

JUDGMENT of the Court third Chamber)

January 25, 2018)*)

"Preliminary reference - Charter of rights fundamental to the European Union - Article 7 - Respect for privacy and family - 2011/95/EU Directive - standards relating to the conditions for granting the status of refugee or subsidiary protection - status Fear of persecution because of sexual orientation - Article 4 - Evaluation of the facts and circumstances - recourse to expertise - psychological Tests"

In case C-473/16,

for the purpose a preliminary ruling in respect of article 267 TFEU, introduced by the Szegedi Közigazgatási és Munkaugyi Bíróság (court administrative and labour of Szeged, Hungary), by decision of 8 August 2016, received at the Court on 29 August 2016, in the proceedings

F

against

Bevándorlási és Allampolgársági Hivatal,

THE third court room),

composed of Mr. L. Bay Larsen (rapporteur), president of Chamber, Mr J. Malenovský, M. Safjan, d. Švaby and M. Vilaras, judges,

advocate general: M. N. Wahl,

CLERK: M^l r. Şereş, administrator,

given the written procedure and further to the hearing on 13 July 2017.

considering the observations:

-for F, by M^{te} T. Fazekas and Z. B. Barcza-Szabo, ügyvedek,.

-for the Hungarian Government, by Messrs. M. Z. Fehér, G. Koos and M^{me} M. M. Tatrai, as agents,

-for the french government, by M. D. Colas as well as M^{my} e. Moustier and E. Armoet, as agents,

-for the Netherlands Government, by M^{my} M. Gijzen and M. Bulterman, as agents,

-for the European Commission, by M^{me} M. Kondou-Jose and M. A. Tokár, as agents,

having heard the advocate general in its submissions at the hearing on 5 October 2017,

gives the following

Stop

1 the preliminary ruling turns on the interpretation of article 1^{er} of the Charter of fundamental rights of the European Union (hereinafter the "Charter") and of article 4 of the directive 2011/95/EU of the European Parliament and of the Council, of December 13, 2011, about the standards to the requirements of third-country nationals or stateless persons to qualify for international protection, a uniform status for refugees or people eligible for subsidiary protection, and content of this protection (JO 2011, L 337, p. 9).

2 the request has been made in proceedings between F, nigerian national, to the Bevándorlási és Állampolgársági Hivatal (office of immigration and nationality, Hungary) (hereinafter the "office") on the decision rejecting the application for asylum made by F and noting that there was no obstacle to the discharge of the latter.

The legal framework

The European convention on protection of the rights of man and fundamental freedoms

3 the European convention of backup of the rights of man and fundamental freedoms, signed in Rome on 4 November 1950, provides, in its article 8, paragraph 1:

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

The right of the Union

Directive 2005/85/EC

(4 article 2 e), of the directive 2005/85/EC of the Council, from 1st December 2005, relating to minimum standards concerning the procedure for granting and withdrawal of refugee in the Member States (OJ 2005 L 326, p. 13, and) Corrigendum OJ 2006 L 236, p. 36), reads:

"For the purposes of this directive, means:

[...]

"(e)"determining authority", any body judicial or administration of a Member State, responsible for examination of applications for asylum and competent to pronounce first spring on these requests, subject to annex I'.

5 article 4, paragraph 1, first subparagraph, of the directive states:

"The Member States shall designate for all procedures an authority responsible for determining who will be asked to conduct a proper review of the applications in accordance with the provisions of this directive [...]"

6 article 8, paragraph 2, of the directive states:

"The Member States shall ensure that decisions on applications for asylum are taken by the responsible authority determination after a proper review. [...] »

7 article 13, paragraph 3, of the directive states:

'Member States shall take appropriate measures to ensure that the personal interview is conducted under conditions that allow the plaintiff to expose all of the reasons for his request. To this end, the Member States:

- (a) ensure that the person responsible for conducting the interview is sufficiently competent to take account of the personal or general circumstances which included the request, including the cultural origin or vulnerability of the plaintiff, as far as it is possible to do, [...] »

8 article 39, paragraphs 1 and 2, of the directive 2005/85 reads:

' 1. Member States shall ensure that asylum seekers have the right to an effective remedy before a court against the following acts:

- (a) a decision on their asylum application, [...]

[...]

2. Member States provide for time limits and set the other necessary rules so that the applicant can exercise his right to an effective remedy pursuant to paragraph 1. »

The 2011/95 directive

9 recital 30 of the directive 2011/95 is worded as follows:

"It is also necessary to adopt a new definition of the grounds of persecution that constitutes "membership in a particular social group". The purpose of the definition of a particular social group, to take into account issues related to the kind of applicant - including gender identity and sexual orientation, which can be linked to certain legal traditions and Customs, resulting for example in genital mutilation, forced abortions or forced sterilizations - insofar as they relate to the well-founded fear of the claimant being persecuted. »

10 article 4 of that directive provides:

'1. Member States may consider that it is up to the applicant to present, as soon as possible, all the elements needed to substantiate the application for international protection. It is for the Member State to assess, in cooperation with the applicant, the relevant elements of the application.

2. the elements referred to in paragraph 1 correspond to statements made by the applicant and all the documents that the plaintiff has concerning his age, his past, including those of parents to take into account, his identity, his or her nationality, the country so only the place or places where he lived previously, its previous asylum applications, his route, his travel documents, as well as the reasons for the application for international protection.

3. should the individual assessment of an application for international protection taking into account the following:

- (a) all relevant facts about the country of origin when ruling on the application, including the laws and regulations of the country of origin and how they are applied;

- (b) the information and documents submitted by the applicant, including the information to determine if the applicant has been or could be the subject of persecution or serious harm;
- (c) the individual status and the personal situation of the applicant, including factors such as her past, her sex and her age, to determine if, in view of the personal situation of the applicant, the acts to which the applicant has been or could be exposed could be considered as persecution or a serious injury;
- (d) the fact that, when he left his country of origin, the applicant or not exercised activities whose only goal or the main purpose was to create the necessary conditions to apply for international protection, to determine if these activities expose him to persecution or serious injury if he returned to that country;
- (e) the fact that it is reasonable to assume that the applicant could rely on the protection of another country which he could claim citizenship.

[...]

5. where Member States apply the principle according to which it is up to the applicant to substantiate its claim, and when certain aspects of the statements of the applicant are not supported by documentary or other evidence, those aspects do not require confirmation when the following conditions are met:

- (a) the applicant has actually tried to substantiate his claim;
- (b) all relevant elements at the disposal of the applicant submitted, and a satisfactory explanation was given as to the absence of other evidence;
- (c) statements made by the applicant are considered to be coherent and plausible and they are not contradicted by General and specific information known and relevant to his application;
- (d) the applicant has applied for international protection as soon as possible, unless he can move forward good reasons for not doing so; and
- (e) the general credibility of the applicant could be established. »

11 article 10 of that directive provides:

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

[...]

(d) a group is considered a particular social, group in particular:

- its members share an innate characteristic or a common history that cannot be changed, or a feature or a belief at this point essential to identity or conscience that it should not be required of a person she renounces , and
- This group has its identity in the country in question because it is perceived as being different by the surrounding society.

Depending on the conditions prevailing in the country of origin, a specific social group can be a group whose members have common feature a sexual orientation. Sexual orientation cannot be understood as including deemed criminal acts according to the national law of the Member States. [...]

[...]

2. when assessing if an applicant well-founded fear of being persecuted, it is immaterial that it actually has the characteristic related to race, religion, nationality, membership in a particular social group or political opinion the origin of the persecution, as long as this feature is attributed to him by the actor of persecution. »

12 article 39, paragraph 1, first subparagraph, of the directive states:

"The Member States implement the legislative, regulatory, and administrative measures 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 no later than December 21, 2013. They shall immediately communicate to the Commission the text of those provisions. »

13 article 40, first paragraph, of the 2011/95 directive reads:

"Directive 2004/83/EC is repealed with effect from December 21, 2013 in respect of the Member States bound by the directive [...]"

The 2013/32/EU directive

14 directive 2013/32/EU of the European Parliament and the Council, of 26 June 2013, on common procedures for granting and withdrawing international protection (2013 OJ, L 180, p. 60), has, in its article 4, paragraph 1:

"The Member States shall designate for all procedures an authority responsible for determining who will be asked to conduct a proper review of the applications in accordance with this directive. Member States shall ensure that this authority has appropriate means, including staff in sufficient numbers, to perform its tasks in accordance with this directive. »

15 article 10, paragraph 3, of the directive states:

"The Member States shall ensure that decisions on applications for international protection are taken by the responsible authority determination following a proper review. For this purpose, Member States shall ensure that:

[...]

(d) staff review applications and make decisions has the possibility to seek advice from experts, if necessary, on specific such as medical, cultural, religious materials, or those related to children or to the genre. »

16 article 15, paragraph 3, of the directive states:

'Member States shall take appropriate measures to ensure that the personal interview is conducted under conditions that allow the plaintiff to expose all of the reasons for his request. To this end, the Member States:

- (a) ensure that the person responsible for conducting the interview is competent to take account of the personal and general situation in which fits demand, including cultural background, gender or sexual orientation, gender identity or the vulnerability of the plaintiff;

[...] »

17 article 46, paragraphs 1 and 4, of the directive reads:

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

- (a) a decision concerning their request for international protection, including:

- (i) decisions as unfounded an application about refugee and/or subsidiary protection status

[...]

4. Member States provide for reasonable time limits and set the other necessary rules so that the applicant can exercise his right to an effective remedy pursuant to paragraph 1. [...]

[...] »

18 article 51, paragraph 1, of directive 2013/32 provides:

"The Member States implement the legislative, regulatory, and administrative measures to comply with articles 1^{er} 30, article 31, paragraphs 1, 2 and 6 to 9, and in articles 32 to 46, to articles 49 and 50 as well as in Annex I to no later than July 20, 2015. They shall immediately communicate to the Commission the text of those provisions. »

19 article 52, first subparagraph, of this directive reads as follows:

"The Member States legislative, regulatory and administrative provisions referred to in article 51, paragraph 1, applications for international protection introduced and withdrawal of international protection proceedings. After July 20, 2015 or earlier. The applications before July 20, 2015 as well as the withdrawal of refugee proceedings before this date are governed by the laws, regulations and administrative provisions adopted under directive 2005/85/EC. »

The main proceedings and the questions referred

20 F introduced during the month of April 2015, an application for asylum with the Hungarian authorities.

21 . in support of this request, he argued, from the first interview conducted by the office, that he feared, with good reason, of being persecuted in his country of origin because of his homosexuality.

22 . by a decision of the 1st October 2015, the Agency denied the application. In this regard, he considered that the statements of F showed no fundamental contradictions. However, he found the lack of credibility on the basis of expertise conducted by a psychologist. This expertise had an exploratory review, a review of personality and several personality tests,

namely a test based on the drawing of a person under the rain, as well as Rorschach and Szondi test, and concluded that it was not possible to confirm the claim of F his sexual orientation.

23 F filed an appeal against the decision of the office before the referring court support including psychological tests he suffered severely infringed on its rights and did not appreciate the plausibility of his sexual orientation.

24 the National Court notes that the applicant in the main proceedings could not indicate specifically what these tests were fundamental rights guaranteed by the Charter. It also States that he said had been subjected to any physical examination or being forced to watch images or pornographic videos.

25 as a result of a measure of inquiry ordered by the national court, the Igazságügyi Szakértői és Kutató Intézet (Institute of experts and legal researchers, Hungary) drew up a report which shows that the methods employees during the review of asylum procedure do not infringe human dignity and are likely, next to an "adequate exploration", to give a picture of the sexuality of a person as well as, as appropriate, to question the wisdom of the assertions of a person on this subject. The referring court States that she feels bound by the findings of this report.

26 in those circumstances, the Szegedi Közigazgatási és Munkaugyi Bíróság (Court Administration and the work of Szeged, Hungary) decided to stay proceedings and to refer questions to the Court the following:

"1) be interpret article 4 of the directive 2011/95, in the light of article 1^{er} of the Charter, in the sense that it does not obstacle in regards to lesbian, gay, bisexual, transgender or intersex (LGBTI), refugee claimants to this." be drawn up an forensic psychological report, which will be taken into consideration, based on projective personality tests, this report being compiled without that no question is asked to the asylum seeker about his sexual habits and without that the asylum seeker is not subjected to any physical examination?

(2) in the event where the expert report referred to in the first question could be used as evidence, interpreting article 4 of 2011/95 directive, in the light of article 1^{er} of the Charter in the sense that it is read no possibility, for the national authorities or the courts, to examine the credibility of the allegations of the person making an application for asylum based on persecution because of sexual orientation, with methods of expertise regardless of the particular features of the method of expertise? »

The questions referred

On the second question

27 by its second question, should be examined first, the national court asks, in essence, if article 4 of 2011/95 directive must be interpreted as meaning that it opposes what the authority responsible for the review of applications for international protection or the courts, if any, of an appeal against a decision of that authority ordered an expertise in the assessment of the facts and circumstances relating to alleged sexual orientation of an applicant.

- 28 it is important to emphasize that his sexual orientation-related statements of an applicant for international protection are, in view of the particular context in which the applications for protection International, as the starting point for the process of assessment of the facts and the circumstances provided for in article 4 of the directive 2011/95 (see, by analogy, judgment of December 2, 2014, e.a., C-148/13-C-150/13, EU:C:2014:2406, item 49).
- 29 it follows that, although it is for the applicant for international protection to identify this orientation, which is an element within his personal sphere, the applications for international protection, motivated by a fear of persecution because of such guidance, such as applications based on other grounds of persecution, may subject to the evaluation process provided for in article 4 of this directive (see, by analogy, judgment of December 2, 2014, A e.a., C-148/13 in) C-150/13, EU:C:2014:2406, paragraph 52).
- 30 in that regard, it should be recalled that sexual orientation is a feature likely to establish the membership of an applicant to a particular social group within the meaning of article 2, sub, d), of the directive 2011/95, when the Group of people whose members share the same sexual orientation is perceived by the surrounding as society is different (see, in this sense, judgment of 7 November 2013, X e.a., C-199/12 C-201/12, EU:C:2013:720, points 46 and 47), as well as the confirms article 10, paragraph 1, under d), of this directive.
- 31 it follows however from article 10, paragraph 2, of this directive, when Member States evaluate if an applicant well-founded fear of being persecuted, it is immaterial that it has actually linked to characteristic membership in a particular social group to the origin of the persecution, as long as this feature is attributed to him by the actor of persecution.
- 32 accordingly, it is not always necessary in order to decide on a request for international protection, motivated by a fear of persecution because of sexual orientation, to assess the credibility of the sexual orientation of the applicant in the context of the assessment of the facts and circumstances laid down in article 4 of the directive.
- 33 however, it was noted that article 4, paragraph 3, of the directive 95/2011 lists the elements which the competent authorities must take into account the individual evaluation of an application for international protection and that article 4, paragraph 5, of this directive specifies the conditions under which a Member State, applying the principle that it is up to the applicant to substantiate his claim, must consider that some aspects of the statements of the applicant only require no confirmation. These conditions include, notably, the fact that the statements of the applicant are considered to be coherent and plausible and that they are not contradicted by General and specific information known and relevant for its application, as well as the the circumstance that the general credibility of the applicant could be established.
- 34 . in this regard, it was noted that these provisions do not limit the resources available to these authorities and, in particular, do not exclude the use of expertise as part of the evaluation of the facts and circumstances in order to determine with more precision the real international protection needs of the applicant.
- 35 it is not unless the terms of a possible appeal, in this context, expertise must be consistent with the other provisions of Union law relevant, namely the fundamental rights guaranteed by the Charter, such as the right to respect for human dignity, enshrined in article 1^{er} of the Charter, and the right to respect for private and family life, guaranteed by article 7 thereof (see, to that effect, judgment of December 2, 2014, A e.a., C-148/13-C-150/13 (, EU:C:2014:2406, point 53).

36 even if the provisions of article 4 of the directive 2011/95 shall apply to all applications for international protection, regardless of the persecution grounds advanced in support of these applications, it is up to the authorities competent to adapt their rules for assessing the declarations and of the documentary or other evidence based on the specific characteristics of each category of application for international protection, in the respect of the rights guaranteed the Charter (see, by analogy, judgment of December 2, 2014, e.a., C-148/13-C-150/13, EU:C:2014:2406, item 54).

37 it cannot be excluded that, in the particular context of the assessment of the declarations of an applicant for protection international relating to his sexual orientation, some forms of expertise proved useful in the assessment of the facts and circumstances and can be carried out without prejudice to the fundamental rights of this applicant.

38 thus, as pointed out by the french and Netherlands Governments, the use of an expert may, in particular, to collect more information on the situation of people who share a certain sexual orientation in the third country is the applicant.

(39 article 10, paragraph 3, under d), of the directive 2013/32, which was, in accordance with article 51, paragraph 1, thereof, be converted no later than July 20, 2015, also specifically requires that Member States shall ensure that staff review applications and make decisions has the opportunity to seek advice from experts, as appropriate, on specific subjects such as issues related to gender, which cover including, as is apparent from the Recital 30 of the directive 2011/95, relating to gender identity and sexual orientation issues.

40 however, it is important to meet, on the one hand, that it is apparent both from article 4, paragraph 1, and article 8, paragraph 2, of the directive 2005/85 article 4, paragraph 1, and article 10, paragraph 3, of directive 2013/32 only the sentencing authority is asked to conduct a proper review of applications at the end of which it will make its decision thereon. It is, therefore, only with such authorities to proceed, under the control of the judge, in assessing facts and circumstances laid down in article 4 of 2011/95 directive (see, in this sense, judgment of February 26, 2015, Shepherd, C-472/13, EU:C:2015:117 ", paragraph 40).

41 it is clear, on the other hand, article 4 of this directive that the examination of the application for international protection must include an individual assessment of the application taking into account including all the relevant facts about the country of origin of the person concerned at the time to rule on the request, the information and documents presented by the individual status and the personal situation of the latter. If necessary, the competent authority must also take into account the explanations provided as to the lack of evidence and the general credibility of the applicant (see, by analogy, judgments of 26 February 2015, Shepherd, C-472/13, EU:C) :2015:117, paragraph 26, and February 9, 2017, M, C-560/14, EU:C:2017:101, point 36).

42 it follows that the sentencing authority cannot base its decision on the only conclusions of an expert report, and this authority cannot, a fortiori, be constrained by these conclusions when assessing the an applicant statements on his sexual orientation.

43 regarding the possibility for a court seised of an action brought against a decision of the authority responsible for the determination rejecting an application for international protection, to order an expertise, it is necessary to add that both article 39, paragraph 1, of the directive 2005/85 that article 46, paragraph 1, of directive 2013/32 provide that the applicant

has a right of remedy before a court against the decision, without frame specifically the measures of instructions that this Court has the right to order.

44 article 39, paragraph 2, of the directive 2005/85 and article 46, paragraph 4, of directive 2013/32 point out, incidentally, that it is for the Member States to lay down the rules necessary for the exercise by the applicant of his right to a effective remedy.

45 if these provisions exclude so not what a court ordered expertise with a view to effective control of the decision of the authority responsible for the determination, it is not less, at sight, on the one hand, the role specific assigned to the courts by article 39 of directive 2005/85 and article 46 of the directive 2013/32 and, on the other hand, the considerations relating to article 4 of the directive 2011/95 in point 41 of the present judgment, the Court seizure cannot base its decision on the only conclusions of an expert report and cannot, a fortiori, be bound by the statements of an applicant on his sexual orientation assessment contained in these conclusions.

46 . in view of these elements, it should be to answer the second question that article 4 of the directive 2011/95 must be interpreted as meaning that it is not opposed to what the authority responsible for examination of applications for international protection or the courts, as appropriate, an appeal against a decision of that authority, ordered an expertise in the assessment of the facts and circumstances relating to the alleged sexual orientation of an applicant, provided that the modalities of such expertise are consistent with the basic rights guaranteed by the Charter, that the authority and these courts do not base their decision on the only conclusions of the expert report and that they are not bound by these conclusions in the assessment of this applicant's statements on his sexual orientation.

On the first question

47 . by its first question, the referring court asks, in essence, whether article 4 of the directive 2011/95, read in the light of the Charter, must be interpreted in the sense that he opposed to the realization and utilization, to assess the reality of alleged sexual orientation of an applicant for international protection, psychological expertise, such as that at issue in the main proceedings, which object, based on projective personality tests, to provide a picture of the sexual orientation of this applicant.

48 it follows from the answer given to the second question and the considerations set out in point 35 of the present judgment that, if article 4 of the directive 2011/95 is not opposed to what the authority responsible for the determination or the courts seizures of an appeal against a decision of that authority order, in a situation such as that at issue in the main proceedings, expertise, the terms of use of such expertise must conform, including, to the fundamental rights guaranteed by the Charter.

49 . among the fundamental rights with a specific relevance in the assessment of the declarations of an applicant for international protection related to his sexual orientation include the right to the respect for life private and family, such as enshrined in article 7 of the Charter (see, to that effect, judgment of December 2, 2014, e.a., C-148/13-C-150/13, EU:C:2014:2406, item 64).

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

- 51 . in this regard, it should be noted that psychological expertise, such as that at issue in the main proceedings, is ordered by the authority responsible for determining the procedure of examination of the application for international protection introduced by the person concerned.
- 52 it follows that this expertise is performed in a context where the person called to submit to projective personality tests is in a situation where its future depends on the fate of this authority will set aside his request of international protection and where any refusal to submit to these tests is likely to be a factor on which the authority will be used to determine if that person has enough to substantiate this request.
- 53 therefore, even where the psychological testing on which rests a expertise, such as that at issue in the main proceedings, is formally subordinate to the expression of the consent of the person concerned, there is place of consider that this consent is not necessarily free, being de facto imposed under pressure from the circumstances in which applicants for international protection (see, by analogy, judgment of December 2, 2014, A e.a., C-148/13 in) C-150/13, EU:C:2014:2406, paragraph 66).
- 54 in those circumstances, as noted by the advocate general in point 43 of its conclusions, the realization and use of a psychological examination such as that at issue in the main proceedings is an interference in the right of that person to the respect for private life.
- 55 . under article 52, paragraph 1, of the Charter, any curtailment of the exercise of the rights and freedoms recognized by must be provided for by law and respect their essential content. In the respect of the principle of proportionality, limitations may be made to the exercise of these rights and these freedoms if they are necessary and respond effectively to objectives of general interest recognised by the European Union or to the need for protection of the rights and freedoms of others.
- 56 with regard, in particular, of the proportionality of the interference observed, it should be recalled that the principle of proportionality requires, according to established case law of the Court, that acts adopted do not exceed the limits of this which is appropriate and necessary to the achievement of the legitimate objectives pursued by the legislation at issue, being understood that the inconveniences caused by it should not be excessive compared to the goals (see, in this sense, March 10) 2005, Tempelman and van Schaijk, C-96/03 and C-97/03, EU:C:2005:145, paragraph 47; July 16, 2015, at Razpredelenie Bulgaria, C-83/14, EU:C:2015:480, point 123, as well as of February 15, 2016, n., C-601/15 SPP, EU:C:2016:84, point 54).
- 57 . in this context, if an interference with the privacy of an applicant is likely to be justified by the search for items to assess its real needs for international protection, it is up to the responsible authority of the determination to assess, under the control of the judge, the character appropriate and necessary to the achievement of this goal of psychological expertise she intends to order or it wants to hold account.
- 58 . in that regard, it should be noted that the appropriateness of expertise such as that at issue in the main proceedings cannot be admitted unless it is based on methods and sufficiently reliable principles by standards accepted by the international scientific community. There is noted in this regard that, if it is not for the Court to pronounce on this point, that spring, as an assessment of the facts, the jurisdiction of the national court, the reliability of such expertise has been strongly opposed by Governments french and Dutch as well as by the Commission.

- 59 . in any event, the impact of expertise such as that at issue in the main proceedings on the private life of the applicant appears excessive compared to the goal, as the seriousness of the interference with the right to respect for privacy that she is cannot be regarded as proportionate utility it could possibly present facts for the assessment and the circumstances provided in article 4 of directive 95/2011.
- 60 indeed, in the first place, the interference with the private life of the applicant for international protection constituted by the implementation and the use of a expertise, such as that at issue in the main proceedings, is, in terms of the nature and purpose of a particular gravity.
- 61 indeed, such expertise is based on the fact that the person concerned undergoes a series of psychological tests to establish an essential element of the identity of this person who relates to his personal sphere as it is related to intimate aspects of the life of that person (see to that effect, judgments of 7 November 2013, X e.a., C-199/12 C-201/12, EU:C:2013:720, point 46, as well as of December 2, 2014, A e.a., C-148/13-C-150/13, :C:2014:2406, paragraphs 52 and 69).
- 62 there is also taken into account, to assess the seriousness of the interference constituted by the realization and use of psychological expertise such as that at issue in the main of principle 18 of the Yogyakarta Principles on the application of the international law of human rights in terms of sexual orientation and gender identity, to which referred the french and Dutch Governments which States that no one can be forced to undergo one any form of psychological test because of his sexual orientation or their gender identity.
- 63 according to the combination of these elements than the seriousness of the interference with privacy constituted by the implementation and the use of expertise, such as that at issue in the main proceedings, which involve the assessment of statements of the applicant for international protection on a fear of persecution because of his sexual orientation or the use of psychological expertise with another object than to establish the applicant's sexual orientation.
- 64 . in the second place, there is noted that expertise such as that at issue in the main proceedings is part of assessing facts and circumstances laid down in article 4 of directive 95/2011.
- 65 . in this context, such expertise cannot be regarded as being essential to confirm the statements of an applicant for international protection related to his sexual orientation in order to decide on a request of international protection is motivated by a fear of persecution because of this orientation.
- (66 indeed, on the one hand, the realization of a personal interview conducted by the staff of the authority responsible for the determination is likely to contribute to the evaluation of these statements, inasmuch as article 13, paragraph 3, under a) (, the Directive 2005/85 that article 15, paragraph 3, under a), of directive 2013/32 provide that Member States ensure that the person responsible for conducting the interview is competent to take account of the circumstances in which demand, this situation covering the applicant's sexual orientation.
- 67 . in General, it follows from article 4, paragraph 1, of the directive that the Member States are required to ensure that the authority responsible for determining the appropriate means, including staff in sufficient to accomplish its tasks. It follows that this authority must particularly have the right skills to enjoy the applications for international protection who are motivated by a fear of persecution because of sexual orientation.

68 on the other hand, it follows from article 4, paragraph 5, of the directive 2011/95 that, when Member States apply the principle according to which it is up to the applicant to substantiate its claim, the applicant's statements on his sexual orientation which are not supported by documentary or other evidence do not require confirmation when the conditions set out in that provision are fulfilled, knowing that these terms refer particularly to consistency and to the plausibility of these statements and do refer in any way to the realization or the use of expertise.

69 Moreover, even if expertise based on the projective tests of personality, such as that at issue in the main proceedings, can contribute to determine the orientation of the person concerned, with a certain reliability it clear statements of the referring court that the conclusions of such expertise would likely only give a picture of this sexual orientation. Accordingly, these conclusions are, in any case, approximate character and have therefore only limited interest to appreciate the statements of an applicant for international protection, in particular when, as in the present case to the main, these statements are without contradiction.

70 in those circumstances, it is unnecessary to answer the first question, to interpret article 4 of the directive 2011/95 in the light of article 1^{er} of the Charter.

71 it follows from the foregoing that there is the answer to the first question that article 4 of the directive 2011/95, in the light of article 7 of the Charter, must be interpreted as meaning that it objected to the realization and use in order to appreciate the reality of the alleged sexual orientation of an applicant for international protection, psychological expertise, such as that at issue in the main proceedings, which, based on projective personality tests, to provide a picture of the applicant's sexual orientation.

On costs

72 the procedure since these are, for the parties to the main proceedings pending before the national court, the decision on costs is a. The costs incurred to make representations to the Court, other than those of the said parties, cannot be subject to a refund.

For these reasons, the Court third Chamber) for right says:

(1) article 4 of the directive 2011/95/EU of the European Parliament and the Council, of 13 December 2011, on standards to the requirements of third-country nationals or stateless persons to qualify for protection International, a uniform status for refugees and persons eligible for protection subsidiary, and the content of this protection, must be interpreted as meaning that it is not opposed to what the authority responsible for the review of applications international protection or the courts, as appropriate, an appeal against a decision of that authority, ordered an expertise in the assessment of the facts and circumstances relating to the alleged sexual orientation of a applicant, provided that the terms of such expertise are consistent with the basic rights guaranteed by the Charter of fundamental rights of the European Union, that the authority and these courts do not base their decision on the only conclusions of the expert report and that they are not bound by these conclusions in the assessment of this applicant's statements on his sexual orientation.

(2) article 4 of the directive 2011/95, in the light of article 7 of the Charter of fundamental rights, must be interpreted as meaning he opposed to the realization and utilization, to assess the reality of the alleged sexual orientation of a applicant for international protection, psychological expertise, such as that at issue in the main proceedings, which is designed, based on projective personality tests, to provide a picture of the applicant's sexual orientation.