



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-71/11 and C-99/11  
Bundesrepublik Deutschland v Y and Z

**According to Advocate General Bot, a serious infringement of the freedom of religion may constitute an 'act of persecution' where the asylum seeker, by exercising that freedom or as a result of infringing the restrictions placed on the exercise of that freedom, runs a real risk of being deprived of his most fundamental rights**

*Such is the case where he risks death, inhuman or degrading treatment, of being reduced to slavery or servitude, or of being prosecuted or imprisoned arbitrarily*

Directive 2004/83/EC<sup>1</sup> seeks to establish minimum standards and common criteria for all the Member States for the purposes of the recognition of refugee status for asylum seekers within the meaning of Article 1 of the Geneva Convention<sup>2</sup>. Thus, the recognition of refugee status requires that the third country national concerned faces a *well-founded fear of persecution* in his country of origin for reasons of race, religion, nationality, political opinion or membership of a particular social group. Under that directive, the concept of an act of persecution covers serious acts which, on account of their nature or repetition, constitute a severe violation of basic human rights, in particular inalienable rights.

The Bundesverwaltungsgericht (Federal Administrative Court, Germany) asks the Court of Justice to set out the circumstances in which an infringement of the freedom of religion, and in particular of the right of an individual to live his faith freely and openly, may constitute an 'act of persecution' within the meaning of the directive. The references for a preliminary ruling arise from a dispute between the German authorities and two Pakistani asylum seekers. The latter are active members of the Ahmadiyya community which is an Islamic reformist movement, long contested by the Sunni Muslim majority in Pakistan, and whose religious activities are severely restricted by the Pakistan Penal Code. Thus, they may not profess their faith publicly without those practices being liable to be considered blasphemous, a charge punishable, according to that code, by a sentence of imprisonment or even the death penalty.

In his Opinion today, Advocate General Bot recalls that the aim of the common European asylum system is not to grant international protection whenever an individual cannot fully and effectively exercise the freedoms guaranteed by the conventions on the protection of human rights in his country of origin, but limits the recognition of refugee status to an individual who may be exposed to persecution in his country of origin, that is to say a serious and intolerable attack on his person and, in particular, his inalienable rights, and whose life has become intolerable in that country.

First of all, Advocate General Bot sets out the fundamental nature of the freedom of religion and rejects the idea that only a serious interference with the 'core area' – private conscience, and the freedom to manifest one's religion in private – may constitute an act of persecution. According to the Advocate General, persecution is characterised not by the aspect of the freedom of religion

<sup>1</sup> Council Directive 2004/83/EC of 29 April 2004 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 (OJ 2004 L 304, p. 12, and corrigendum OJ 2005 L 204, p. 24).

<sup>2</sup> Convention relating to the Status of Refugees, signed on 28 July 1951 (entered into force on 22 April 1954) United Nations Treaty Series, Vol. 189, p. 150, No 2545 (1954).

affected – private conscience, the manifestation of faith in private or in public, individually or collectively – but by the nature of the repression inflicted on the individual and its consequences.

Next, the Advocate General sets out the limits on the freedom of religion under the rule of law in order to maintain religious pluralism and the peaceful coexistence of different beliefs. That objective justifies the fact that certain prohibitions carry criminal penalties, on condition that those penalties are proportionate and that they are determined in compliance with individual liberties.

Accordingly, the Advocate General takes the view that it is by the degree of measures and the penalties adopted against the person concerned that any disproportion is revealed, which is the objective marker of the persecution, that is to say an infringement of an inalienable right of a person.

Thus, the Advocate General states that a serious infringement of the freedom of religion may constitute an ‘act of persecution’ within the meaning of the directive where the asylum seeker, by exercising that freedom or as a result of infringing the restrictions placed on the exercise of that freedom in his country of origin, runs a real risk of being executed or subjected to torture, or inhuman and degrading treatment, being reduced to slavery or servitude, or being prosecuted or imprisoned arbitrarily. In that context, it is for the authorities responsible for examining the application for asylum to verify specifically the rule invoked in the country of origin and the repressive practice in a broad sense.

As regards the situation of members of the Ahmadiyya community in Pakistan, the Advocate General takes the view that the prohibitions in Pakistani law are likely to constitute a serious infringement of the freedom of religion, and that the penalties which accompany it, if they are in fact applied, may reach the level of persecution because they aim to deprive any person who persists in publicly manifesting his faith of his most basic rights by threatening him with imprisonment or death.

Furthermore, the Advocate General takes the view that the authority responsible for examining an application for asylum cannot reasonably expect the applicant to renounce his religious activities in order to avoid persecution. That would amount to denying him a basic right which he is guaranteed by the conventions on the protection of human rights. Moreover, that would deprive the directive of its effectiveness since it would not be able to protect a person who, because he chooses to exercise his rights and freedoms in his country of origin, is exposed to acts of persecution. Finally, regardless of the efforts which the individual may consent to in his manner of living his faith in public, any activities, even the most insignificant, may be, in certain countries, a pretext for all sorts of abuse.

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**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 European Union law or the validity of a European Union 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.

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

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