the decision might have been different had there been no such breach.

45. It seems to me that the answer to those questions can be found by examining the significance of the requirement that the Member State cooperate, in accordance with Article 4 of Directive 2004/83.

#### *1. The significance of the requirement that the Member State cooperate*

46. The referring court states that the country of origin information provided by the applicant was not up to date, even when the applicant submitted it. In particular, in connection with a pivotal finding in the contested decision,[16] the IPAT refers to a 2015 Austrian fact-finding mission[17] and to a 2017 report of the [United Nations] High Commissioner for Refugees (HCR).[18] According to that court, that evidence could not properly be said to be up-to-date country of origin information in the context of that decision, which was delivered on 7 February 2019.[19] Accordingly, on the basis of Article 4 of Directive 2004/83, as interpreted by the Court in the judgment in *M.*, the referring court considers that the IPAT has failed in its duty to cooperate in that it failed to obtain adequate and up-to-date information on the applicant's country of origin.

47. In my view, that approach seems, a priori, to be reasonable. However, it is desirable to clarify certain elements.

48. As a reminder, as is apparent from its title, Article 4 of Directive 2004/83 concerns the 'assessment of facts and circumstances' of an application for international protection. According to the Court, that 'assessment' takes place in two separate stages. The first concerns the establishment of factual circumstances which may constitute evidence that supports the application and the second concerns the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are satisfied.[20]

16 According to the referring court, that finding by the IPAT concerned the fact that the situation in the applicant's country of origin was one of indiscriminate violence in the context of an internal/international armed conflict. See point 59 of the present Opinion.

17 That information was gathered during a fact-finding mission in July 2015 concerning the region from which the applicant originates.

18 Freedom House, *Refworld Freedom in the World 2017 Pakistan*, UNHCR. According to that court, that report indicates that terrorist violence in Pakistan has decreased significantly and relates only to the first quarter of 2017.

19 See point 10 of the present Opinion.

20 Judgments in *M.* (paragraph 64); of 2 December 2014, *A and Others* (C-148/13 to C-150/13, EU:C:2014:2406, paragraph 55); and of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)* (C-349/20, EU:C:2022:151, paragraph 63).

49. In that context, the question arises as to the practical significance of the requirement to cooperate with the applicant in each of those two stages.

*(a) The requirement to cooperate in the context of the first stage of the assessment concerning the establishment of factual circumstances*

50. I would recall at the outset that, under Article 4(1) of Directive 2004/83, although it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State concerned to cooperate with the applicant at the stage of determining the relevant elements of that application.[21] In other words, that provision places a 'positive duty' on the authorities of the Member States to act in cooperation with the applicant to assess those elements.[22]

51. In that regard, it follows from Article 4(2) of Directive 2004/83 that the evidence capable of justifying an application for international protection consists of the applicant's statements and all documentation at the applicant's disposal relating to his or her individual situation regarding, inter alia, his or her age, background, identity or nationality(ies). That provision therefore refers to all the elements relevant for justifying the application and, consequently, concerns information and documents relating to the *factual circumstances of the applicant's past*, including those relating to 'country(ies) and place(s) of previous residence'.

52. I would also recall that the significance of the requirement that the Member State cooperate in the context of that first stage of the assessment has already been clarified by the Court. It held that if, for any reason whatsoever, the elements provided by an applicant for international protection are not *complete, up to date or relevant*, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled.[23] It also stated that the authorities of a Member State may be often better placed than an applicant to gain access to certain types of documents.[24]

53. Therefore, it is clear, in my view, that, in the context of that first stage of the assessment concerning the establishment of factual circumstances which may constitute evidence supporting the application, the requirement to cooperate laid down in Article 4 of Directive 2004/83 requires the determining authority to obtain *complete and up-to-date information on the country of origin* of an applicant for asylum and for international protection.

54. That said, the question remains as to whether there is such a 'cooperation' obligation on the part of the authorities of the Member State concerned in the context of the second stage of the assessment.

21 Judgment in *M.* (paragraph 65).

22 Opinion of Advocate General Sharpston in Joined Cases *A and Others* (C-148/13 to C-150/13, EU:C:2014:2111, point 42).

23 Judgment in *M.* (paragraph 66). In that regard, see also Opinion of Advocate General Bot in *M.* (C-277/11, EU:C:2012:253, point 67).

24 Judgment of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)* (C-349/20, EU:C:2022:151, paragraph 64 and the case-law cited).

*(b) Is there a requirement to cooperate in the second stage of the assessment concerning the legal assessment of the evidence supporting the application?*

55. I recall that Article 4(3)(a) of Directive 2004/83 provides, with regard to the assessment of an application for international protection, that that assessment is to be carried out on an individual basis, taking into account inter alia *all relevant facts as they relate to the country of origin at the time of taking a decision on the application*, including laws and regulations of the country of origin and the manner in which they are applied.

56. That assessment on an individual basis of the application is, as I have already stated,[25] the second stage in the 'assessment of facts and circumstances' of an application for asylum or for international protection, within the meaning of Article 4 of Directive 2004/83. That stage concerns the legal assessment of the evidence provided in support of the application in order to determine whether that evidence does in fact meet the conditions required for the refugee status or the international protection requested to be granted.[26]

57. As the Court has already held, the examination of the substance of the application is solely the responsibility of the competent national authority; with the result that, at that stage in the procedure, a requirement that the authority cooperate with the applicant – as laid down in the second sentence of Article 4(1) of Directive 2004/83 – is of no relevance.[27] In that regard, I note that it follows from Article 4(1) and Article 8(2) of Directive 2005/85 that the determining authority is responsible for carrying out an 'appropriate examination' of applications, at the end of which it will take a decision regarding them.[28] In particular, it follows from Article 8(2)(b) of that directive that Member States are to ensure that *precise and up-to-date information* is obtained on the general situation prevailing in the countries of origin of applicants for asylum[29] from different sources, such as the UNHCR.[30]

58. I therefore fully share the Commission's view that it is clear from those provisions that, under Article 4(3)(a) of Directive 2004/83, the determining authority is required to go beyond a simple duty to cooperate with the applicant as regards information relating to the situation in the country of origin. Member States are required, where a person fulfils the conditions laid down in Directive 2004/83, to grant the international protection status sought, since their authorities have no discretion in that respect.[31] Since, in accordance with Article 28(1) of Directive 2005/85, Member States may only consider an application for asylum to be unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83, that authority would not be able to reject an application without carrying out an 'appropriate examination' of that application and, therefore, without considering up-to-date information concerning the situation prevailing in the country of origin.

59. In particular, that is all the more true in respect of the condition of serious harm, referred to in Article 15(c) of Directive 2004/83, consisting in serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed

[25] See point 48 of the present Opinion.

[26] See to that effect, judgment in *M.* (paragraph 69).

[27] Judgment in *M.* (paragraph 70).

[28] Judgment of 25 January 2018, *F* (C-473/16, EU:C:2018:36, paragraph 40).

[29] Judgment in *M.* (paragraph 67).

[30] With regard to the obligation on the determining authority to collect and assess on its own initiative reports on the general situation in the applicant's country of origin, see Reneman, M., 'The Burden and Standard of Proof and Evidentiary Assessment', *EU Asylum Procedures and the Right to an Effective Remedy*, Hart Publishing, London, 2014, pp. 183 to 248, in particular p. 204.

[31] See, inter alia, to that effect, judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraph 50).

conflict, such as that referred to in the main proceedings. [32] The Court has held that the existence of those types of threats is not subject to the condition that that applicant adduce evidence that he or she is specifically targeted by reason of factors particular to his or her personal circumstances. According to the Court, the degree of indiscriminate violence characterising the armed conflict taking place is assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred. [33] In addition, it should be recalled that the assessment of whether or not the established circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be subjected to acts of persecution must, in all cases, be carried out with *vigilance and care*, since what are at issue are issues relating to the integrity of the person and to individual liberties, issues which relate to the fundamental values of the Union. [34]

60. Therefore, it follows from the foregoing that Article 4(3)(a) of Directive 2004/83 requires the determining authority, as part of its obligation to carry out an *appropriate examination* of the application, as provided for in Article 8(2)(b) of Directive 2005, to obtain *precise and up-to-date* information on the country of origin of an applicant for asylum and for international protection 5. In other words, that authority cannot limit itself to examining partial or outdated information, provided by the applicant in support of his or her application, but must obtain up-to-date information.

*2. Does the duty to cooperate involve an obligation on the determining authority to obtain a medico-legal report on the applicant's mental health?*

61. The referring court states that the applicant in the main proceedings had submitted before the IPO a medical report highlighting the existence of mental illness as a result of having been in the immediate proximity of a terrorist bomb explosion in his country of origin. [35] That court explains that the IPO submitted before the IPAT that such a report did not make it possible to establish whether or not the mental illness from which the applicant was suffering had been caused by that explosion. In addition, it is clear from the order for reference that the IPAT shared that view and considered that a medico-legal report, namely a 'Spirasi report', could in fact have been 'of more assistance'. [36] Therefore, the referring court observes that both the IPO and the IPAT took the view that the medical report submitted by the applicant in the main proceedings was insufficient and that a medico-legal report would have been relevant.

62. In that context, the question arises as to whether the duty to cooperate laid down in Article 4(1) of Directive 2004/83 requires the national authorities to obtain such an expert report.

63. In the first place, with regard to the first stage of the assessment concerning the establishment of factual circumstances, I note that such a requirement is not apparent from the wording of that provision. The purpose of Directive 2004/83 is to lay down minimum standards for third-country nationals to be able to obtain international protection. If the EU legislature had intended to

[32] See, in that regard, point 46 of and footnote 16 to the present Opinion. According to the referring court, in view of the persecution suffered by the Pashtun (Pathan) people in Pakistan, it is surprising that the IPAT decision contains no considerations regarding the ethnicity of the applicant in the main proceedings, and that no reference is made to it when assessing the country of origin information.

[33] See, to that effect, judgment of 17 February 2009, *Elgafaji* (C-465/07, EU:C:2009:94, paragraph 43).

[34] See judgment of 2 March 2010, *Salahadin Abdulla and Others* (C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 89 and 90).

[35] See point 7 of the present Opinion.

[36] See the following website with regard to the Spirasi report: https://spirasi.ie/what-we-do/medico-legal-report/.

impose such an obligation on the Member States, it would certainly have done so expressly. Consequently, the national authorities must have a margin of discretion *in determining whether or not a medico-legal report is relevant* to the assessment on an individual basis which the national authorities are required to carry out, in accordance with Article 4(3) of Directive 2004/83. [37]

64. However, contrary to the submissions made by the respondents, where, as in the present case, those authorities take the view that the medico-legal report in question is *relevant or necessary* for the assessment of the application for international protection, [38] it follows, in my view, from the duty to cooperate, for the purposes of Article 4(1) of Directive 2004/83, that they must inform the applicant and cooperate with him in order to be able to obtain such an expert report. [39] As I have already observed, it follows from the requirement on the national authorities to cooperate that, where the determining authority considers that the elements provided by the applicant for international protection are incomplete, out of date or irrelevant, it is required to cooperate actively with the applicant so that all the elements needed [40] to establish the factual circumstances which may constitute evidence in support of the application may be assembled.

65. In the second place, with regard to the second stage of the assessment concerning the legal assessment of the evidence submitted in support of the application, I note that it is clear from Article 4(3)(b) and (c) of Directive 2004/83 that an assessment of an application for international protection on an individual basis must be carried out taking into account the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm as well as the position and *personal circumstances of the applicant* so as to assess whether, on the basis of those circumstances, the acts to which he or she has been or could be exposed could be regarded as persecution or serious harm. In particular, the Court has already held that Article 4(3) of that directive does not exclude the use of expert reports in the context of the process of assessing facts and circumstances. [41] It is therefore for the competent authorities to adapt their methods of assessing statements and documentary or other evidence having regard to the specific features of each category of application for international protection. [42]

66. In that regard, the requirement to obtain a medico-legal report on the applicant's mental health where the national authorities consider it relevant or necessary in order to assess the evidence is supported by Article 4(1) and Article 8(2) of Directive 2005/85. Those provisions require the determining authority to carry out an 'appropriate examination' of applications, at the end of which it will take a decision regarding them. [43] That authority will not be in a position to carry out an appropriate examination of applications, within the meaning of those provisions

[37] Although Directive 2013/32 is not applicable in the present case, I consider it relevant to mention that the first paragraph of Article 18(1) of that directive provides that, 'where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive [2011/95], Member States shall, subject to the applicant's consent, *arrange for* a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination' (emphasis added).

[38] See points 16, 17 and 61 of the present Opinion.

[39] See to that effect, judgment in *M.* (paragraph 66).

[40] See point 52 of the present Opinion.

[41] The Court held that the procedures, should recourse be had to an expert's report, must however be consistent with other relevant EU law provisions, and in particular with the fundamental rights guaranteed by the Charter, such as the right to respect for human dignity, enshrined in Article 1 of the Charter. See judgment of 25 January 2018, *F* (C-473/16, EU:C:2018:36, paragraphs 34 and 35).

[42] See, to that effect, judgment of 25 January 2018, *F* (C-473/16, EU:C:2018:36, paragraph 36).

[43] Judgment of 25 January 2018, *F* (C-473/16, EU:C:2018:36, paragraph 40).

where, although it considers that a medico-legal report is relevant or necessary in order to carry out the assessment of the application in question on an individual basis, it does not obtain such a report.

67. Therefore, I am of the opinion that Article 4(3)(b) and (c) of Directive 2004/83 requires the determining authority, in the context of its obligation to carry out an *appropriate examination* of the application, within the meaning of Article 8(2) of Directive 2005/85, where it considers that the medico-legal report on the applicant's mental health is relevant to or necessary for the assessment on an individual basis of that application, to obtain such an expert report. In my view, a different interpretation would run contrary to the purpose of Directive 2004/83 and would render both Article 4(3) of that directive and Article 8(2) of Directive 2005/85 meaningless.

### *3. The consequences of a breach of the duty to cooperate and of the obligation to carry out an appropriate examination of the application*

68. Before analysing the consequences of a breach of the duty to cooperate and of the obligation to carry out an appropriate examination of the application (Sections c and d below), it must be determined whether, as the German Government and the Commission maintain, Article 39 of Directive 2005/85 requires that the court of first instance is able to carry out an *ex nunc* substantive review of a decision rejecting an application for asylum or for international protection (Section a below). If so, the question arises as to whether the IPAT must be regarded as a judicial authority for the purposes of Article 39 of Directive 2005/85 (Section b below).

#### *(a) The concept of a 'court or tribunal' within the meaning of Article 39 of Directive 2005/85*

69. As a reminder, Article 39(1)(a) of Directive 2005/85 provides that Member States are to ensure that applicants for asylum have the right to an effective remedy before a court or tribunal against a decision taken on their application for asylum. However, that provision does not state that it is necessary for that court or tribunal to be able to exercise such a review *ex nunc*. In that regard, the Commission states in its written observations that, in its view, those requirements are apparent from the case-law established by the Court.

70. I note, in that regard, that such a requirement is clear from Article 46 of Directive 2013/32, which replaced Article 39 of Directive 2005/85 and which is not applicable in the present case. However, in my view, it is worth noting, as the Commission stated during the legislative procedure concerning Article 46 of Directive 2013/32, that that provision is 'largely informed by ongoing developments in respective case-law of the [Court] and the [European Court of Human Rights]'.[44] I shall therefore examine whether Article 39 of Directive 2005/85, as interpreted by the Court, provides for such a requirement.

71. First, the Court has already stated that the characteristics of the remedy provided for in Article 39 of Directive 2005/85 must be determined in a manner which is consistent with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection and provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions

[44] Proposal for a Directive of the European Parliament and of the Council of 21 October 2009 on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009) 554 final, p. 9). See footnote 51 of the present Opinion.

laid down in that article.[45] In particular, it held that, in order for that right to be exercised effectively, the national court must, in the course of a *thorough review*, be able to review the merits of the reasons which led the competent administrative authority to hold the application for international protection to be unfounded.[46] I note, in that regard, that every decision on whether to grant refugee status or subsidiary protection status must be based on an individual assessment.[47]

72. Second, the Court held, in connection with Regulation (EU) No 604/2013,[48] that an action for annulment brought against an administrative decision, in the context of which the court or tribunal seised cannot take account of circumstances subsequent to the adoption of that decision, does not ensure sufficient judicial protection enabling the person concerned to exercise his or her rights under that regulation and Article 47 of the Charter.[49]

73. Third, it is necessary to add that, as Advocate General Mengozzi recalled, the requirement for a 'full examination', one that is not confined to rules of applicable law but includes the establishment and appraisal of the facts, has long been established by the European Court of Human Rights.[50] According to that court, that scrutiny must be close, independent, rigorous and full and must be such as to enable any doubts, however legitimate, to be dispelled regarding the lack of substance of the application for international protection, irrespective of the extent of the competences of the authority responsible for examining it.[51]

74. It is therefore to be considered that Article 39 of Directive 2005/85, read in the light of Article 47 of the Charter, requires that the court of first instance be able to carry out a review *ex nunc* of a decision rejecting an application for asylum or for international protection.

*(b) The characterisation of the IPAT as a 'court or tribunal' within the meaning of Article 39 of Directive 2005/85*

75. In its response to the request for clarification from the Court, the referring court states, first, that the IPO takes the decision to grant or refuse international protection at first instance, for the purposes of Article 23 of Directive 2005/85.[52] Second, that court explains that, in a dispute such as

[45] See, to that effect, judgment of 17 December 2015, *Tall* (C-239/14, EU:C:2015:824, paragraph 51 and the case-law cited). Recital 27 of Directive 2005/85 states that it reflects a basic principle of EU law that the decisions taken on an application for asylum and on the withdrawal of refugee status are subject to an effective remedy before a court or tribunal within the meaning of Article 267 TFEU.

[46] See, to that effect, judgment of 28 July 2011, *Samba Diouf* (C-69/10, EU:C:2011:524, paragraphs 56 and 61).

[47] Judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal* (C-406/18, EU:C:2020:216, paragraph 29 and the case-law cited). See point 56 of the present Opinion.

[48] Regulation 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).

[49] See judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)* (C-194/19, EU:C:2021:270, paragraph 45).

[50] With regard to the interpretation of Article 46(3) of Directive 2013/32, see Opinion of Advocate General Mengozzi in (C-585/16, EU:C:2018:327, point 69). See also judgment of 25 July 2018, *Alheto* (C-585/16, EU:C:2018:584, paragraph 113).

[51] See, with regard to Articles 3 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, ECtHR, 11 July 2000, *Jabari v. Turkey* (CE:ECHR:2000:0711JUD004003598, § 50); ECtHR, 12 April 2005, *Chamaïev and Others v. Georgia and Russia* (CE:ECHR:2005:0412JUD003637802, § 448); ECtHR, 21 January 2011, *M.S.S v. Belgium* (CE:ECHR:2011:0121JUD003069609, §§ 293 and 388); and ECtHR, 2 October 2012, *Singh and Others v. Belgium* (CE:ECHR:2012:1002JUD003321011, § 103). In that regard, see, also, Reneman M., 'Judicial Review of the Establishment and Qualification of the Facts', *EU Asylum Procedures and the Right to an Effective Remedy*, Hart Publishing, London, 2014, pp. 249 to 293, in particular pp. 268 to 270 and 292.

[52] The referring court added, in particular, that, under Section 47(3) of the International Protection Act 2015, where the IPO recommends that international protection be granted or the IPAT upholds that recommendation on appeal, the Minister for Justice and Equality has no discretion and such decisions have binding force unless there are reasonable grounds for regarding the applicant as a danger to the community or security of the State.

that in the main proceedings, the IPAT acts as a judicial authority conducting a first level of judicial review before which an appeal on facts and law may be lodged against a decision at first instance taken by the determining authority (namely the IPO), for the purposes of Article 39 of that directive.[53] It points out, in particular, that the IPAT takes decisions *ex nunc* and has the power to request that the Minister for Justice and Equality make inquiries and provide it with information.[54]

76. Therefore, I am of the opinion that, in so far as the decision by the determining authority must, under Article 4(3)(a) to (c) of Directive 2004/83, read in conjunction with Article 8(2)(b) of Directive 2005/85, be taken following an 'appropriate examination' taking into account all relevant facts relating to the country of origin, including, where it considers it relevant or necessary, a medico-legal report on the applicant's mental health, the review, by a court of first instance, of the substance of that authority's reasoning, involves, as the Commission correctly noted in its observations, the examination of precise and up-to-date information on the situation prevailing in the country of origin which was, inter alia, the basis for the administrative decision under review.

77. Similarly, if that court considers that the evidence submitted by the applicant is not sufficient to support his or her claim that he or she has already suffered serious harm, or to assess inter alia his or her state of mental health, it must be able to order measures of inquiry to enable the applicant to provide a medico-legal report. That implies that the court of first instance hearing the appeal may carry out an examination *ex nunc*, that is to say not on the basis of the circumstances of which the authority which adopted the decision was aware or should have been aware when it adopted that decision, but rather on the basis of the circumstances existing at the time when the court gives its ruling.

78. Therefore, the IPAT, as the court or tribunal referred to in Article 39 of Directive 2005/85, read in the light of Article 47 of the Charter, is required to obtain and examine precise and up-to-date information on the situation prevailing in the applicant's country of origin, including a medico-legal report where it considers it relevant or necessary, having regard to its obligation to ensure an effective remedy against a decision by the determining authority, in the present case the IPO, refusing to grant the right to asylum or international protection.

### *(c) The possibility of setting aside the decision rejecting the applications*

79. The referring court wishes to ascertain whether such an obligation may, in itself, lead to the setting aside of the decision rejecting the applications for asylum and for international protection.

80. I must point out that, in its response to the Court's request for clarification, the referring court stated, by referring to paragraphs 102 and 103 of the judgment in *D and A*, that the Irish system for granting and withdrawing refugee status also includes the possibility of review by the IPO and the IPAT before it in respect of errors of law in the determination of the application.[55] Consequently, the present reference for a preliminary ruling has been made in the context of such a judicial review.

[53] The referring court states that the International Protection Act 2015 retained the material functions, structure and powers of the Refugee Appeals Tribunal, as identified by the Court in the judgment of 31 January 2013, *D. and A.* (C-175/11, EU:C:2013:45, paragraphs 20 to 32 and 78 to 105).

[54] In that regard, the referring court refers to Section 44 of the International Protection Act 2015.

[55] Judgment of 31 January 2013 (C-175/11, EU:C:2013:45). The referring court adds that that system provides for the possibility of appeals on points of law before the Court of Appeal (Ireland) and before the Supreme Court (Ireland) when authorisation has been given.

81. That means, in my view, that the referring court provides a second-level review. Therefore, its review is limited to possible errors of law, such as, in the present case, the breach of the obligation, on the part of both the determining authority and the court of first instance, to obtain precise and up-to-date information on the applicant's country of origin, including a medico-legal report where they consider it relevant or necessary.

82. Although the breach of such an obligation may result in the setting aside of the decision rejecting those applications, the referring court states in its response to the request for clarification that, in the event that it finds that there has been an error of law, it refers the case to the IPAT for that court to issue a new appeal decision as regards the facts and the law. It is therefore for the referring court to determine whether there has been such an error.

*(d) The burden of proof*

83. Can an applicant be required to demonstrate that the decision might have been different had there been no breach of the obligation to carry out an appropriate examination of the application?

84. The German Government correctly submits in its written observations that, while the court of first instance itself carries out a full assessment in order to determine whether the applicant for asylum is entitled to international protection on the basis of current factual circumstances, it is not necessary for the parties to the proceedings to demonstrate that the decision by the national determining authority might have been different.

85. I note in that regard that, while it is certainly true that that question falls within the procedural autonomy of the Member States, the fact remains that, as I have already explained, the effective exercise of the right to asylum or to international protection, as well as compliance with the requirements stemming from Article 47 of the Charter [56] and the principle of non-refoulement, require an examination *ex nunc* by the court of first instance, referred to in Article 39 of Directive 2005/85. [57]

86. Therefore, given the importance of the fundamental rights at stake in an application for asylum and for international protection, it does not seem to me to be relevant that, in the event of a breach of the obligation of the determining authority and the court of first instance to carry out an *appropriate examination* of the application, the burden of demonstrating that the decision might have been different had there been no such breach is borne by the applicant. On the contrary, in the course of that examination, the burden of carrying out such a demonstration is, in my view, excessive, since that obligation falls to that national authority and to that court and not to the applicant.

## *C. The consequences of the failure to take decisions on applications for asylum and for international protection within a reasonable time (fourth and fifth questions)*

87. By its fourth and fifth questions, which, in my view, should be considered together, the referring court wishes to ascertain, in essence, whether the period of more than three and a half years which elapsed between the application for asylum being lodged and the IPAT's decision may be justified by the legislative amendments made in Ireland in the course of that procedure

[56] See judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraph 41).

[57] See points 40, 41 and 71 to 74 of the present Opinion.

and, if that is not the case, whether such a period, which it describes as 'unreasonable', may, in itself, justify the annulment of the decision rejecting the applications at issue in the main proceedings.

88. Before answering those questions, I shall briefly examine the differences between the time limits referred to in Articles 23 and 39 of Directive 2005/85 and their nature.

### *1. The differences between the time limits referred to in Articles 23 and 39 of Directive 2005/85 and their nature*

89. I must point out at the outset that it is clear from the structure and scheme of Directive 2005/85, in particular from the distinction between procedures at first instance, provided for in Chapter III, and appeals procedures, provided for in Chapter V, that a distinction must be drawn between the time limit for the determining authority to take a decision, referred to in Article 23 of that directive, and the time limit for the court at first instance to take a decision, referred to in Article 39 of that directive.

90. As regards, first, the nature of the *time limit laid down in Article 23* of Directive 2005/85, I recall that the first subparagraph of Article 23(2) provides that Member States are to ensure that such a procedure is concluded *as soon as possible*, without prejudice to an adequate and complete examination.[58] It is therefore clear from the wording of that provision that it concerns only the appropriate period for the determining authority to take a decision within the framework of the examination procedure. That six-month period is therefore an indicative time limit and is in no way binding on that authority.

91. That is supported, of the one part, by the objective of Directive 2005/85. I recall, in that regard, that the Court has already had occasion to point out that the procedures put in place by that directive are minimum standards and that the Member States have, in a number of respects, a margin of assessment with regard to the implementation of those provisions in the light of the particular features of national law.[59] In particular, it noted that the intention of the EU legislature to leave a broad discretion to Member States is found, inter alia, in the wording of recital 11 and Article 23 of Directive 2005/85, which deal with the examination procedure.[60] The importance of expediency in processing asylum applications is, as appears from that recital, shared both by Member States and by applicants for asylum.[61]

92. The indicative nature of that time limit is also corroborated, of the other part, by points (a) and (b) of the second subparagraph of Article 23(2) of Directive 2005/85. That provision stipulates that Member States are to ensure that, where a decision cannot be taken within six months, the applicant concerned shall either be informed of the delay or receive, upon his or her request, information on the time frame within which the decision on his or her application is to be expected. In accordance with that provision, such information does *not constitute an obligation* for the Member State towards the applicant concerned to take a decision within that time frame.

[58] By contrast, the time limit of six months laid down in Article 31(3) of Directive 2013/32, which is not applicable in the present case, is binding on the Member States.

[59] See, inter alia, judgments of 28 July 2011, *Samba Diouf* (C-69/10, EU:C:2011:524, paragraph 29), and of 31 January 2013, *D. and A.* (C-175/11, EU:C:2013:45, paragraph 63).

[60] See, to that effect, judgment of 31 January 2013, *D. and A.* (C-175/11, EU:C:2013:45, paragraph 65).

[61] Judgment of 31 January 2013, *D. and A.* (C-175/11, EU:C:2013:45, paragraph 60).

93. As regards, second, the nature of the *time limits set out in Article 39 of Directive 2005/85*, I note that Article 39(4) thereof provides that Member States *may* lay down time limits for the court of first instance to examine the decision of the determining authority.[62] Therefore, it is clear from that provision that it does not provide for a time limit, be it indicative or mandatory, in which that court or tribunal must rule on an appeal against the determining authority's decision.

94. That said, I must point out that, in the present case, the IPO's rejection decision was taken more than 16 months after the applicant in the main proceedings lodged his application for refugee status, whereas the IPAT's decision dismissing the appeal against that decision was taken 2 years and 2 months after the appeal was lodged. However, the referring court questions the fact that the decision upholding the refusal to grant the applicant in the main proceedings international protection was taken by the court of first instance *three years and seven months* after his first asylum application was lodged.

95. Therefore, although, as I have explained, a distinction must be drawn between the indicative time limit for the examination procedure, referred to in Article 23(2) of Directive 2005/85, and the time limit for the appeal procedure which may be fixed by the Member States, set out in Article 39(4) of that directive, and although I share the Commission's view that Directive 2005/85 does not set a mandatory time limit within which a final decision must be taken, the question nevertheless arises as to whether that period of over three and a half years is a reasonable time.

96. I think not, for the following reasons.

*2. The failure to take a decision within a reasonable time*

97. In the first place, it is admittedly true that, in the absence of EU rules concerning the procedural requirements attaching to the examination of an application for international protection, the Member States remain competent, in accordance with the principle of procedural autonomy, to determine those requirements, while at the same time ensuring that fundamental rights are observed and that EU provisions on subsidiary protection are fully effective.[63]

98. However, I would point out, first, that the requirement for genuine access to international protection status means that, according to the Court, the application should be considered within a reasonable period of time.[64] As Advocate General Bot stated, applications for asylum and for subsidiary protection must 'be the subject of a thorough examination, taking place within a reasonable period of time, as the prompt dispatch of the proceedings contributes not only to the applicant's legal certainty but also to his integration'.[65]

99. In that regard, I consider that both the duration of the procedure for examining the applications before the determining authority and that of the appeal procedure before the court of first instance, in the present case the IPO and the IPAT respectively, are to be taken into account.

62 Article 39(4) of Directive 2005/85 is identical to Article 46(10) of Directive 2013/32, which is not applicable in the present case.

63 See judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraph 41).

64 See, to that effect, judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraph 45).

65 Opinion of Advocate General Bot in *M.* (C-277/11, EU:C:2012:253, point 115).

100. I note, second, that the Court has pointed out that the right to good administration, enshrined in Article 41 of the Charter, reflects a general principle of EU law. Accordingly, the requirements pertaining to such right to good administration, including the right of any person to have his or her affairs handled within a reasonable period of time, are applicable in a procedure for granting refugee status or subsidiary protection, such as the procedure in question in the main proceedings, which is conducted by the competent national authorities. [66]

101. That means that the total duration of proceedings concerning an application for asylum or for international protection must respect the right to good administration, enshrined in Article 41 of the Charter, and the effectiveness of the right to an effective remedy. In that regard, I recall that the second paragraph of Article 47 of the Charter states inter alia that 'everyone is entitled to a fair and public hearing *within a reasonable time* by an independent and impartial tribunal previously established by law'. [67] I must also point out that, in view of the individual situation of applicants for asylum or for international protection, the Member State in which that applicant is present must therefore ensure that there is no worsening of a situation of infringement of the applicant's fundamental rights by examination procedures of an unreasonable duration.

102. In the second place, with regard to the justification for such an unreasonable period, I would point out that, according to the settled case-law of the Court, a Member State cannot rely on legislative amendments made during the main proceedings to justify its failure to comply with its obligation to decide on applications for asylum or for international protection within a reasonable time. [68]

103. In the third and final place, as regards the question of whether the failure to observe a reasonable time limit can, in itself, justify setting aside the decision rejecting an application for asylum or for international protection, I share the Commission's view that the failure to comply with the obligation to take a decision on those applications within a reasonable time is not a relevant ground for deciding, in the context of the remedy referred to in Article 39 of Directive 2005/85, whether a refusal to grant international protection complies with the rules and criteria set out in Directive 2004/83.

104. The purpose of the remedy referred to in Article 39 of Directive 2005/85 is to decide whether the determining authority was fully entitled to consider that an applicant did not satisfy the requisite conditions to obtain international protection. In that regard, the question of whether or not a person is genuinely in need of such protection must be assessed on the basis of the criteria for granting such protection, set out in Directive 2004/83. The fact that the decision on the need for international protection was not taken within a reasonable time is irrelevant in the context of that assessment and cannot serve as a basis for deciding whether to grant protection.

[66] See, to that effect, judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraphs 49 and 50). See, also, Reneman, M., 'Judicial Review of the Establishment and Qualification of the Facts', *EU Asylum Procedures and the Right to an Effective Remedy*, Hart Publishing, London, 2014, pp. 249 to 293, in particular p. 288.

[67] Emphasis added.

[68] See, to that effect, with regard to the field of asylum, judgment of 9 July 2009, *Commission* v *Spain* (C-272/08, not published, EU:C:2009:442, paragraph 10 and the case-law cited). See, also, judgment of 19 April 2012, *Commission* v *Greece* (C-297/11, not published, EU:C:2012:228, paragraph 14).

105. That said, I would point out that the second paragraph of Article 47 of the Charter states that 'everyone shall have the possibility of being advised, defended and represented'.[69] According to settled case-law, observance of the rights of the defence is a fundamental principle of EU law.[70] In the present case, while the total duration of the procedure results in an infringement of the rights of defence of an applicant for asylum and for international protection, the disregard of the reasonable time limit on account of that infringement may, in itself, justify the annulment of the decision rejecting those applications, which it is for the referring court to ascertain.[71]

### *D. The general credibility of an applicant (seventh question)*

106. By its seventh question, the referring court asks, in essence, whether a false statement in the initial application, which the applicant retracted at the first opportunity, justifies calling into question his or her credibility.

107. I note that Article 4(1) of Directive 2004/83 provides for the possibility for Member States to consider that the applicant is obliged to substantiate his or her application for international protection, that obligation consisting, according to the Court, of 'submit[ting] all elements needed'.[72] Article 4(2) of that directive defines those elements as consisting, inter alia, of 'the applicant's statements and all documentation at the applicant's disposal'. In addition, it follows from Article 4(5) of that directive that, where aspects of the applicant's statements are not supported by documentary or *other* evidence,[73] those aspects do not need confirmation, when five cumulative conditions are met, one of them being that 'the *general credibility* of the applicant has been established'.[74]

108. However, I note that neither Directive 2004/83 nor Directive 2005/85 specifies what is meant by 'credibility' and gives no indications as to the factors to be taken into account in the assessment of the applicant's 'general credibility' by the competent national authorities and courts.

109. According to the UNHCR, 'credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed'.[75] It follows from that definition that those criteria correspond to one of the cumulative conditions laid down in Article 4(5) of Directive 2004/83, namely the condition that 'the applicant's statements are found to be *coherent and plausible* and *do not run counter to* available specific and *general information* relevant to the applicant's case'.[76] Therefore, to me, that definition does not appear to be relevant for the purposes of defining the criterion of 'general credibility' within the meaning of Article 4(5)(e) of that directive. Rather, I

[69] In accordance with Article 48(2) of the Charter, respect for the rights of the defence of anyone who has been charged must be guaranteed.

[70] Judgment in *M.* (paragraph 81 and the case-law cited).

[71] In the context of the interpretation of Article 46(3) of Directive 2013/32, which is not applicable in the present case, see judgment of 29 July 2019, *Torubarov* (C-556/17, EU:C:2019:626, paragraph 59 and the case-law cited), on the obligation of each Member State to order its national law in such a way that, following annulment of the initial decision and in the event of the file being referred back to the quasi-judicial or administrative body, a new decision is adopted within a short period of time and that it complies with the assessment contained in the judgment annulling the initial decision.

[72] Judgment in *M.* (paragraph 65).

[73] This includes, inter alia, oral, documentary, visual and audio evidence or documents. See UNHCR report 'Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report', May 2013, available at: https://www.refworld.org/docid/519b1fb54.html.

[74] Article 4(5)(e) of Directive 2004/83 (emphasis added).

[75] See UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, paragraph 11, available at: https://www.refworld.org/pdfid/3ae6b3338.pdf.

[76] Article 4(5)(c) (emphasis added).

infer therefrom that that criterion must be assessed by the determining authority in the context of its obligation to carry out an individual assessment of an application for international protection taking into account, inter alia, the individual position and personal circumstances of the applicant, in accordance with Article 4(3)(c) of that directive.

110. In that regard, I note that the Court has already recalled the requirement imposed on the competent authorities, under Article 13(3)(a) of Directive 2005/85[77] and Article 4(3) of Directive 2004/83, to conduct the interview taking account of the personal or general circumstances surrounding the application, in particular, the vulnerability of the applicant, and to carry out an individual assessment of the application, taking account of the individual position and personal circumstances of each applicant.[78]

111. In that context, the fact that an applicant has submitted a false statement does not mean, in itself, that that statement is significant or decisive for the outcome of the application, without the existence of additional factors indicating that the applicant's allegations are unfounded.[79] There are many reasons why an applicant may have submitted a false statement.[80] Thus, if a piece of evidence contradicts the applicant's statements, the case officer has to address that and give the applicant an opportunity to explain the inconsistencies.[81]

112. In the present case, it is apparent from the order for reference that the application by the applicant in the main proceedings was initially based on a single false statement and that he retracted that statement and explained it at the first possible opportunity. Moreover, it cannot be ruled out that the mental health problems from which the applicant in the main proceedings appears to suffer might have affected his first statement.

113. Therefore, I share the Commission's view that it would not be proportionate to take the view, on the basis of a single false statement, which the applicant explained and retracted at the first possible opportunity, that the applicant is not credible.

77 Article 13 of Directive 2005/85 lays down the conditions to which a personal interview is subject. This includes ensuring that the personal interview is conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. Therefore, Member States must ensure that the person who conducts the interview is sufficiently competent and that applicants have access to the services of an interpreter to assist them.

78 Judgment of 2 December 2014, *A and Others* (C-148/13 to C-150/13, EU:C:2014:2406, paragraph 70). As Advocate General Sharpston correctly pointed out in her Opinion in *A and Others* (C-148/13 to C-150/13, EU:C:2014:2111, point 74), which concerned the scope of the assessment of the credibility of an asylum seeker's statements relating to his or her sexual orientation and, more specifically, the limits imposed on that assessment by Article 4 of Directive 2004/83 and Articles 3 and 7 of the Charter, 'genuine applicants for refugee status often find themselves requesting asylum because they have suffered an ordeal and endured difficult and distressing circumstances. It is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof'.

79 European Asylum Support Office, *Legal analysis*: *Evidence and credibility assessment in the context of the Common European Asylum System*, EASO, 2018, p. 79.

80 In particular, duress, coercion, lack of autonomy, misguided advice, fear, desperation or ignorance. See, in that regard, UNHCR report 'Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report', loc. cit., p. 213.

81 See, to that effect, European Asylum Support Office, *EASO Practical Guide: Evidence Assessment*, Publications Office of the European Union, Luxembourg, 2016, p. 4.

## VII. Conclusion

114. In the light of the foregoing considerations, I propose that the Court should give the following response to the High Court (Ireland):

'(1) Article 4(3)(a) to (c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, read in conjunction with Article 8(2)(b) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status,

must be interpreted as meaning that it requires the determining authority to obtain, first, precise and up-to-date information on the country of origin of an applicant for asylum and for international protection and, second, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country, a medico-legal report on that applicant's mental health where the determining authority considers such a report to be relevant or necessary for the assessment of the application.

(2) Article 4(3)(a) to (c) of Directive 2004/83, read in conjunction with Article 8(2)(b) and Article 39 of Directive 2005/85 and Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that it requires the court of first instance, having regard to its obligation to ensure an effective remedy against a decision by the determining authority, to obtain, first, precise and up-to-date information on the country of origin of an applicant for asylum and for international protection and, second, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country, a medico-legal report on that applicant's mental health where the court of first instance considers such a report to be relevant or necessary for the assessment of the application.

Given the importance of the fundamental rights at stake in an application for asylum and for international protection, in the event of a breach of the obligation of the determining authority and the court of first instance to carry out an appropriate examination of the application, the burden of demonstrating that their decisions might have been different had there been no such breach must not be borne by the applicant.

(3) Where the total duration of the procedure for granting refugee status and international protection results in an infringement of the rights of defence of an applicant for refugee status and for international protection, the disregard of the reasonable time limit may, in itself, justify the annulment of the decision rejecting those applications, which it is for the referring court to ascertain.

A Member State cannot rely on legislative amendments made during that procedure to justify its failure to comply with its obligation to decide on applications for international protection within a reasonable time.

(4) Article 4(3)(c) and Article 4(5)(e) of Directive 2004/83

must be interpreted as meaning that a false statement in the initial application for refugee status, which the applicant retracted at the first opportunity, after having explained himself or herself, does not justify calling into question his or her general credibility.

[i] — The wording of point 9 of this document has been amended since it was first put online.