



EASO Guidance on membership of a particular social group

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EASO

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About the guide

Why was this guide created? The mission of the European Asylum Support Office (EASO) is to support European Union Member States and Associated Countries (Member States) through common training, common quality standards and common country-of-origin information, among other things. According to its overall aim of supporting Member States in achieving common standards and high-quality processes within the Common European Asylum System (CEAS), EASO develops common practical tools and guidance.

The *EASO Practical Guide on Qualification for International Protection*, which was published in 2018⁽¹⁾, discusses the concept of membership of a particular social group in a concise manner. The purpose of this guidance is to provide further assistance in applying the reason for persecution of ‘membership of a particular social group’, and more generally in applying the same legal criteria and common standards when determining who qualifies for international protection. Guidance on the application of the other grounds for international protection is included in the *EASO Practical Guide on Qualification for International Protection*.

How was this guide developed? This guide was created by experts from across the EU, with valuable input from the European Commission and the United Nations High Commissioner for Refugees (UNHCR). The development was facilitated and coordinated by EASO. Before its finalisation, a consultation on the guide was carried out with all Member States through the EASO Asylum Processes Network.

Who should use this guide? This guide is primarily intended for asylum case officers, interviewers and decision-makers, as well as policy-makers in the national determining authorities. Additionally, this tool is useful for quality officers and legal advisers, as well as any other person working or involved in the field of international protection in the EU context.

How to use this guide. This guide is structured in three main parts; 1) the legal basis, 2) the legal analysis, which forms the core of this guide, and 3) the concrete application of the legal analysis on a number of commonly encountered profiles. At the end the guide includes a practical overview of the key points to remember, a summary of the most relevant judgment of EU courts in this field and legal reference. This guidance should be used in conjunction with *EASO Practical guide on Qualification for International Protection*.

It should be emphasised that this document does not provide country-specific guidance. For such guidance, concerning the applicability of the reason for persecution of ‘membership of a particular social group’ in the context of certain countries of origin, refer to the EASO country guidance: <https://www.easo.europa.eu/country-guidance>.

How does this guide relate to national legislation and practice? This is a soft convergence tool and it is not legally binding. It reflects commonly agreed standards and incorporates dedicated space for national variances in legislation, guidance and practice.

Each national authority can include relevant pieces of legislation and guidance in the designated spaces of the guide, in order to provide case officers with a one-stop guidance on qualification for international protection.

⁽¹⁾ EASO, *Practical guide on Qualification for International Protection*, 2018.

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List of abbreviations

APD	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)
CEAS	Common European Asylum System
EU	European Union
FGM	Female genital mutilation
LGBTI	Lesbian, gay, bisexual, transgender, intersex
Member States	Member States of the European Union and Associated Countries
OHCHR	Office of the High Commissioner for Human Rights
SOGI	Sexual orientation and gender identity
THB	Trafficking in human beings
QD	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 (recast)
Refugee Convention	The 1951 Convention relating to the status of refugees and its 1967 Protocol
UNHCR	United Nations High Commissioner for Refugees

Introduction

The 1951 Refugee Convention includes membership of a particular social group as one of the five grounds for a well-founded fear of persecution in the refugee definition⁽²⁾. It is a notion that is often debated and which is difficult to understand intuitively. The concept ‘Membership particular social group’ is not commonly used outside the context of the Refugee Convention. It mainly derives its meaning from the Refugee Convention.

Given its close link to the Refugee Convention, the context of a fear for persecution always needs to be kept in mind when discussing membership of a particular social group. While it makes perfect sense to write about political parties or ethnicities of a particular country as a topic by itself, outside the refugee context, it would not be meaningful to start listing particular social groups in a specific country of origin outside any context of a risk for persecution. Membership of a particular social group is not a stand-alone concept and should not be analysed in isolation.

The contextuality is also inherent to the notion of particular social groups itself. As pointed out in UNHCR’s Guidelines on international protection, there is no ‘closed list’ of particular social groups⁽³⁾. The concept needs to be understood in the context of the diverse and changing nature of groups in various societies. In the Qualification Directive⁽⁴⁾ the perception of the surrounding societies is as well a key element of the notion of particular social group.

It is therefore also not the aim of the present guidance to say as such which profile *is* or *is not* a particular social group, but to offer the legal analysis that needs to be carried out to assess if a specific profile should be considered as a particular social group in a given country of origin. This analysis always needs to be carried out in the context of the prevailing situation in the country of origin at hand.

Overall, the guidance aims at offering a common approach and a common language for the practical application of the concept of a particular social group in the context of the CEAS. In order to be as practical as possible, the guidance on the legal analysis is complemented with a section with a number of commonly encountered profiles to illustrate the practical application of this legal analysis. The guide concludes with an overview of the essential key considerations as points to remember and a summary of the most relevant judgements of EU courts.

⁽²⁾ *The 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol*, Article 1A2, published by UNHCR, December 2010.

⁽³⁾ UNHCR, *Guidelines on international protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, p. 2.

⁽⁴⁾ *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 (recast)*.

Legal basis of the concept of membership of a particular social group

This section provides reference to the current EU legislation concerning membership of a particular social group, and an overview of relevant case law of the Court of Justice of the European Union (CJEU). The interpretation of the concept of a ‘particular social group’ is prone to evolve with time⁽⁵⁾.

Qualification Directive

The Qualification Directive (QD) lays down the concept of ‘membership of a particular social group’ in Article 10(1)(d) as follows:

Article 10 Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution: (...)

(d) a group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

European Union case law

For the purposes of this guidance, the following CJEU case law is taken into consideration (see extracts of official summary of cases, page 30):

CJEU, *X, Y and Z* judgment, 7 November 2013⁽⁶⁾

The CJEU was addressed with a preliminary ruling from the Raad van State (Netherlands) concerning the assessment of applications for international protection based on sexual orientation.

The referring Court raised three questions: 1) whether homosexuals can constitute a particular social group (within the meaning of Article 10 QD); 2) how should it be assessed what constitutes an act of persecution concerning homosexual activities; 3) does the criminalisation of homosexual activities amount to persecution.

CJEU, *F* judgement, 25 January 2018⁽⁷⁾

The CJEU was asked by a Hungarian Court to give a preliminary ruling concerning the use of psychologists’ expert opinions to verify the credibility of the statements made by an applicant who invokes a fear of persecution for reasons relating to his sexual orientation.

⁽⁵⁾ UNHCR, *Guidelines on international protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, p. 2.

⁽⁶⁾ CJEU, judgment of 7 November 2013, *Minister voor Immigratie en Asiel v X and Y and Z*, Joined Cases C199/12 to C201/12, EU:C:2013:720.

⁽⁷⁾ CJEU, judgment of 25 January 2018, *F v Bevándorlási és Állampolgársági Hivatal*, Case C-473/16, EU:C:2018:36.

CJEU, *Ahmedbekova* judgment, 4 October 2018^(*)

The CJEU had been requested for a preliminary ruling by a Bulgarian Administrative Court concerning the interpretation of various provisions of the QD and the APD. The referring Court asked nine questions in its request. The seventh question asked whether the fact that an applicant has brought a complaint against his/her own State of origin before the European Court of Human Rights establishes that applicant's membership of a particular social group, or constitutes a political opinion, within the meaning of Article 10(1)(e) QD.

^(*) CJEU, judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Oglu Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, Case C-652/16, EU:C:2018:801.

Membership of a particular social group within the examination process

Membership of a particular social group is not a stand-alone concept, it cannot be analysed in isolation and must only be assessed in a context where a fear of persecution in the country of origin can be established.

The *EASO Practical guide on Qualification for international protection*^(*) presents the examination of an individual application for international protection as a step-by-step process, during which each element of the refugee definition is examined. The steps of the examination process are described below.

Step 1: Preliminary considerations

The applicant is a third country national or a stateless person and he/she is outside his/her country of nationality or, when stateless, of former habitual residence.

Step 2a: Persecution

The treatment feared by the applicant amounts to persecution, i.e. it is a sufficiently severe violation of human rights, or an accumulation of various measures which is sufficiently severe, taking the form mentioned inter alia in Article 9(2) QD.

Step 2b: Well-founded fear

The fear of persecution is well-founded.

Step 2c: Reason(s) for persecution

The persecution or the absence of protection against such acts is connected (at least in part) to one of the following (actual or imputed) reasons:

- Race
- Religion
- Nationality
- **Membership of a particular social group**
- Political opinion

Step 3: Subsidiary Protection

Eligibility for subsidiary protection is examined only when the applicant does not qualify for refugee status, i.e. if none of step 2a, 2b or 2c are met.

Step 4: Protection in the country of origin

There is no protection in the country of origin, or actors of protection are unable or unwilling to provide it; or protection is not effective or temporary, i.e. protection does not meet the criteria of Article 7 QD.

Step 5: Internal Protection Alternative

If applicable, in accordance with national legislation and practice, it is established that there is no internal protection alternative available to the applicant.

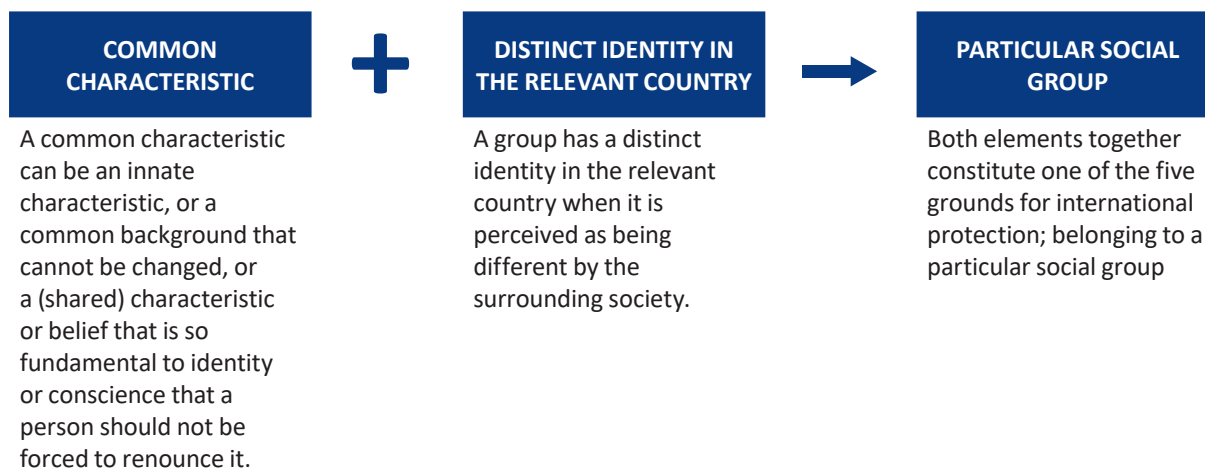
In principle, membership of a particular social group is analysed only in conjunction with the existence of a well-founded fear of persecution. The concept of membership of a particular social group should never be seen in isolation and can only lead to the recognition of a refugee status if there is also a well-founded fear for persecution, provided it is established that there is a connection between the fear and the reason for that fear.

^(*) EASO, *Practical guide on Qualification for International Protection*, 2018, p. 42.

Legal analysis

A) Cumulative approach

Article 10(1)(d) QD defines a particular social group by two **cumulative** elements:



The cumulative approach means that the two criteria outlined above, respectively ‘common characteristics’ and ‘distinct identity’, both need to be met. In other words, it is not sufficient to establish that the group share certain characteristics or background or beliefs, this must, at the level of the group, also be visible for others so that the group is identified as being different.

The cumulative approach was reaffirmed in the CJEU judgment of the case *X, Y and Z*⁽¹⁰⁾.

Extracts from the CJEU judgment in case *X, Y and Z*

‘According to that definition, a group is regarded as a ‘particular social group’ where, inter alia, two conditions are met.

First, members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.

Second, that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society’.
(para. 45)

Note on UNHCR’s approach

In this context it has to be noted that unlike what is provided in the QD, UNHCR does not apply a ‘cumulative approach’. UNHCR lays down the concept of particular social group as follows:

‘A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights’.⁽¹¹⁾

National practices on cumulative approach

To be filled by Member State

⁽¹⁰⁾ CJEU, judgment of 7 November 2013, *X, Y and Z*, joined cases C199/12 and C201/12, EU:C:2013:720, para. 45.

⁽¹¹⁾ UNHCR, *Guidelines on international protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, p. 3.

B) Common characteristic



This section will focus on the first set of requirements in Article 10(1)(d) QD relating to a **shared characteristic, background or belief**.



Innate characteristics: an innate characteristic can be defined as a characteristic that is inherent, intrinsic or usually referring to a characteristic with which the person is born. It should, however, be noted that this characteristic does not need to be immutable (i.e. fixed or permanent) or unchangeable.

Common background: a common background can be established with regard to significant past experiences that are shared with others, or to hereditary status, social or educational background, etc.

Characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it: these are typically characteristics related to a fundamental human right. A person cannot be forced to renounce it, nor should they be expected to conceal or exercise reserve in the expression of this characteristic or belief⁽¹²⁾. UNHCR states: 'The definition of particular social group includes (...) those [characteristics] which, though it is possible to change them, ought not to be required to be changed because they are so closely linked to the identity of the person or are an expression of fundamental human rights.'⁽¹³⁾

It should be noted that the three aspects of common characteristics above are complementary to each other and that the distinction is not always clear-cut. The three aspects reflect one common underlying idea. The same profile can be placed under more than one 'category' of common characteristic, depending on the national decision-making practice. For example, 'age' can be placed under 'innate characteristic' according to some or under 'common background that cannot be changed' according to others. When a characteristic can be placed under any of the three categories, the discussion on which of the three is the most appropriate is not crucial. It has no effect on the outcome. It is important to always check all the categories before deciding whether the criterion of common characteristic is met.

Below you will find a non-exhaustive list of examples of frequently encountered common characteristics. It has to be kept in mind that common characteristics do not establish particular social groups by themselves when not complemented by an analysis of the distinct identity of the group in a particular country of origin.

- Biological sex and gender: sex and gender can be seen as innate characteristics, even when one's sex and gender are not immutable and can change. However, in practice the criterion of 'distinct identity' will, in most of countries of origin, only be substantiated if it is combined with more characteristics relevant for the surrounding society to perceive a particular group as different.
- Congenital conditions: congenital conditions, such as albinism, for example, could also be considered to be innate.

⁽¹²⁾ CJEU, judgment of 7 November 2013, *X, Y and Z*, joined cases C199/12 and C201/12, EU:C:2013:720.

⁽¹³⁾ UNHCR, *Guidelines on international protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, p. 3.

- Disabilities⁽¹⁴⁾: certain mental and physical disabilities could constitute an innate characteristic. Persons who are born blind, deaf, or who have certain developmental disorders, could be some examples. Persons living with other disabilities could be understood to share a common background that cannot be changed. In particular, disabilities caused by a war or its remnants could also fall within this category.
- Transgression of moral codes and contravention of prevailing norms: certain acts of transgression of moral codes, such as adultery, could also constitute a common background that cannot be changed. Moreover, in some cases, contravening social norms could be related to a belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. Parents refusing to have their child undergo female genital mutilation (FGM), or women refusing to take a subordinate role to their husbands, could be relevant examples.
- Sexual orientation and gender identity can be regarded as characteristics so fundamental to identity or conscience that a person should not be forced to renounce them.
- Serious conditions and illnesses: some conditions and serious illnesses, such as HIV/AIDS for example, could be considered a common background that cannot be changed.
- Kinship ties: This could be seen as an innate characteristic (e.g. family you are born into) or common background which cannot be changed (e.g. due to marriage).

The common characteristic cannot be exclusively limited to sharing a common fear of persecution.

It should be noted that the common characteristic cannot be solely the fear of persecution itself. Common characteristic should exist independently from a fear of persecution. Persecutory conduct cannot define the social group. Otherwise, any individual having a well-founded fear of persecution would constitute a particular social group and thus qualify for refugee status. The other reasons for persecution (race, religion, nationality and political opinion) would then be deprived of all meaningful content, as the mere fact of having a well-founded fear would be sufficient to be granted refugee status.

UNHCR guidelines also highlight the importance of this principle, as it defines a particular social group as '(...) a group of persons who share a **common characteristic other than their risk of being persecuted**'⁽¹⁵⁾.

National guidance on the application of the 'common characteristic' condition
<p><i>To be filled by Member State</i></p>

⁽¹⁴⁾ 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others', United Nations General Assembly, [Convention on the Rights of Persons with Disabilities](#), 13 December 2006, Article 1.

⁽¹⁵⁾ UNHCR, *Guidelines on international protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, point 11.

C) Distinct identity



Once the ‘common characteristic’ requirement is fulfilled, the next question is whether the group has a **distinct identity in the relevant country, because it is perceived as being different by the surrounding society**.

Defining ‘identity’ is difficult, since different theories can be made on how to contemplate the notion of ‘identity’. However, the QD provides clear guidance on how to establish the existence of a distinct identity in the context of membership of a particular social group: a particular social group has a distinct identity in the relevant country because it is perceived as different by the surrounding society.

1) Distinct identity needs to be analysed according to the conditions prevailing in the country of origin

Article 10 (1)(d) QD states that the group ‘has a distinct identity **in the relevant country**, because it is perceived as being different by the surrounding society’.

The distinct identity depends on the specific context prevailing in a given country of origin. A group can be perceived as being different (within the meaning of the QD) in one country but not in another.

Therefore, it is not possible to conclude that a certain profile constitutes a particular social group by definition or from an abstract point of view. The existence of a distinct identity should always be assessed in light of the national context in the country of origin.

Assessing the existence of a particular social group in a certain country requires therefore **relevant and up-to-date country of origin information**.

It should also be noted that the groups do not need to have a distinct identity with regard to the whole country of origin, and the existence of a particular social group in this sense may be limited to certain regions from where the applicant originates.⁽¹⁶⁾

2) Being perceived as different by the surrounding society

At this stage, the key question for a case officer is to determine **whether the concerned group is perceived as being different by the surrounding society**.

When examining whether a group is perceived by the surrounding society (in the country of origin) as being different, several indicators can be used. The two indicators described below are not necessary in themselves for the identification of a social group, and **as such are not prerequisites for establishing a distinct identity; they are provided as examples** of indicators that may be helpful in specific circumstances for the identification of a social group.

The perception of the surrounding society does not necessarily need to refer to the society of the country of origin as a whole. The perception of being different should neither be understood as something necessarily negative. For example, a privileged social class may be perceived as being different by the surrounding society.

a) Stigmatised or singled-out by laws

In the *X, Y and Z* case, the CJEU ruled that the existence of criminal laws targeting a specific group (in that case, homosexuals) supports a finding that the group is perceived as being different by the surrounding society and thus, that it has a distinct identity in the relevant country.

⁽¹⁶⁾ This is without prejudice to the examination of internal protection alternative, which is conducted in the context of the risk assessment.

Extracts from CJEU judgment in case X, Y and Z⁽¹⁷⁾

‘In that connection, it should be acknowledged that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports a finding that those persons form a separate group which is perceived by the surrounding society as being different’.
(para. 48)

‘Therefore, the answer to the first question referred in each of the cases in the main proceedings is that Article 10(1)(d) of the Directive must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group’.
(para. 49)

The existence of criminal laws that target a specific group, or laws that are discriminatory against certain groups, may support a finding that those groups are perceived as being different by the surrounding society.

b) Stigmatised or seen as standing out by society

As a social group is related to a surrounding society, it is important to understand how the society operates and treats groups differently.

This can become apparent through acts or beliefs of discrimination or ostracism or granting privileges to certain groups.

Discrimination or ostracism may consist of, amongst others, restricted access to jobs, housing, medical treatment or education. Particular social groups can be considered as pariah groups or as standing apart from the rest of society or the population in the country of origin or specific area(s) in the country of origin.

Certain traditions and customs, or religious or political beliefs may also stigmatise certain groups.

In countries or regions where the prevalence rate of FGM is high, women and girls of a certain age who have not undergone FGM may be perceived as different by the surrounding society, and thus have a distinct identity.

⁽¹⁷⁾ CJEU, judgment of 7 November 2013, *X, Y and Z*, joined cases C199/12 and C201/12, EU:C:2013:720, paras. 48 and 49.

D) Membership

According to the QD, the distinct identity as well as the perception of being different refers to the group as a whole. The surrounding society should have some general awareness that a particular social group exists among society and perceives its members differently.

Individually, a member of a particular social group can be ‘invisible’ or ‘unnoticeable’ by the surrounding society, but the mere fact of sharing the common characteristics of that particular social group makes him or her a member of that group. For example, one's sexual orientation may not be visible to the surrounding society if the applicant does not talk about it openly.

The existence of a **particular social group** is not based nor dependent on activities or actions conducted by its members. A particular social group may and often exists without any inherent activity attached to it.

Cohesiveness among members of the group is not a requirement. Members of a particular social group do not need to know each other, nor do they need to be connected in any way. The relevant criterion is that members share a common characteristic, but it is not required that they have any kind of relationship with one another.

Concealment or reserve/restraint. In the *X, Y and Z* case, the CJEU ruled that applicants should not be expected to conceal a characteristic that is so fundamental to their identity that they cannot be required to renounce it. Moreover, the Court specified that an applicant cannot be reasonably expected to exercise reserve in the expression of sexual orientation. The fact that they could avoid a risk of persecution by exercising greater restraint than a heterosexual in expressing sexual orientation is not to be taken into account in that respect.

Extracts from CJEU judgment in case *X, Y and Z* ⁽¹⁸⁾

‘As far as concerns the first of those conditions, it is common ground that a person’s sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. (...)’
(para. 46)

‘In that connection, it is important to state that requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person’s identity that the persons concerned cannot be required to renounce it’.
(para. 70)

‘The fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect.’
(para. 75)

‘When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.’
(para. 76)

The size of a group, i.e. the number of members or persons composing the group, is not relevant when assessing the existence of a particular social group.

Indeed, a particular social group can be composed of a very small number of persons (e.g. persons with a rare disease/disability), or on the contrary of a higher number of persons (e.g. LGBTI persons in an entire country). It is worth recalling that other reasons for persecution (race, religion, nationality and political opinion) may also encompass a very high or very low number of persons. Moreover, there are numerous well-documented historical examples of dominant minority groups persecuting a majority for reasons of a Convention ground.

The word ‘particular’, in the term ‘particular social group’ refers to the fact that the group is ‘identifiable’. It is not understood to relate to the size of the group⁽¹⁹⁾.

⁽¹⁸⁾ CJEU, judgment of 7 November 2013, *X, Y and Z*, joined cases C199/12 and C201/12, EU:C:2013:720, paras. 46, 70, 75 and 76.

⁽¹⁹⁾ UNHCR, *Guidelines on international protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, pt. 18.

Conclusion on the existence of a particular social group

The fulfilment of the common characteristic criterion and of the distinct identity criterion leads to the conclusion that the applicant belongs to a particular social group, thereby establishing the existence of one of the five grounds for persecution within the refugee definition.

National guidance on the application of the 'distinct identity' condition

To be filled by Member State



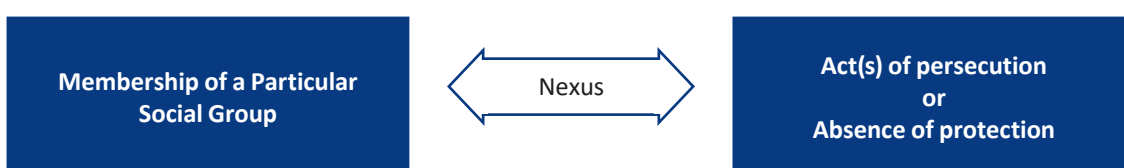
E) Nexus (for reasons of)

The mere fact of being a member of a particular social group is not sufficient to qualify for refugee status. Once the applicant's membership of a particular social group has been established, the next step is to examine the existence of a nexus between the applicant's membership and the applicant's fear of persecution, or absence of protection.

The **nexus (for reasons of)** is the causal link between:

- membership of a particular social group and the well-founded fear of persecution;
- or
- membership of a particular social group and the absence of an effective and non-temporary protection against an act of persecution as per Article 7(2) QD, and in particular the unwillingness of the actors of protection to provide protection against the feared persecutions, where the act of persecution itself is not linked to a reason for persecution.

The nexus between the membership of a particular social group and the fear of persecution coming from either the act(s) of persecution or absence of protection is essential.



Example of unwillingness to provide protection: a homosexual man is the victim of criminal acts, which are not for reasons of his sexual orientation or another Convention ground; but the competent authorities refuse to investigate the crimes or, where necessary, provide physical protection to him because of his sexual orientation.

F) Specific considerations

a. Plurality of motives

The plurality of motives refers to the situation in which an act of persecution is committed for more than one motive, not all of which are reasons for persecution. The presence of at least one reason for persecution, as an effective contributing factor among the other motives, is sufficient to apply the refugee definition.

b. Plurality of reasons for persecution

Depending on the circumstances of an individual case, one or more reasons for persecution may overlap or may be equally applicable. In addition to membership of a particular social group, other reasons for persecution (race, religion, nationality, political opinion) may be applicable to one and the same act of persecution. The case officer should therefore always remain attentive to the existence of other grounds for persecution. As a tip, when an act of persecution can clearly be linked to one of the other convention grounds, there is no need to conduct an additional analysis of the application of the criteria of membership of a particular social group.

c. Individual assessment

It should be noted that when establishing a well-founded fear of persecution, it is not a requirement that every member of the particular social group be at risk of persecution. As with the other reasons for persecution, not all members of a particular social group will necessarily qualify for refugee status.

A member of a particular social group may have a well-founded fear of persecution based on their membership, while another member of the same group may not have any fear of persecution. Likewise, there could be personal circumstances under which a member of a particular social group enjoys protection while other members of the same particular social group do not.

Application of the analysis on membership of a particular social group

This section is intended to illustrate the application of the principles described in the previous sections of the guidance. The profiles detailed in this section have been chosen to show how the analysis can be carried out in practice. They are **not examples of particular social groups as such**. As stated above, particular social groups should always be established in light of the individual characteristics and the specific context in the country of origin.

When assessing if an individual belongs to a particular social group it is particularly important for the decision-maker to **refrain from relying on stereotyped concepts and culturally biased generalisations or assumptions**, particularly in relation to the presence or absence of certain visible characteristics.⁽²⁰⁾

A) Profiles related to sexual orientation and gender identity

Sexual Orientation and Gender Identity (SOGI) are explicitly mentioned in the second subparagraph of Article 10 (1)(d) QD.

Article 10 (1)(d) Reasons for persecution

(...)

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

Common characteristic

In the *X, Y and Z* case, the CJEU considered that sexual orientation is a characteristic so fundamental to identity that one should not be forced to renounce it:

Extracts from the CJEU judgment in case *X, Y and Z* ⁽²¹⁾

‘As far as concerns the first of those conditions, it is common ground that a person’s sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. That interpretation is supported by the second subparagraph of Article 10(1)(d) of the Directive, from which it appears that, according to the conditions prevailing in the country of origin, a specific social group may be a group whose members have sexual orientation as the shared characteristic.’
(para. 46)

Moreover, the Court ruled that an applicant should not be expected to conceal, in order to avoid persecution, a characteristic that is so fundamental to his/her identity that he/she cannot be required to renounce it. The Court specified that an applicant cannot be reasonably expected to exercise reserve (in the expression of his sexual orientation) and that the fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect.

⁽²⁰⁾ UNHCR, *UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, p. 12.

⁽²¹⁾ CJEU, judgment of 7 November 2013, *X, Y and Z*, joined cases C199/12 and C201/12, EU:C:2013:720, para. 46.

Extract from the CJEU judgment in case *X, Y and Z* ⁽²²⁾

‘In that connection, it is important to state that requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person’s identity that the persons concerned cannot be required to renounce it’.

(para. 70)

‘Therefore, an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution’.

(para. 71)

As mentioned above, the distinction between the different types of common characteristics (innate characteristic, common background, or characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it) are complementary and not always clear-cut. Some may for example consider sexual orientation as an innate characteristic. This illustrates how the common characteristic can be substantiated by different argumentations⁽²³⁾.

Distinct identity

As SOGI is a common characteristic, the second question in order to establish whether the individual in question belongs to a particular social group is whether the group has a distinct identity based on this common characteristic, i.e. is this group perceived as being different by the surrounding society because of their sexual orientation and/or gender identity?

The relevant question for a case officer is how the perception of being different manifests itself. In the *X, Y and Z* case, the Court gives importance to the existence of criminal laws specifically targeting homosexuals. This can support a finding that homosexuals form a distinct group, which is perceived by the surrounding society as being different.

Extracts from the CJEU judgment in case *X, Y and Z* ⁽²⁴⁾

‘In that connection, it should be acknowledged that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports a finding that those persons form a separate group which is perceived by the surrounding society as being different.’

(para 48)

‘Therefore, the answer to the first question referred in each of the cases in the main proceedings is that Article 10(1)(d) of the Directive must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.’

(para 49)

The stigmatisation of persons due to their SOGI may result from criminal or discriminatory laws or policies, from unofficial state practices, but also from the surrounding society itself. The existence of a criminal law is not a requirement to establish a distinct identity related to SOGI.

In countries in which there are no laws criminalising or discriminating persons due to their SOGI, LGBTI persons may nevertheless have a distinct identity, if for example a culture of intolerance prevails in the surrounding society.

If the common characteristic and the distinct identity criteria are met, it can be concluded that the existence of a particular social group can be established in the context of a certain country of origin or part thereof.

Nexus

Merely establishing an applicant’s membership of a particular social group in their country of origin is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant’s membership to the particular social group and a well-founded fear of persecution, or absence of protection against such persecution.

⁽²²⁾ CJEU, judgment of 7 November 2013, *X, Y and Z*, joined cases C199/12 and C201/12, EU:C:2013:720, paras. 70 and 71.

⁽²³⁾ UNHCR, *Guidelines on International Protection: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, para. 47.

⁽²⁴⁾ CJEU, judgment of 7 November 2013, *X, Y and Z*, joined cases C199/12 and C201/12, EU:C:2013:720, paras. 48 and 49.

Reasons for the persecution can be based on a plurality of motives (see page 18) whereby for example the act of persecution is motivated by criminal reasons, as well as by the victim's membership of a particular group (e.g. extortion of LGBTI persons for financial gain).

In situations where a culture of intolerance prevails, the actor of persecution is often a non-State actor, where the actors of protection might be unable or unwilling to provide protection; or the protection offered is not effective and of a temporary nature.

National practices on particular social groups based on SOGI
<p><i>To be filled by Member State</i></p>

B) Gender

Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another⁽²⁵⁾.

Recital 30 QD

It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'. For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution.

Article 10 (1)(d) QD second subparagraph

(...)

Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

Article 9(2)(f) QD Reasons for persecution

Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

[...] acts of a gender-specific or child-specific nature.

In some societies, there are laws that are discriminatory against women due to their gender alone, or societal practices which discriminate against women. The existence of a discriminatory law or practice does not necessarily establish in itself a particular social group, but it forms an indication which needs to be further assessed in the context of the country of origin; how essential is the law for the perception of the surrounding society on different identity, how is it being applied and how does it affect women differently. Often other characteristics will be needed to establish the criterion of 'distinct identity' such as a region of origin, ethnicity and/or social situation.

Below is a list of commonly encountered examples of particular groups of women who could be seen as a particular social group in a specific country of origin. It should be reiterated that these examples do not apply to every country and society, and that the existence of a particular social group should always be assessed in light of the situation in the specific country of origin.

- **Women and girls who refuse to undergo FGM.** This profile is further detailed below.
- **Women who have been victims of rape or other forms of sexual violence** and who face stigmatisation by the surrounding society.
- **Women who were formerly prostitutes** and who face ostracism or other forms of discrimination, punishment or ill-treatment.

⁽²⁵⁾ UNHCR, *Guidelines on International Protection: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, para. 47.

- **Women who are survivors of human trafficking** and who are ostracised by their family and society in general (refer to profile D below).
- **Women transgressing social mores**, e.g. women who, based on a deeply-rooted conviction, refuse to follow traditional cultural norms related to the 'expected' role of a woman in the family

National practices on particular social groups based on gender
<p><i>To be filled by Member State</i></p>

Female genital mutilation

The World Health Organization defines female genital mutilation (FGM) as all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons⁽²⁶⁾.

FGM is a harmful traditional practice and is considered as a human rights violation of girls and women⁽²⁷⁾.

As cited above, recital 30 QD refers explicitly to 'certain legal traditions and customs, resulting in for example genital mutilation', which should be given due consideration during the assessment of an application.

Common characteristic

Depending on the context in the concerned country of origin, a particular social group could be formed of women and girls who share the common characteristic of not having undergone FGM in line with the local traditional practices and/or continue to refuse to undergo it. The group could be based on an innate characteristics (age, gender, ethnicity) as well as common background (not having undergone FGM), and/or a characteristic or belief that is fundamental to one's identity or conscience.

It can also include women and girls who have already undergone a type of FGM but who nevertheless still face a risk of undergoing an additional type of FGM⁽²⁸⁾

Distinct identity

In order to determine whether the above-mentioned group (i.e. women and girls who have not undergone FGM in line with local traditional practices) may constitute a particular social group, it also has to be assessed it has a distinct identity in the relevant country of origin, i.e. whether it is perceived as being different by the surrounding society.

In countries (or areas) where FGM is a prevalent practice, women and girls with intact genitalia (or who are not 'sufficiently' cut according to local practices) might be considered as different from females who have undergone this practice.

The distinct identity of these women and girls could be demonstrated by the fact that they are socially ostracised. Such ostracism can result from the fact that they are perceived as 'unclean' or 'morally questionable' by their local community. This could be demonstrated by the fact that men in this society refuse/have refused to marry women who have not undergone FGM, for example.

Moreover, women and girls who are opposed to FGM, who refuse to follow this harmful traditional practice could also be seen as transgressing social mores and therefore be stigmatised and discriminated by the surrounding society. This could apply as well to men who are opposed to FGM for their daughters.

⁽²⁶⁾ WHO, *Classification of female genital mutilation*, 2007.

⁽²⁷⁾ WHO, *Eliminating Female genital mutilation - An interagency statement OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO*, p. 8.

⁽²⁸⁾ UNHCR, *Guidance Note on refugee claims relating to female genital mutilation*, May 2009, p. 5, pt. 6.

Nexus

Establishing an applicant's membership of a particular social group (in the present case, it could be 'girls or women who have not undergone FGM and/or refuse to undergo it, in country X'), is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of the particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

In this case, where the form of persecution feared is of being subjected to FGM, a causal link between the act of persecution and the ground will be easy to establish. Moreover, other risks of persecution, such as severe forms of discrimination or ostracism, may also exist.

National practices on particular social groups based on FGM
<i>To be filled by Member State</i>

C) Children

According to the CRC, a child is any human being below the age of 18.

According to recital 28 QD:

It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution. See also Article 9(2)(f) QD, according to which: Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of: [...] acts of a gender-specific or child-specific nature.

The situation of children can be largely impacted by their actual age (very young children) and by the lack of social networks. These are factors that always need to be taken into account when determining a particular social group involving children.

Below is a list of commonly encountered examples of groups of children who could be seen as a particular social group in a specific country of origin. It should be reiterated that these examples do not apply to every country and society, and that the existence of a particular social group should be assessed in light of the situation in the specific country of origin or part thereof

- **Girls with intact genitalia who refuse to undergo FGM** (see profile above).
- **Children who refuse to follow traditional cultural norms who are perceived to be different by the surrounding society**, e.g. girls who study or go to school in cultures where access to education is reserved for boys, children who refuse forced marriage.
- **Victims of child trafficking who are ostracised** (refer to point D below). Children are particularly vulnerable to trafficking, including for sexual exploitation, marriage, domestic work, modern slavery, begging, illegal adoption, criminal activities.
- **Children accused of witchcraft**

National practices on particular social groups based or related to childhood
<i>To be filled by Member State</i>

D) Victims of trafficking in human beings

The EU Directive 2011/36/EU⁽²⁹⁾ provides a definition of trafficking in human beings (THB).

Directive 2011/36/EU - 5 April 2011 on preventing and combating trafficking in human beings and protecting its victim

Article 2

1. The recruitment, transportation, transfer, harbouring or receipt of persons, including exchange or transfer of control over that person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
 2. A position of vulnerability occurs when the person has no real or acceptable alternative but to submit to the abuse involved.
 3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities or the removal of organs.
- (...)

THB cases may cover a variety of situations, such as:

- victims who have **been trafficked in their country of origin and who fled** to the country of asylum to apply for international protection;
- victims who have been **trafficked outside their country of origin**, whether in a third country (e.g. transit country) or in the country of asylum, and who apply for international protection;
- individuals who have never been trafficked but who **fear of being trafficked** in their country of origin, and who fled the country of asylum to apply for international protection.

This section focuses on particular social groups constituted of former victims of THB. It does not cover the case of individuals who have never been trafficked, and who are exposed to the risk of being trafficked due to their membership to a particular social group.

Common characteristic

Former victims of trafficking can be considered as a group of persons who share the common past experience of having been trafficked, which can be seen as a ‘common background that cannot be changed’.

Distinct identity

In order to establish the existence of a particular social group, it has to be examined whether the group defined by a shared common characteristic has a distinct identity in the relevant country of origin.

The fact of being stigmatised, alienated or discriminated against in their country or area of origin, can be an indication that victims of THB are perceived as being different by the surrounding society, and thus that the distinct identity criterion of Article 10(1)(d) QD is met. The perception will often depend on the type of exploitation that the victim has undergone. Victims of labour exploitation or organ theft for example may be viewed differently than victims of sexual exploitation.

Nexus

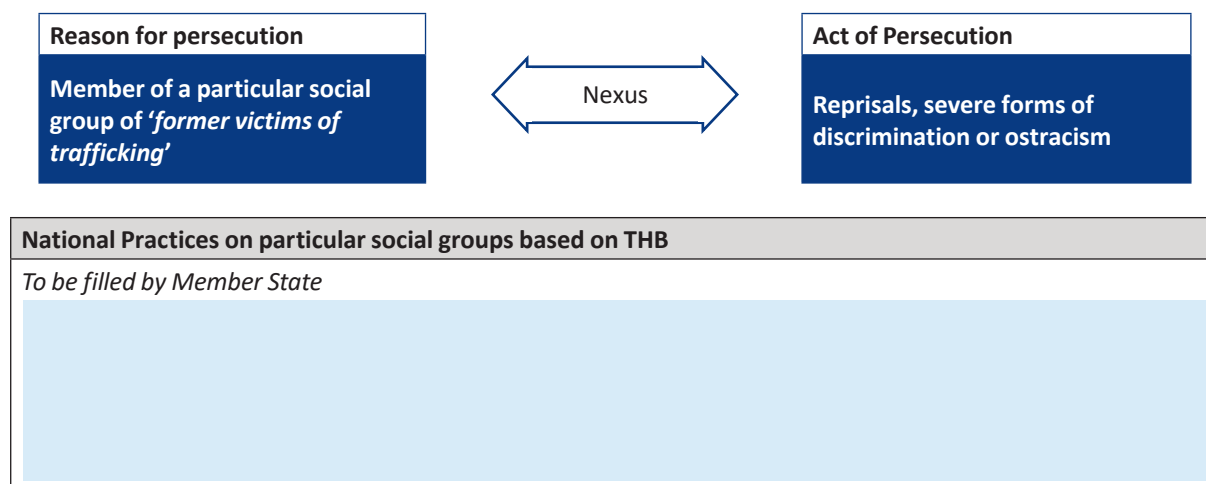
Establishing an applicant’s membership of a particular social group (in the present case it could be ‘former victims of THB’), is not sufficient to qualify for refugee status.

⁽²⁹⁾ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on *preventing and combating trafficking in human beings and protecting its victims*, and replacing Council Framework Decision 2002/629/JHA.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of the particular social group of 'former victims of THB' and a well-founded fear of persecution, or an absence of protection against such persecution.

As a member of a particular social group of 'former victims of THB', an applicant can be exposed to a variety of acts of persecution, such as reprisals, severe forms of discrimination or ostracism.

In the latter case, the situation would be as described as below:



E) Persons living with disabilities and illness

In this section, different profiles can be explored, e.g. persons born with a disability or congenital disorder, persons who acquired a disability due to war, its aftermath or an accident, or persons suffering from serious illnesses.

Common characteristics

Persons living with a disease, a disability or a genetic disorder may be considered alternatively as sharing an innate characteristic or a common background that cannot be changed, depending on their individual circumstances.

Distinct identity

Discrimination and stigmatisation of persons living with disabilities or certain illnesses can take different forms, and result from laws, customs, traditions or myths. Depending on personal circumstances, discrimination may apply to all areas of social life, including access to education, employment or health, and more generally to the exercise of a wide range of civic, political, economic, social and cultural rights.

Nexus

Establishing an applicant's membership of a particular social group (in the present case it could be 'persons living with (name of the disability or illness)'), is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

In some cases, persons living with disabilities or suffering from particular physical or mental medical conditions may be at risk of serious human rights violations and thus may have a well-founded fear of killing, torture or inhuman or degrading treatment or punishment. Depending on the context in the country of origin and on individual circumstances, severe discrimination and stigmatisation against persons living with disabilities or illnesses may also amount to persecution within the meaning of Article 9 QD.

As with all the profiles and examples mentioned in this guidance, the profiles below are intended to illustrate the application of the principles described in the previous sections. They are not to be considered as particular social groups in abstract terms, as the existence of particular social groups can only be established in light of the specific context in the country of origin.

Persons living with a disability

Persons living with a disability include those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others⁽³⁰⁾.

Common characteristic

Depending on personal circumstances, persons living with disabilities can be considered as either sharing an innate characteristic, or as sharing a common background that cannot be changed.

Distinct identity

Depending on the specific context in the country of origin and on personal circumstances, persons living with a disability may face discrimination and stigmatisation in many areas of life. Such discrimination and stigmatisation against persons with certain disabilities may indicate that these persons are perceived as being different by the surrounding society and thus, that they have a distinct identity in their country of origin⁽³¹⁾.

Nexus

Establishing an applicant's membership of a particular social group (in the present case it could be 'persons living with (name of the disability)', is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

Depending on conditions prevailing in the country of origin and on individual circumstances, members of a particular social group of 'persons living with a disability' can be exposed to a variety of acts of persecution, including severe violations of human rights.

The case may also be that discrimination and stigmatisation against persons living with a disability amount to persecution within the meaning of Article 9 QD.

Persons living with albinism

Albinism is a rare, non-contagious, genetically inherited condition that affects people worldwide regardless of ethnicity or gender. It is a result of a significant deficit in the production of melanin and is characterised by the partial or complete absence of pigment in the skin, hair and eyes⁽³²⁾.

Common characteristic

Persons living with albinism can be considered as sharing an innate characteristic.

Distinct identity

Depending on the context in the country of origin, persons living with albinism may face numerous forms of discriminations, due to laws, traditions, customs or prevailing myths⁽³³⁾.

These types of discrimination may support a finding that persons living with albinism are perceived as different by the surrounding society, and thus that they have a distinct identity in those particular countries where such discrimination exist.

⁽³⁰⁾ UN, *The Convention on the Rights of Persons with Disabilities and Optional Protocol*, Article 1.

⁽³¹⁾ UN, *Report of the Office of the United Nations High Commissioner for Human Rights - Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities*, 9 December 2016, p. 4, pt. 6.

⁽³²⁾ OHCHR, *Report of the Independent Expert on the enjoyment of human rights by persons with albinism*, 18 January 2016, p. 5, pt. 12.

⁽³³⁾ OHCHR, *Report of the Independent Expert on the enjoyment of human rights by persons with albinism*, 18 January 2016, p. 6, pts. 14 and 16.

Nexus

Establishing an applicant's membership of a particular social group (in the present case it could be 'persons living with albinism'), is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

Depending on the context in the country of origin and on individual circumstances, persons living with albinism may face the risk of serious human rights violations, including killing, torture or inhuman or degrading treatment.

Severe discrimination and stigmatisation against persons living with albinism may also amount to persecution within the meaning of Article 9 QD.

National practices
<i>To be filled by Member State</i>


Key points to remember

Throughout the guide there are seven general considerations that recur. They have been listed here as key points to remember. These considerations are listed here as they should always be borne in mind when dealing with the concept of membership of a particular social group.

Membership of a particular social group is in itself not sufficient to qualify for refugee status. The other elements of the refugee definition also need to be met, including the existence of a well-founded fear of persecution and its nexus to the particular ground.

- Merely establishing an applicant's membership to a particular social group is not sufficient for them to qualify for refugee status. Indeed, the other inclusion criteria of the refugee definition also need to be met. In particular, the applicant must have a well-founded fear of persecution and there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and the persecution (or the absence of protection against such persecution) and it has to be established that there is no protection available in the country of origin.
- In the context of an assessment of an application for international protection, membership of a particular social group is only discussed in conjunction with a fear for persecution. Membership of a particular social group is not a stand-alone concept. It must only be assessed in a context where a fear of persecution in the country of origin can be established.
- For more information, see pages 8-9 and 18-19.

A particular social group is composed of members who share a common characteristic other than the mere fact of fearing persecution.

- As much as membership of a particular social group should not be assessed outside the context of a fear for persecution, a shared fear of persecution is not, in itself, sufficient to conclude on the existence of a particular social group. In other words, a group cannot exist solely on account of the fact that it is at risk of being persecuted.
- For more information, see page 13.

The existence of a particular social group always has to be analysed according to the conditions prevailing in the country of origin and with regards to the surrounding society.

- The existence of a particular social group is dependent on the national context in the country of origin. In particular, the distinct identity has to be established in relation to the respective country, where the group should be 'perceived as being different by the surrounding society'.
- It is therefore impossible to state or identify a list of profiles that would constitute particular social groups in abstract terms, that would be valid regardless of the country of origin. All examples given in this guidance are merely intended to illustrate the underlying legal analysis.
- For more information, see page 14.

The definition of 'membership of a particular social group' follows a cumulative approach.

- Article 10(1)(d) QD provides that, for membership of a particular social group to be established, the two conditions need to be satisfied cumulatively: common characteristics and perceived distinct identity.
- For more information, see page 11.

The size of the group is not relevant.

- Where possible, it may be preferable to define more specific groups. However, the actual size of the population included in a particular social group, as for the other reasons for persecution, is not of relevance to establishing its existence.
- For more information, see page 16.

Cohesiveness of the group is as such not required.

- Cohesiveness among members of the group is not a requirement. Members of the group do not need to know each other, nor do they need to be connected in any way.
- For more information, see page 16.

Not all members of the group need to be at risk of being persecuted.

- It is not necessary for all members of the group to have been singled out for persecution.
- For more information, see page 18.

EU Case Law

Below is the CJEU case law that is taken into consideration for the purposes of this guidance:

CJEU summary of the judgment in case *X, Y and Z v Minister voor Immigratie en Asiel* (Extracts) ⁽³⁴⁾

1. Article 10(1)(d) of Directive 2004/83 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that the existence of criminal laws which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.

Article 10(1) of the directive, which defines what constitutes a particular social group, membership of which may give rise to a genuine fear of persecution, requires, inter alia, that two cumulative conditions be satisfied. First, members of that group must share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. Second, that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.

As far as concerns the first of those conditions, it is common ground that a person's sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. That interpretation is supported by the second subparagraph of Article 10(1)(d) of Directive 2004/83, from which it appears that, according to the conditions prevailing in the country of origin, a specific social group may be a group whose members have sexual orientation as the shared characteristic. The second condition assumes that, in the country of origin concerned, the group whose members share the same sexual orientation has a distinct identity because it is perceived by the surrounding society as being different. (paras 44-47, 49, operative part 1)

2. Article 9(1) of Directive 2004/83 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the mere fact that homosexual acts are criminalised does not, in itself constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.

Where an applicant for asylum relies on the existence in his country of origin on legislation criminalising homosexual acts, it is for the national authorities to undertake, in the course of their assessments of the facts and circumstances under Article 4 of Directive 2004/83, an examination of all the relevant facts concerning that country of origin, including its laws and regulations and the manner in which they are applied, as provided for in Article 4(3)(a) of that directive. In undertaking that assessment it is, in particular, for those authorities to determine whether, in the applicant's country of origin, the term of imprisonment provided for by such legislation is applied in practice. It is in the light of that information that the national authorities must decide whether it must be held that in fact the applicant has a well-founded fear of being persecuted on return to his country of origin.

(paras. 58-61, operative part 2)

3. Article 10(1)(d) of Directive 2004/83 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, read together with Article 2(c) thereof, must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member State are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.

⁽³⁴⁾ CJEU, summary of the judgment of 7 November 2013, *X, Y and Z v Minister voor Immigratie en Asiel*, joined cases C199/12 and C201/12, EU:C:2013:720; full judgment at <http://curia.europa.eu/juris/document/document.jsf?docid=144215&doclang=EN>.

In that connection, requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. It follows that the person concerned must be granted refugee status, in accordance with Article 13 of the directive, where it is established that on return to his country of origin his homosexuality would expose him to a genuine risk of persecution within the meaning of Article 9(1) of the directive. The fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect.

(paras. 70, 75, 76, operative part 3)

CJEU summary of the judgement in case *F v Bevándorlási és Állampolgársági Hivatal* (Extracts)⁽³⁵⁾

1. It must be noted that the statements made by an applicant for international protection relating to his sexual orientation constitute, having regard to the particular context in which applications for international protection are made, merely the starting point in the process of assessment of the facts and circumstances envisaged under Article 4 of Directive 2011/95 (see, by analogy, judgment of 2 December 2014, *A and Others*, C148/13 to C150/13, EU:C:2014:2406, paragraph 49). It follows that, although it is for the applicant for international protection to identify his sexual orientation, which is an aspect of his personal identity, applications for international protection on the basis of a fear of persecution on grounds of that sexual orientation may, in the same way as applications based on other grounds for persecution, be subject to the assessment process provided for in Article 4 of that directive (see, by analogy, judgment of 2 December 2014, *A and Others*, C148/13 to C150/13, EU:C:2014:2406, paragraph 52).

(paras. 28, 29)

2. In that regard, it must be recalled that sexual orientation is a characteristic which is capable of proving an applicant's membership of a particular social group, within the meaning of Article 2(d) of Directive 2011/95, where the group of persons whose members share the same sexual orientation is perceived by the surrounding society as being different (see, to that effect, judgment of 7 November 2013, *X and Others*, C199/12 to C201/12, EU:C:2013:720, paragraphs 46 and 47), as is confirmed, moreover, by Article 10(1)(d) of that directive. It follows nevertheless from Article 10(2) of that directive that, when the Member States assess whether an applicant has a well-founded fear of being persecuted, it is immaterial whether he actually possesses the characteristic linked to the membership of a particular social group which attracts the persecution, provided that such a characteristic is attributed to him by the actor of persecution.

Accordingly, it is not always necessary, in order to adjudicate on an application for international protection based on a fear of persecution on grounds of sexual orientation, to assess the credibility of the applicant's sexual orientation in the context of the assessment of the facts and circumstances laid down in Article 4 of Directive 2011/95.

(paras. 30-32)

(...)

⁽³⁵⁾ CJEU, summary of the judgment of 25 January 2018, *F v Bevándorlási és Állampolgársági Hivatal*, C-473/16, EU:C:2018:36; full judgment at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=198766&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=371021>.

CJEU summary of the judgment in case *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* (Extracts) ⁽³⁶⁾

(...)

5. The involvement of an applicant for international protection in bringing a complaint against his country of origin before the European Court of Human Rights cannot in principle be regarded, for the purposes of assessing the reasons for persecution referred to in Article 10 of Directive 2011/95, as proof of that applicant's membership of a 'particular social group', within the meaning of Article 10(1)(d) of that directive, but must be regarded as a reason for persecution for 'political opinion', within the meaning of Article 10(1)(e) of the directive, if there are valid grounds for fearing that involvement in bringing that claim would be perceived by that country as an act of political dissent against which it might consider taking retaliatory action.

In that regard, it should be noted that Article 10(1) of Directive 2011/95 must be read in conjunction with Article 10(2) of that directive. According to Article 10(2) of Directive 2011/95, when assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Therefore, regardless of whether an Azerbaijani national's involvement in bringing a complaint against the European Court of Human Rights, for the purposes of supporting a finding that the governing regime disregards fundamental rights, conveys a 'political opinion' on the part of that national, it should be ascertained, in the course of the assessment of the reasons for persecution invoked in the application for international protection lodged by that national, whether there are valid grounds for fearing that that involvement would be perceived by the regime as an act of political dissent against which it might consider taking retaliatory action. Where there are valid grounds to fear that such is the case, it must be concluded that an applicant is subject to a serious and proven threat of persecution for the expression of his opinions on the policies and methods of his country of origin. As is clear from the wording of Article 10(1)(e) of Directive 2011/95, the concept of 'political opinions' in that provision covers such a situation.

By contrast, the class of persons to which the applicant for international protection belongs, where such is the case, through her involvement in bringing a claim before the European Court of Human Rights, cannot in principle be regarded as a 'social group' within the meaning of Article 10(1)(d) of Directive 2011/95. For it to be found that there is a 'social group', within the meaning of that provision, two cumulative conditions must be satisfied. First, members of that group must share an 'innate characteristic', or a 'common background that cannot be changed', or share a characteristic or belief that is 'so fundamental to identity or conscience that a person should not be forced to renounce it'. Second, that group must have a distinct identity in the relevant country, because it is perceived as being different by the surrounding society (judgment of 7 November 2013, *X and Others*, C199/12 to C201/12, EU:C:2013:720, paragraph 45). (paras. 85-90, operative part 5)

(...)

⁽³⁶⁾ CJEU, summary of the judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, Case C652/16, EU:C:2018:801; full judgment at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=206429&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=527895>.

References

This section contains references to legislation, relevant case law and additional resources.

- Use the writeable spaces to add national legislation and jurisprudence.

Legal references

This overview of legal references is not intended as an exhaustive reference tool. It only aims to provide practical direction to the case officer by referring to some of the most relevant provisions.

Legal references		Relevant article
Refugee Convention	Definition of the term 'refugee'	Article 1
Qualification Directive (Directive 2011/95/EU)	Acts of Persecution Reasons for Persecution	recital 28 recital 30 Article 9 Article 10
Anti-trafficking Directive (Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims)	Offences concerning trafficking in human beings	Article 2
United Nations Convention on the Rights of Persons with Disabilities	Purpose of the Convention	Article 1

National legislation
<i>To be filled by Member State</i>

Case law of the Court of Justice of the European Union

- CJEU, judgment of 7 November 2013, *Minister voor Immigratie en Asiel v X and Y and Z*, Joined Cases C199/12 to C201/12, EU:C:2013:720
- CJEU, judgment of 25 January 2018, *F v Bevándorlási és Állampolgársági Hivatal*, Case C-473/16, EU:C:2018:36
- CJEU, judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, Case C-652/16, EU:C:2018:801

National jurisprudence

To be filled by Member State

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Country guidance

For common analysis and guidance on the applicability of the concept of membership of a particular social group in relation to profiles from particular countries of origin, see the country guidance documents published by EASO at: <https://www.easo.europa.eu/country-guidance>

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