Case C-283/24 [Barouk] [i]

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

23 April 2024

Referring court:

Dioikitiko Dikastirio Diethnous Prostasias (Cyprus)

Date of the decision to refer:

29 March 2024

Applicant:

B. F.

Defendant:

Kypriaki Dimokratia meso proistamenou tis Ypiresias Asylou

Subject matter of the main proceedings

Action brought by the applicant in the main proceedings challenging the decision of the Ypiresia Asylou (Asylum Service, Cyprus) of 7 February 2022 rejecting his application for international protection, and the return decision adopted in the same proceedings, the enforcement of which is, however, suspended pending the decision of the referring court on the action.

Subject matter and legal basis of the request

Interpretation of Article 46(1) and (3) of Directive 2013/32/EU in the light of Article 47 of the Charter of Fundamental Rights of the European Union and in the light of the obligations to carry out individual assessments (Article 4(3)(c) of Directive 2011/95/EU), cooperation (Article 4(1) of that directive) and sincere cooperation (Article 4(3) TEU) – Article 267 TFEU

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

Questions referred for a preliminary ruling

1. Is Article 46(1) and (3) of Directive 2013/32/EU, 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), the duty of cooperation laid down in Article 4(1) of Directive 2011/95/EU and the duty of sincere cooperation laid down in Article 4(3) TEU, to be interpreted as meaning that, in the absence of an express provision of national law empowering the national court under Article 46 to refer the applicant for medical examinations, that court may derive its power to issue an order referring the applicant for medical examinations directly from that article where that is considered necessary for a full and *ex nunc* examination of an application for international protection?

2. Is Article 46(1) and (3) of Directive 2013/32/EU, 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), the duty of cooperation laid down in Article 4(1) of Directive 2011/95/EU and the duty of sincere cooperation laid down in Article 4(3) TEU, to be interpreted as meaning that, in the absence of an express provision of national law empowering the national court under Article 46 to refer the applicant 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 directly under that article, 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 provided for in Article 18 of Directive 2013/32/EU by providing the national court with a medical examination of the applicant?

3. Is Article 46(3) of Directive 2013/32/EU, 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/EU, 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/EU and the duty of sincere cooperation laid down in Article 4(3) TEU, to be interpreted as meaning that, in the absence of an express provision of national law empowering the national court to refer the applicant 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/EU 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/EU, 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/EU, the guarantees set out in those articles are satisfied where the national court has the power to annul the decision rejecting an application for international protection?

Provisions of European Union law and case-law relied on

Treaty on European Union ('TEU'): Articles 4(3) and 19(3)(b).

Treaty on the Functioning of the European Union ('TFEU'): Articles 78 and 267.

Charter of Fundamental Rights of the European Union ('the Charter'): Articles 18 and 47.

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: Articles 18 and 46(1) and (3).

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: Article 4(1) and(3)(c).

Judgments of the Court of Justice of the European Union of 4 December 1974, *Van Duyn* v *Home Office*, C-41/74, EU:C:1974:133; of 19 January 1982, *Becker*, C-8/81, EU:C:1982:7; of 22 June 1989, *Fratelli Constanzo* v *Municipality of Milan*, C-103/88, EU:C:1989:256; of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591; of 25 January 2018, *F*, C-473/16, EU:C:2018:36; of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584; of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626; of 19 March 2020, *PG*, C-406/18, EU:C:2020:216; and of 29 June 2023, *International Protection Appeals Tribunal and Others (Terrorist attack in Pakistan)*, C-756/21, EU:C:2023:523.

Provisions of national law relied on

O peri Dikastirion Nomos (Law on courts of justice) 1960, as amended on several occasions, the most recent relevant and applicable amendment being the second of those made in 2023: Article 34A.

O peri Prodikastikis Parapompis sto Dikastirio ton Evropaikon Koinotiton Diadikastikos Kanonismos (Procedural regulation on preliminary references to the Court of Justice of the European Communities) (1/2008): Articles 3 and 5.

O peri tis Idrysis kai Leitourgias Dioikitikou Dikastiriou Diethnous Prostasias (Law on the establishment and operation of the International Protection

Administrative Court) 2018, as amended on several occasions, the most recent relevant and applicable amendment being the second one made in 2023: Article 11.

O peri Prosfygon Nomos (Law on refugees) 2000, as amended on several occasions, the most recent relevant and applicable amendment being the one made in 2023: Articles 15 (medical and psychological examination of an applicant), Article 16 (transposition of Article 4(1) of Directive 2011/95) and Article 18(3)(c) (assessment of an application for international protection on an individual basis).

I peri tis Leitourgias Dioikitikou Dikastiriou Diethnous Prostasias Diadikastikoi Kanonismoi (Rules of procedure on the functioning of the International Protection Administrative Court) 2019 (3/2019): Articles 7 and 10.

Succinct presentation of the facts and procedure in the main proceedings

1 The applicant in the main proceedings comes from Lebanon and holds a passport from that country. He entered the territory of Cyprus illegally through areas not controlled by the government. On 4 September 2018, he applied for international protection. With regard to the reasons why he abandoned his country of origin, the applicant briefly stated the following in his application: ‘political reasons – threat – danger’. On 5 and 26 August and on 9 September 2020, successive interviews were conducted with an official of the European Union Agency for Asylum (EUAA), as it is now named, with the assistance of an interpreter.

2 In the course of those interviews, the applicant stated that he is a Lebanese national, a Maronite Christian and a supporter of the Kataeb party, the military branch of which he joined as a young man, as a ‘military musician’. He left his country 20 years ago. He states that he is married and that his wife comes from Georgia where she lives with their child. He maintains contact only with his mother, as he claims that his other relatives are supporters of the regime and spy on him. He has moved around many countries because in Lebanon, since abandoning his military training, he has constantly faced trumped-up charges, including those of sympathising with the Islamic Caliphate (ISIS) or spying for Israel, which carry the death penalty. On account of his beliefs and his unwillingness to cooperate with the regime’s authorities, he has become a target of the intelligence services of his country, and also those of Syria, as well as of various military and terrorist organisations. He also described, albeit in a rather confused and not particularly plausible manner in the view of the referring court, incidents of kidnapping and attempted murder, and alleged that he had been subjected to torture by Lebanese and Syrian authorities.

3 On 25 January 2022, an official submitted a report/recommendation to the Head of the Asylum Service recommending that the asylum application be rejected. That recommendation was approved by the head of the service on 7 February 2022. Specifically, when assessing the statements made by the applicant in the present proceedings, the Asylum Service distinguished three substantive claims,

the first of which, concerning his identity, other personal data and country of origin, was accepted, since the relevant information was provided in detail, without gaps or contradictions, and was confirmed by external sources. By contrast, the second claim, concerning problems with various Lebanese agencies, was rejected, as the applicant had not established the existence of a genuine problem. The applicant was formally exempted from military training by paying the relevant fine. Similarly, his third claim, which is inextricably linked to the second, that he had been subjected to torture by Lebanese and Syrian agencies and by military services, was also rejected. It was found that the applicant's statements on the matter contained no evidence pointing to actual personal experience of such conduct. Accordingly, the Asylum Service took the view that there was no reasonable fear of persecution or risk of serious harm if the applicant were to be returned to his country of origin and that, therefore, there were no grounds to include him in the international protection regime.

4 That decision was notified to the applicant on 31 March 2022. On 12 April 2022, the applicant brought an action before the International Protection Administrative Court ('IPAC' or 'the referring court') against the decision to reject his application. Previously, on 11 April 2022, he had applied for legal aid, but that application was rejected on 7 December 2022. In the present proceedings, the applicant is appearing in person, without the assistance of counsel.

5 On 16 October 2023, IPAC invited the parties to submit their observations on its intention to refer a question to the Court of Justice of the European Union for a preliminary ruling. The Republic of Cyprus, acting through the Head of the Asylum Service ('the defendant'), submitted written observations arguing that there is no need for a reference for a preliminary ruling in the present case, since the interpretation of the relevant provisions of EU law is clear and, in the event that IPAC considers that the applicant was wrongly not referred for a medical examination, it may annul the decision at issue. The applicant did not submit written observations.

The essential arguments of the parties in the main proceedings

6 According to the referring court, the applicant, appearing in person and without the assistance of counsel, states, in many instances in an incomprehensible manner, his view that he has been persecuted for 20 years on account of his beliefs. He maintains that, following the civil war, Lebanon became a country controlled by a terrorist organisation. He claims that the decision of the Asylum Service is wrong and attributes it either to a lack of knowledge on the part of the defendant or to the influence of his political opponents. He maintains that the presence of an Arabic-speaking interpreter caused him to fear that information would be leaked, with the result that he withheld information of a sensitive nature.

7 The defendant restated its conclusions as to the applicant's credibility, referring to the points it had assessed as contradictory, inconsistent or general in nature and

reiterating its view that the applicant would not face a risk of persecution or serious harm if returned to his country of origin.

8 As regards the referring court's intention to refer a question to the Court of Justice for a preliminary ruling regarding the possibility for it to refer the applicant for medical examinations or to require the competent administrative authority to carry out such a medical examination and produce a report, the defendant submits that the conditions for submitting a request for a preliminary ruling are not satisfied. It submits, inter alia, that the referring court may be guided on the relevant issues by recent decisions of the national Anotato Dikastirio tis Kypriakis Dimokratias (Supreme Court of the Republic of Cyprus) and that referral for medical examinations is a matter for the administration, in so far as it is referred to in Chapter II of Directive 2013/32, which is relevant to the first stage of the examination of an application for international protection.

9 As to the substance of the relevant questions, the defendant argues that the referral of an applicant for a medical examination is a matter for the discretion of the Asylum Service (see Article 15 of the Law on refugees). Moreover, it is for the Member States to review the application of Article 46(3) of Directive 2013/32, as is apparent from the judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584. The defendant also refers to the judgment of 29 June 2023, *International Protection Appeals Tribunal and Others (Terrorist Attack in Pakistan)*, C-756/21, EU:C:2023:523, paragraphs 28 to 94, and argues that it follows from that judgment that the determining authority has the power to conduct that medical examination and report on the applicant's mental health. Finally, referring to the judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801 (paragraphs 92 to 96), it submits that, if IPAC is not in a position to make a full and *ex nunc* assessment of the facts and points of law, national legislation provides the necessary guarantees to that end in Article 11(6) of the Law on the establishment and functioning of the International Protection Administrative Court, namely the possibility for IPAC to order an administrative authority to reply on a specific issue.

10 The appellant, although given the opportunity to do so, did not submit any observations regarding the intention of IPAC to refer questions for a preliminary ruling to the Court of Justice.

Succinct presentation of the reasoning in the request for a preliminary ruling

11 Under national legislation, applications for international protection are examined in two stages, the first before an administrative authority and the second before a judicial authority. The Asylum Service, which reports to the Ministry of the Interior (Article 2 of the Law on refugees) is the 'determining authority' referred to in Article 2(f) of Directive 2013/32. IPAC is the 'court or tribunal of first instance' within the meaning of Article 46(3) of that directive, which is called upon, by virtue of that provision and Article 11(3)(a) of the Law on the

establishment and functioning of IPAC, to examine fully and *ex nunc* the facts and points of law in the case and ultimately to decide whether to uphold or annul, in whole or in part, the contested decision of the administration.

12 The obligation to make an individual assessment of applications for international protection, taking into account the applicant's personal circumstances, is expressly provided for in Article 4(3)(c) of Directive 2011/95 and has been consistently upheld by the Court of Justice (see, for example, the judgment of 19 March 2020, *PG*, C-406/18, EU:C:2020:216, paragraph 29). In that regard, the claims made by the applicant in the main proceedings, during both the administrative procedure and the legal proceedings, suffer from a lack of consistency and plausibility. However, the administrative authority did not carry out psychological or other medical examinations in relation to the applicant's state of mental and physical health in respect of any signs that might indicate past persecution or serious harm to him or symptoms or signs of torture or other serious acts of physical or psychological violence. It is therefore necessary to carry out a medical and scientific examination and diagnosis as to whether the marked inconsistency and lack of plausibility in question is based on any medical factor.

13 National law (Article 15 of the Law on refugees) expressly provides that the administration has the power to refer an applicant to a doctor and/or psychologist. There is, however, no such provision with regard to IPAC, which may merely 'order the administrative authority to answer a question related to the disputed issue within a deadline set by the court' (Article 11(6) of the Law on the establishment and functioning of the International Protection Administrative Court). The defendant relies on two recent judgments of the Supreme Court of the Republic of Cyprus, delivered on an application by the Attorney General of the Republic for a prerogative writ of certiorari, namely an application against a decision of a lower court claiming that it was issued in excess or absence of jurisdiction or in the event of manifest error of law (decision in the case regarding the application of the Attorney General of the Republic for the issue of a prerogative writ of certiorari concerning the Order of the International Protection Administrative Court of 10 February 2023 issued in the context of appeal No 7386/22, Civil Application No 31/2023, dated 7 April 2023 and the decision in the case regarding the application of the Attorney General of the Republic for the issue of a prerogative writ of certiorari concerning the Decision of the International Protection Administrative Court of 10 February 2023, Civil Appeal No 30/2023, dated 15 May 2023). In those judgments, the Supreme Court of the Republic of Cyprus held that IPAC had exceeded its powers and jurisdiction by ordering the referral of the applicant in that case for medical examinations. However, the referring court notes that, in the cases referred to above, the question of its jurisdiction to order a medical examination and report was not examined in the light of Article 11(3) of the Law on the establishment and functioning of the International Protection Administrative Court, which refers to the full and *ex nunc* examination that IPAC is to carry out of the refusal decision at issue.

14 Pursuant to the case-law of the Court of Justice, Member States 'are required, by virtue of Article 46(3) of Directive 2013/32, to order their national law in such a way that the processing of the appeals referred to 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 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 110). It has, moreover, been held that Article 46(3), which provides for the requirement of full and *ex nunc* examination, is an EU rule that has direct effect (judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 73). The referring court harbours doubts as to whether it is in a position to carry out such an examination if it does not have the power to refer the applicant for medical examinations, the usefulness of which has also been recognised by the Court of Justice [judgments of 19 March 2020, *PG*, C-406/18, EU:C:2020:216, paragraph 31, and of 29 June 2023, *International Protection Appeals Tribunal and Others (Terrorist attack in Pakistan)*, C-756/21, EU:C:2023:523, paragraph 60]. The Court of Justice has held that it may 'prove useful to order other measures of inquiry, in particular the medical examination referred to in the first subparagraph of Article 18(1) of Directive 2013/32' (judgment of 19 March 2020, *PG*, C-406/18, EU:C:2020:216, paragraph 31). However, it is not clear from the case-law of the Court of Justice whether such a power may derive directly from Article 46(3) of Directive 2013/32 or whether the granting of such a power is a matter for the procedural autonomy of the Member States.

15 In conclusion, the referring court considers it appropriate that a medical examination of the applicant be carried out in order to enable that court to carry out an individual, full and up-to-date examination of the application for international protection, taking into account all the relevant facts and points of law. Given that there is no express provision in national law for a power of referral for medical examinations, the referring court asks whether, on the basis of the direct effect of Article 46(3) of Directive 2013/32, it would be possible to recognise such a power (first question referred for a preliminary ruling) or a power to order the determining authority to carry out such examinations if it considers it necessary (second question referred for a preliminary ruling).

16 With regard to the means provided by national legislation for establishing the symptoms or signs referred to in Article 15 of the Law on refugees, the Supreme Court of the Republic of Cyprus held that the referring court does not have the power to order the determining authority to carry out a specific medical or psychological examination of an applicant who has brought an action before it. The referring court is uncertain, however, as to how far the possibility of questioning the administrative authority about not referring the applicant for medical examinations allows it to conduct an 'exhaustive and up-to-date examination of the applicant's international protection needs'. It may of course be possible for the referring court to obtain useful information from the determining authority as to why a medical examination was not considered appropriate or necessary. However, in the event that the judgment of the referring court differs from that of the authorities, the court will not, of its own motion, have any means

at its disposal to obtain an overview of the up-to-date state of the applicant's health or to order that an examination of the signs and/or symptoms referred to in Article 15 of the Law on refugees be carried out, where the authorities have failed to do so.

17 Furthermore, according to the referring court, although applicants for international protection are granted the opportunity to submit medical examinations, it cannot be presumed that they are aware of which documents are relevant to the examination of their application, especially in the present case, where the applicant is not represented by counsel. If, therefore, it is held that the means available to it to carry out the examination referred to in Article 46(3) of that directive are a matter for the procedural autonomy of the Member States, the question arises as to whether the referring court can effectively fulfil its obligation to carry out a full and *ex nunc* examination of the application for international protection by virtue of its power to put questions to the determining authority. That court considers that that would make it excessively difficult for the applicant to exercise his right to an individual review of his case. It therefore asks for clarification as to whether it may require the administrative authority to carry out a medical examination and produce a report if it considers that the national measures do not meet the requirements of the principle of effectiveness (third question referred for a preliminary ruling).

18 If no power is recognised for the referring court itself to order the referral of an applicant for international protection for medical examinations or to require the administrative authority to carry out such examinations, that court will have to annul the rejection decision at issue, as it will be unable to carry out a full and *ex nunc* review. It is therefore not impossible that an otherwise correct administrative decision may be annulled, and thus the application for international protection re-examined. Such a procedure does not appear to be compatible with the principle of expeditious examination of applications or with the structure of the asylum system. It is therefore doubtful whether the requirements of Article 46(3) of Directive 2013/32 and Article 47 of the Charter are met (fourth question referred for a preliminary ruling).

19 In view of all the foregoing, the referring court considers it necessary to refer the questions to the Court of Justice for a preliminary ruling.