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Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

3 April 2025 (*)

(Reference for a preliminary ruling – Asylum policy – International protection – Directive 2013/32/EU – Article 46(3) – Requirement for a full and ex nunc examination – Article 47 of the Charter of Fundamental Rights of the European Union – Right to an effective remedy – Scope of the powers of the court or tribunal of first instance – National legislation that makes no provision for a power to order a medical examination of the applicant for international protection)

In Case C283/24 [Barouk], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Dioikitiko Dikastirio Diethnous Prostasias (International Protection Administrative Court, Cyprus), made by decision of 29 March 2024, received at the Court on 23 April 2024, in the proceedings

B.F.

v

Kypriaki Dimokratia,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, D. Gratsias, E. Regan, J. Passer and B. Smulders (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Cypriot Government, by F. Sotiriou and E. Symeonidou, acting as Agents,

– the European Commission, by M. Debieuvre and A. Katsimerou, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 46(1) and (3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and in conjunction with Article 4(1) and Article 4(3)(c) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9) and with Article 4(3) TEU.

2 The request has been made in proceedings between B.F. and the Kypriaki Dimokratia (Republic of Cyprus), represented by the Ypiresia Asylou (Asylum Service, Cyprus) ('the Asylum Authority'), concerning the latter's decision refusing to grant the application for international protection made by B.F. and ordering his return to his country of origin.

Legal context

European Union law

Directive 2011/95

3 Article 4 of Directive 2011/95 provides:

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

…

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

…

(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;

…'

Directive 2013/32

4 Recitals 18, 50 and 60 of Directive 2013/32 state:

'(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

…

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.

…

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.'

5 Under Article 2(f) of that directive:

'For the purposes of this Directive:

…

(f) "determining authority" means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases'.

6 Article 18 of that directive, headed 'Medical examination', provides:

'1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive [2011/95], Member States shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

The medical examinations referred to in the first subparagraph shall be carried out by qualified medical professionals and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

Medical examinations carried out in accordance with this paragraph shall be paid for out of public funds.

2. When no medical examination is carried out in accordance with paragraph 1, Member States shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.

3. The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.'

7 Article 46 of Directive 2013/32, headed 'The right to an effective remedy', provides:

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

(a) a decision taken on their application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

…

…

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95], at least in appeals procedures before a court or tribunal of first instance.

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

…'

Cypriot law

8 Article 15 of the Peri Prosfygon Nomos (Law on refugees), in the version applicable to the dispute in the main proceedings ('the Law on refugees'), headed 'Medical and psychological examination of an applicant', provides:

'(1) Where a competent official [of the Asylum Authority] deems it appropriate for the purposes of the assessment of the application … and subject to the consent of the applicant, a medical doctor and/or psychologist shall carry out an examination of the applicant concerning:

(a) signs that might indicate past persecution or serious harm; and

(b) symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence.

(2) The medical examinations referred to in paragraph 1, the costs of which shall be paid for out of public funds, shall be carried out by qualified health professionals and the results thereof shall be submitted [to the Asylum Authority] as soon as possible.

(3) Refusal on the part of the applicant to undergo a medical and/or psychological examination shall not prevent the Head [of the Asylum Authority] from issuing a decision on the application.

(4) The results of the medical and/or psychological examinations carried out pursuant to in paragraphs 1 or 8 shall be assessed by the Head [of the Asylum Authority] along with the other elements of the application.

(5) Where there are signs of serious harm, the competent official [of the Asylum Authority] shall interview the applicant, further to consultation of and in collaboration with a competent medical doctor.

…

(8) When no medical and/or psychological examination is carried out in accordance with paragraph 1, [the Asylum Authority] shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical and/or psychological examination concerning signs that might indicate past persecution or serious harm.'

9 Under Article 7 of the Peri tis Litourgias Dioikitikou Dikastiriou Diethnous Prostasias Diadikastikoi Kanonismoi tou 2019 (2019 Rules of Procedure on the functioning of the International Protection Administrative Court), in the version applicable to the dispute in the main proceedings:

'The [International Protection Administrative Court] may determine the procedure and, where appropriate, issue directions in so far as concerns the taking of a written or oral statement or other items of evidence, in

the interviews conducted with the applicant for asylum or for international protection, and other procedures, in accordance with the Law … on refugees and with the guidelines of the European Asylum Support Office (EASO), as the court or tribunal considers appropriate and fair in the circumstances of the case before it.'

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

10 On 4 September 2018, B.F., a Lebanese national, made an application for international protection in Cyprus.

11 In support of his application, he claimed inter alia that he had been the victim of torture by the intelligence agencies and military services in Lebanon on account, amongst other matters, of his political activism and his involvement in the paramilitary wing of a Lebanese political party, and that he continued to be subjected to threats and attempted murder, with the result that he was convinced that, should he be returned to Lebanon, he would be arrested at the airport in that country and sentenced to a term of imprisonment or face the death penalty.

12 By decision of 7 February 2022, the Asylum Authority refused to grant him refugee status, on the ground that there was no reasonable fear of persecution or risk of serious harm if the applicant were to be returned to Lebanon. In that regard, that authority considered statements made by B.F. in the course of several interviews to be inconsistent, contradictory and vague.

13 Hearing an action brought by B.F. against that decision, the Dioikitiko Dikastirio Diethnous Prostasias (International Protection Administrative Court, Cyprus), which is the referring court, also states that it reached the conclusion that the allegations made by B.F. regarding the political, religious and racial persecution to which he claims to have been subjected by the intelligence agencies in Lebanon, inter alia, as a member of a Lebanese political party, lacked consistency, logic or plausibility.

14 However, according to the referring court, in the individual assessment of an application for international protection, the vulnerability of the applicant must be taken into consideration, since that may affect, in particular, the consistency of his or her statements made in support of his or her application for international protection and, accordingly, the assessment of his or her credibility.

15 The Asylum Authority failed, according to that court, to carry out a medical or psychological examination of the person concerned in respect of signs of persecution or serious harm which he claims to have suffered in the past, or to signs of torture or other serious acts of physical or psychological violence.

16 Accordingly, in the absence of a medical examination of the person concerned, the referring court is of the view that it is impossible for that court to assess the applicant's credibility, which is nevertheless an integral part of the full and *ex nunc* examination of the application for international protection which must be carried out by the court of first instance pursuant to Article 46(3) of Directive 2013/32.

17 The referring court states that, under national law, it does not have the power to order such a medical examination, as is confirmed by the recent case-law of the Anotato Dikastirio Kyprou (Supreme Court of Cyprus), under which the Asylum Authority alone has the power, under national law, to require an applicant for asylum to undergo medical examinations. The referring court could therefore only put questions to that authority concerning the reasons why such examinations have not taken place and, where appropriate, annul the contested decision if it finds there to have been infringement of Article 15 of the Law on refugees.

18 Consequently, that court wishes to ascertain whether it may derive the power to order a medical examination from Article 46(3) of Directive 2013/32, since that provision, read in the light of the right to an

effective remedy enshrined in Article 47 of the Charter, requires that that court carry out a 'full and *ex nunc* examination' of the application for international protection.

19 The referring court is uncertain, in particular, whether, in the scenario where it considers a medical examination to be necessary for the purposes of assessing the application for international protection, it may be concluded that, in the light of the direct effect of Article 46(3) of Directive 2013/32, as established by the case-law of the Court, it has the power to order such an examination itself or, at the very least, the power to order the determining authority to carry out such a medical examination and inform the referring court of the results of that examination.

20 Furthermore, if it were to be accepted that the means that it has at its disposal to carry out the examination laid down in Article 46(3) of that directive come within the scope of the procedural autonomy of the Member States, the referring court seeks to ascertain whether, where the national legislation applicable does not satisfy the requirements arising from the principle of effectiveness, it may require the determining authority to arrange for the applicant to undergo the medical examination, and inform the referring court of the results of that examination, by implementing the mechanism under Article 18 of Directive 2013/32.

21 Lastly, the referring court is uncertain whether, having regard also to the duty to carry out an expeditious assessment of applications for asylum, the guarantees provided for in Article 46(3) of Directive 2013/32 and Article 47 of the Charter are observed where, in the case where a medical issue is raised during the judicial assessment of an application for asylum, the national court or tribunal does not have the power to order a medical examination when it considers that such an examination is necessary, but can annual a decision of the determining authority refusing to grant an application for international protection, on the ground that that authority has failed to carry out a medical examination of the applicant for international protection.

22 In those circumstances, the Dioikitiko Dikastirio Diethnous Prostasias (International Protection Administrative Court) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 46(1) and (3) of Directive [2013/32], read in the light of Article 47 of the Charter, and in conjunction with the obligation to carry out an individual assessment referred to in Article 4(3)(c) [of Directive 2011/95], the duty of cooperation laid down in Article 4(1) of Directive [2011/95] and the duty of sincere cooperation laid down in Article 4(3) TEU, to be interpreted as meaning that, in the absence of [a] … provision of national law [expressly providing for the possibility for] the national court … to refer the applicant [for asylum] for medical examinations, that court may derive its power to issue an order referring [that] applicant for [such] medical examinations directly from [Article 46] where that is considered necessary for a full and *ex nunc* examination of [the] application for international protection?

(2) Is Article 46(1) and (3) of Directive [2013/32], read in the light of Article 47 of the Charter, and in conjunction with the obligation to carry out an individual assessment referred to in Article 4(3)(c), [of Directive 2011/95], the duty of cooperation laid down in Article 4(1) of Directive [2011/95] and the duty of sincere cooperation laid down in Article 4(3) TEU, to be interpreted as meaning that, in the absence of [a] … provision of national law [expressly providing for the possibility for] the national court … to refer the applicant for asylum for medical examinations, and, by extension, in the absence of an express statutory provision on a mechanism for referral for medical examinations available to the national court …, the court has the power [directly under Article 46] to apply to the determining authority (which is always one of the parties to the proceedings before it) in order that it may, by analogy, implement the mechanism provided for in Article 18 of Directive [2013/32] by providing the national court with a medical examination of the applicant?

(3) Is Article 46(3) of Directive [2013/32], read in the light of Article 47 of the Charter, to be interpreted as meaning that the means of conducting the full and *ex nunc* examination of an application for international protection are a matter for the procedural autonomy of the Member States? If so, is Article 46(1) and (3) of Directive [2013/32], read in the light of Article 47 of the Charter, and in conjunction with the duty of cooperation laid down in Article 4(1) of Directive [2011/95] and the duty of sincere cooperation laid down in Article 4(3) TEU, to be interpreted as meaning that, in the absence of [a] … provision of national law [expressly providing for the possibility for] the national court to refer the applicant for asylum for medical examinations, and, by extension, in the absence of an express statutory provision on a mechanism for referral for medical examinations available to the national court, the court has the power to apply to the determining authority (which is always one of the parties to the proceedings before it) in order that it may, by analogy, implement the mechanism laid down in Article 18 of Directive [2013/32] by providing the national court with a medical examination of the applicant where the national court considers that the national measures do not comply with the principle of effectiveness?

(4) Is Article 46(3) of Directive [2013/32], read in conjunction with Article 47 of the Charter, to be interpreted as meaning that, in cases where it is established that there is an absence of appropriate mechanisms for carrying out the individual, full and *ex nunc* examination provided for in Article 46(3) of Directive [2013/32], the guarantees set out in those [provisions] are satisfied where the national court has the power to annul the decision rejecting an application for international protection?'

Consideration of the questions referred

23 By its four questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter and Article 4(3) TEU, must be interpreted as meaning that, in order to satisfy the requirement of a full and *ex nunc* examination laid down in that Article 46(3), a national court of first instance hearing an action against a decision of the determining authority refusing to grant an application for international protection must have the power to order a medical examination of the applicant for international protection, where it takes the view that the use of that examination is necessary or relevant for the purposes of assessing that application, or if it is sufficient for that court to have the power to annul such a decision, on the ground that that authority has failed to refer that applicant for a medical examination, and refer the case back to that authority so that the latter might require that examination subsequently in the context of a fresh procedure.

24 In accordance with its heading, Article 46 of Directive 2013/32 concerns the right of applicants for international protection to an effective remedy. Paragraph 1 of Article 46 of that directive guarantees those applicants such a right to an effective remedy before a court or tribunal against decisions taken on their application. Paragraph 3 of Article 46 defines the scope of the right to an effective remedy by specifying that Member States bound by that directive must ensure that the court or tribunal before which the decision relating to the application for international protection concerned is contested carries out 'a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive [2011/95]'.

25 Furthermore, the Court notes that it is apparent from its case-law that the characteristics of the remedy provided for in Article 46 of Directive 2013/32 must be determined in a manner that is consistent with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection. Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law in order to confer on individuals a right which they may rely on as such. The same must hold true for Article 46(3) of that directive, read in the light of that article of the Charter (judgment of 4 October 2024, *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, C406/22, EU:C:2024:841, paragraph 86 and the case-law cited).

26 From that perspective, as regards the scope of the right to an effective remedy, as defined in Article 46(3) of that directive, the Court has held that the words 'shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law' in that provision must be interpreted as meaning that the Member States are required, by virtue of that provision, to order their national law in such a way that the processing of the actions referred to in that provision includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand (judgment of 4 October 2024, *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, C406/22, EU:C:2024:841, paragraph 87 and the case-law cited).

27 In that regard, the expression '*ex nunc*' points to the court or tribunal's obligation to make an assessment that takes into account, should the need arise, new evidence that has come to light after the adoption of the decision which is being challenged. Such an assessment makes it possible to deal with the application for international protection exhaustively without there being any need to refer the case back to the determining authority. Consequently, the power of the court or tribunal to take into consideration new evidence on which that authority has not taken a decision is consistent with the purpose of Directive 2013/32, which seeks in particular, as is apparent, inter alia, from recital 18 thereof, to ensure that applications for international protection are dealt with 'as soon as possible, … without prejudice to an adequate and complete examination being carried out' (judgment of 4 October 2024, *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, C406/22, EU:C:2024:841, paragraphs 78 and 88 and the case-law cited).

28 It is the adjective 'full', used in Article 46(3) of Directive 2013/32, which confirms that the court or tribunal is required to examine both the evidence which the determining authority took into account or should have taken into account and that which has arisen following the adoption of the decision by that authority (judgment of 4 October 2024, *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, C406/22, EU:C:2024:841, paragraph 89 and the case-law cited).

29 In the present case, the referring court points out, first, that under the applicable national law, it does not itself have the power to refer the applicant for international protection for a medical examination or to order the determining authority to carry out that examination even though, in the present case, it regards such an examination as necessary for the purposes of examining the applicant for international protection, whereas the Asylum Authority – which is 'the determining authority' within the meaning of Article 2(f) of Directive 2013/32 – does have such a power in accordance with Article 15 of the Law on refugees, which is intended to transpose Article 18 of that directive.

30 Second, that court highlights the fact that, pursuant to the applicable national law, it does by contrast have the power to annul a decision of the Asylum Authority refusing to grant international protection if it considers, having regard to the particular circumstances of the case, that the latter authority ought to have required a medical examination of the applicant for international protection to be carried out in accordance with that Article 15, and that such annulment enables that authority to adopt, thereafter, in the context of a fresh administrative procedure, a decision that takes the results of such an examination into account.

31 In the light of the case-law recalled in paragraphs 25 to 28 of the present judgment, it must be held, in the first place, that national legislation that does not permit a court of first instance to order a medical examination, subject to the applicant's consent thereto, where that court considers that such an examination is necessary or relevant in order to assess the merits of the application for international protection, does not satisfy the requirement of a full and *ex nunc* examination laid down in Article 46(3) of Directive 2013/32.

32 Not to permit, in such circumstances, such a court to order a medical examination of the applicant for international protection appears to run counter to the obligation placed on the Member States, pursuant to Article 46(3) of Directive 2013/32, to order their national law in such a way that the processing of the

actions referred to in that provision includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand, within the meaning of the case-law cited to in paragraph 26 above.

33 Where it is impossible, for the court having jurisdiction, to obtain information on the state of health of the applicant for international protection for the purposes of assessing his or her application for international protection, that assessment will be unable to take into account all the facts that would allow that court to make an up-to-date assessment of the case at hand. In particular, the medical examination of the applicant may allow it to be ascertained whether the evidence of illness presented, if any, by that applicant can be explained by past persecution or serious harm, in particular in his or her country of origin, and should, on those grounds, be taken into account in order to assess the applicant's genuine need for international protection (see, to that effect, judgment of 29 June 2023, *International Protection Appeals Tribunal and Others (Attack in Pakistan)*, C756/21, EU:C:2023:523, paragraph 61).

34 In the second place, it is clear that national legislation which confines itself to providing that the court of first instance has the option to annul the decision of the determining authority refusing to grant the application for international protection, on the ground that that authority ought to have referred the applicant for a medical examination, does not satisfy the requirement of a full and *ex nunc* examination, within the meaning of Article 46(3) of Directive 2013/32, even where that option would, as a consequence, allow a fresh examination of that application by that authority in the light of the results of a medical examination of the applicant for international protection.

35 It is sufficient to note that such national legislation, in so far as it requires that authority to adopt a new decision taking into account the results of a medical examination, does not ensure compliance with the principle arising from the case-law of the Court referred to in paragraph 27 of the present judgment, according to which it is for the court itself to ensure that the application for international protection is dealt with in a complete manner without there being any need to return the file to the determining authority, and thus undermines the objective of the expeditious processing of applications for international protection pursued by Directive 2013/32, the importance of which was highlighted by the Court in that case-law.

36 In the third place, the Court notes that the only provision of Directive 2013/32 laying down rules on medical examinations is Article 18 of that directive. However, as is apparent from the very wording of Article 18 and, in particular, from paragraph 1 thereof, the provisions laid down therein apply, as such, only in the context of the assessment of an application for international protection by the determining authority and not in the context of an action before a court or tribunal brought against a decision taken by that authority.

37 Furthermore, as is clear from the settled case-law of the Court, in the absence of EU rules on the matter, it is for the national legal order of each Member State in accordance with the principle of procedural autonomy to lay down the detailed procedural rules regarding such an examination, on condition, however, that those detailed rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice for an applicant for international protection to exercise his or her right to an effective remedy, within the meaning of Article 46(3) of Directive 2013/32 (principle of effectiveness) (see, by analogy, judgment of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, C564/18, EU:C:2020:218, paragraph 63 and the case-law cited).

38 In the latter regard, first, it must be possible, in any event, for the medical examination to be ordered by the court concerned where there is concrete evidence that the health problems of the applicant for international protection might result from a traumatic event which occurred, in particular, in his or her country of origin and, in general, where, according to the assessment of that court, the use of such an

examination is necessary or relevant in order to assess the applicant's genuine needs for international protection. Furthermore, the modalities for the use of a medical examination must comply with the fundamental rights guaranteed by the Charter, such as the right to respect for human dignity and the right to respect for private and family life, which are guaranteed by Article 1 and Article 7 of the Charter respectively (see, to that effect, judgments of 25 January 2018, *F*, C473/16, EU:C:2018:36, paragraph 35, and of 29 June 2023, *International Protection Appeals Tribunal and Others (Attack in Pakistan)*, C756/21, EU:C:2023:523, paragraph 61).

39 Second, the Court notes that it is not necessary for the court that ordered the medical examination of the applicant concerned to be able to approach a qualified health professional itself in order for that professional to carry out that examination and send the results to the court, where that court may also order the determining authority to take the necessary measures to arrange for that applicant to undergo the medical examination ordered and to send the results of that examination to the court within a short period of time. In either case, the court would be in a position to obtain the evidence which it considers relevant or necessary in order to carry out an up-to-date assessment of the case at hand, while respecting the objective to proceed expeditiously pursued by Directive 2013/32, as recalled in paragraph 27 of the present judgment.

40 In the fourth place, although it must therefore be held that the national legislation at issue in the main proceedings does not comply with the requirement of a full and *ex nunc* examination laid down in Article 46(3) of Directive 2013/32, since it does not provide the court with the option to order a medical examination of the applicant for international protection, the Court points out that it is for the referring court to interpret that legislation in a manner that is consistent with that requirement to the fullest extent possible (see, in particular, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C664/15, EU:C:2017:987, paragraph 54 and the case-law cited).

41 However, if such a consistent interpretation were to prove impossible, the Court has already emphasised the imperative of the court with jurisdiction to set aside, with a view to applying EU law, national legislative provisions that might prevent EU rules which have direct effect, such as Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, from having full force and effect (see, to that effect, judgment of 29 July 2019, *Torubarov*, C556/17, EU:C:2019:626, paragraph 73 and the case-law cited).

42 Accordingly, the Court holds that it follows from the direct effect of both Article 47 of the Charter and Article 46(3) of Directive 2013/32 that, in order to guarantee the applicant for international protection effective judicial protection, within the meaning of Article 47 and in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, the national court hearing an action against the decision refusing to grant the application for international protection must be able to order a medical examination of that applicant where such an examination is required for the purposes of assessing that application.

43 In the light of all the findings above, the answer to the questions referred is that Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter and Article 4(3) TEU, must be interpreted as meaning that, in order to satisfy the requirement of a full and *ex nunc* examination laid down in that Article 46(3), a national court of first instance hearing an action against a decision of the determining authority refusing to grant an application for international protection must have the power to order a medical examination of the applicant for international protection, where it takes the view that the use of that examination is necessary or relevant for the purposes of assessing that application.

Costs

44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fifth Chamber) hereby rules:

Article 46(3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union and Article 4(3) TEU,

must be interpreted as meaning that, in order to satisfy the requirement of a full and *ex nunc* examination laid down in that Article 46(3), a national court of first instance hearing an action against a decision of the determining authority refusing to grant an application for international protection must have the power to order a medical examination of the applicant for international protection, where it takes the view that the use of that examination is necessary or relevant for the purposes of assessing that application.

[Signatures]

* Language of the case: Greek.

i The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.