OPINION OF ADVOCATE GENERAL
WAHL
delivered on 5 October 2017 (1)

Case C-473/16

F
v
Bevándorlási és Menekültügyi Hivatal (formerly Bevándorlási és Állampolgársági Hivatal)

(Request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary))

(Area of freedom, security and justice — Directive 2011/95/EU — Minimum standards for granting refugee status or subsidiary protection status — Article 4 — Assessment of facts and circumstances — Methods of assessment — Psychological tests — Fear of persecution on grounds of sexual orientation — Charter of Fundamental Rights of the European Union — Article 1 — Human dignity — Article 7 — Right to respect for private and family life)

1. How are the national authorities to verify the credibility of the statements made by an asylum seeker who invokes, as a ground for granting asylum, fear of being persecuted in his country of origin for reasons relating to his sexual orientation? In particular, does EU law preclude reliance by those authorities on psychologists' expert opinions?

2. Those are, in a nutshell, the issues raised by the present request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary).

I. Legal framework

A. EU law

1. Directive 2011/95/EU (2)

3. Under Article 2(d) ('Definitions') of Directive 2011/95:

'"refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail

himself or herself of the protection of that country, ...'

4. Article 4 ('Assessment of facts and circumstances') of Directive 2011/95 reads:

'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;

...

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.'

2. Directive 2013/32/EU (3)

5. Article 10(3) ('Requirements for the examination of applications') of Directive 2013/32 reads:

‘Members 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:

(a) applications are examined and decisions are taken individually, objectively and impartially,

...

(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.’

B. National law

6. Article 6(1) of A menedékjogról szóló 2007. évi LXXX. törvény (Law LXXX of 2007, on the right to asylum) states:

‘Hungary shall grant refugee status to foreigners to whom the circumstances provided for in Article XIV(3) of the Constitution apply.’

7. Article 7(1) of that law reads:

‘Without prejudice to Paragraph 8(1) of this Law, the competent asylum authority shall grant refugee status to foreigners who prove or establish with sufficient certainty that the circumstances provided for in Paragraph 6(1) of this Law apply to them, in accordance with Article 1 of the Geneva Convention.’

8. Article 41(1) of the same law provides:

‘In the asylum procedure the following means of proof, in particular, may be used in order to prove or establish with sufficient certainty that the applicant for asylum meets the requirements for the granting of refugee status, subsidiary protection status or the benefit of temporary protection:

(a) the facts and circumstances alleged by the applicant for asylum in order to justify fleeing, in addition to the relevant supporting evidence;

…

(c) any current, relevant information on the country of origin of the applicant for asylum, including the legislation and other mandatory rules applicable to individuals, as well as the manner in which they are applied.’

II. Facts, procedure and the questions referred

9. The applicant (‘F’), a Nigerian national, submitted an application for refugee status to the (now) Bevándorlási és Menekültügyi Hivatal (Hungarian Immigration and Asylum Office, ‘the Office’) in April 2015. At his first interview, he expressed fears that, if he were to return to his country of origin, he would be subject to persecution because of his homosexuality.

10. In the ensuing asylum procedure, the Office examined the applicant’s credibility by means of several personal interviews. Subsequently, the Office also appointed a psychologist to examine F’s personality, from which his sexual orientation could be inferred. After an exploration and examination of personality, the ‘Draw-a-Person-in-the-Rain’ test, Rorschach’s test and Szondi’s test

(collectively referred to as 'the tests at issue'), the psychologist concluded that the results of the tests did not support the applicant's assertion that he was homosexual.

11. By means of decision of 1 October 2015, the Office rejected F's request for asylum.

12. F brought proceedings against that decision before the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged). He claimed, in particular, that the carrying-out of the tests at issue infringed his fundamental rights and that, at any rate, those tests are unsuitable for proving sexual orientation. In the course of the ensuing proceedings, that court asked the Institute of forensic experts and investigators to produce an expert opinion on those issues.

13. The expert opinion produced by that institute stated that, contrary to what the applicant had argued, the tests at issue are appropriate to determine with sufficient certainty an individual's sexual orientation. The opinion also stated that the carrying-out of those tests is not such as to infringe the applicant's human dignity.

14. The Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged) took the view that, since it does not have the scientific and technical knowledge required to review the findings of the experts, it may not depart from those findings. That court also considered that the tests at issue do not have a medical character because psychology belongs to human sciences, and that they are not similar to those which the Court considered incompatible with EU law in *A and Others*. (4)

15. In those circumstances, having doubts as to the correct interpretation of EU law, the referring court 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 of Fundamental Rights of the European Union [("the Charter")], must Article 4 of Directive 2004/83/EC 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 2004/83 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?'

16. By letter of 19 June 2017, the referring court informed the Court of its wish to amend the questions submitted for a preliminary ruling, replacing the references to Article 4 of Directive 2004/83 with Article 4 of Directive 2011/95.

17. Written observations have been submitted by F, the Hungarian, French and Netherlands Governments and the Commission. F, the Hungarian and French Governments as well as the Commission also presented oral argument at the hearing on 13 July 2017.

III. Analysis

18. By its two questions, that I will consider jointly, the referring court essentially asks the Court how the national authorities are to verify the credibility of the statements made by an asylum seeker who invokes, as a ground for granting asylum, a fear of being persecuted for reasons relating to his sexual orientation. In particular, the referring court asks whether Article 4 of Directive 2011/95, interpreted in the light of Article 1 of the Charter, precludes the use by those authorities of a psychologist's expert opinion.

A. Preliminary remarks

19. Before examining in more detail the specific issues raised by the present case, I find it useful to call to mind briefly the key provisions of EU law as well as the Court's case-law on those provisions. Indeed, in a number of cases, the Court has already provided important clarifications as to the obligations incumbent on the Member States, under EU law, when examining applications for international protection.

20. By virtue of Article 10(3) of Directive 2013/32, Member States are to ensure that applications for international protection are examined and decisions are taken 'individually, objectively and impartially'. Pursuant to Article 4(3) of Directive 2011/95, in the assessment of the applications, the competent authorities must take 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, the relevant statements and documentation presented by the applicant, and the individual position and personal circumstances of the applicant.

21. That assessment is composed of two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions for the grant of international protection are met. (5)

22. As regards the status of refugee, the crucial issue is, for the competent authorities, to establish whether the applicant has a 'well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group' in the country of nationality (or of habitual residence in case of stateless persons). (6) It is generally accepted that homosexuals may be regarded as forming a particular social group for that purpose. (7)

23. Under Article 4(1) of Directive 2011/95 Member States may consider it the duty of the applicant to submit all the elements needed to substantiate the application for international protection. It is then the Member States' duty to assess the relevant elements of the application in cooperation with the applicant.

24. However, Article 4(5) of Directive 2011/95 adds that, 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 a certain number of cumulative conditions are met. Among those conditions, notably, is 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 the applicant's case, and that the general credibility of the applicant has been established.

25. Accordingly, in *A and Others* (8) the Court pointed out that, if the conditions laid down in Article 4(5) of Directive 2011/95 are not met, statements made by applicants for asylum with respect to their sexual orientation may require confirmation. Those statements thus constitute, in the

words of the Court, ‘merely the starting point in the process of assessment of the facts and circumstances envisaged under Article 4 of Directive [2011/95]’. (9)

26. It is undisputed that no instrument of EU law lays down specific rules with regard to the methodologies that the national authorities are to apply in evaluating the information and evidence submitted by the applicants and, more particularly, in assessing the credibility of the applicants. Member States thus have a certain leeway in that regard. (10) Nevertheless, the methodologies used must be consistent with the provisions of Directives 2011/95 and 2013/32 and, as is clear from recitals 16 and 60 of those directives respectively, 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. (11)

27. It is against that background that I shall analyse the legal issues raised by the present proceedings.

B. The use of expert advice from psychologists

28. In order to answer the questions referred, it is necessary to clarify whether and, if so, under what conditions, the national authorities may have recourse to psychologists’ expert advice when examining applications for international protection on the ground of sexual orientation.

29. From the outset, however, let me emphasise once again that the central question in the assessment to be carried out in conformity with the provisions of Directives 2011/95 and 2013/32 is whether the applicant’s alleged fear of persecution is well founded. In other words, the competent authorities are required to ascertain whether the circumstances established constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subject to acts of persecution. (12) Even when an asylum seeker alleges a fear of persecution on grounds relating to his sexual orientation, it is not always necessary to establish his real sexual orientation, as the French and Netherlands Governments point out.

30. For example, there may be countries where — notwithstanding the existence of laws prohibiting homosexuality — certain homosexual persons (for example, because the law is not systematically applied (13) and in the light of their social, economic and family background, the place where they live and so forth (14)) do not face a real risk of being persecuted. There may, on the other hand, be situations in which the simple act of behaving in a way which, from a traditional point of view, is perceived to be non-gender-conform, (15) may create an actual risk for the person concerned of being subject to physical or psychological harm. (16)

31. That said, I would point out that, pursuant to Article 10(3)(d) of Directive 2013/32, the national authorities assessing an application for international protection must have the possibility of seeking advice, whenever necessary, from experts on particular issues, including on gender issues.

32. In view of that, the first question that arises is whether the expert advice that the competent authorities may seek includes that of psychologists.

33. I do not see any reason why, as a matter of principle, the competent authorities should not be able to seek advice from persons trained and qualified in psychology, (17) the science which studies human mind and behaviour. It does not seem to me that any type of psychological examination, where deemed useful, is always and necessarily inconsistent with human dignity. On the contrary, it cannot be excluded that, at least in certain situations, the assistance of psychologists could be helpful to the administrative authorities deciding on an application for international protection or to the national courts reviewing that decision and, arguably, to the applicants themselves.

34. For example, the presence of a psychologist during the interviews may make it easier for an applicant who claims to have been subject to persecution or harm (or who merely fears persecution should he return to his country of origin) to talk openly about his past experiences or his fears, so that the authorities may have a more complete and truthful picture of the situation. (18) After all, according to Article 4 of Directive 2013/32 the national authority which is responsible for examining the applications must be 'provided with appropriate means, including sufficient competent personnel, to carry out its tasks'. In particular, the persons interviewing the applicants must 'have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed'.

35. In addition, the authorities could also consider that the assistance of a psychologist may be helpful to evaluate the general credibility of an applicant. That is an important aspect of the assessment carried out by the competent authorities since, if the applicant's credibility is established (and provided that the other cumulative conditions set out in Article 4(5) of Directive 2011/95 are also met), the sexual orientation declared by the applicant, despite not being supported by documentary or other evidence, need not be confirmed.

36. Conversely, I am not persuaded that a psychologist's expert opinion may, from an analysis of the personality of the applicant, determine with sufficient certainty whether or not the sexual orientation declared by an applicant is correct. Firstly, a cursory look at scientific literature shows that, according to a number of studies in psychology, homosexual men and women are not distinguishable, from a psychological viewpoint, from heterosexual men and women. (19)

37. Secondly, regardless of the scientific basis for it, I am not sure that an analysis based on projective tests of personality to determine one's sexual orientation is compatible with the provisions of Article 4(3) of Directive 2011/95. If I understand correctly, the hidden conflicts or emotions that such an analysis is supposed to uncover would, in the eyes of the psychologists carrying it out, either confirm or call into question the applicant's stated sexual orientation. It would seem to me, though, that such type of analysis inevitably involves the use of stereotyped notions as to the behaviour of homosexuals. In fact, when asked at the hearing, the Hungarian Government was at pains to explain why the analysis at issue in the main proceedings did not involve the use of stereotyped notions. That is, however, a type of analysis that the Court has already found problematic in *A and Others*, insofar as it does not permit full account to be taken of the individual situation and personal circumstances of the applicant. (20)

38. In the light of that, the second question that arises is under what conditions a psychologist's expert opinion is admissible and, more specifically, whether that expert opinion can be based on tests such as those at issue in the main proceedings.

C. The requirement of consent

39. First, I take the view that psychological examinations are admissible only when the applicant has given his consent and when they can be carried out in a manner that respects the applicant's dignity and right to respect for private and family life.

40. Article 18(1), first subparagraph, of Directive 2013/32 provides that 'where the determining authority deems it relevant for the assessment of an application for international protection … 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'.

41. In addition, Article 25(5), second subparagraph, of the same directive — which concerns

medical examinations on unaccompanied minors — states that 'any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.'

42. No similar provisions appear in Directive 2013/32 as concerns examination by psychologists. Yet I believe that the basic principles enshrined in Article 18(1), first subparagraph, and Article 25(5), second subparagraph, of Directive 2013/32 are, to some extent, valid also with regard to psychological examinations. (21)

43. Psychological examinations may be, for the applicant's psyche, as intrusive as medical examinations may be for his body. They also constitute a clear interference with his private life. (22) That is why I take the view that the applicant's consent to undergo such examinations is, in this context, necessary. I am obviously aware that, in a situation such as that of an asylum seeker, it may be quite difficult, in practice, to withhold consent. All the more so because it may often be difficult to provide evidence regarding one's sexual orientation. (23) In my view, that makes it even more important that, first, a refusal to undergo such examinations is respected. A pre-requisite for real consent is, obviously, that the asylum seeker should have been enabled to have sufficient knowledge and understanding of all elements and implications of the psychological examinations. (24) Second, it is of the utmost importance that those examinations be carried out in a manner that respects the applicant's dignity and private and family life. (25)

44. That reading is corroborated also by recital 29 of Directive 2013/32, according to which 'certain applicants may be in need of special procedural guarantees due, inter alia, to their … sexual orientation … Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection'. That recital confirms the sensitive nature of any inquiry into a person's sexuality.

45. Obviously, a refusal by the applicant to undergo such an examination — when care is taken to carry out the examination in a manner that respects the applicant's dignity and right to respect for private and family life — cannot prevent the authorities from taking a decision on the application. (26) That implies that, where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection, and the conditions set out in Article 4(5) of Directive 2011/95 are not met, the applicant's refusal may have certain consequences that the applicant himself has to bear.

46. According to the order for reference, F had consented to undergo psychological examination. However, it is for the referring court to verify that this examination was carried out in a manner that truly respected F's dignity and private and family life. (27)

D. The use of psychological tests

47. Second, the psychological examinations to be carried out by the experts appointed by the authorities ought to be based on methods, principles and notions generally accepted by the scientific community, or that are in any event sufficiently reliable. In addition, those methods, principles and notions must, in the light of the circumstances of the case, be relevant for the type of examination sought by the authorities. As a result, the psychological examinations would, therefore, be capable of producing sufficiently reliable results. (28)

48. As I see it, examinations carried out on the basis of disputed or unrecognised science can hardly be regarded by the authorities as having a probative value. Similarly, examinations which

are, in principle, based on generally accepted methods, principles and notions but that have been misapplied or that have been applied in a wrong context cannot produce sufficiently reliable results.

49. Clearly, it is not for this Court to take a position on the reliability and pertinence of the specific types of test at issue in the main proceedings. (29) It will, accordingly, be for the referring court to rule, in particular, on whether the tests used in the case of F ('Draw-a-Person-in-the-Rain', Rorschach's and Szondi's tests) are — as the Hungarian Government argues — based on methods, principles and notions that are generally accepted by the scientific community or — as F contends — the object of strong controversy in scientific literature.

E. The right to an effective remedy

50. Third, when it is a national court that, for the purposes of reviewing the authorities' decision on an application for international protection, asks for an expert opinion, that court cannot consider itself to be bound, under all circumstances, *de lege* or *de facto* by the findings of the expert (and, a fortiori, by the findings of the experts which the competent authorities had appointed during the administrative procedure).

51. By virtue of Article 46(1) and (3) of Directive 2013/32, applicants for international protection must have the right to 'an *effective* remedy before a court or tribunal' against, inter alia, decisions taken on their application. That remedy should provide for '*a full … examination* of both facts and points of law'. (30)

52. Article 46 of Directive 2013/32 — especially when interpreted in the light of Article 47 of the Charter— thus requires national courts to be able to carry out an in-depth, independent and critical review of all relevant aspects of fact and law. (31) That necessarily includes, to my mind, the possibility of disregarding the findings of experts — which constitutes a piece of evidence to be evaluated with the other evidence — which a judge may find, for example, to be biased, unsubstantiated or based on controversial methods and theories.

53. In that regard, in accordance with the principle of procedural autonomy and subject to the principles of equivalency and effectiveness, it is for the national legal order of each Member State to establish the ways in which evidence is to be elicited, what evidence is to be admissible before the appropriate national court, or the principles governing that court's assessment of the probative value of the evidence adduced before it and also the level of proof required. (32) However, in accordance with the principle of effectiveness, the Court found that rules of evidence may not be applied by the national courts in such a way that in practice they introduce unjustified presumptions liable to infringe the rules of evidence set out in EU instruments, or undermine the effectiveness of the substantive rules laid down in those instruments. (33) Such a problem could arise in a situation where national courts apply domestic rules of evidence in an overly rigorous manner by accepting irrelevant or insufficient evidence.

54. National courts must, accordingly, ensure that the evidence adduced before them is sufficiently serious, specific and consistent to warrant the conclusion drawn from it. (34) They are to safeguard their own freedom of assessment in determining whether such proof has been made out to the requisite legal standard, until such time as, having examined all the evidence adduced by the parties and the arguments exchanged by them, they consider themselves able to draw a definitive conclusion on the matter, having regard to all the relevant circumstances of the case before them. (35)

55. The contrary position would essentially mean that the judge abdicates his role, rendering ineffective the guarantees expressly provided for in Article 46 of Directive 2013/32. That is

especially true with regard to experts' opinions that express a view as regards issues of law. For example, I observe that the expert appointed by the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged) in the main proceedings found that the manner in which the examination of F had been carried out by the psychologists appointed by the Hungarian administrative authorities did not breach F's fundamental rights. This, however, appears to be a legal assessment that it is for the competent judges to make, and not for an expert appointed in the proceedings. (36)

IV. Conclusion

56. In the light of the foregoing, I propose that the Court answer the questions referred by the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary) as follows:

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, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, does not preclude the use by the authorities of a psychologist's expert opinion, especially to evaluate the general credibility of an applicant for international protection, provided that: (i) the examination of the applicant takes place with the consent of the applicant and is carried out in a manner that respects the applicant's dignity and private and family life; (ii) the opinion is based on methods, principles and notions that are sufficiently reliable and relevant in the circumstances of the case, and may produce sufficiently reliable results; and (iii) the expert's findings are not binding for the national courts reviewing the decision on the application.

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1 Original language: English.

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2 Directive 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 (recast) (OJ 2011 L 337, p. 9).

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3 Directive 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).

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4 Judgment of 2 December 2014, A and Others, C-148/13 to C-150/13, EU:C:2014:2406.

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5 Judgment of 22 November 2012, M., C-277/11, EU:C:2012:744, paragraph 64.

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6 See Article 2(d) and Articles 9 to 12 of Directive 2011/95.

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7 See Article 10(1)(d) of Directive 2011/95. See also judgment of 7 November 2013, X and Others, C-199/12 to C-201/12, EU:C:2013:720, paragraphs 41 to 49.

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8 Judgment of 2 December 2014, A and Others, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 51.

9 Judgment of 2 December 2014, A and Others, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 49.

10 See, to that effect, Opinion of Advocate General Sharpston in Joined Cases A and Others, C-148/13 to C-150/13, EU:C:2014:2111, point 32.

11 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.

12 See judgment of 7 November 2013, X and Others, C-199/12 to C-201/12, EU:C:2013:720, paragraph 72 and the case-law cited.

13 See, for example, ECtHR, 19 April 2016, *A.N. v. France*, CE:ECHR:2016:0419DEC001295615, § 41.

14 See, for example, ECtHR, 11 January 2007, *Salah Sheekh v. The Netherlands*, CE:ECHR:2007:0111JUD000194804, §§ 138 to 149.

15 That behaviour may concern, inter alia, the manner in which a person is dressed, speaks or acts (for example, socialising and spending time with homosexual persons, or campaigning for LGBTI rights).

16 See, to that effect, Article 10(2) of Directive 2011/95. Cf. also Opinion of Advocate General Sharpston in Joined Cases *A and Others*, C-148/13 to C-150/13, EU:C:2014:2111, point 34.

17 On the need for proper qualification, see, by analogy, Article 18(1), second subparagraph, and Article 25(5), second subparagraph, of Directive 2013/32.

18 Cf. Opinion of Advocate General Bot inM., C-277/11, EU:C:2012:253, point 66.

19 See, for example, American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*, Washington, 2009.

20 Judgment of 2 December 2014, A and Others, C-148/13 to C-150/13, EU:C:2014:2406, paragraphs 60 to 62.

21 For example, I note that medical and psychological treatments and procedures are treated alike under Principle 18 (‘Protection from Medical Abuses’) of the Yogyakarta Principles. Principle 18 reads: ‘No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity. Notwithstanding any

classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed. ...' The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity were adopted in 2007 and, even if not legally binding, they are generally considered to constitute useful tools for the interpretation of human rights treaties or laws.

22 See, to that effect, ECtHR, 5 July 1999, *Matter v. Slovakia*, CE:ECHR:1999:0705JUD003153496, and ECtHR, 27 November 2003, *Worwa v. Poland*, CE:ECHR:2003:1127JUD002662495.

23 See, to that effect, ECtHR, 19 April 2016, *A.N. v. France*, CE:ECHR:2016:0419DEC001295615, § 44.

24 In that regard, see for example, European Union Agency for Fundamental Rights, *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity — 2010 Update*, Publications Office of the European Union, Luxembourg, 2010, p. 60.

25 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.

26 See, by analogy, Article 18(1), second subparagraph, of Directive 2013/32.

27 I will come back to this issue *infra*, point 55 of this Opinion.

28 See, by analogy, Article 25(5), second subparagraph, of Directive 2013/32.

29 Like the French, Hungarian and Netherlands Governments and the Commission, and unlike F, I do not read paragraph 59 of the judgment of 2 December 2014, A and Others (C-148/13 to C-150/13, EU:C:2014:2406), as prohibiting psychological tests outright. The Court's findings on that issue concerned, in my view, only the specific tests at issue in the case in question.

30 Emphasis added.

31 See, by analogy, judgment of 28 July 2011, Samba Diouf, C-69/10, EU:C:2011:524, paragraph 57 and the case-law cited.

32 See, to that effect, judgment of 21 June 2017, W and Others, C-621/15, EU:C:2017:484, paragraph 25 and the case-law cited.

33 See judgment of 21 June 2017, W and Others, C-621/15, EU:C:2017:484, paragraph 34.

34 See, by analogy, judgment of 21 June 2017, W and Others, C-621/15, EU:C:2017:484, paragraphs 35 and 36.

35 See, to that effect, judgment of 21 June 2017, W and Others, C-621/15, EU:C:2017:484, paragraph 38 and the case-law cited.

36 For example, the *Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States* state in that regard: 'The expert is required to find and present the court with those facts that can only be obtained by specialists who conduct specialist objective observation. He/she conveys the scientific and/or technical knowledge to the judge which then enables the judge to conduct an objective and clear investigation and evaluation of the facts. The expert is neither able, nor is it by any means his/her task, to take over the judge's responsibility for the appraisal and evaluation of the facts which is the basis for the judgment of the court. … Consequently, the expert is simply an assistant or consultant of the judge, nothing more. The expert's role is therefore different from that of the judge, who is the one deciding on questions of law.' (Guidelines adopted by the European Commission for the Efficiency of Justice, Council of Europe, on 11-12 December 2014, points 16 and 17).