



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 108/12
Luxembourg, 5 September 2012

Judgment in Joined Cases C-71/11 and C-99/11
Bundesrepublik Deutschland v Y and Z

Certain forms of serious interference with the public manifestation of religion may constitute persecution for reasons of religion

Where that persecution is sufficiently serious, refugee status must be granted

Pursuant to the Directive on the status of refugees¹, Member States must, in principle, grant refugee status to third country nationals who fear persecution in their country of origin for reasons of race, religion, nationality, political opinion, or membership of a particular social group. An act may be considered as persecution if it is sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights.

The Muslim Ahmadiyya community is an Islamic reformist movement. In Pakistan, the Criminal Code provides that members of the Ahmadiyya religious community may face imprisonment of up to three years or a fine if they claim to be Muslim, describe their faith as Islam, preach or propagate or invite others to accept their faith. The same code provides that any person who defiles the name of the Prophet Mohammed may be punished by death or life imprisonment and a fine.

Y and Z, Pakistani nationals, currently live in Germany where they applied for asylum and protection as refugees. They are members of the Ahmadiyya community and claim that they were forced to leave Pakistan because of their membership of that community. In particular, Y stated that on several occasions he had been beaten in his home village by a group of people and had stones thrown at him at his community's place of prayer. Those people threatened to kill him and reported him to the police for insulting the Prophet Mohammed. Z claimed that he was mistreated and imprisoned as a result of his religious beliefs.

The German authorities rejected Y and Z's applications for asylum, finding that the restrictions on the public practice of faith imposed on Ahmadis in Pakistan do not constitute persecution for the purposes of the right of asylum.

The Bundesverwaltungsgericht (Federal Administrative Court, Germany), before which the disputes have been brought, asks the Court of Justice to specify what restrictions on the practice of a religion may be considered as persecution justifying the grant of refugee status.

In today's judgment, the Court finds, first, that only certain forms of severe interference with the right to freedom of religion, and not any interference with that right, may constitute an act of persecution requiring the competent authorities to grant refugee status. Hence, limitations on the exercise of that right which are provided by law cannot be considered as persecution as long as the essence of the right is respected. Moreover, even the violation of the right constitutes an act of persecution only if it is sufficiently serious and has a significant effect on the person concerned.

Secondly, the Court points out that acts which may constitute a severe violation include serious acts which interfere with a person's freedom **not only to practice his faith in private circles but also to live that faith publicly**. Therefore, it is not the public or private, or collective or individual, nature of the manifestation and practice of the religion which will determine whether a violation of

¹ 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; addendum OJ 2005 L 204, p. 24)

the right to freedom of religion should be regarded as persecution, but the severity of the measures and sanctions adopted or liable to be adopted against the person concerned.

In that context, the Court holds that a violation of the right to freedom of religion may constitute persecution where, because of the exercise of that liberty in his country of origin, there is a genuine risk that the asylum applicant will, inter alia, be prosecuted or subject to inhumane or degrading punishment. The Court observes that where the participation in formal worship, either alone or in community with others, may give rise to such a risk, the violation of the right to freedom of religion may be sufficiently serious.

The Court also finds that in assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. In that respect, the Court notes that **the subjective circumstance that the observance of a certain religious practice in public**, which is subject to the restrictions at issue, **is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor** to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

Indeed, the protection afforded on the basis of persecution on religious grounds extends both to forms of personal or communal conduct which the person concerned considers to be necessary to him – namely those ‘based on ... any religious belief’ – and to those prescribed by religious doctrine – namely those ‘mandated by any religious belief’.

Finally the Court holds that, **where it is established that, upon his return to his country of origin, the person concerned will engage in a religious practice which will expose him to a real risk of persecution, he should be granted refugee status**. The Court considers that, in assessing an application for refugee status on an individual basis, **the national authorities cannot reasonably expect the applicant to abstain from the manifestation or practice of certain religious acts**.

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.

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

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355