Provisional text

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 4 December 2025 (1)

Case C-440/25 [Ebilum (i)]

PM,
QN,
RM,
SM,
TM,
UM,
VM,
WM
v
Minister van Asiel en Migratie

(Request for a preliminary ruling from the rechtbank den Haag zittingsplaats Zwolle (District Court, The Hague, sitting in Zwolle, Netherlands))

(Reference for a preliminary ruling – Asylum policy – International protection – Common procedures for granting and withdrawing international protection – Right to an effective remedy – Full and ex nunc examination – Appeal against a decision rejecting an application for international protection – Powers of courts of first instance to make a decision on the merits of an application – The concept of 'well-founded fear of being persecuted' – Reasonable likelihood of persecution)

I. Introduction

1. The present request for a preliminary ruling from the rechtbank den Haag zittingsplaats Zwolle (District Court, The Hague, sitting in Zwolle, Netherlands), the referring court, asks for an interpretation of both the Asylum Procedures Directive (2) and the Qualification Directive. (3)

2. However, as requested by the Court of Justice, the present Opinion focuses solely on the interpretation of the concept of 'well-founded fear of being persecuted' referred to in the definition of a 'refugee' under Article 2(d) of the Qualification Directive.

II. Facts in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

3. A family from the Kurdistan Region of Iraq, consisting of a mother, a father and their three daughters (the applicants in the main proceedings; ‘the applicants’), applied for asylum in the Netherlands before the Minister van Asiel en Migratie (Minister for Asylum and Migration; ‘the Minister’), the defendant in the main proceedings.

4. As grounds for their asylum application, the applicants cited, inter alia, issues with their neighbour and fear of a vendetta and their daughters being forced into marriage, fear of their daughters being subjected to female genital mutilation, and the fact that their daughters identified with the fundamental value of equality between women and men.

5. According to the order for reference, the asylum procedure has been ongoing since 2017.

6. By decisions of 11 September 2023 (‘the contested decisions’), the Minister rejected the asylum applications of the applicants as manifestly unfounded on the ground that the applicants’ statements were not credible.

7. The applicants lodged an appeal against those decisions before the referring court.

8. That court examined the appeal at a hearing held on 26 March 2024, and decided on 30 April 2024 to reopen the investigation following the announcement of the Court of Justice that it would deliver its judgment in *K and L.* (4)

9. Following that judgment, the Minister held an additional hearing for the applicants. By his complementary decisions of 25 February 2025 (‘the complementary decisions’), the Minister upheld the rejection of the asylum applications. In doing so, however, he provided additional grounds for refusal, which concerned the applicants’ alleged fear of female genital mutilation, fear of forced marriage and identification with the fundamental value of equality between women and men.

10. On account of those complementary decisions, the applicants amended their appeal before the referring court, and submitted supplementary grounds for appeal on the basis of the Minister’s additional reasons for refusing their asylum applications.

11. On 12 June 2025, during the proceedings before the referring court, the Minister withdrew the complementary decisions without providing any further explanation except that he needed more time to examine the consequences of the judgment in *K and L* and the legislation adopted in response to that judgment. He stated that the applicants may remain in the Netherlands pending new decisions.

12. The applicants, not wishing to await the Minister’s new decisions, asked the referring court to examine and assess their appeal on its merits, citing the considerable stress and psychological impact that the lengthy proceedings have caused them, particularly as regards the three daughters.

13. First, the applicants contended that the three daughters genuinely identify with the fundamental value of equality between women and men, and that, should they return to their country of origin, they would be considered different and could therefore face persecution.

14. The Minister had not found that argument plausible on the basis that the three daughters had failed to demonstrate that their identification with a particular social group was fundamental to their identity.

15. The referring court disagrees with that assertion and considers, inter alia, that the argument of the Minister is based on an erroneous interpretation of the judgment in *K and L*.

16. Second, the applicants submitted that they fear persecution if they return to their country of origin because they belong to a family or clan where women are forced into marriage and are considered unequal to men, and where they can be killed for disagreeing with their husbands.

17. The Minister had considered their fear to be unfounded because he believed, in essence, that the parents of the three daughters were open-minded.

18. The referring court again disagrees with the Minister. According to that court, the Minister had failed to sufficiently substantiate why the three daughters – if they do in fact identify with the fundamental value of equality between women and men – would not have a well-founded fear of persecution upon their return to Iraq. In that respect, the referring court considers that the criterion of a reasonable likelihood of persecution, as previously applied by the Minister, must be assessed from the perspective of a 'rational and reasonable person'.

19. Third, the Minister had rejected the applicants' asylum request in so far as it pertained to their alleged issues with a neighbour and to their fear of a vendetta and of forced marriage, because he considered that some of the father's statements in that respect were contradictory.

20. The applicants argue that, despite their father's in-depth interviews, he did not have sufficient opportunity to be heard in order to refute the alleged inconsistencies.

21. The referring court notes that, although the inconsistencies in the father's statements are not disputed, contradictions alone do not automatically undermine the credibility of his statements. That is supported, in that court's view, by the fact that statements made by the mother concerning the issues with the neighbour can be used to corroborate the father's statements.

22. Based on the preceding, the referring court considers itself to be sufficiently well informed to rule on the credibility of the applicants' asylum account, which it believes to be credible. However, the existing case-law of the Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State, Netherlands) does not allow the referring court itself to examine the merits of an asylum application.

23. For that reason, the referring court harbours doubts as to the compatibility of the existing case-law of the Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State) with the Qualification Directive and the Asylum Procedures Directive.

24. The referring court notes that, according to the established case-law of the Court of Justice, where a national court, when examining an appeal of a decision rejecting an asylum application, considers that it has all the necessary factual and legal information in that regard, that national court has the power to rule in a binding manner, after a comprehensive and *ex nunc* examination of those elements, on the question of whether the person who has lodged that appeal fulfils the conditions laid down in the Qualification Directive for being granted international protection. The decision taken by that court in that regard is then binding on the competent authority when deciding on asylum applications.

25. Furthermore, the referring court considers that the term 'well-founded fear' must be interpreted as meaning a 'reasonable likelihood' or a 'real risk' of persecution, whereby the decisive criterion may be whether, from the perspective of a rational and reasonable person in an asylum seeker's situation, a return to the country of origin appears unreasonable after assessing all known circumstances.

26. In those circumstances, the rechtbank den Haag zittingsplaats Zwolle (District Court, The Hague, sitting in Zwolle) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can the court derive from Article 46(3) of [the Asylum Procedures Directive], whether or not read in conjunction with Article 47 of the Charter of Fundamental Rights of the EU, or from any other provision or principle of EU law, the power to make its own ruling on the credibility of an asylum account, superseding the ruling made by the Minister?

(2) Can the court derive from any of the abovementioned provisions the power to make a substantive and final ruling on the application for international protection on the basis of those parts of the asylum account which the Minister deems credible and, if the answer to question 1 is in the affirmative, those parts of the asylum account which the court also deems credible? In that regard, may the court substitute its own ruling on the plausibility of the fear of persecution or the real risk of serious harm for that of the Minister, especially if, against the background of publicly

accessible country information, the court considers itself sufficiently informed to make such a ruling?

(3) Can national case-law constrain the powers referred to in questions 1 and 2, for example on the basis of procedural autonomy, to the effect that those powers are still vested exclusively in the Minister?

(4) May the court take into account information which was put forward on appeal, but which was not yet available at the administrative stage, in the ruling on the question whether it has enough information to make a substantive ruling? Is it relevant in that regard whether the parties have been able to express their views fully on the facts in writing or at the hearing?

(5) Should "well-founded fear" as referred to in Article 2(d) of [the Qualification Directive] be understood as meaning that there is a reasonable likelihood that the asylum seeker will be persecuted upon return? Should that reasonable likelihood be determined on the basis of the criterion of a "rational and reasonable person", whereby the decisive factor is whether, from the perspective of a rational and reasonable person in the position of the asylum seeker, a return to the country of origin appears unreasonable after weighing up all the known circumstances? If not, what criteria should be applied?'

27. The referring court requested that the present case be determined either pursuant to the urgent procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice or pursuant to the expedited procedure provided for in Article 105(1) thereof.

28. Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure where the nature of the case requires that it be dealt with within a short time.

29. On 19 August 2025, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to grant the referring court's request that the present request for a preliminary ruling be determined pursuant to an expedited procedure in accordance with Article 105(1) of the Rules of Procedure.

30. The President of the Court based his decision on the fact that the referring court provided the Court of Justice with concrete, specific and tangible evidence regarding both the health of the applicants concerned and the causal link between their health and the uncertainty caused by the circumstances of the dispute in the main proceedings. It also follows from those considerations that a response from the Court within a short period of time is likely to significantly limit the risk of worsening the health condition of the two applicants concerned.

31. The applicants, the Czech, German and Netherlands Governments and the European Commission submitted written observations to the Court.

32. A joint hearing with another reference for a preliminary ruling pending before the Court in Case C-198/25 (5) was held on 27 October 2025, at which the applicants, the Netherlands Government and the Commission presented oral argument.

III. Analysis

33. As I have already explained, my Opinion in the present case focuses solely on the fifth question referred, which seeks the interpretation of the concept of 'well-founded fear' referred to in Article 2(d) of the Qualification Directive.

34. As part of the European Union's common asylum policy, the Qualification Directive bases the right to international protection on the recognition of refugee status.

35. In that respect, a person's 'well-founded fear' of persecution upon being returned to his or her country of origin is key for such a status to be recognised.

36. Article 2(d) of the Qualification Directive defines a refugee as 'a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply'.

37. That definition is taken from Article 1(A)(2) of the Geneva Convention, (6) recognised by the EU legislature as 'the cornerstone of the international legal regime for the protection of refugees', which the European Union also respects. (7)

38. In that sense, that convention, (8) including the differing international interpretations of the concept of a 'refugee' contained therein, as well as the guiding documents of the international institutions set up under the auspices of the United Nations, such as the UN High Commissioner for Refugees (UNHCR), (9) are relevant for the interpretation of the concept of a 'refugee' under EU law.

39. A person is considered a refugee as soon as he or she fulfils the conditions set out in the definition of a refugee contained in the Geneva Convention. (10) In other words, the recognition of the status of a refugee is a declaratory act. (11)

40. Because that definition includes the concept of 'well-founded fear' of persecution, understanding its meaning and the methods for establishing whether that condition is met is necessary for determining whether a person should be recognised as having refugee status.

41. When deciding whether the conditions for granting refugee status are fulfilled, the determining authorities, or the courts as the case may be, must first establish the material facts relating to the person asking for the recognition as a refugee, as well as the facts relating to the situation in his or her country of origin. Second, they must decide whether those facts lead to a finding of the existence of a well-founded fear of persecution. (12)

42. It is that second step to which the fifth question of the referring court in the present case relates. That court first asks, in essence, whether, when assessing if the condition of a 'well-founded fear' referred to in Article 2(d) of the Qualification Directive is fulfilled, national authorities must consider whether there is a reasonable likelihood that the person seeking international protection will be persecuted if returned to his or her country of origin. Second, the referring court asks on what criteria that reasonable likelihood should be determined. In particular, it asks whether that should be assessed on the basis of a 'rational and reasonable person' in the position of the asylum seeker, or by applying alternative criteria.

43. My understanding of those questions is that the referring court is essentially asking for confirmation that the requirement of the existence of a 'well-founded fear' is an objective assessment and should therefore be established on the basis of objective criteria, in which case the referring court further wishes to know what criteria should be used.

44. My analysis of those questions is organised as follows. I will first provide arguments as to why the 'well-founded fear' requirement must only be assessed on the basis of objective criteria (A). I will then discuss the referring court's interpretation, which I will propose that the Court accept, whereby a well-founded fear of persecution should be understood as meaning that there is a reasonable likelihood of persecution (B). Finally, I will argue that it is not necessary to introduce the 'reasonable person' standard in order to increase objectiveness when assessing the possible existence of a well-founded fear (C).

A. Objective assessment of 'fear'

45. Even if the notion of a ‘well-founded fear’ is central to the definition of a refugee, the Qualification Directive, just like the Geneva Convention, does not elaborate on its meaning.

46. Determining the existence of fear when deciding whether to recognise a person’s refugee status is necessarily a forward-oriented assessment. A determining authority must ask whether the fear of persecution that a person would face if returned to his or her country of origin is well founded.

47. In that respect, and in the absence of a ‘crystal ball’, the answer to such a question is necessarily an assessment of the likelihood or probability that such persecution will occur in the future. That question, to which I will return, thus becomes the following: by what method should that likelihood of persecution be assessed?

48. However, an additional question that arises in relation to the concept of ‘fear’ is whether, in the event that there exists a likelihood of persecution, the person deciding on the application for international protection must additionally establish whether an applicant actually harbours such a fear of persecution. Direction for making a determination on that subjective element of the ‘well-founded fear’ requirement can be taken from the guidance provided in the UNHCR Handbook.

49. According to that document, the concept of a well-founded fear has subjective and objective elements. Fear is an emotion, and thus a subjective condition. However, the UNHCR Handbook further explains that the additional qualification of ‘well founded’ implies that ‘it is *not only* the frame of mind of the person concerned that determines his [or her] refugee status, but that this frame of mind must be supported by an objective situation. The term “well-founded fear” therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, *both elements* must be taken into consideration.’ (13)

50. That seems to suggest that both the subjective emotion of fear and an objective recognition that that emotion is well founded must be established before a person’s refugee status can be recognised.

51. That said, a number of scholarly commentaries contend that it is not necessary to establish the existence of a subjective emotion of fear on the part of the applicant in order to satisfy the criterion of a ‘well-founded fear’. (14)

52. I agree with that position and I propose that the Court find that it is sufficient to establish that the likelihood of persecution objectively exists in order to recognise a person’s refugee status. That entails a finding that any person with the characteristics of the applicants would likely face persecution if returned to his or her country of origin, given the circumstances prevailing in that country. It is therefore unnecessary to establish whether that person actually fears such persecution.

53. Exclusion of that subjective element from the assessment of whether a well-founded fear exists can be justified on a number of grounds.

54. First, not only is it difficult to measure an emotion such as fear, but people are also different and express emotions in different ways.

55. Second, and more importantly, the failure of a person to adequately demonstrate his or her fear might lead the determining authority to deem that person’s asylum application not credible. That, in turn, could result in the denial of that person’s refugee status, without that authority at all assessing the objective element of a well-founded fear.

56. Finally, some persons, such as children, might not feel fear despite the objective likelihood of facing persecution upon returning to their country of origin. (15)

57. Does that interpretation, which requires determining authorities to take into consideration only the objective elements of fear, run contrary to the guidelines laid down in the UNHCR Handbook? Not necessarily. By establishing the existence of an objective risk that a person might be persecuted if returned to his or her country of origin, the determining authority may also implicitly conclude that a subjective fear exists. Therefore, a separate assessment of the subjective aspect of fear is not necessary

even if the term ‘fear’, referred to in the definition of a refugee, is understood to have subjective and objective elements.

58. Relying only on objective elements to establish whether a well-founded fear exits seems to be a practice accepted by several jurisdictions. (16)

59. For example, some United States courts seem to ask whether a ‘reasonable person’, who would find himself or herself in the same situation as the asylum applicant, would experience fear. If so, subjective fear on the part of the applicant for international protection can be implied. (17)

60. Moreover, courts and determining authorities in other countries, for instance in Australia, France, Germany and New Zealand, support the objective approach for establishing a well-founded fear of persecution. (18)

61. The Court of Justice has not yet been directly asked to take a position on whether authorities that decide on applications for international protection must take into consideration an applicant’s subjective fear when deciding whether to grant refugee status.

62. In *Y and Z*, the Court, when answering a different question, (19) stated that: ‘when assessing whether … an applicant has a well-founded fear of being persecuted, the competent authorities are required to ascertain whether or not the circumstances established constitute such a threat that *the person concerned may reasonably fear*, in the light of his individual situation, that he will in fact be subject to acts of persecution’. (20)

63. One could conclude from that paragraph that the Court required the competent authorities to establish the existence of a subjective fear on the part of the applicant, even though the basis for that fear also had to be objectively recognised, by requiring that the applicant should *reasonably* fear persecution.

64. However, in *Y and Z*, the Court continued by saying that ‘that assessment of the extent of the risk, which must, in all cases, be carried out with vigilance and care …, will be based *solely* on a specific evaluation of the facts and circumstances, in accordance with the rules laid down in particular by Article 4 of the [Qualification] Directive.’ (21)

65. In my view, that suggests that the Court considered that it is only the objective evaluation of the prevailing circumstances that can lead to the conclusion that a fear of persecution reasonably exists, which is both necessary and sufficient to establishing whether a person is or is not a refugee.

66. More recent case-law confirms, to my mind, such a conclusion. In *K and L*, the Court combined two paragraphs from *Y and Z* into one, which reads: ‘… the assessment by the competent national authorities of whether an applicant’s fear of being persecuted is well founded must be individual in character and must be carried out on a case-by-case basis with vigilance and care, solely on the basis of a specific evaluation of the facts and circumstances, in order to determine whether the established facts and circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be the victim of acts of persecution if returned to his or her country of origin …’. (22)

67. Therefore, to my mind, the Court has already adopted a position according to which the authorities must assess, on an objective basis, whether a person in the position of the applicant, and given the circumstances in his or her country of origin, would reasonably fear persecution.

B. Understanding a well-founded fear as a reasonable likelihood of persecution

68. Establishing whether an applicant could reasonably fear persecution depends on the risk assessment, carried out by the determining authority, of whether it is likely that, if returned to his or her country of origin, the concerned applicant will be persecuted. Such a risk assessment is necessarily a subjective one, unless a mathematical formula computable by current AI models and verifiable by human decision-makers can be devised.

69. In that respect, there is a multitude of factors which must be taken into consideration when carrying out such an assessment, and they may interact with each other in different ways. It is not impossible that an AI model would be more successful in predicting the likelihood of persecution of an asylum applicant, that is, in achieving greater accuracy than humans. However, there are insufficient data on past events – especially in relation to the number of situations in which applicants for international protection faced persecution as a result of being refused international protection and therefore returned to their country of origin – to train such an AI model and to then compare that model's accuracy with that of human decision-makers. Even if such a model could be developed, it would still necessitate human oversight and could, at best, be used as an additional tool when deciding on whether a person fulfils the necessary conditions to be recognised as a refugee.

70. In any case, to my knowledge, such a model has not yet been developed. Therefore, assessment of the likelihood of persecution can, for the time being, only be carried out by humans, whose assessment will necessarily be subjective, in the sense that two different determining authorities could come to a different conclusion when assessing the same set of circumstances.

71. Given the potential for determining authorities to make diverging decisions with regards to two applicants in a similar position, it is important to minimise such a risk.

72. Therefore, the question that arises is how to objectivise a subjective decision on the likelihood of persecution of a particular person?

73. The Qualification Directive contains some elements which serve to objectivise the decision-making process in relation to decisions on the likelihood of persecution. As the Court has already explained, the determination of the existence of a well-founded fear must be done 'in accordance with the rules laid down in particular by Article 4(3) to (5) of [the Qualification Directive]'. (23)

74. Article 4(3) of the Qualification Directive first requires that the assessment be performed on an individual basis. That means that each application requires its own analysis and for it to be done on a case-by-case basis. In that analysis, the deciding authority must take into consideration two types of fact. The first type are facts that enable determining authorities to come to a conclusion on the prevailing situation in the country of origin, including the laws and regulations of that country and the way in which they are applied in practice. The second type are those facts which relate directly to the applicant; they include that person's personal characteristics such as his or her background, gender, religion and identity, which can be substantiated by the documents or statements provided by the applicant. If certain facts cannot be proven on the basis of the documentary or other evidence provided, Article 4(5) of that directive provides for circumstances under which the applicant is to be afforded the benefit of the doubt. (24)

75. In principle, all relevant facts are ascertained at the moment of the assessment of the application. However, the determining authority should also take into consideration the evidence of past persecution of that particular applicant, if it exists, (25) as well as the applicant's activities since leaving the country which may have contributed to the fear of persecution. (26)

76. It is only after combining the personal circumstances of the applicant with the facts established in relation to the possible reasons for persecution in the country of origin that the determining authority should decide on whether that applicant's fear of persecution is in fact 'well founded'.

77. Therefore, and contrary to the position of the Netherlands Government, the determining authorities do not enjoy a large margin of discretion when deciding on applications for international protection. Instead, they are bound, based on Article 4 of the Qualification Directive, to diligently consider, in cooperation with the asylum seeker, all the circumstances of the case that are known to them, either because the applicant raised them or because they conducted a thorough assessment on their own initiative in order to carry out as complete an assessment as possible in order to allow them to decide on the matter.

78. Thus, the margin for a personal and subjective assessment on the part of the determining authority is reduced by Article 4 of the Qualification Directive. Nevertheless, taking into consideration

all the required facts, that authority must still decide how likely it is that the concerned applicant will be persecuted if returned to their country of origin.

79. In that respect, the referring court proposes that the standard of proof should be a 'reasonable likelihood' of persecution. (27) That standard means, as indeed all of the parties to the present proceedings agree, that the mere possibility of persecution is not sufficient. (28) At the same time, the standard should not be too high and should certainly not be 'beyond reasonable doubt', as applied in criminal law. However, the parties disagreed on whether reasonable likelihood requires that it is 'more likely than not' that persecution might occur. Although the ECtHR has seemingly shown a willingness to accept such a standard of proof, (29) I agree with the Commission that such a 50:50 requirement seems too high a standard. The existence of a reasonable chance that a particular person would be persecuted if returned to his or her country of origin should be sufficient to establish a well-founded fear, without setting a required percentage-chance in advance. (30)

80. Bearing the foregoing in mind, the first part of the fifth question of the referring court could be answered in the following way: a well-founded fear of persecution exists when there is a reasonable likelihood that an applicant for international protection will be persecuted if returned to his or her country of origin.

C. 'Reasonable person' criterion as a method for objectivising subjective decisions

81. The referring court further asks whether a reasonable likelihood that persecution might occur if a particular applicant is returned to his or her country of origin could be assessed by using a legal standard of a 'reasonable person'. In that respect, the referring court relies on the practice of German courts, which use the standard of a 'reasonable and well-informed person' when deciding on applications for international protection. (31)

82. In their written observations, the German Government and the Commission both support that practice and suggest applying the 'reasonable and well-informed person' standard to the situation of asylum seekers.

83. The applicants, however, consider that an asylum application must be assessed only from the asylum seeker's perspective, in the light of the situation prevailing in their country of origin, for example. They explain that only that approach ensures that the criterion include a neutral and objective assessment in all cases, whereas the criterion of a 'reasonable and well-informed person' risks neglecting a comprehensive assessment. Thus, the applicants explained at the hearing that reliance on the standard of a 'reasonable and well-informed person' might detach the assessment from the individual applicants at issue in a given case.

84. The Netherlands Government considers that relying on such a criterion would not lead to more uniformity, because the way in which a *fictional* reasonable person experiences a certain (subjective) fear also depends on the interpretation that a determining authority and/or judge gives on a case-by-case basis. Therefore, the Netherlands Government, supported on that matter by the Commission, considers that there is no reason for the Court to define any further the standard of a reasonable likelihood of persecution, but should leave that appreciation to be done on a case-by-case basis by national authorities and courts.

85. To my mind, if properly used, the legal standard of a reasonable person would serve the purpose of objectivising the decision of the authority that is asked to determine whether there is a reasonable likelihood of persecution in a particular case. That would be so in as much as that standard is understood and employed to induce a decision-maker, including a judge, to become 'a social character who is interested in others'; (32) in other words, not to rely only on his or her personal perspective. In that sense, using the legal standard of a 'reasonable person' would serve as an additional reminder for the deciding person not to impose his or her personal views.

86. However, as there is also the possibility that the standard of a reasonable person is in fact relied on only to enhance a certain point of view – by presenting that point of view as 'reasonable', thus not acting as a limiting factor on one's subjectiveness, but quite the contrary, that is, enabling the

justification of a subjective decision – (33) I agree with the applicants and the Netherlands Government that it is not necessary to use that standard.

87. To answer the second part of the referring court's fifth question, the criterion to be used to determine whether there is a well-founded fear of persecution is to ask whether a person having the characteristics of the applicant, in the situation in which the applicant finds him or herself, especially taking into consideration the relationship between his or her personal characteristics and the facts established in relation to the acts of persecution in his or her country of origin, could reasonably fear that he or she would be persecuted if returned to that country.

88. Such an assessment must be performed on a case-by-case basis, taking into account all available and relevant evidence submitted by the applicant concerned as well as any other information that the determining authority is able to obtain and use in order to support statements made by that applicant.

89. That interpretation is in line with and further develops the position already expressed by the Court in several judgments, as referred to in point 66 of this Opinion.

IV. Conclusion

90. In the light of the foregoing considerations, I propose that the Court answer the fifth question referred for a preliminary ruling by the rechtbank den Haag zittingsplaats Zwolle (District Court, The Hague, sitting in Zwolle, Netherlands) as follows:

> Article 2(d) 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
>
> must be interpreted as meaning that a well-founded fear of persecution exists when there is a reasonable likelihood that an applicant for international protection will be persecuted if returned to his or her country of origin.
>
> To assess whether there is such a reasonable likelihood, the determining authority must ask whether a person having the characteristics of the applicant, in the situation in which the applicant finds him or herself, and taking into consideration the relationship between applicant's personal characteristics and the facts established in relation to the acts of persecution in his or her country of origin could reasonably fear that he or she would be persecuted if returned to that country.
>
> Such an assessment must be performed on a case-by-case basis, taking into account all available and relevant evidence submitted by the applicant concerned as well as any other information that the determining authority is able to obtain and use in order to support statements made by that applicant.

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1 Original language: English.

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

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2 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; 'the Asylum Procedures Directive').

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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; 'the Qualification Directive').

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4 Judgment of 11 June 2024, *Staatssecretaris van Justitie en Veiligheid (Women identifying with the value of gender equality)* (C-646/21, '*K and L*', EU:C:2024:487).

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5 See Case C-198/25, Quotal – Request for a preliminary ruling from the rechtbank Den Haag, zittingsplaats Zwolle (District Court, The Hague, sitting in Zwolle) lodged on 11 March 2025 – *S* v *Minister van Asiel en Migratie* (OJ C, C/2025/3395) available at: http://data.europa.eu/eli/C/2025/3395/oj.

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6 Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, which entered into force on 22 April 1954 (*United Nations Treaty Series*, Vol. 189, p. 137), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967 (*United Nations Treaty Series*, Vol. 606, p. 267), which entered into force on 4 October 1967 (together, 'the Geneva Convention').

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7 See recitals 3 and 4 of the Qualification Directive.

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8 See, for example, judgment of 4 October 2024, *Bundesamt für Fremdenwesen und Asyl and Others (Afghan women)* (C-608/22 and C-609/22, EU:C:2024:828, paragraph 33 and the case-law cited).

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9 For understanding the concept of 'refugee', the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection – Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 2019 ('the UNHCR Handbook'), should therefore be taken into consideration.

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10 See point 28 of the UNHCR Handbook.

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11 See recital 21 of the Qualification Directive.

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12 For a detailed description of the steps to be taken in deciding whether a person asking for international protection is a refugee, see the website of the European Union Agency for Asylum (EUAA), 'Well-founded fear', in *EASO Practical Guide: Qualification for international protection*, January 2022, pp. 20-21; available at: https://euaa.europa.eu/easo-practical-guide-qualification-international-protection/well-founded-fear-0.

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13 See point 38 of the UNHCR Handbook (emphasis added).

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14 For example, Hathaway, J.C. and Foster, M., *The Law of Refugee Status*, Cambridge University Press, Cambridge, 2014, p. 92. See also Storey, H., *The Refugee Definition in International Law*, Oxford University Press, Oxford, 2023, and the literature review provided in that book.

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15 See, for example, Hathaway, J.C. and Hicks, W.S., 'Is there a subjective element in the refugee convention's requirement of "well-founded fear"?', *Michigan Journal of International Law*, 2005, pp. 505-562, in particular p. 512; and Zimmermann, A. and Herrmann, F.M., 'Article 1 A, para. 2 1951 Convention – (Definition of the term "refugee"/définition du terme "réfugié")', in Zimmermann, A. et al. (eds.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, Oxford University Press, Oxford, 2024, pp. 359-555, in particular pp. 484-489.

16 For an overview, see, for example, Hathaway, J.C. and Foster, M., footnote 14, op. cit., p. 104; Anderson, A. et al., 'A well-founded fear of being persecuted … But when?', *Sydney Law Review*, 2020, pp. 155-181, in particular pp. 161-162; and Zimmermann, A. and Herrmann, F.M., footnote 15, op. cit., in particular pp. 413-414.

17 For example, according to the United States Court of Appeals for the Fifth Circuit, 'an alien possesses a well-founded fear of persecution if a reasonable person in her circumstances would fear persecution if she were to be returned to her native country' (*Guevara Flores, Petitioner, v. Immigration and Naturalization Service, Respondent* (1986) 786 F.2d 1242 (USCA, 5th Cir., 1986), p. 1249).

18 For examples of such decisions in those countries, see Australia: High Court of Chan v. Minister for Immigration and Ethnic Affairs (9 December 1989); France: Cour nationale du droit d'asile (National Court of Asylum), Case N°24009761 (17 July 2024); Germany: Oberverwaltungsgericht, Niedersachsen (Higher Administrative Court, Lower Saxony, Germany), Case No 2 LA 1584/17 (17 August 2018); New Zealand: Refugee Status Appeals Authority, Refugee Appeal No. 72635/01 (6 September 2002).

19 The question referred in that case asked whether an applicant's fear of being persecuted is well founded when such a person can avoid exposure to persecution in his or her country of origin by abstaining from certain religious practices. See, in that respect, judgment of 5 September 2012, *Y and Z* (C-71/11 and C-99/11, '*Y and Z*', EU:C:2012:518, paragraph 73).

20 *Y and Z*, paragraph 76 (emphasis added).

21 See *Y and Z*, paragraph 77 (references to case-law omitted and emphasis added).

22 See *K and L*, paragraph 59 and the case-law cited.

23 Judgment of 21 September 2023, *Staatssecretaris van Veiligheid en Justitie (Political opinions in the host Member State)* (C-151/22, EU:C:2023:688, paragraph 42 and the case-law cited).

24 A similar position is accepted by the European Court of Human Rights (ECtHR). See, in that respect, ECtHR, 23 March 2016, *F.G. v. Sweden* (CE:ECHR:2016:0323JUD004361111, § 113 and the case-law cited), which states: '… owing to the special situation in which asylum-seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum-seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies …'.

25 Article 4(4) of the Qualification Directive.

26 Article 4(3)(d) of the Qualification Directive.

27 That is also a standard of proof proposed by the EUAA; see its *Practical Guide on Evidence and Risk Assessment*, 2024, p. 8.

28 That is also a position of the ECtHR; see its judgment of 30 October 1991, *Vilvarajah and Others v. the United Kingdom* (CE:ECHR:1991:1030JUD001316387, § 111).

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29 See ECtHR, 28 February 2008, *Saadi v. Italy* (CE:ECHR:2008:0228JUD003720106, § 140).

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30 In that respect, see U.S. Supreme Court judgment, *Immigration and Naturalization Service v. Cardoza-Fonseca* (480 U.S. 421 (1987), No 85-782). That court stated at p. 440: 'There is simply no room in the United Nations' definition for concluding that because an applicant only has a 10% chance of being shot, tortured, or otherwise persecuted, that he or she has no "well-founded fear" of the event happening. … a moderate interpretation of the "well-founded fear" standard would indicate "that so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility."'

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31 In particular, it quotes the judgment of Oberverwaltungsgericht Niedersachsen (Higher Administrative Court, Lower Saxony) of 17 August 2018, Case No 2 LA 1584/17. See footnote 26 to the order for reference (in the original language and in French).

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32 See, in that respect, Jeutner, V., *The Reasonable Person*, Cambridge University Press, Cambridge, 2024, p. 173.

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33 See, in that respect, research published by Jeutner, V., footnote 32, op. cit.