Raad
van State

<u>This is an unofficial English translation of the ruling of the Administrative Jurisdiction Division of the Council of State (hereinafter: the Division) in case no. 201506502/1/V2. No rights can be derived from this translation. For the official (Dutch) version of this ruling, refer to http://www.raadvanstate.nl.</u>

ADMINISTRATIVE JURISDICTION DIVISION

Ruling on the appeal by:

the State Secretary of Security and Justice
appellant

against the ruling of the summary proceedings judge of the District Court of The Hague, hearing location Amsterdam (hereinafter: the District Court) of 7 August 2015 in case no. 15/12918 and 15/12919 in the action between:

the asylum seeker

and

The State Secretary

Course of the proceedings

In a decision of 5 July 2015, the State Secretary, in so far as is of interest at present, rejected an application from the asylum seeker to grant him a temporary asylum residence permit.

In a ruling dated 7 August 2015, the District Court, in so far as is of interest at present, declared the appeal lodged by the asylum seeker against that decision as well-founded, annulled that decision and ruled that the State Secretary make a new decision on the application, taking into account the information which was considered in the ruling.

The State Secretary appealed against this ruling.

The asylum seeker has submitted a statement of defence.

The asylum seeker has submitted an additional document.

The Division examined the case simultaneously with case no 201507952/1/V2 in a hearing on 15 December 2015, at which the asylum seeker, represented by A.A. Vermeij, lawyer in Voorburg, and the State Secretary, represented by R.A. Visser, employee of the Ministry of Security and Justice, appeared.

Considerations

1. The legal framework has been included in the Annex, that forms part of this ruling.

Context

2. In the present case, and in the case number 201507952/1/V2 that was examined simultaneously in the hearing, the grounds for appeal concern the judicial review of the State Secretary's assessment of the credibility of the statements made by the asylum seeker in question. In both cases, the District Court applied Article 83a of the 'Vreemdelingenwet 2000' (Aliens Act 2000, hereinafter referred to as Vw 2000), that entered into force on 20 July 2015, on the submitted appeals. This Article implements Article 46(3) of Directive 2013/32/EU (hereinafter referred to as: the Procedures Directive). Pursuant to that Article, the judicial review by the District Court shall encompass a full and *ex nunc* examination of both facts and points of law, including, if applicable, an examination of the need for international protection.

2.1. In this ruling and today's ruling in case number 201507952/1/V2 (www.raadvanstate.nl), the Division has explained the consequences of Article 83a of the Vw 2000 for the manner in which a Dutch administrative judge in first instance reviews an assessment of the State Secretary of the credibility of an asylum seeker’s statements.

This ruling concerns the question whether that Article requires that, in derogation from the general principles of Dutch administrative law, a Dutch administrative judge has the authority to give his own assessment of the facts as asserted by an asylum seeker in his or her asylum request and therefore, on the credibility of an asylum seeker's statements, and thus to substitute his own assessment of the credibility of the asylum seeker’s statements for that of the State Secretary. The ruling in case number 201507952/1/V2 concerns the meaning of Article 83a of the Vw 2000 with regard to the intensity of the judicial review exercised by the administrative judge of an assessment of the State Secretary of the credibility of an asylum seeker's statements.

These rulings implement the legislator’s wish, that is apparent from legislative history, that the Division provides guidance in the interpretation of the aforementioned Article 83a, from the perspective of unity of law, development of law and legal protection in a general sense (Parliamentary Papers II 2014/15, 34 088, no 3, page 22).

Order of examination

3. The Division will first examine the issue of whether Article 83a of the Vw 2000, in derogation from the general principles of administrative law in the Netherlands, gives an administrative judge in first instance the authority to substitute his own assessment of the credibility of an asylum seeker’s statements for the assessment of the State Secretary. That interpretation, and the interpretation in case no 201507952/1/V2, shall then be applied to the examination of the grounds for appeal in this case.

Opinions of the parties

4. At the hearing before the Division, the State Secretary argued that Article 83a of the Vw 2000 is not intended to grant the administrative judge the authority to substitute his own assessment with regard to the credibility of an asylum application for that of the State Secretary. To that end, the State Secretary made reference to the national legislative history behind Article 83a of the Vw 2000. It is stated therein that, for the interpretation of that Article, the legislator referred to the general system of administrative law in the Netherlands, which states that the role of the administration is to carry out the law, and that it is for the administrative judge to review the lawfulness of the decisions made by that administration (Parliamentary Papers II 2014/15, 34 088, no 3, pages 20 and 21, and Parliamentary Papers I 2014/15, 34088, no C, page 2). The State Secretary points out that the purpose of the Procedures Directive shows that the determining authority performs the primary role in the asylum procedure. For that reason, in the State Secretary’s view, even after implementation of the Procedures Directive the assessment of the administration regarding the credibility of an asylum seeker, set out in a decision taken by the State Secretary, remains the point of departure in the review by the administrative judge (Parliamentary Papers II 2014/15, 34 088, no 6, page 27 and 31, Parliamentary Papers I 2014/15, 34 088, no C, page 2).

With reference to the case law of the European Court of Justice (hereinafter: the Court) and the European Court of Human Rights

(hereinafter: the ECtHR), and a memorandum of the 'Commissie Strategisch Procederen' initiated by VluchtelingenWerk Nederland, the asylum seeker has reasoned the opposing view. The asylum seeker has requested that for the interpretation of Article 46(3) of the Procedures Directive, a preliminary reference be made to the Court of Justice of the European Union (hereinafter: the Court).

European case-law on substituting a decision of the administration

5. Article 46(3) of the Procedures Directive was implemented in Article 83a of the Vw 2000. The meaning and scope of the full and *ex nunc* examination of both facts and points of law stipulated in Article 83a must therefore be determined in the light of Article 46(3) of the Procedures Directive. That interpretation must take place in accordance with the method described by the Court in its case law (see paragraph 28 of the Judgment of the Court of 24 October 1996, C-72/95, Kraaijeveld, ECLI:EU:C:1996:404; paragraph 42 of the Judgment of the Court of 11 June 2015, C-554/13, Z. Zh. and I.O., ECLI:EU:C:2015:377; and paragraph 58 of the Judgment of the Court of 24 June 2015, C-373/13, H.T., ECLI:EU:C:2015:413). For that reason, the interpretation of the text of the aforementioned Article 46(3) requires a comparison of the different language versions. Furthermore, the interpretation of that Article must take into account the other provisions, the context and the objectives pursued by the Procedures Directive. The interpretation may also draw on the legislative history of the Procedures Directive (see paragraph 12 of the Judgment of the Court of 13 December 1989, C-342/87, Genius Holding BV, ECLI:EU:C:1989:635). This means that the interpretation made by the national legislator of Article 83a of the Vw 2000, and therefore of Article 46(3) of the Procedures Directive is not, in itself, leading.

5.1. The phrase “volledig en ex nunc onderzoek van zowel de feitelijke als juridische gronden” in Article 46(3) of the Procedures Directive, reads “un examen complet et ex nunc tant des faits que des points d’ordre juridique”, “full and *ex nunc* examination of both facts and points of law” and “eine umfassende Ex-nunc-Prüfung (vorsieht), die sich sowohl auf Tatsachen als auch auf Rechtsfragen erstreckt” in the French, English and German versions respectively. It follows from this wording in the different language versions that a full and *ex nunc* examination must include both points of a fact and law, and that no single aspect or element of a decision may be omitted from judicial review. However, the text of Article 46(3) of the Procedures Directive does not seem to indicate whether the intention is that an administrative judge can substitute his own assessment of the credibility of an asylum seeker for that of the State Secretary.

5.2. As the text of Article 46(3) of the Procedures Directive does not provide a definite answer as to whether this provision requires an administrative judge to substitute his own assessment of the credibility of an asylum seeker’s statements for that of the State Secretary, the meaning and scope of that provision must also be determined with due regard to the other

provisions, the context, objective and legislative history of the Procedures Directive.

5.3. As was concluded in the aforementioned ruling in case no. 201507952/1/V2, it follows from the system of the Procedures Directive that it is the task of the determining authority, with the required degree of expertise and subject to the procedural safeguards that apply in relation to the administrative procedure, to make a decision regarding a request for international protection. In that system, the judicial review consists of an examination of the administrative decision-making, and should be able to cover all findings of both points of fact and law (see paragraph 57 of the Judgment of the Court of 28 July 2011, C-69/10, Samba Diouf, ECLI:EU:C:2011:524). However, the system of the Procedures Directive does not require the administrative judge to assess a request for asylum himself, similar to how the determining authority assesses it in accordance with that Directive. In accordance with that system, an administrative judge assesses the decision taken by the determining authority in terms of its lawfulness. It is for the determining authority to adopt a position with regard to the credibility of the statements of an asylum seeker. This point of view is then examined by the administrative judge.

5.4. It also follows from the aforementioned ruling in case no 201507952/1/V2 that the intention of Article 46(3) of the Procedures Directive is to also concur with the case law of the Court with regard to the right to an effective remedy before a court or tribunal, as laid down in Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter: the Charter), and therefore to also reflect the case law of the ECtHR on Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR). That also follows from the legislative history of the Procedures Directive (see COM(2009) 554 final, pages 6, 8 and 9).

5.4.1. It does not follow from that case law that the administrative judge must be able to substitute his own assessment of the credibility of an asylum seeker's statements for that of an administrative body (see paragraphs 33 to 36 of the Judgment of the Court of 21 January 1999, C-120/97, Upjohn, ECLI:EU:C:1999:14; paragraph 153 of the Judgment of the ECtHR of 21 July 2011, Sigma Radio Television v Cyprus, nos 32181/04 and 35122/05, ECLI:CE:ECHR:2011:0721JUD003218104; and paragraph 78 of the Judgment of the ECtHR of 6 March 2001, Hilal, no 45276/99, ECLI:CE:ECHR:2001:0306JUD004527699).

5.5. The fact that the ECtHR sometimes chooses a different approach and substitutes its own opinion for that of the national authorities on the basis of its own investigation and assessment (see, for example, paragraphs 70 to 80 of the Judgment of the ECtHR of 18 December 2012, F.N. and Others v. Sweden, no 28774/09, ECLI:CE:ECHR:2012:1218JUD002877409) does not lead to a different conclusion. The position of the ECtHR is not comparable to that of a national court. Where appropriate, the ECtHR arrives at an independent conclusion as to whether, given the latest state of affairs, there exists a genuine risk of a

violation of Article 3 of the ECHR (compare paragraph 133 of the Judgment of the ECtHR of 28 February 2008, Saadi v. Italy, no 37201/06, ECLI:CE:ECHR:2008:0228JUD003720106; paragraph 61 of the Judgment of the ECtHR of 10 September 2015, R.H. versus Sweden, no 4601/14, ECLI:CE:ECHR:2015:0910JUD000460114; and paragraphs 110 to 127 inclusive of the Judgment of the ECtHR of 23 March 2016, F.G. versus Sweden, no 43611/11, ECLI:CE:ECHR:2016:0323JUD004361111). Unlike an administrative judge in the Netherlands, it does not have the ability to nullify a decision due to a lack of grounds or due care and require a Contracting State to make a new decision in observance of his ruling. However, that different position does not detract from the fact that the case law of the ECtHR is the guiding principle for the Division when assessing whether an asylum seeker is at genuine risk of a violation of Article 3 of the ECHR.

Substituting a decision of the administration under national law

6. The aforementioned means that a Dutch administrative judge cannot derive authority from Article 46(3) of the Procedures Directive, implemented in Article 83a of the Vw 2000, to substitute his own assessment of the credibility of an asylum seeker's statements for that of the State Secretary. As follows from considerations in 5.3 to 5.4.1, this interpretation of Article 46(3) of the Procedures Directive is without prejudice to an effective application of that Directive (see paragraph 63 of the Judgment of the Court of 5 June 2014, C-146/14 PPU, Mahdi, ECLI:EU:C:2014:1320) and as such does not impede the attainment of the objectives pursued by the Procedures Directive (see paragraph 41 of the Judgment of the Court of 8 May 2014, C-604/12, H.N., ECLI:EU:C:2014:302). The Dutch system is therefore in keeping with EU law. This means that, even after implementation of the Procedures Directive, the administrative judge reviews the legality of a decision of the State Secretary on the credibility of an asylum seeker, in accordance with the basic principles of general administrative law in the Netherlands, but cannot substitute its own assessment of the facts for that of the State Secretary.

6.1. This does not preclude that the administrative judge dealing with cases involving requests for asylum may, under certain circumstances, decide on a case himself by invoking the authority granted to him in Article 8:72(3)(b) of the General Administrative Law Act. In exercising these powers, however, the administrative judge must take account of the viewpoint held by the State Secretary.

Reference for a preliminary ruling

7. In view of the state of EU law at present and the aforementioned judgments of the Court, there is no reason to refer questions for a preliminary ruling. The legal question that has been raised can be answered in the light of case law the Court (see paragraphs 13 and 14 of the Judgment of the Court of 6 October 1982, C-283/81, Cilfit, ECLI:EU:C:1982:335, and paragraphs 57 to 62 of the Judgment of the Court of 9 September 2015, C-72/14 and C-197/14, X and Van Dijk,

ECLI:EU:C:2015:564). The aforementioned interpretation of Article 46(3) of the Procedures Directive, and therefore of Article 83a of the Vw 2000, is in line with the purpose and objective of the Procedures Directive and the case law of the Court and the ECtHR. The Netherlands' system of legal protection under administrative law in asylum cases as a whole safeguards that an asylum seeker is given the protection to which he is entitled on the grounds of EU law and the ECHR.

8. Up to the present, the supplemental seats of the Court of The Hague have interpreted Article 83a of the Vw 2000 in the same way, as is shown in the rulings of the full-bench judgments of the Court of The Hague in its respective hearing locations of Groningen of 24 August 2015 (ECLI:NL:RBDHA:2015:9942), Arnhem of 1 October 2015 (ECLI:NL:RBDHA:2015:11350), Utrecht of 26 November 2015 (ECLI:NL:RBDHA:2015:14568), and Haarlem of 18 January 2016 (ECLI:NL:RBDHA:2016:629) As such, this situation is not the same as the one referred to in the Judgment of the Court of 9 September 2015, C-160/14, Ferreira da Silva e Brito and Others (ECLI:EU:C:2015:565).

Assessment of the appeal

9. The asylum seeker has based his application on the fact that he carried out nursing duties in Qatar. These duties were part of an agreement between the Cuban government and the authorities of Qatar. The asylum seeker declared that he had resigned in Qatar out of dissatisfaction with inter alia the poor conditions of employment. As a result, he is regarded as anti-revolutionary by the Cuban authorities and is therefore at risk if he returns to Cuba.

10. In the decision of 5 July 2015, in which the intention of the decision was repeated and incorporated therein, the State Secretary found it credible that the asylum seeker originates from Cuba and has worked as a nurse in Qatar, having been posted there by the Cuban authorities. However, the State Secretary did not find it credible that the asylum seeker resigned in Qatar, because the asylum seeker made contradictory statements in that regard in the initial interview, and furthermore could not state with any certainty the reason why his work permit in Qatar was cancelled. As the resignation is not credible, the State Secretary neither finds it credible that the asylum seeker is at risk of any negative attention from the Cuban authorities. The asylum seeker therefore failed to demonstrate that he should be granted an asylum residence permit.

11. The District Court has found that the State Secretary could not have concluded that the asylum seeker had made contradictory statements regarding his resignation, solely on the basis of the initial interview. According to the District Court, while the asylum seeker did state that he left Qatar for a holiday, he also explained that he only decided not to return to Qatar after leaving there. The asylum seeker has also consistently stated that he has permanently left his post in Qatar, while the fact that his work permit in Qatar has actually been cancelled is not under dispute. In the view of the District Court, the State Secretary has failed to consider the

statements made by the asylum seeker in the initial interview within the context of the questions asked during that interview.

12. In the first part of the first ground for appeal, as explained at the hearing before the Division, the State Secretary claimed that the District Court wrongly substituted its own assessment of the credibility of the asylum seeker for his own.

12.1. The District Court considered that the State Secretary did not base his decision on proper grounds, annulled that decision and ordered the State Secretary to make a new decision taking into account what was considered in the ruling. The fact that, while doing so, the District Court gave an assessment on the facts and circumstances that formed the basis of the viewpoint held by the State Secretary does not in itself mean that it has substituted its own opinion on the credibility of the asylum seeker for that of the State Secretary.

12.2. The first part of the first ground for appeal is therefore unsuccessful.

13. In the second part of the first ground for appeal, the State Secretary stated that the District Court wrongly found that he had erred in adopting the view that the asylum seeker's statements lack credibility. He argued, among other things, that the statements made by the asylum seeker in relation to his resignation in Qatar are contradictory.

13.1. This part of the ground for appeal relates to the intensity of judicial review of the State Secretary's assessment of the credibility of the statements made by the asylum seeker, on which the Division has given its interpretation in today's ruling in case no 201507952/1V2.

As shown in that ruling, the manner in which the administrative judge reviews a decision by an administrative body within the general system of administrative law in the Netherlands depends on the nature and content of the powers exercised by the administrative body and the decision at hand. The basic principle is that the administrative judge reviews whether the administrative body has made its decision with due care and has provided proper reasons. If the administrative body enjoys discretion on parts or aspects of its decision in its decision-making (in Dutch legal terminology: 'beslissingsruimte') the administrative judge will respect that when reviewing those parts and aspects of that decision. This principle also applies under immigration law, including asylum law. Under asylum law, the State Secretary has discretion in his decision-making when assessing the credibility of statements and assumptions made by an asylum seeker that are not substantiated by evidence.

13.1.1. The administrative judge must however, even in such cases, review in the manner referred to above, whether the decision-making process for which the State Secretary made use of this discretion, satisfies all legal requirements, meets the requirements of due care and is based on a proper reasoning.

13.2. There is no reason why an administrative judge cannot examine whether statements of an asylum seeker, which are written down in the transcripts of the interviews, are contradictory to one another (see consideration 7.1. of the ruling in case no 201507952/1/V2). The State Secretary has no discretion in this regard. As such, the District Court has rightly reviewed whether the State Secretary had rightly adopted the position that the asylum seeker made contradictory statements regarding his resignation in Qatar.

13.3. In this case, the District Court has rightly found that the statement in question by the asylum seeker in the initial interview, namely that he left Qatar for a holiday, does not mean that he made a contradictory statement with regard to his resignation. After all, the asylum seeker clarified this statement in that same interview by explaining that he left Qatar for a holiday in the first instance, but that he also abandoned his post permanently. Furthermore, it has not been disputed that the asylum seeker has made unambiguous and consistent statements regarding his resignation during the second interview in which, unlike in the initial interview, he was asked about his reasons for seeking asylum. In view thereof, the District Court has rightly found that the State Secretary had wrongfully adopted the view that the asylum seeker made contradictory statements about his resignation in Qatar.

13.4. The second part of the first ground for appeal is therefore also unsuccessful.

14. That which the State Secretary argued as the second ground for appeal is insufficient to cause the annulment of the disputed ruling. As the arguments have not raised any questions that require answers in the interests of unity of law, development of law or legal protection in a general sense, that judgment shall suffice in view of Article 91(2) of the Vw 2000.

Conclusion

15. The appeal is unfounded. The contested ruling must be upheld. This means that, as the District Court had already ordered, the State Secretary is required to make a new decision on the asylum seeker's application to be granted a temporary asylum residence permit.

16. The State Secretary will be ordered to pay the costs of the proceedings in the manner stated below.

Decision

The Administrative Jurisdiction Division of the Council of State hereby:

I. upholds the contested ruling;
II. orders the State Secretary for Security and Justice to pay the costs of the proceedings incurred by the asylum seeker in connection with the handling of the appeal, of € 992 (nine hundred and ninety-two euros), to be allocated in full to legal representation provided professionally by a third party.

As determined by H.G. Lubberdink, Presiding Judge, and H. Troostwijk and N. Verheij, judges, in the presence of M.M. Bosma, Clerk of the Court.

signed Lubberdink
Presiding Judge

signed Bosma
Clerk of the Court

Delivered in open court on13 April 2016

572/284-791.
Sent: 13 April 2016

ANNEX - Legislative framework

Charter of Fundamental Rights of the European Union

Article 47
Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 52
(...)
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
(...)

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of asylum seekers 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 (recast) (OJ 2011 L 337; the Qualifications Directive)

Article 4
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.
2. The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.
3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

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

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

a) the applicant has made a genuine effort to substantiate his application;
b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
e) the general credibility of the applicant has been established.

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 (recast) (OJ L 180/60, the Procedures Directive)

Preamble

(11) In order to ensure a comprehensive and efficient assessment of the international protection needs of applicants within the meaning of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of asylum seekers 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, the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a single procedure.
(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.
(16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.
(17) In order to ensure that applications for international protection are examined and decisions thereon are taken objectively and impartially , it is necessary that professionals acting in the framework of the procedures provided for in this Directive perform their activities with due respect for the applicable deontological principles.
(25) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.
(29) Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.
(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.

Article 1
The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.

Article 4
1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.
2. Member States may provide that an authority other than that referred to in paragraph 1 shall be responsible for the purposes of:

a) processing cases pursuant to Regulation (EU) No 604/2013; and
b) granting or refusing permission to enter in the framework of the procedure provided for in Article 43, subject to the conditions as set out therein and on the basis of the reasoned opinion of the determining authority.

3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. To that end, Member States shall provide for relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Member States shall also take into account the relevant training established and developed by the European Asylum Support Office (EASO). Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.
4. Where an authority is designated in accordance with paragraph 2, Member States shall ensure that the personnel of that authority have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.
5. Applications for international protection made in a Member State to the authorities of another Member State carrying out border or immigration controls there shall be dealt with by the Member State in whose territory the application is made.

Article 10
1. Member States shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.
2. When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees

and, if not, determine whether the applicants are eligible for subsidiary protection.
3. Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

a) applications are examined and decisions are taken individually, objectively and impartially;
b) precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
c) the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law;
d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

4. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 3(b), necessary for the fulfilment of their task.
5. Member States shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article 11
1. Member States shall ensure that decisions on applications for international protection are given in writing.
2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.
Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with such information at an earlier stage either in writing or by electronic means accessible to the applicant.
3. For the purposes of Article 7(2), and whenever the application is based on the same grounds, Member States may take a single decision, covering all dependants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity and/or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.

Article 12
1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

a) they shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. they shall be informed of the time-frame, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2011/95/EU, as well as of the consequences of an explicit or implicit withdrawal of the application. That information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 13;
b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds;
c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;
d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;
e) They shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;
f) they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).

Article 13

1. Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95/EU. Member States may impose upon applicants other obligations to cooperate with the

competent authorities insofar as such obligations are necessary for the processing of the application.
2. In particular, Member States may provide that:
a) applicants are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
b) applicants have to hand over documents in their possession relevant to the examination of the application, such as their passports;
c) applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he or she indicated accordingly;
d) the competent authorities may search the applicant and the items which he or she is carrying. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Directive shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity;
e) the competent authorities may take a photograph of the applicant; and
f) the competent authorities may record the applicant's oral statements, provided he or she has previously been informed thereof.

Article 14
1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).
(...)
Where a person has lodged an application for international protection on behalf of his or her dependants, each dependent adult shall be given the opportunity of a personal interview.
Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

Article 15
1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.
2. A personal interview shall take place under conditions which ensure appropriate confidentiality.
3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

a) ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;
b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
c) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
d) ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform;
e) ensure that interviews with minors are conducted in a child-appropriate manner.

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

Article 16
When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive 2011/95/EU as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant's statements.

Article 17
1. Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.
2. Member States may provide for audio or audio-visual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.
3. Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarification orally and/or in writing with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time

limit before the determining authority takes a decision. To that end, Member States shall ensure that the applicant is fully informed of the content of the report or of the substantive elements of the transcript, with the assistance of an interpreter if necessary. Member States shall then request the applicant to confirm that the content of the report or the transcript correctly reflects the interview.

When the personal interview is recorded in accordance with paragraph 2 and the recording is admissible as evidence in the appeals procedures referred to in Chapter V, Member States need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. Without prejudice to Article 16, where Member States provide for both a transcript and a recording of the personal interview, Member States need not allow the applicant to make comments on and/or provide clarification of the transcript.

4. Where an applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in the applicant's file.

Such refusal shall not prevent the determining authority from taking a decision on the application.

5. Applicants and their legal advisers or other counsellors, as defined in Article 23, shall have access to the report or the transcript and, where applicable, the recording, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the personal interview, Member States need not provide access to the recording in the procedures at first instance referred to in Chapter III. In such cases, they shall nevertheless provide access to the recording in the appeals procedures referred to in Chapter V.

Without prejudice to paragraph 3 of this Article, where the application is examined in accordance with Article 31(8), Member States may provide that access to the report or the transcript, and where applicable, the recording, is granted at the same time as the decision is made.

Article 18

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/EU, 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.

Article 19
1. In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information — in addition to that given in accordance with Article 11(2) and Article 12(1)(f) — in order to clarify the reasons for such decision and explain how it can be challenged.
2. The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

Article 20
1. Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.
2. Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.
3. Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.
4. Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

Article 21
1. Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.
2. Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

a) only to those who lack sufficient resources; and/or
b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provided for under national law, including rehearings or reviews of appeals.
Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).
3. Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.
4. Member States may also:

a) impose monetary and/or time limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and representation;
b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

Article 23
1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised. In such cases, Member States shall:

a) make access to such information or sources available to the authorities referred to in Chapter V; and
b) establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU.

3. Member States shall allow an applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4. Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

Member States may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

Article 24

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.

2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive 2013/33/EU and need not take the form of an administrative procedure.

3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43

cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).
4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25
(...)
3. Member States shall ensure that:
- a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
- b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

4. Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.
5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.
Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.
(...)

Article 46
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;
  - II. considering an application to be inadmissible pursuant to Article 33(2);
  - III. taken at the border or in the transit zones of a Member State as described in Article 43(1);
  - IV. not to conduct an examination pursuant to Article 39;
- b) a refusal to reopen the examination of an application after its discontinuation pursuant to Articles 27 and 28;
- c) a decision to withdraw international protection pursuant to Article 45.

(...)

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/EU, at least in appeals procedures before a court or tribunal of first instance.

Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 6
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
(...)

Article 13
Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

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Article 31
1. An application to be granted a temporary residence permit in the sense of Article 28 shall be rejected as unfounded in the sense of Article 32(1) of the Procedures Directive if the alien has not demonstrated plausibly that his or her application is based on circumstances that, whether in themselves or in connection with other facts, form a legal basis for the permit to be granted.
2. The alien shall provide all elements to support his or her application as soon as possible. Our Minister shall assess the relevant elements in cooperation with the alien.
3. The elements referred to in paragraph two shall include the statements made by the alien and all relevant documentation in his or her possession.
4. In the assessment of the application, the following aspects, among others, shall be taken into account:

a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;
b) the statement made and documents submitted by the alien, together with information relating to the question of whether he has been or

could be subjected to persecution in the sense of the Convention Relating to the Status of Refugees or serious harm in the sense of Article 29(1)(b);

c) the individual position and personal circumstances of the alien, including factors such as background, gender and age, so as to assess whether, on the basis of the alien's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution in the sense of the Convention Relating to the Status of Refugees or serious harm in the sense of Article 29(1)(b);
d) the question of whether his or her activities since leaving the country of origin or a country of previous residence were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the alien to persecution in the sense of the Convention Relating to the Status of Refugees or serious harm in the sense of Article 29(1)(b), paragraph one, sub-section b, if returned to that country;
e) whether the alien could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

5. The fact that the alien has already been subjected to persecution, in the sense of the Convention relating to the Status of Refugees, or serious harm, in the sense of Article 29(1)(b), or to direct threats of such persecution or such harm, is a serious indication of the alien's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

6. In the event that the alien is unable to provide documentary evidence for his statements or for part of his statements, those statements shall be regarded as credible and the alien granted the benefit of the doubt, whenever the following conditions have been fulfilled:

a) the alien has made a genuine effort to substantiate his application;
b) all relevant elements at the alien's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
c) the alien's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the alien's application;
d) the alien has applied for international protection at the earliest possible time, unless he is able to demonstrate good reasons for not having done so; and
e) the overall credibility of the alien has been established.

7. An application will not be rejected on the basis of a previous negative decision, in the event that the elements stated by the alien in his application and any findings constitute grounds to assume that these take the form of specific facts and circumstances that relate to the individual case concerned and would prevent such rejection.

8. Rules may be imposed by, or by order of a General Government Decree, regarding the application of paragraphs one to seven inclusive.

Article 83
1. When assessing the appeal, the court shall take account of:
   a) facts and circumstances that have been submitted subsequent to the contested decision, and
   b) policy changes promulgated subsequent to the contested decision.

Article 83a
The review by the Court shall encompass a full and *ex nunc* examination of both facts and points of law, including, if applicable, an examination of the need for international protection.

Article 85
(...)
3. In the event that the stipulations in paragraphs one or two, in Article 6.5 of the General Administrative Law Act or any other legal requirement governing the admissibility of an appeal is not fulfilled, an appeal shall be declared inadmissible. Article 6:6 of the General Administrative Law Act shall not apply in the event that the requirements in Article 6:5(1)(c) and (d), or in the first and second paragraphs of this Article, have not been fulfilled.

Article 91
(...)
2. In the event that the administrative law division of the Council of State rules that a complaint submitted is insufficient to proceed with annulment, it shall restrict itself to this ruling when stating the grounds.

General Administrative Law Act

Article 8:69
1. The court shall give judgment on the basis of the notice of appeal, the documents lodged, the proceedings during the preliminary examination and the examination in court.
Article 8:72
(...)
3. The administrative court may direct that:
   (...)
   b) its judgment takes the place of the quashed order or the quashed part thereof.