Lingua del documento :
ECLI:EU:C:2023:523

JUDGMENT OF THE COURT (First Chamber)

29 June 2023 (*)

(Reference for a preliminary ruling – Common policy on asylum and subsidiary protection – Directive 2004/83/EC – Minimum standards for granting refugee status or subsidiary protection status – Second sentence of Article 4(1) – Cooperation of the Member State with the applicant to assess the relevant elements of the application – Scope – General credibility of the applicant – Article 4(5)(e) – Evaluation criteria – Common procedures for the grant of international protection – Directive 2005/85/EC – Appropriate examination – Article 8(2) and (3) – Judicial review – Article 39 – Scope – Procedural autonomy of the Member States – Principle of effectiveness – Reasonable time to take a decision – Article 23(2) and Article 39(4) – Consequences of any breach)

In Case C-756/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 23 November 2021, received at the Court on 9 December 2021, in the proceedings

X

v

International Protection Appeals Tribunal,

The Minister for Justice and Equality,

Ireland,

The Attorney General,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, P.G. Xuereb, T. von Danwitz, A. Kumin and I. Ziemele, Judges,

Advocate General: M. Szpunar,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 16 November 2022,

after considering the observations submitted on behalf of:

– X, by B. Burns, Solicitor, H. Hofmann, Rechtsanwalt, and P. O'Shea, Barrister-at-Law,

– the International Protection Appeals Tribunal, Minister for Justice and Equality, Ireland, and the Attorney General, by M. Browne, C. Aherne and A. Joyce, acting as Agents, and by C. Donnelly, Senior Counsel, and E. Doyle and A. McMahon, Barristers-at-Law,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

– the European Commission, by A. Azéma and L. Grønfeldt, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 February 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(1) and (5)(e) 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 Article 8(2) and (3), Article 23(2) and Article 39(4) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

2 The request has been made in proceedings between X and, first, the International Protection Appeals Tribunal (Ireland) ('the IPAT'), secondly, the Minister for Justice and Equality (Ireland), thirdly, Ireland and, fourthly, the Attorney General (Ireland) ('the IPAT and Others'), concerning the IPAT's dismissal of his appeals against the decisions rejecting his applications for asylum and for subsidiary protection.

Legal context

European Union law

Directive 2004/83

3 Directive 2004/83 was repealed and replaced by Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9). However, since Ireland did not take part in the adoption of the latter directive and is not bound by it, Directive 2004/83 continues to apply to that Member State.

4 Article 2(a), (d), (e), (f), (g) and (k) of Directive 2004/83 contains the following definitions:

‘For the purposes of this Directive:

(a) “international protection” means the refugee and subsidiary protection status as defined in (d) and (f);

…

(d) “refugee status” means the recognition by a Member State of a third country national or a stateless person as a refugee;

(e) “person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(f) “subsidiary protection status” means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

(g) “application for international protection” means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

…

(k) “country of origin” means the country or countries of nationality or, for stateless persons, of former habitual residence.’

5 Pursuant to Article 4 of that directive:

‘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;

…

4. The fact that an Applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the Applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

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.'

6 Article 15(c) of that directive is worded as follows:

'Serious harm consists of:

…

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

Directive 2005/85

7 Directive 2005/85 was repealed and replaced by Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60). However, since Ireland did not take part in the adoption of the latter directive and is not bound by it, Directive 2005/85 continues to apply to that Member State.

8 Recital 11 of Directive 2005/85 states:

‘It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.’

9 Article 2(b) to (e) of that directive contains the following definitions:

‘For the purposes of this Directive:

…

(b) “application” or “application for asylum” means an application made by a third country national or stateless person which can be understood as a request for international protection from a Member State under the [Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, vol. 1 89, p. 150, No 2545 (1954)) as supplemented and amended by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967]. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;

(c) “applicant” or “applicant for asylum” means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;

(d) “final decision” means a decision on whether the third country national or stateless person be granted refugee status by virtue of Directive 2004/83/EC and which is no longer subject to a remedy within the framework of Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome, subject to Annex III to this Directive;

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

10 Article 8(2) and (3) of that directive provides:

‘2. Member States shall ensure that decisions by the determining authority on applications for asylum 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;

(b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

3. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 2(b), necessary for the fulfilment of their task.'

11 Article 23(1) and (2) of that directive provides:

'1. Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:

(a) be informed of the delay; or

(b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time-frame.'

12 Article 28(1) of Directive 2005/85 provides:

'Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.'

13 Under Article 39(1)(a) and (4) of Directive 2005/85:

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

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

…

4. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.'

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

14 X is a Pakistani national who entered Ireland on 1 July 2015, after residing, during the period from 2011 to 2015, in the United Kingdom, where he did not lodge an application for international protection.

15 On 2 July 2015, X lodged an application for refugee status in Ireland. That application, initially based on a false statement which X subsequently retracted, was founded on the fact that he had been in the immediate vicinity of a bomb explosion in a terrorist attack which took place during a funeral in Pakistan and killed around 40 people, including two people known to him. He claims to have been deeply affected by that event, with the result that he is afraid to live in Pakistan and fears serious harm if sent there. He states that he suffers from anxiety, depression and sleep disorders.

That application was refused by the Refugee Applications Commissioner (Ireland) by decision of 14 November 2016.

16 On 2 December 2016, X filed an appeal against that decision to the Refugee Appeals Tribunal (Ireland). The proceedings relating to that appeal were suspended on account of legislative amendments made on 31 December 2016 by the entry into force of the International Protection Act 2015 which unified the various international protection procedures previously laid down and established, inter alia, the International Protection Office ('the IPO') and the IPAT.

17 On 13 March 2017, X lodged an application for subsidiary protection. That application was rejected by the IPO and the applicant appealed against that decision before the IPAT.

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

19 On 7 April 2019, X brought an action before the High Court (Ireland) seeking the annulment of that decision of the IPAT.

20 In support of that action, he submits, first, that the country of origin information consulted by the IPAT, dating from 2015 to 2017, was incomplete and outdated, with the result that the IPAT did not take account of the situation prevailing in Pakistan at the time when the decision of 7 February 2019 was adopted. Moreover, the IPAT did not properly examine the information available to it.

21 Secondly, the time taken to rule on the application of 2 July 2015 was manifestly unreasonable and in breach of the principle of effectiveness, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and the minimum procedural standards established by Directive 2005/85.

22 Thirdly, the IPAT was informed of the state of the X's mental health, but failed to take any steps to ensure that it had before it all the necessary evidence in order to be able to adjudicate properly upon the applications. In particular, the IPAT ought to have requested an expert medical opinion, referred to as a medico-legal report, which is generally used to support the asylum application of a person who has been subjected to acts of torture, or some other expert evidence as to the state of his mental health.

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

24 Fifthly, in the circumstances of the case, which are characterised by the fact that the applicant has admitted that an earlier account of the alleged events was false and that there is at least a possibility that the applicant is suffering from mental health problems, it is unreasonable to conclude that X is not credible as regards important aspects of his claim.

25 In that regard, the High Court observes, first of all, that the IPAT did not obtain up-to-date information on the country of origin or a medico-legal report. However, it questions whether the IPAT was required under EU law to obtain such a report and whether it is compatible with EU law to require, in accordance with national law, that X must also establish, in order to have the IPAT's decision annulled, that he was prejudiced by that breach.

26 The referring court then asks what conclusions it should draw from the fact that more than three and a half years elapsed between the submission of the application on 2 July 2015 and the adoption of the IPAT's decision on 7 February 2019, a decision-making period that could be considered to be unreasonable.

27 Lastly, the referring court expresses doubts as to whether a single untruthful statement, which was explained by X and withdrawn at the earliest opportunity, may be sufficient to justify calling into question X's general credibility.

28 In those circumstances, the High Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In circumstances where there has been a complete breach of the duty of cooperation as described at paragraph 66 of the judgment [of 22 November 2012, *M.* (C-277/11, EU:C:2012:744)], in an applicant's application for subsidiary protection, has the consideration of that application been rendered "totally ineffective" in the sense considered in [the judgment of 15 October 2015, *Commission* v *Germany* (C-137/14, EU:C:2015:683)]?

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

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

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

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

(6) Where insufficient evidence is before a protection decision maker as to the state of an applicant's mental health but where some evidence of the possibility of an applicant suffering from such difficulties is present, is the international protection decision maker, in accordance with the duty of cooperation mentioned in [the judgment of 22 November 2012, *M.* (C-277/11, EU:C:2012:744, paragraph 66)], or otherwise, under a duty to make further enquiry, or any other duty, prior to arriving at a final decision?

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

Procedure before the Court

29 The referring court requested that the case be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.

30 On 17 December 2021, the Court decided, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, that there was no need to grant that request, since that court had not provided any elements from which it could be concluded that there was an urgent need to adjudicate on the present case. In particular, that court did not indicate that X is being detained or, a fortiori, set out the reasons why the Court's answers could be decisive for his possible release.

Consideration of the questions referred

Admissibility of the request for a preliminary ruling

31 In the first place, the IPAT and Others submit that, contrary to what is suggested by the wording of the first question, the referring court neither found a complete breach of the duty of cooperation incumbent on the competent authorities nor could have made such a finding on the basis of the facts of the case before it. That question is therefore hypothetical and asks the Court, moreover, to give a determinative ruling on the facts of the case in the main proceedings, which is not within its jurisdiction. Such considerations equally affect the second and third questions, by reason of their close connection with the first question.

32 In the second place, the fourth and fifth questions are also hypothetical, given that the High Court did not make any finding of failure to fulfil the obligation to provide a decision within a reasonable time.

33 In the third place, an answer to the sixth question is not necessary, since the IPAT had regard to the medical evidence submitted by X, without questioning its relevance.

34 In the fourth place, the seventh question is hypothetical, since X stated that he was not challenging the IPAT's conclusions relating to his credibility and the admitted lie was not, contrary to what that question suggests, the only factor that led the IPAT to consider that X's credibility had not been established. X failed to mention key information relating to past events until latterly and did not seek international protection at an early stage.

35 According to settled case-law, in proceedings under Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions referred concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 20 September 2022, *VD and SR*, C-339/20 and C-397/20, EU:C:2022:703, paragraph 56).

36 The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 20 September 2022, *VD and SR*, C-339/20 and C-397/20, EU:C:2022:703, paragraph 57).

37 Furthermore, under the division of jurisdiction between the Courts of the European Union and the national courts, the Court must take into account the factual and legal context, as set out in the order for reference, of the questions referred for a preliminary ruling (judgment of 20 October 2022, *Centre public d'action sociale de Liège (Withdrawal or suspension of a return decision)*, C-825/21, EU:C:2022:810, paragraph 35).

38 Therefore, since the referring court has defined the factual and legislative context of the questions it is asking, it is not for the Court to verify the accuracy of those questions (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 50).

39 In the present case, in the first place, it is apparent from the first to third questions that the referring court is uncertain whether the facts set out constitute a breach of the duty of cooperation and what conclusions it must, as the case may be, draw from such a finding, having regard to the limits which national law imposes on that court's jurisdiction. Contrary to what the IPAT and Others claim, those questions are not hypothetical, since they are at the heart of the dispute in the main proceedings. In addition, the Court is asked to answer those questions by interpreting EU law and, therefore, may do so without giving a determinative decision on the facts in the main proceedings.

40 In the second place, since it is unequivocally clear from the order for reference that the High Court is contemplating finding a failure to fulfil the obligation to give a decision within a reasonable time, the fourth and fifth questions cannot be hypothetical merely because that court has not yet made such a finding.

41 In the third place, the fact that the IPAT took into account the medical evidence provided by X, without calling it into question, in no way undermines the relevance of the sixth question, which concerns the possible obligation to obtain a supplementary medico-legal report.

42 In the fourth place, by their objections to the admissibility of the seventh question, the IPAT and Others dispute the findings of fact made by the referring court and its assessment of the relevance of that question to the resolution of the dispute in the main proceedings. It is not for the Court to take the place of the national court either as regards the findings of fact or in relation to such an assessment.

43 It follows from the foregoing considerations that the objections raised by the IPAT and Others to the admissibility of the request for a preliminary ruling must be rejected as unfounded.

The first and sixth questions, relating to the duty of cooperation

44 By its first and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(1) of Directive 2004/83 must be interpreted as meaning that the duty of cooperation laid down in that provision requires the determining authority to obtain (i) up-to-date information concerning all the relevant facts as regards the general situation prevailing in the country of origin of an applicant for asylum and international protection and (ii) a medico-legal report on his or her mental health, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country of origin.

45 At the outset, it should be noted that Article 4 of Directive 2004/83 relates, as is apparent from its title, to the 'assessment of the facts and circumstances'.

46 Under paragraph 1 of that provision, 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. Furthermore, it is the duty of the Member State to assess, in cooperation with the applicant, the relevant elements of the application.

47 As the Court has already held, the assessment of the facts and circumstances takes place 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 in Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are met (judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 64).

48 Although under Article 4(1) of Directive 2004/83 it is the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection, the Court has clarified that the authorities of the Member States must, if necessary, cooperate actively with him or her in order to determine and supplement the relevant elements of the application, those authorities indeed often being better placed than an applicant to gain access to certain types of documents (judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraphs 65 and 66).

49 As regards the extent of that cooperation, it follows from the context of that provision and, inter alia, first, from Article 4(1) and Article 8(2) of Directive 2005/85 that the determining authority is responsible for carrying out an appropriate examination of applications, at the end of which it will take a decision regarding them (judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 40).

50 In particular, as the Advocate General observed in point 59 of his Opinion, the assessment as to whether or not the established circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subjected to acts of persecution must, in all cases, be carried out with vigilance and care, since what are at issue are issues relating to the integrity of the person and to individual liberties, issues which relate to the fundamental values of the European Union (judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 89 and 90).

51 It is apparent, secondly, from Article 4(3)(a) to (c) and Article 4(5) of Directive 2004/83 that the examination of the application for international protection must include an individual assessment of that application, taking into account, inter alia, all relevant facts as they relate to the country of origin of the applicant at the time of taking a decision on the application, the relevant statements and documentation presented by him or her as well as his or her individual position and personal circumstances. Where necessary, the competent authority must also take account of the explanation provided regarding a lack of evidence, and of the applicant's general credibility (see, by analogy, judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 41).

52 It should also be borne in mind that, as the Advocate General observed in point 58 of his Opinion, under Article 28(1) of Directive 2005/85, Member States may consider an application for asylum to be unfounded only if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83.

53 Accordingly, where a person fulfils the conditions laid down in Articles 9 and 10 or 15 of Directive 2004/38 to qualify for the grant of international protection, Member States are required, subject to the grounds for exclusion provided for by that directive, to grant the international protection sought, since those Member States have no discretion in that respect (see, to that effect, judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 50 and the case-law cited).

54 It follows from the case-law referred to in paragraphs 48 to 53 above that the duty of cooperation laid down in Article 4(1) of Directive 2004/83 entails that the determining authority, in this case the IPO, cannot carry out an appropriate examination of applications or, consequently,

declare an application unfounded without taking into consideration, at the time of taking a decision on the application, first, all the relevant facts concerning the general situation prevailing in the country of origin and, secondly, all the relevant elements relating to the individual position and personal circumstances of the applicant.

55 As regards the relevant facts concerning the general situation prevailing in the country of origin, it follows from a combined reading of Article 4(1) of Directive 2004/83 and Article 8(2)(b) of Directive 2005/85 that Member States are to ensure that precise and up-to-date information is obtained on the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited (judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 67).

56 As regards the relevant elements relating to the individual position and personal circumstances of the applicant, it should be noted that the provisions of Directive 2005/85 do not restrict the means available to the competent authorities and, in particular, do not exclude the use of expert reports in the context of the process of assessment of the facts and circumstances in order to determine more accurately the applicant's actual need for international protection, provided that the modalities of any use, in that context, of an expert's report are consistent with other relevant EU law provisions, and in particular with the fundamental rights guaranteed by the Charter (see, to that effect, judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraphs 34 and 35).

57 The individual assessment thus required may therefore include, inter alia, the use of a medico-legal report, if such a report proves necessary or relevant in order to assess, with the vigilance and care required, the applicant's genuine need for international protection, provided that the modalities of such use comply, inter alia, with the fundamental rights guaranteed by the Charter.

58 It follows that the competent authority has a margin of discretion as to the necessity and relevance of such a report and that, where it deems such a report necessary or relevant, it is required to cooperate with the applicant in order to obtain that report, within the limits set out in the preceding paragraph.

59 Lastly, since it is apparent from the order for reference that the High Court asks, more specifically, whether the findings made in paragraphs 54 to 58 above also apply to the IPAT, it should be noted that that court stated, in answer to a question put by the Court, that it follows from the applicable Irish legislation that the IPAT is required to carry out a full and *ex nunc* review of decisions of the IPO; that it has, in particular, the power to request inquiries to be made by the Minister for Justice and Equality and to request information to be furnished by the Minister and that the IPAT may, inter alia, on the basis of such evidence, affirm the decisions of the IPO or set them aside and make a binding recommendation that refugee or subsidiary protection status be granted.

60 In such circumstances, it must be held that those findings also apply to the IPAT. Such a review of the merits of the grounds of the IPO's decision involves obtaining and examining precise and up-to-date information on the situation existing in the applicant's country of origin on which, inter alia, that decision is based, and the possibility of ordering measures of inquiry in order to be able to rule *ex nunc*. The IPAT may therefore be required to obtain and examine such precise and up-to-date information, including a medico-legal report deemed relevant or necessary.

61 In the light of the foregoing considerations, the answer to the first and sixth questions is that Article 4(1) of Directive 2004/83 must be interpreted as meaning that the duty of cooperation laid down in that provision requires the determining authority to obtain (i) up-to-date information concerning all the relevant facts as regards the general situation prevailing in the country of origin

of an applicant for asylum and international protection and (ii) a medico-legal report on his or her mental health, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country of origin and the use of such a report is necessary or relevant in order to assess the applicant's genuine need for international protection, provided that the modalities of the use of such a report comply, inter alia, with the fundamental rights guaranteed by the Charter.

The second and third questions, relating to the procedural consequences of a breach of the duty of cooperation

62 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(1) of Directive 2004/83 must be interpreted as meaning that the finding, in the context of the second level of judicial scrutiny provided for by national law, of a breach of the duty of cooperation laid down in that provision must, by itself, lead to the annulment of the decision dismissing an appeal brought against a decision rejecting an application for international protection, or whether the applicant for international protection may be required to demonstrate that the decision dismissing the appeal might have been different in the absence of such a breach.

63 As a preliminary point, it should be noted that, according to the information furnished by the referring court in its request for a preliminary ruling and in its reply to the question posed to it by the Court, the IPAT must be regarded as a court or tribunal of first instance, tasked with performing the judicial scrutiny function provided for in Article 39 of Directive 2005/85. It is in that capacity that it is required to carry out the full review referred to in paragraph 59 above, which entails that it is has the power to deliver a decision *ex nunc* on the basis of the elements produced before it, if necessary at its request, and that it may affirm or set aside, on the basis of those elements, a decision of the IPO and, where appropriate, make a binding recommendation that refugee status or subsidiary protection be granted. It should be added that it has not been claimed before the Court and that there is nothing in the file before it to suggest that the judicial scrutiny which the IPAT is thus required to carry out of decisions of the IPO rejecting an application for international protection does not satisfy the requirements of Article 39.

64 It follows from that request and from that reply that the referring court must, for its part, be regarded as a court of second instance responsible, as it has stated, for carrying out a review of decision of the IPAT limited, first, to the grounds that the decision is ultra vires; that the decision turns on an error of law or material error of fact; that the decision is irrational or disproportionate; and that the decision has been taken in breach of fair procedures or legitimate expectations and, secondly, in the event of a finding of such illegality, the annulment of those decisions and the remittal of the cases to the IPAT.

65 As the referring court has also stated, it must, however, refrain from annulling the IPAT decision and making such a remittal if it appears that, even in the absence of a finding of illegality, the IPAT decision could not have been different. Irish law imposes on the party seeking the annulment of that decision the burden of showing that that decision might have been different in the absence of that illegality.

66 Since Directive 2005/85 does not contain any rule relating to the possibility of appealing the decision on the appeal brought against a decision rejecting an application for international protection or expressly governing the system of any appeal proceedings at second instance, it must be held that the protection conferred by Article 39 of Directive 2005/85, read in the light of Article 18 and Article 47 of the Charter, is confined to the existence of a single judicial remedy and

does not require the establishment of several levels of jurisdiction (see, to that effect, judgment of 26 September 2018, *Staatssecretaris van Veiligheid en Justitie (Suspensory effect of the appeal)*, C-180/17, EU:C:2018:775, paragraph 33).

67 In the absence of EU legislation governing the matter, it is therefore, in accordance with the principle of procedural autonomy, for the national legal order of each Member State to decide whether to introduce a second level of jurisdiction against a judgment ruling on an appeal brought against a decision rejecting an application for international protection and, where appropriate, to lay down the detailed procedural rules of that second level of jurisdiction, provided, however, that those rules are not, in situations covered by EU law, less favourable than in similar situations under domestic law (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, judgments of 26 September 2018, *Staatssecretaris van Veiligheid en Justitie (Suspensory effect of the appeal)*, C-180/17, EU:C:2018:775, paragraphs 34 and 35, and of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 42).

68 As regards the principle of equivalence, it is apparent from the referring court's reply to the question posed to it by the Court that the detailed procedural rules referred to in paragraphs 64 and 65 above still apply to the second-instance review carried out by that court, both where the situation is covered by EU law and where it falls within the scope of national law.

69 As regards the principle of effectiveness, it does not appear that the burden of demonstrating that the decision of the IPO and/or the IPAT might have been different in the absence of a proven breach of the duty of cooperation would make it impossible in practice or excessively difficult to exercise the rights conferred by EU law, which is, however, for the referring court to determine.

70 First, such a burden does not appear to entail that an applicant for international protection must demonstrate that the decision would have been different had it not been for that breach, but only that it cannot be ruled out that the decision might have been different.

71 Secondly, if it appears at the outset or if the competent authority is able to demonstrate before the referring court, if necessary in response to the allegations of the applicant for international protection, that, even in the absence of that breach, the decision could not in any event have been different, it does not appear that there are rights conferred by EU law the exercise of which would be rendered impossible in practice or excessively difficult. The referring court itself thus presents itself as carrying out a review of whether that decision is well founded, with the result that, in such a case, the annulment and remittal of the case to the IPAT would risk duplicating that review and needlessly prolonging the procedure.

72 In the light of the foregoing considerations, the answer to the second and third questions is that Article 4(1) of Directive 2004/83 must be interpreted as meaning that the finding – in the context of a second level of judicial scrutiny provided for by national law – of a breach of the duty of cooperation laid down in that provision need not necessarily entail, by itself, the annulment of the decision dismissing an appeal brought against a decision rejecting an application for international protection, since the applicant for international protection may be required to demonstrate that the decision dismissing the appeal might have been different in the absence of that breach.

The fourth and fifth questions, concerning the reasonable period of time

73 By its fourth and fifth questions, which it is appropriate to examine together, the referring court asks, in essence, whether EU law, in particular Article 23(2) and Article 39(4) of Directive 2005/85, must be interpreted as meaning that the periods which have elapsed between, on the one hand, the lodging of the application for asylum and, on the other, the adoption of the decisions of the determining authority and of the competent court or tribunal of first instance, may be justified by legislative amendments made in the Member State during those periods and, if that is not the case, whether the unreasonable nature of one or other of those periods may, by itself, entail the annulment of the decision of the competent court or tribunal of first instance.

74 As the Advocate General observed in points 89 to 93 of his Opinion, it is apparent from the structure, scheme and objectives of Directive 2005/85, first of all, that a distinction must be drawn between the time limits laid down in Article 23(2) and Article 39(4), respectively, since the former applies to the administrative procedure, whereas the latter relates to the judicial proceedings.

75 Next, as is also apparent from the wording of those provisions, those time limits are not binding for the adoption of a decision.

76 Lastly, given that the first of those provisions provides that Member States are to ensure that the administrative procedure is concluded as soon as possible, that the latter provision expressly allows Member States to lay down time limits for the competent court or tribunal to examine the decision of the determining authority and that recital 11 of Directive 2005/85 states that it is in the interest of both Member States and applicants to decide as soon as possible on applications for asylum, that directive calls for the rapid examination of both applications for international protection and appeals brought against, inter alia, decisions rejecting such applications.

77 The need to ensure effective access to the status conferred by international protection requires that the application should be examined within a reasonable time (see, to that effect, judgment of 8 May 2014, *N.*, C-604/12, EU:C:2014:302, paragraph 45). Furthermore, it follows from the very wording of Article 47 of the Charter that effective judicial protection requires that a person's case be heard, inter alia, within a reasonable time by a tribunal.

78 It will therefore be for the referring court to examine whether the decisions taken at the end of the administrative phase by the IPO and at the end of the first instance judicial proceedings by the IPAT were taken within a reasonable time, in the light of the circumstances of the case.

79 As regards those circumstances, it can be seen from the case-law that where the duration of a procedure is not set by a provision of EU law, the 'reasonableness' of the period of time taken to adopt the measure at issue must be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties (see, to that effect, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 122 and the case-law cited).

80 However, those circumstances specific to each case do not include legislative amendments made in a Member State during the administrative or judicial stages of a case. It follows from the factors set out in paragraphs 76 and 77 above that the Member States are required to ensure that those procedures are completed as soon as possible and, in any event, within a reasonable time. They cannot, therefore, rely on circumstances which fall under their responsibility, such as legislative amendments, in order to justify any failure to comply with that requirement.

81 That being said, as the Advocate General observed in points 103 to 105 of his Opinion, any failure to comply with the requirement that cases be dealt with within a reasonable time in matters

of international protection, both during the administrative and judicial stages, cannot by itself result in the annulment of a decision dismissing an appeal seeking the annulment of a decision which did not grant an application for international protection, unless that failure to comply with the reasonable time requirement resulted in a breach of the rights of the defence.

82 Since decisions as to whether applications for international protection are well founded or not must be made in the light of the material criteria for granting such protection, laid down by Directive 2004/83, the failure to make such a decision within a reasonable time cannot lead – where there are no indications that the excessive length of the administrative or judicial proceedings affected the outcome of the dispute – to the annulment of the contested administrative or judicial decision (see, to that effect, judgment of 8 May 2014, *Bolloré* v *Commission*, C-414/12 P, not published, EU:C:2014:301, paragraph 84).

83 On the other hand, where there are indications that the excessive duration of administrative or judicial proceedings may have affected the outcome of the dispute, the failure to act within a reasonable time may lead to the annulment of the contested administrative decision or judicial decision, in particular where that failure results in a breach of the rights of the defence which are fundamental rights forming an integral part of the general principles of law whose observance the Court ensures (see, by analogy, judgment of 25 October 2011, *Solvay* v *Commission*, C-110/10 P, EU:C:2011:687, paragraphs 47 to 52).

84 Accordingly, although the file submitted to the Court does not contain any material to establish that the – as the case may be – unreasonableness of one or other of the two periods at issue in the main proceedings resulted in a breach of X's rights of defence, it is for the referring court to verify this.

85 In the light of the foregoing considerations, the answer to the fourth and fifth questions is that EU law, in particular Article 23(2) and Article 39(4) of Directive 2005/85, must be interpreted as meaning that:

– the periods which have elapsed between, on the one hand, the lodging of the application for asylum and, on the other, the adoption of the decisions of the determining authority and of the competent court or tribunal of first instance, cannot be justified by national legislative amendments made during those periods, and

– the unreasonableness of one or other of those periods cannot, by itself and in the absence of any evidence that the excessive duration of the administrative or judicial proceedings affected the outcome of the dispute, justify setting aside the decision of the competent court or tribunal of first instance.

The seventh question, concerning the general credibility of an applicant

86 By its seventh question, the referring court asks, in essence, whether Article 4(5)(e) of Directive 2004/83 must be interpreted as meaning that a false statement, contained in the initial application for international protection, which was explained and withdrawn by the applicant for asylum at the first available opportunity, is capable, by itself, of preventing the applicant's general credibility from being established, for the purposes of that provision.

87 In accordance with Article 4(5) of Directive 2004/83, where Member States apply the principle that it is the duty of the applicant to substantiate the application, and where aspects of the

applicant's statements are not supported by documentary or other evidence, those aspects do not need confirmation, when the conditions listed in points (a) to (e) of that provision are met.

88 Those cumulative conditions relate to the fact that the applicant has applied for international protection at the earliest possible time, that he or she has made a genuine effort to substantiate his or her application, that he or she has submitted all the relevant elements at his or her disposal, that he or she has given a satisfactory explanation regarding any lack of other relevant elements, that the applicant's statements are found to be coherent and plausible, that they 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.

89 Accordingly, it follows from Article 4(5) of Directive 2004/83 that when the conditions listed under (a) to (e) of that provision are not cumulatively met, statements made by applicants for asylum which are not supported by evidence may require confirmation (see, to that effect, judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 51).

90 It follows that the general credibility of the applicant for asylum is one factor among others to be taken into account in order to verify, during the first stage of the assessment, provided for in Article 4(1) of Directive 2004/83, which concerns the establishment of factual circumstances capable of constituting evidence in support of the application, whether the statements of asylum seekers require confirmation.

91 It must be held that the findings made, in a particular case, relating to the conditions set out in Article 4(5)(a) to (d) of Directive 2004/83 are capable of influencing the assessment of the general credibility of the applicant referred to in point (e) of that provision.

92 That being said, as the Advocate General observed, in essence, in point 109 of his Opinion, the assessment of the general credibility of the asylum seeker cannot be limited to taking into account those conditions set out in Article 4(5)(a) to (d) of Directive 2004/83, but must be carried out, as the German Government has pointed out, by taking into account, in the context of an overall and individual assessment, all other relevant factors of the case.

93 In the context of such an analysis, a false statement in the initial application for international protection is indeed a relevant factor to be taken into account. However, this alone cannot prevent the general credibility of the applicant from being established. The fact that that untruthful statement was explained and withdrawn by the applicant for asylum at the first available opportunity, the claims which replaced that false statement and the subsequent behaviour of the asylum seeker are all equally relevant.

94 Lastly, if the assessment of all the relevant factors in the case in the main proceedings were to lead to the conclusion that the general credibility of the asylum seeker cannot be established, statements by that applicant which are not supported by evidence may therefore require confirmation, in which case it may be for the Member State concerned to cooperate with that applicant, as noted, inter alia, in paragraphs 47 and 48 above, in order to enable all the elements capable of substantiating the application for asylum to be assembled.

95 In the light of the foregoing considerations, the answer to the seventh question is that Article 4(5)(e) of Directive 2004/83 must be interpreted as meaning that a false statement, contained in the initial application for international protection, which was explained and withdrawn by the applicant for asylum at the first available opportunity, is not capable, by itself, of preventing the establishment of the applicant's general credibility, for the purposes of that provision.

Costs

96 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 (First Chamber) hereby rules:

1. **Article 4(1) 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 must be interpreted as meaning that:**

– **the duty of cooperation laid down in that provision requires the determining authority to obtain (i) up-to-date information concerning all the relevant facts as regards the general situation prevailing in the country of origin of an applicant for asylum and international protection and (ii) a medico-legal report on his or her mental health, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country of origin and the use of such a report is necessary or relevant in order to assess the applicant's genuine need for international protection, provided that the modalities of the use of such a report comply, inter alia, with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union;**

– **the finding – in the context of a second level of judicial scrutiny provided for by national law – of a breach of the duty of cooperation laid down in that provision need not necessarily entail, by itself, the annulment of the decision dismissing an appeal brought against a decision rejecting an application for international protection, since the applicant for international protection may be required to demonstrate that the decision dismissing the appeal might have been different in the absence of that breach.**

2. **EU law, in particular Article 23(2) and Article 39(4) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as meaning that:**

– **the periods which have elapsed between, on the one hand, the lodging of the application for asylum and, on the other, the adoption of the decisions of the determining authority and of the competent court or tribunal of first instance, cannot be justified by national legislative amendments made during those periods, and**

– **the unreasonableness of one or other of those periods cannot, by itself and in the absence of any evidence that the excessive duration of the administrative or judicial proceedings affected the outcome of the dispute, justify setting aside the decision of the competent court or tribunal of first instance.**

3. **Article 4(5)(e) of Directive 2004/83**

must be interpreted as meaning that a false statement, contained in the initial application for international protection, which was explained and withdrawn by the applicant for asylum at the first available opportunity, is not capable, by itself, of preventing the establishment of the applicant's general credibility, for the purposes of that provision.

Arabadjiev Xuereb von Danwitz
Kumin Ziemele

Delivered in open court in Luxembourg on 29 June 2023.

A. Calot Escobar A. Arabadjiev
Registrar President of the Chamber

* Language of the case: English.