



PRESS RELEASE No 172/23

Luxembourg, 9 November 2023

Advocate General's Opinion in Joined Cases C-608/22 and C-609/22 | Bundesamt für Fremdenwesen und Asyl and Others (Afghan women)

According to Advocate General Richard de la Tour, the discriminatory measures adopted against Afghan women by the Taliban regime amount, on account of their cumulative effect, to persecution

There is nothing to prevent a Member State from recognising, in respect of those women, the existence of a well-founded fear of persecution on grounds of their gender, without having to look for other factors specific to their personal situation

Since the return of the Taliban regime to Afghanistan, the situation of women has deteriorated to the point that their very identity can be said to be denied. That regime is characterised by an accumulation of acts and discriminatory measures which restrict, or even prohibit, inter alia, their access to health care and education, their gainful employment, their participation in public and political life, their freedom of movement and their right to take part in sports, which deprive them of protection against gender-based and domestic violence and require them to cover their entire body and face.

An Austrian court asks the Court of Justice whether such treatment can be classified as an act of persecution justifying the grant of refugee status. It also asks whether, for the purposes of the individual assessment of the application for international protection, a Member State can conclude that there is a well-founded fear of persecution taking into account only the gender of the applicant.

In today's Opinion, Advocate General Jean Richard de la Tour considers that **the accumulation of discriminatory acts and measures adopted against girls and women by the Taliban in Afghanistan constitutes persecution**. In his view, those acts and measures, because of the seriousness of the deprivations that they entail, are liable to jeopardise their physical or mental integrity, as much as more direct threats to their life. On account of their cumulative effect and their deliberate and systematic application, those measures are evidence of the establishment of a social organisation based on a system of segregation and oppression against girls and women, in which they are excluded from civil society and deprived of the right to lead a dignified and decent life in their country of origin. **Those measures therefore result in flagrant and persistent denial of the most essential rights of girls and women, on the basis of their gender, depriving them of their identity and rendering their daily life intolerable.**

The Advocate General also considers that that regime is imposed on them solely on account of their presence on the territory, regardless of their identity or personal circumstances. Although a woman may not be affected by one or more of the measures at issue on the basis of her particular characteristics, she remains exposed to restrictions and deprivations which, taken individually or as a whole, reach a level of severity equivalent to the level of severity required in order to be classified as persecution. In such circumstances, **there is, in his view, nothing to prevent a**

Member State from considering that it is not necessary to establish that the applicant is targeted because of distinctive characteristics other than her gender.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Pictures of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

Stay Connected!

