Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

25 January 2018*

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 7 — Respect for private and family life — Directive 2011/95/EU — Standards for granting refugee status or subsidiary protection status — Fear of persecution on grounds of sexual orientation — Article 4 — Assessment of facts and circumstances — Recourse to an expert's report — Psychological tests)

In Case C-473/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary), made by decision of 8 August 2016, received at the Court on 29 August 2016, in the proceedings

F

v

Bevándorlási és Állampolgársági Hivatal,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, J. Malenovský, M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: N. Wahl,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 13 July 2017,

after considering the observations submitted on behalf of:

– F, by T. Fazekas and Z.B. Barcza-Szabó, ügyvédek,

– the Hungarian Government, by M.Z. Fehér, G. Koós and M.M. Tátrai, acting as Agents,

– the French Government, by D. Colas, E. de Moustier and E. Armoët, acting as Agents,

– the Netherlands Government, by M. Gijzen and M. Bulterman, acting as Agents,

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

* Language of the case: Hungarian.

after hearing the Opinion of the Advocate General at the sitting on 5 October 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 4 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

2 The request has been made in proceedings between F, a Nigerian national, and the Bevándorlási és Állampolgársági Hivatal (Office for Immigration and Citizenship, Hungary, 'the Office') concerning the decision rejecting the asylum application submitted by F and stating that there was no obstacle to his *refoulement*.

Legal context

European Convention for the Protection of Human Rights and Fundamental Freedoms

3 Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, provides:

'Everyone has the right to respect for his private and family life, his home and his correspondence.'

European Union law

Directive 2005/85/EC

4 Article 2(e) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) is worded as follows:

'For the purposes of this Directive:

…

(e) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I'.

5 The first subparagraph of Article 4(1) of that directive provides:

'Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive …'

6 Article 8(2) of that directive lays down:

‘Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. …’

7 Article 13(3) of the directive states:

‘Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end Member States shall:

(a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant’s cultural origin or vulnerability, insofar as it is possible to do so; …’

8 Article 39(1) and (2) of Directive 2005/85 is worded as follows:

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

(a) a decision taken on their application for asylum …

…

2. Member States shall provide for time limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.’

Directive 2011/95

9 Recital 30 of Directive 2011/95 reads as follows:

‘It is equally necessary to introduce a common concept of the persecution ground “membership of a particular social group”. For the purposes of defining a particular social group, issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of persecution.’

10 Article 4 of that directive provides:

‘1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in paragraph 1 consist of the applicant’s statements and all the documentation at the applicant’s disposal regarding the applicant’s age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) 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;

(b) 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;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

…

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) 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;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.'

11 Article 10 of that directive provides:

'1. Member States shall take the following elements into account when assessing the reasons for persecution:

…

(d) a group shall be considered to form a particular social group where in particular:

– members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

– that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. …

…

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.'

12 The first subparagraph of Article 39(1) of the directive provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by 21 December 2013. They shall forthwith communicate to the Commission the text of those provisions.'

13 The first paragraph of Article 40 of Directive 2011/95 is worded as follows:

'Directive 2004/83/EC is repealed for the Member States bound by this Directive with effect from 21 December 2013 …'

Directive 2013/32/EU

14 Article 4(1) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), provides:

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

15 Article 10(3) of that directive lays down:

'Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

…

(d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.'

16 Article 15(3) of that directive states:

'Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end Member States shall:

(a) ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;

…'

17 Article 46(1) and (4) of the Directive is worded as follows:

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

(a) a decision taken on their application for international protection, including a decision:
(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status,

…

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. …

…'

18 Article 51(1) of Directive 2013/32 provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate the text of those measures to the Commission.'

19 The first paragraph of Article 52 of that directive reads as follows:

'Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged and to procedures for the withdrawal of international protection started after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC.'

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

20 In April 2015, F submitted an application for asylum to the Hungarian authorities.

21 In support of that application, he claimed, at the first interview conducted by the Office, that he had a well-founded fear of being persecuted in his country of origin on account of his homosexuality.

22 By decision of 1 October 2015, the Office rejected F's application for asylum. In that regard, although it considered that F's statements were not fundamentally contradictory, it nonetheless concluded that F lacked credibility on the basis of an expert's report prepared by a psychologist. That expert's report entailed an exploratory examination, an examination of personality and several personality tests, namely the 'Draw-A-Person-In-The-Rain' test and the Rorschach and Szondi tests, and concluded that it was not possible to confirm F's assertion relating to his sexual orientation.

23 F brought an action against the Office's decision before the referring court, contending in particular that the psychological tests he had undergone seriously prejudiced his fundamental rights and did not make it possible to assess the plausibility of his sexual orientation.

24 The referring court notes that the applicant in the main proceedings was unable to show specifically how those tests prejudiced the fundamental rights guaranteed by the Charter. It also states that he declared that he had not undergone any physical examination and had not been required to view pornographic photographs or videos.

25 Following a measure of inquiry ordered by the referring court, the Igazságügyi Szakértői és Kutató Intézet (Institute of forensic experts and investigators, Hungary) produced an expert report, according to which the methods used during the procedure for examining the asylum application do not prejudice human dignity and are appropriate, together with a 'suitable exploration' of the issues, for giving an indication of an individual's sexual orientation as well as, where appropriate, for calling in question the validity of a person's statements in that regard. The referring court states that it considers itself bound by the conclusions of that report.

26 In those circumstances, the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In the light of Article 1 of the [Charter], must Article 4 of Directive [2011/95] be interpreted as not precluding a forensic psychologist's expert opinion based on projective personality tests from being sought and evaluated, in relation to [Lesbian, Gay, Bisexual, Transsexual and Intersexed ("LGBTI")] applicants for asylum, when, in order to formulate that opinion, no questions are asked about the sexual habits of the applicant for asylum and that applicant is not subject to a physical examination?

(2) If the expert opinion referred to in question 1 may not be used as proof, must Article 4 of Directive [2011/95] be interpreted, in the light of Article 1 of the [Charter], as meaning that when the asylum application is based on persecution on grounds of sexual orientation, neither the national administrative authorities nor the courts have any possibility of examining, by expert methods, the truthfulness of the claims of the applicant for asylum, irrespective of the particular characteristics of those methods?'

Consideration of the questions referred

The second question

27 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 4 of Directive 2011/95 must be interpreted as meaning that it precludes the authority responsible for examining applications for international protection, or, where an action has been

brought against a decision of that authority, the courts or tribunals seised, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant.

28 It must be noted that the statements made by an applicant for international protection relating to his sexual orientation constitute, having regard to the particular context in which applications for international protection are made, merely the starting point in the process of assessment of the facts and circumstances envisaged under Article 4 of Directive 2011/95 (see, by analogy, judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 49).

29 It follows that, although it is for the applicant for international protection to identify his sexual orientation, which is an aspect of his personal identity, applications for international protection on the basis of a fear of persecution on grounds of that sexual orientation may, in the same way as applications based on other grounds for persecution, be subject to the assessment process provided for in Article 4 of that directive (see, by analogy, judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 52).

30 In that regard, it must be recalled that sexual orientation is a characteristic which is capable of proving an applicant's membership of a particular social group, within the meaning of Article 2(d) of Directive 2011/95, where the group of persons whose members share the same sexual orientation is perceived by the surrounding society as being different (see, to that effect, judgment of 7 November 2013, *X and Others*, C-199/12 to C-201/12, EU:C:2013:720, paragraphs 46 and 47), as is confirmed, moreover, by Article 10(1)(d) of that directive.

31 It follows nevertheless from Article 10(2) of that directive that, when the Member States assess whether an applicant has a well-founded fear of being persecuted, it is immaterial whether he actually possesses the characteristic linked to the membership of a particular social group which attracts the persecution, provided that such a characteristic is attributed to him by the actor of persecution.

32 Accordingly, it is not always necessary, in order to adjudicate on an application for international protection based on a fear of persecution on grounds of sexual orientation, to assess the credibility of the applicant's sexual orientation in the context of the assessment of the facts and circumstances laid down in Article 4 of Directive 2011/95.

33 That said, it must be noted that Article 4(3) of Directive 2011/95 lists the factors which the competent authorities must take into account during the individual assessment of an application for international protection and that Article 4(5) of that directive specifies the conditions under which a Member State, applying the principle that it is the duty of the applicant to substantiate his application, must consider that certain aspects of the applicant's statements do not require confirmation. Those conditions include, in particular, the fact 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 his case, as well as the fact that the applicant's general credibility has been established.

34 In that regard, it must be held that those provisions do not restrict the means available to those authorities and, in particular, do not exclude the use of expert reports in the context of the process of assessment of the facts and circumstances in order to determine more accurately the applicant's actual need for international protection.

35 Nevertheless, the procedures, should recourse be had, in that context, to an expert's report, must 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, and the right to respect for private and family life guaranteed by Article 7 thereof (see, to that effect, judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 53).

36 Even though Article 4 of Directive 2011/95 is applicable to all applications for international protection, whatever the ground for persecution relied on in support of those applications, it is 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, in observance of the rights guaranteed by the Charter (see, to that effect, judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 54).

37 It cannot be ruled out that, in the specific context of the assessment of statements made by an applicant for international protection relating to his sexual orientation, certain forms of expert reports may prove useful for the assessment of the facts and circumstances and may be prepared without prejudicing the fundamental rights of that applicant.

38 Thus, as pointed out by the French and Netherlands Governments, recourse to an expert may, inter alia, allow for the collection of more comprehensive information about the situation of persons sharing a specific sexual orientation in the third country from which the applicant originates.

39 Article 10(3)(d) of Directive 2013/32, which, according to Article 51(1) thereof, was to be transposed by 20 July 2015 at the latest, also specifically provides that Member States must ensure that the personnel examining applications and taking decisions have the possibility of seeking advice, whenever necessary, from experts on particular issues such as those related to gender, which encompass in particular, as is apparent from recital 30 of Directive 2011/95, issues relating to gender identity and sexual orientation.

40 However, it should be noted, first, that it follows both from Article 4(1) and Article 8(2) of Directive 2005/85 and from Article 4(1) and Article 10(3) of Directive 2013/32 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. It is, therefore, for such authorities alone to carry out, acting under the supervision of the courts, the assessment of the facts and circumstances laid down in Article 4 of Directive 2011/95 (see, to that effect, judgment of 26 February 2015, *Shepherd*, C-472/13, EU:C:2015:117, paragraph 40).

41 It is apparent, secondly, from Article 4 of that directive that the examination of the application for international protection must include an individual assessment of that application, taking into account, inter alia, all relevant facts as they relate to the country of origin of the applicant at the time of taking a decision on the application, the relevant statements and documentation presented by him as well as his individual position and personal circumstances. Where necessary, the competent authority must also take account of the explanation provided regarding a lack of evidence, and of the applicant's general credibility (see, by analogy, judgments of 26 February 2015, *Shepherd*, C-472/13, EU:C:2015:117, paragraph 26, and of 9 February 2017, *M*, C-560/14, EU:C:2017:101, paragraph 36).

42 It follows that the determining authority cannot base its decision solely on the conclusions of an expert's report and that that authority cannot, a fortiori, be bound by those conclusions when assessing the statements made by an applicant relating to his sexual orientation.

43 As regards the possibility, for a court or tribunal seised of an action against a decision of the determining authority rejecting an application for international protection, of ordering that an expert's report be obtained, it should be added that both Article 39(1) of Directive 2005/85 and Article 46(1) of Directive 2013/32 provide that the applicant is to have the right to an effective remedy before a court or tribunal against that decision but do not specifically delimit the measures of inquiry that that court is entitled to order.

44 Article 39(2) of Directive 2005/85 and Article 46(4) of Directive 2013/32 state, moreover, that it is for the Member States to lay down the rules necessary for the exercise by the applicant of his right to an effective remedy.

45 Although those provisions do not therefore preclude a court or tribunal from ordering that an expert report be obtained for the purpose of an effective review of the decision of the determining authority, the fact remains that, in the light of (i) the specific role assigned to the courts and tribunals by Article 39 of Directive 2005/85 and Article 46 of Directive 2013/32 and (ii) the considerations relating to Article 4 of Directive 2011/95 set out in paragraph 41 of the present judgment, the court or tribunal seised cannot base its decision solely on the conclusions of an expert's report and cannot, a fortiori, be bound by the assessment of the applicant's statements relating to his sexual orientation set out in those conclusions.

46 In the light of those considerations, the answer to the second question is that Article 4 of Directive 2011/95 must be interpreted as meaning that it does not preclude the authority responsible for examining applications for international protection, or, where an action has been brought against a decision of that authority, the court or tribunal seised, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant, provided that the procedures for such a report are consistent with the fundamental rights guaranteed by the Charter, that that authority and those courts or tribunals do not base their decision solely on the conclusions of the expert's report and that they are not bound by those conclusions when assessing the applicant's statements relating to his sexual orientation.

The first question

47 By its first question, the referring court asks, in essence, whether Article 4 of Directive 2011/95, read in the light of the Charter, must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.

48 It follows from the answer to the second question and the considerations set out in paragraph 35 of the present judgment that, although Article 4 of Directive 2011/95 does not prevent the determining authority or the courts or tribunals seised of an action against a decision of that authority from ordering, in circumstances such as those at issue in the main proceedings, that an expert's report be obtained, the procedures for recourse to such a report must be consistent with, in particular, the fundamental rights guaranteed by the Charter.

49 The right to respect for private and family life, as affirmed in Article 7 of the Charter, in particular, is among the fundamental rights having specific relevance in the context of the assessment of the statements made by an applicant for international protection relating to his sexual orientation (see, to that effect, judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 64).

50 Article 4 of Directive 2011/95 must, accordingly, be interpreted in the light of Article 7 of the Charter (see, by analogy, judgment of 21 April 2016, *Khachab*, C-558/14, EU:C:2016:285, paragraph 28).

51 In this regard, it should be noted that a psychologist's expert report, such as that at issue in the main proceedings, is commissioned by the determining authority in the context of the examination of the application for international protection submitted by the person concerned.

52 It follows that that report is prepared in a context where the person called upon to undergo projective personality tests is in a situation in which his future is closely linked to the decision that that authority will take on his application for international protection and in which a possible refusal to undergo these tests is liable to constitute an important factor on which the authority will rely for the purpose of determining whether that person has sufficiently substantiated his application.

53 Therefore, even if the performance of the psychological tests on which an expert's report, such as that at issue in the main proceedings, is based is formally conditional upon the consent of the person concerned, it must be considered that that consent is not necessarily given freely, being de facto imposed under the pressure of the circumstances in which applicants for international protection find themselves (see, to that effect, judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 66).

54 In those circumstances, as the Advocate General noted in point 43 of his Opinion, the preparation and use of a psychologist's expert report such as that at issue in the main proceedings constitutes an interference with that person's right to respect for his private life.

55 Under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. In observance of the principle of proportionality, limitations may be imposed on the exercise of those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

56 As regards, in particular, the proportionality of the interference that has been found to exist, it should be recalled that the principle of proportionality requires, according to the settled case-law of the Court, that the measures adopted do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question, since the disadvantages caused by the legislation must not be disproportionate to the aims pursued (see, to that effect, judgments of 10 March 2005, *Tempelman and van Schaijk*, C-96/03 and C-97/03, EU:C:2005:145, paragraph 47; of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 123; and of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 54).

57 In this context, although interference with an applicant's private life can be justified by the search for information enabling his actual need for international protection to be assessed, it is for the determining authority to assess, under the court's supervision, whether a psychologist's expert report which it intends to commission or wishes to take into account is appropriate and necessary in order to achieve that objective.

58 In this respect, it should be noted that the suitability of an expert's report such as that at issue in the main proceedings may be accepted only if it is based on sufficiently reliable methods and principles in the light of the standards recognised by the international scientific community. It should be noted in that regard that, although it is not for the Court to rule on this issue, which is, as an assessment of the facts, a matter within the national court's jurisdiction, the reliability of such an expert's report has been vigorously contested by the French and Netherlands Governments as well as by the Commission.

59 In any event, the impact of an expert's report such as that at issue in the main proceedings on the applicant's private life seems disproportionate to the aim pursued, since the seriousness of the interference with the right to privacy it constitutes cannot be regarded as proportionate to the benefit that it may possibly represent for the assessment of the facts and circumstances set out in Article 4 of Directive 2011/95.

60 In the first place, the interference with the private life of the applicant for international protection arising from the preparation and use of an expert's report, such as that at issue in the main proceedings, is, in view of its nature and subject matter, particularly serious.

61 Such an expert's report is based in particular on the fact that the person concerned undergoes a series of psychological tests intended to establish an essential element of his identity that concerns his personal sphere in that it relates to intimate aspects of his life (see, to that effect, judgments of 7 November 2013, *X and Others*, C-199/12 to C-201/12, EU:C:2013:720, paragraph 46, and of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraphs 52 and 69).

62 It is also necessary to take account, in order to assess the seriousness of the interference arising from the preparation and use of a psychologist's expert report, such as that at issue in the main proceedings, of Principle 18 of the Yogyakarta principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, to which the French and Netherlands Governments have referred, which states, inter alia, that no person may be forced to undergo any form of psychological test on account of his sexual orientation or gender identity.

63 When those elements are looked at together, it is apparent that the seriousness of the interference with private life entailed by the preparation and use of an expert's report, such as that at issue in the main proceedings, exceeds that entailed by an assessment of the statements of the applicant for international protection relating to a fear of persecution on grounds of his sexual orientation or recourse to a psychologist's expert report having a purpose other than that of establishing the applicant's sexual orientation.

64 In the second place, it must be borne in mind that an expert's report such as that at issue in the main proceedings falls within the scope of the assessment of the facts and circumstances laid down in Article 4 of Directive 2011/95.

65 In this context, such an expert's report cannot be considered essential for the purpose of confirming the statements of an applicant for international protection relating to his sexual orientation in order to adjudicate on an application for international protection based on a fear of persecution on grounds of that orientation.

66 On the one hand, the carrying out of a personal interview conducted by the personnel of the determining authority is such as to contribute to the assessment of those statements, inasmuch as both Article 13(3)(a) of Directive 2005/85 and Article 15(3)(a) of Directive 2013/32 provide that the Member States must ensure that the person who conducts the interview is competent to take account of the personal circumstances surrounding the application, those circumstances covering in particular the applicant's sexual orientation.

67 More generally, it is apparent from Article 4(1) of Directive 2013/32 that the Member States are under an obligation to ensure that the determining authority is provided with the appropriate means, including sufficient competent personnel, to carry out its tasks. It follows that the personnel of that authority must in particular have appropriate skills to assess applications for international protection which are based on a fear of persecution on grounds of sexual orientation.

68 Second, it is apparent from Article 4(5) of Directive 2011/95 that, where the Member States apply the principle that it is the duty of the applicant to substantiate his application, the applicant's statements concerning his sexual orientation which are not substantiated by documentary evidence or evidence of another kind do not need confirmation when the conditions set out in that provision are fulfilled: those conditions refer, inter alia, to the consistency and plausibility of those statements and do not make any mention of the preparation or use of an expert's report.

69 Furthermore, even assuming that an expert's report based on projective personality tests, such as that at issue in the main proceedings, may contribute to identifying with a degree of reliability the sexual orientation of the person concerned, it follows from the statements of the referring court that the conclusions of such an expert's report are only capable of giving an indication of that sexual orientation. Accordingly, those conclusions are, in any event, approximate in nature and are therefore

of only limited interest for the purpose of assessing the statements of an applicant for international protection, in particular where, as in the case at issue in the main proceedings, those statements are not contradictory.

70 That being so, it is not necessary, in order to answer the first question, to interpret Article 4 of Directive 2011/95 also in the light of Article 1 of the Charter.

71 It follows from the foregoing that the answer to the first question is that Article 4 of Directive 2011/95, read in the light of Article 7 of the Charter, must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.

Costs

72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 4 of Directive 2011/95/EC 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, must be interpreted as meaning that it does not preclude the authority responsible for examining applications for international protection, or, where an action has been brought against a decision of that authority, the courts or tribunals seised, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant, provided that the procedures for such a report are consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, that that authority and those courts or tribunals do not base their decision solely on the conclusions of the expert's report and that they are not bound by those conclusions when assessing the applicant's statements relating to his sexual orientation.**

2. **Article 4 of Directive 2011/95, read in the light of Article 7 of the Charter of Fundamental Rights, must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.**

[Signatures]