



Press and Information

Court of Justice of the European Union

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Judgment in Case C-473/16

F v Bevándorlási és Állampolgársági Hivatal

An asylum seeker may not be subjected to a psychological test in order to determine his sexual orientation

The performance of such a test amounts to a disproportionate interference in the private life of the asylum seeker

In April 2015, a Nigerian national submitted an application for asylum to the Hungarian authorities claiming that he feared he would be persecuted in his country of origin on account of his homosexuality. Although those authorities did not consider that person's statements to be contradictory, they rejected the application on the ground that the psychologist's expert report they had commissioned for the purpose of exploring the personality of the asylum seeker had not confirmed his alleged sexual orientation.

The asylum seeker brought an action against that decision before the Hungarian courts contending that the psychological tests used for the expert's report at issue seriously prejudiced his fundamental rights without making it possible to assess the plausibility of his sexual orientation.

The Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szeged, Hungary), which is hearing the case, asks the Court of Justice whether the Hungarian authorities may assess an asylum seeker's statements relating to his sexual orientation on the basis of a psychologist's expert report. If the Court were to answer the first question in the negative, the Hungarian court also seeks to ascertain whether there are nevertheless expert methods which may be used by national authorities to examine the credibility of the claims made in the context of an application for asylum based on a fear of persecution on the ground of sexual orientation.

By today's judgment, the Court holds first of all that the directive on standards for obtaining refugee status¹ **enables the national authorities to commission an expert's report** in the context of the assessment of an application for asylum in order to better determine the asylum seeker's actual need for international protection. However, **should recourse be had to an expert's report, the procedures must be consistent with the fundamental rights** guaranteed by the Charter of Fundamental Rights of the European Union, such as the right to respect for human dignity and the right to respect for private and family life.

In that context, it cannot be ruled out that, when the statements made by an asylum seeker relating to his sexual orientation are assessed, certain forms of expert reports may prove useful for the assessment of the facts and circumstances set out in the application and may be prepared without prejudicing the fundamental rights of the asylum seeker. In that regard, the Court notes nevertheless that, in the context of the assessment of an asylum seeker's statements relating to his sexual orientation, the national authorities and courts **cannot base their decision solely on the conclusions of an expert's report and must not be bound by them.**

Next, the Court notes that, in the event that the national authorities responsible for assessing an asylum application commission a psychologist to carry out an examination to assess the veracity of

¹ 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).

an asylum seeker's claim as to his sexual orientation, the person undergoing that examination is in a situation in which his future is closely linked to the decision that those authorities will take on his application. Furthermore, should the asylum seeker refuse to undergo the tests in question, such a refusal is liable to constitute an important factor on which the national authorities will rely for the purpose of determining whether that person has sufficiently substantiated his application.

Therefore, even if the performance of such tests is formally conditional upon the consent of the person concerned, that consent is not necessarily given freely, since it is imposed under the pressure of the circumstances in which an asylum seeker finds himself. In those circumstances, **recourse to a psychologist's expert report in order to determine the sexual orientation of the asylum seeker constitutes an interference with that person's right to respect for his private life.**

As regards the question whether that interference with private life can be justified by the objective of collecting information useful for assessing the asylum seeker's actual need for international protection, the Court notes that an expert's report can be accepted only if it is based on sufficiently reliable methods: that reliability, on which it is not for the Court to rule, has, however, been disputed by the Commission and by a number of governments. Furthermore, the Court states that **the impact of such an expert's report on private life is disproportionate in relation to that objective.** In this respect, the Court observes in particular that **such interference is particularly serious because it is intended to give an insight into the most intimate aspects of the asylum seeker's life.**

The Court also notes that the preparation of a psychologist's expert report seeking to determine an asylum seeker's sexual orientation **is not essential** for the purpose of assessing the credibility of his statements relating to his sexual orientation. In that regard, the Court states that, under the Directive, in a situation in which the asylum seeker's sexual orientation is not substantiated by documentary evidence, **the national authorities, which must have personnel with the appropriate skills, may rely, inter alia, on the consistency and plausibility of the statements of the person concerned.** Moreover, the reliability of that report is, at best, only limited, with the result that its usefulness for the purpose of assessing the credibility of the statements of an asylum seeker may be questioned, in particular where, as is the case here, the statements of the asylum seeker are not contradictory.

In these circumstances, the Court holds that **recourse to a psychologist's expert report for the purpose of assessing the veracity of a claim made by an asylum seeker as to his sexual orientation is not consistent with the Directive, read in the light of the Charter.**²

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Article 7.