



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

2 December 2014\*

(References for a preliminary ruling — Area of freedom, security and justice — Directive 2004/83/EC — Minimum standards for granting refugee status or subsidiary protection status — Article 4 — Assessment of facts and circumstances — Methods of assessment — Acceptance of certain types of evidence — Extent of the competent national authority's powers — Fear of persecution on grounds of sexual orientation — Differences between, on the one hand, the limitations that apply to the verification of statements and documentary or other evidence as regards the declared sexual orientation of an applicant for asylum and, on the other hand, those that apply to the verification of those elements as regards other grounds for persecution — Directive 2005/85/EC — Minimum standards in respect of procedures in Member States for granting and withdrawing refugee status — Article 13 — Requirements for a personal interview — Charter of Fundamental Rights of the European Union — Article 1 — Human dignity — Article 7 — Respect for private and family life)

In Joined Cases C-148/13 to C-150/13,

REQUESTS for a preliminary ruling under article 267 TFEU, from the Raad van State (Netherlands), made by decision of 20 March 2013, received at the Court on 25 March 2013, in the proceedings

A (C-148/13),

B (C-149/13),

C (C-150/13)

v

**Staatssecretaris van Veiligheid en Justitie,**

intervener:

**United Nations High Commissioner for Refugees (UNHCR),**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen (Rapporteur), T. von Danwitz, A. Ó Caoimh and J.-C. Bonichot, Presidents of Chambers, A. Borg Barthet, J. Malenovský, E. Levits, E. Jarašiūnas, J.L. da Cruz Vilaça and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

\* Language of the case: Dutch.

having regard to the written procedure and further to the hearing on 25 February 2014,

after considering the observations submitted on behalf of:

- A, by N.C. Blomjous, advocaat,
- B, by C. Chen, advocaat,
- the United Nations High Commissioner for Refugees (UNHCR), by P. Moreau, acting as Agent, and by M.-E. Demetriou QC,
- the Netherlands Government, by C. Schillemans, M. Bulterman and B. Koopman, acting as Agents,
- the Belgian Government, by M. Jacobs and C. Pochet, acting as Agents,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the German Government, by T. Henze and A. Wiedmann, acting as Agents,
- the Greek Government, by M. Michelogiannaki, acting as Agent,
- the French Government, by D. Colas and S. Menez, acting as Agents,
- the European Commission, by M. Condou-Durande and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 July 2014

gives the following

### **Judgment**

- 1 These requests for a preliminary ruling concern the interpretation of Article 4 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12 and corrigenda OJ 2005 L 204, p. 24 and OJ 2011, L 278, p. 13), and Articles 3 and 7 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The requests have been made in proceedings between A, B and C, who are third country nationals, and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, 'the Staatssecretaris') concerning the rejection of their applications for temporary residence permits (asylum) in the Netherlands.

### **Legal context**

#### *International law*

- 3 Under the first subparagraph of Article 1(A)(2) of the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 and which entered into force on 22 April 1954 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954) the 'Geneva Convention'), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967, the term 'refugee' is to apply to any person who 'owing to

well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’.

*EU law*

Directive 2004/83

4 According to the recital 3 in the preamble to Directive 2004/83, the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees.

5 Recital 10 of that directive states:

‘This Directive respects the fundamental rights and observes the principles recognised in particular by [the Charter]. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members.’

6 Recital 16 of the directive states that minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

7 According to recital 17 in the preamble to Directive 2004/83, it is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

8 According to Article 2, for the purposes of that directive:

‘...

(c) “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 ...

...’

9 Article 4 of Directive 2004/83, under Chapter II thereof entitled ‘Assessment of applications for international protection’, defines the conditions for the assessment of the facts and circumstances and provides:

‘1. Member States may consider it the duty of the applicant to submit as soon as possible all 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 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, identity and 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 these activities will expose the applicant to persecution or serious harm if returned to that country;
- (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he 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 regarding any lack of other relevant elements has been given;
- (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.'

<sup>10</sup> Article 10 of Directive 2004/83, entitled 'Reasons for persecution', 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 ...

...'

Directive 2005/85/EC

- 11 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, and corrigendum OJ 2006 L 236, p. 36) states in recital 8 in its preamble that the directive respects the fundamental rights and observes the principles recognised in particular by the Charter.
- 12 Article 13 of Directive 2005/85, which specifies the requirements for a personal interview, provides at paragraph 3:

'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; ...'

*Netherlands law*

- 13 The relevant national legislation is found in Article 31 of the Law on Foreign Nationals 2000 (Vreemdelingenwet 2000), in Article 3.111 of the Decree on Foreign Nationals 2000 (Vreemdelingenbesluit 2000) and in Article 3.35 of the Regulation on Foreign Nationals 2000 (Voorschrift Vreemdelingen 2000).
- 14 Those provisions have been clarified by paragraphs C2/2.1, C2/2.1.1, and C14/2.1 to C14/2.4 of the Foreign Nationals Circular 2000 (Vreemdelingencirculaire 2000).
- 15 According to Article 31(1) of the Law on Foreign Nationals 2000, read in conjunction with Article 3.111(1) of the Decree on Foreign Nationals 2000, it is for the applicant for asylum concerned to establish the plausibility of the grounds on which the grant of a temporary residence permit (asylum) is sought, the applicant being required to provide, on his own initiative, all relevant information in order to enable the authority to make a decision on the application. The Staatssecretaris determines whether the grant of that authorisation is well founded in law.

- 16 Under paragraph 1 of Article 3.111 of the Decree on Foreign Nationals 2000, when an applicant for asylum requests the grant of a residence permit referred to in Article 28 of the Law on Foreign Nationals 2000, that applicant is to provide all the information, including the relevant documents, on the basis of which the Staatssecretaris can determine, in cooperation with the applicant for asylum concerned, whether there is a legal basis for the permit to be granted.
- 17 In accordance with paragraph C14/2.1 of the Foreign Nationals Circular 2000, the assessment of the credibility of the statements made by an applicant for asylum is to concern the facts and the circumstances that he sets out. The factual circumstances are the facts relating to the person of the applicant for asylum concerned, inter alia, his sexual orientation.
- 18 Under paragraph C14/2.2 of that circular, an applicant for asylum is required to tell the truth and to cooperate fully in the determination, which is to be as complete as possible, of all the facts. The applicant must, as soon as possible, inform the Immigration and Naturalisation Service of all the events and factual circumstances that are important for the consideration of his application.
- 19 In accordance with paragraph C14/2.3 of the circular, it is not excluded that the lack of credibility of part of the statement made by the applicant for asylum may also adversely affect the credibility of all other parts of the applicant's statement.
- 20 According to paragraph C14/2.4 of that circular, it suffices in principle that an applicant for asylum has made his statements plausible. For that purpose, he is expected to produce documents in support of his application. However, in order to assess the credibility of the statements that the applicant for asylum made in support of his application, it is not a matter of deciding whether, and if so to what extent, those statements can be proved. In many cases applicants for asylum have demonstrated that they are not in a position to prove their statements and that it would not be reasonable to require them to adduce convincing evidence in support of their account.
- 21 The Staatssecretaris may consider the statements made under Article 3.35, paragraph 3, of the Regulation on Foreign Nationals 2000 to be credible and, therefore, not to require them to be confirmed, if it was possible for the general credibility of the applicant for asylum to be established.

### **The disputes in the main proceedings and the question referred for a preliminary ruling**

- 22 A, B and C, third country nationals, each lodged an application for a temporary residence permit (asylum) in the Netherlands. In support of their applications, they stated that they feared persecution in their respective countries of origin on account, in particular, of their homosexuality.
- 23 The first application for asylum lodged by A was rejected by the Staatssecretaris as not being credible.
- 24 A did not challenge that first refusal and lodged a second application for asylum, stating that he was prepared to take part in a 'test' that would prove his homosexuality or to perform a homosexual act to demonstrate the truth of his declared sexual orientation.
- 25 By decision of 12 July 2011, the Staatssecretaris rejected A's second application on the ground that the credibility of his declared sexual orientation had still not been established. The Staatssecretaris considered that it was not appropriate to rely only on the declared sexual orientation of the applicant for asylum without making any assessment of the credibility of that orientation.

- 26 On 1 August 2012, the Staatssecretaris rejected B's application on the ground that the statements concerning his homosexuality were vague, perfunctory and implausible. In addition, according to the Staatssecretaris, inasmuch as B is from a country where homosexuality is not accepted, he ought to have been able to give more details about his emotions and his internal awareness of his sexual orientation.
- 27 C lodged a first application for asylum on grounds other than persecution based on his homosexuality, which was rejected by the Staatssecretaris.
- 28 C did not challenge that first decision and lodged a second application for asylum based, on that occasion, on the fear of persecution in his country of origin on account of his homosexuality. In the second application, C submitted that he had not been able to indicate his homosexual feelings until after leaving his country of origin. In support of his application, C also gave the authorities responsible for carrying out the assessment of the application a video recording of intimate acts with a person of the same sex.
- 29 By decision of 8 October 2012, the Staatssecretaris rejected C's application for asylum on the ground that his statements concerning his homosexuality were not credible. The Staatssecretaris considered that C ought to have mentioned his declared sexual orientation in the first application for asylum, that he had not clearly explained how he became aware of his homosexuality and had not been able to reply to questions about Netherlands organisations for the protection of rights of homosexuals.
- 30 Following the rejection of their applications for temporary residence permits (asylum), A, B and C lodged appeals against those decisions dismissing their applications before the Rechtbank's-Gravenhage.
- 31 By judgments of 9 September 2011 and 30 October 2012, the Rechtbank's-Gravenhage dismissed, respectively, A and C's appeals as unfounded. That court held, first, that A and C ought, in their respective appeals, to have challenged the first decisions by the Staatssecretaris dismissing their applications, and, second, that they had not demonstrated, in the second asylum procedure, that their statements concerning their declared sexual orientation were credible.
- 32 By judgment of 23 August 2012, the appeal brought by B against the decision of the Staatssecretaris rejecting his application was also dismissed. The Rechtbank's-Gravenhage held that the Staatssecretaris could reasonably have concluded that B's statements concerning his homosexuality were not credible.
- 33 A, B and C appealed against those judgments before the Raad van State.
- 34 In those appeal procedures, A, B and C submit in particular that, because it is impossible to determine objectively the sexual orientation of applicants for asylum, the authorities carrying out an assessment of an application for asylum should base their decisions solely on the assertions made by those applicants as regards their declared sexual orientation.
- 35 According to the applicants in the main proceedings, in the course of assessing the credibility of the statements made by an applicant for asylum, those authorities ask questions in respect of the declared sexual orientation which breach, in particular, the applicant's right to human dignity and his right to respect for private life and which, furthermore, take account neither of the shame that the applicant could feel during the hearings nor of the cultural reservations that would prevent him from speaking freely of that orientation. In addition, the fact that the Staatssecretaris found that the accounts given by the applicants for asylum were not credible should not lead to the same conclusion as regards the credibility of the sexual orientation itself.

- 36 The Staatssecretaris observes that it is not clear either from Directive 2004/83 or from the Charter that the determination must be made on the basis solely of the declarations by the applicants for asylum as to their declared sexual orientation. According to the Staatssecretaris, it was, however, necessary to verify, not whether the applicants for asylum actually had the sexual orientation that they claimed to have, but rather whether they had made a plausible case that they belonged to a social group within the meaning of Article 10(1)(d) of Directive 2004/83, or whether the ‘actors of persecution’ regarded them as doing so for the purposes of Article 10(2) of that directive.
- 37 Furthermore, according to the Staatssecretaris, applicants for asylum can only rarely provide evidence of their homosexuality otherwise than by their own declarations, with the result that when those declarations are considered to be coherent and plausible and it has been possible to establish the overall credibility of the applicant for asylum, those applicants must be given the benefit of the doubt.
- 38 According to the Staatssecretaris, the assessment that he must carry out as to the credibility of the sexual orientation of applicants for asylum does not differ from that carried out in relation to other grounds of persecution. That authority does, however, take account of the specific problems involved in testifying about sexual orientation. In particular, staff interviewing applicants for asylum are advised not to ask explicit questions about the way in which applicants for asylum live their sexual orientation. In addition, no weight is attached to images of sexual acts produced by applicants for asylum by way of evidence, given that they establish only the practice of the sexual acts themselves and not the reality of the declared sexual orientation.
- 39 The Raad van State observes that neither Article 4 of Directive 2004/83 nor the provisions of the Charter relied on require the Staatssecretaris to find that the declared sexual orientation of an applicant for asylum is established on the basis solely of his declarations. Furthermore, according to that court, the verification of the sexual orientation of applicants for asylum is no different from the verification of other grounds for persecution.
- 40 Nevertheless, the Raad van State is uncertain whether there are limits imposed by Article 4 of Directive 2004/83 and Articles 3 and 7 of the Charter on the method of verification of the sexual orientation of applicants for asylum.
- 41 The referring court considers that the mere fact of putting questions to the applicant for asylum may, to a certain extent, infringe the rights guaranteed by the abovementioned provisions of the Charter.
- 42 According to that court, whatever method is adopted in the Member State concerned to verify the declared sexual orientation, the risk of infringing the fundamental rights of the applicants for asylum, such as those guaranteed by Articles 3 and 7 of the Charter, cannot be excluded.
- 43 In those circumstances, the Raad van State decided to stay the proceedings and to refer the following question to the Court of Justice, which is framed in the same terms in each of Cases C-148/13 to C-150/13:
- ‘What limits do Article 4 of [Directive 2004/83] and [the Charter], in particular Articles 3 and 7 thereof, impose on the method of assessing the credibility of a declared sexual orientation, and are those limits different from the limits which apply to assessment of the credibility of the other grounds of persecution and, if so, in what respect?’
- 44 By decision of the Court of 19 April 2013, cases C-148/13 to C-150/13 were joined for the purposes of the written and oral procedure and of the judgment.

## Consideration of the question referred for a preliminary ruling

### *Preliminary observations*

- 45 It is apparent from recitals 3, 16 and 17 in the preamble to Directive 2004/83 that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of the directive for determining who qualifies for refugee status and the content thereof were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria (judgment in *N.*, C-604/12, EU:C:2014:302, paragraph 27).
- 46 Directive 2004/83 must, therefore, be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 10 in the preamble thereto, the directive must also be interpreted in a manner consistent with the rights recognised by the Charter (judgment in *X and Others*, C-199/12 to C-201/12, EU:C:2013:720, paragraph 40).
- 47 Furthermore, it should be recalled that Directive 2004/83 does not contain any procedural rules applicable to the examination of an application for international protection, nor, therefore, does it lay down the procedural guarantees that must be afforded to an applicant for asylum. It is Directive 2005/85 that establishes minimum standards applicable to procedures for examining applications and specifies the rights of applicants for asylum that must be taken into account in the examination of the cases in the main proceedings.

### *Consideration of the question*

- 48 By its question, the referring court asks, in essence, whether Article 4 of Directive 2004/83, read in the light of the Charter, must be interpreted as meaning that it imposes on the competent national authorities, acting under the supervision of the courts, certain limits when they assess the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation.
- 49 In that regard, it should be noted at the outset that, contrary to the submissions made by the applicants in the main proceedings, according to which the competent authorities examining an application for asylum based on a fear of persecution on grounds of the sexual orientation of the applicant for asylum must hold the declared sexual orientation to be an established fact on the basis solely of the declarations of the applicant, those declarations constitute, having regard to the particular context in which the applications for asylum are made, merely the starting point in the process of assessment of the facts and circumstances envisaged under Article 4 of Directive 2004/83.
- 50 It is clear from the very wording of Article 4(1) of the directive that, in the context of that assessment, the Member States may consider it to be the applicant's duty to submit as soon as possible all elements needed to substantiate the application for international protection, the Member State assessing, in cooperation with the applicant, the relevant elements of the application.
- 51 Furthermore, it follows from Article 4(5) of Directive 2004/83 that when the conditions listed under (a) to (e) of that provision are not met, statements made by applicants for asylum with respect to their declared sexual orientation may require confirmation.

- 52 It follows that, although it is for the applicant for asylum to identify his sexual orientation, which is an aspect of his personal identity, applications for the grant of refugee status 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 an assessment process, provided for in Article 4 of that directive.
- 53 However, the methods used by the competent authorities to assess the statements and documentary or other evidence submitted in support of those applications must be consistent with the provisions of Directive 2004/83 and 2005/85 and, as is clear from recitals 10 and 8 in the preambles to 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.
- 54 Even though Article 4 of Directive 2004/83 is applicable to all applications for international protection, whatever the ground for persecution relied on in support of those applications, it remains the case that it is for the competent authorities to modify their methods of assessing statements and documentary or other evidence having regard to the specific features of each category of application for asylum, in observance of the rights guaranteed by the Charter.
- 55 As regards the assessment of the facts and circumstances under Article 4 of Directive 2004/83, that assessment takes place, as was held at paragraph 64 of the judgment in *M.* (C-277/11, EU:C:2012:744), in 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 laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are satisfied.
- 56 During the first stage, to which the questions of the referring court in each of the cases in the main proceedings relates, while the Member State may consider that it is generally for the applicant to submit all elements needed to substantiate his application, the applicant being, besides, best placed to provide evidence to establish his own sexual orientation, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of assessing the relevant elements of that application, in accordance with Article 4(1) of the directive (see, to that effect, judgment in *M.*, EU:C:2012:744, paragraph 65).
- 57 It should be noted in that regard that, in accordance with Article 4(3)(c) of Directive 2004/83, that assessment must be made on an individual basis and must take account of the individual situation and personal circumstances of the applicant, including factors such as background, gender and age, in order for it to be determined 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.
- 58 Furthermore, as is recalled at paragraph 51 of this judgment, in verifications carried out by the competent authorities, pursuant to Article 4 of the directive, when certain aspects of the statements of the applicant for asylum are not substantiated by documentary or other evidence, those aspects do not require confirmation provided that the cumulative conditions laid down in Article 4(5)(a) to (e) of the directive are met.
- 59 As regards the methods of assessing the statements and documentary or other evidence at issue in each of the cases in the main proceedings, it is appropriate, in order to provide an answer useful to the referring court, to restrict the present analysis to the compatibility with Directives 2004/83 and 2005/85 and the Charter of, first, the verifications carried out by the competent authorities based on, in particular, stereotypes as regards homosexuals or detailed questioning as to the sexual practices of an applicant for asylum and the option, for those authorities, to allow the applicant to submit to 'tests' with a view to establishing his homosexuality and/or of allowing him to produce, of his own free

will, films of his intimate acts and, second, the option for the competent authorities of finding a lack of credibility on the basis of the sole fact that the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the grounds for persecution.

- 60 As regards, in the first place, assessments based on questioning as to the knowledge on the part of the applicant for asylum concerned of organisations for the protection of the rights of homosexuals and the details of those organisations, such questioning suggests, according to the applicant in the main proceedings in case C-150/13, that the authorities base their assessments on stereotyped notions as to the behaviour of homosexuals and not on the basis of the specific situation of each applicant for asylum.
- 61 In that respect, it should be recalled that Article 4(3)(c) of Directive 2004/83 requires the competent authorities to carry out an assessment that takes account of the individual position and personal circumstances of the applicant and that Article 13(3)(a) of Directive 2005/85 requires those authorities to conduct the interview in a manner that takes account of the personal and general circumstances surrounding the application.
- 62 While questions based on stereotyped notions may be a useful element at the disposal of competent authorities for the purposes of the assessment, the assessment of applications for the grant of refugee status on the basis solely of stereotyped notions associated with homosexuals does not, nevertheless, satisfy the requirements of the provisions referred to in the previous paragraph, in that it does not allow those authorities to take account of the individual situation and personal circumstances of the applicant for asylum concerned.
- 63 Therefore, the inability of the applicant for asylum to answer such questions cannot, in itself, constitute sufficient grounds for concluding that the applicant lacks credibility, inasmuch as such an approach would be contrary to the requirements of Article 4(3)(c) of Directive 2004/83 and of Article 13(3)(a) of Directive 2005/85.
- 64 In the second place, while the national authorities are entitled to carry out, where appropriate, interviews in order to determine the facts and circumstances as regards the declared sexual orientation of an applicant for asylum, questions concerning details of the sexual practices of that applicant are contrary to the fundamental rights guaranteed by the Charter and, in particular, to the right to respect for private and family life as affirmed in Article 7 thereof.
- 65 In relation, in the third place, to the option for the national authorities of allowing, as certain applicants in the main proceedings proposed, homosexual acts to be performed, the submission of the applicants to possible 'tests' in order to demonstrate their homosexuality or even the production by those applicants of evidence such as films of their intimate acts, it must be pointed out that, besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by Article 1 of the Charter.
- 66 Furthermore, the effect of authorising or accepting such types of evidence would be to incite other applicants to offer the same and would lead, *de facto*, to requiring applicants to provide such evidence.
- 67 In the fourth place, as regards the option for the competent authorities finding a lack of credibility when, in particular, the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the grounds for persecution, it must be held as follows.
- 68 It is clear from Article 4(1) of Directive 2004/83 that Member States may consider it the duty of the applicant to submit 'as soon as possible' all elements needed to substantiate the application for international protection.

- 69 However, having regard to the sensitive nature of questions relating to a person's personal identity and, in particular, his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset.
- 70 Moreover, it must be observed that the obligation laid down by Article 4(1) of Directive 2004/83 to submit all elements needed to substantiate the application for international protection 'as soon as possible' is tempered by the requirement imposed on the competent authorities, under Article 13(3)(a) of Directive 2005/85 and Article 4(3) of Directive 2004/83 to conduct the interview taking account of the personal or general circumstances surrounding the application, in particular, the vulnerability of the applicant, and to carry out an individual assessment of the application, taking account of the individual position and personal circumstances of each applicant.
- 71 Thus, to hold that an applicant for asylum is not credible, merely because he did not reveal his sexual orientation on the first occasion that he was given to set out the grounds of persecution, would be to fail to have regard to the requirement referred to in the previous paragraph.
- 72 Having regard to all the foregoing, the answer to the question referred in each of the cases C-148/13 to C-150/13 is:
- Article 4(3)(c) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities founded on questions based only on stereotyped notions concerning homosexuals.
  - Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter, must be interpreted as precluding, in the context of that assessment, the competent national authorities from carrying out detailed questioning as to the sexual practices of an applicant for asylum.
  - Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter, must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts.
  - Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of that assessment, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution.

### **Costs**

- 73 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 (Grand Chamber) hereby rules:

**Article 4(3)(c) of Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Article 13(3)(a) of Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals.**

**Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the competent national authorities from carrying out detailed questioning as to the sexual practices of an applicant for asylum.**

**Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to ‘tests’ with a view to establishing his homosexuality or, yet, the production by him of films of such acts.**

**Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of that assessment, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution.**

[Signatures]