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Judgment of the Court in Joined Cases C-608/22 and C-609/22 | Bundesamt für Fremdenwesen und Asyl and Others (Afghan women)

Discriminatory measures adopted in respect of women by the Taliban regime constitute acts of persecution

When carrying out an individual assessment of the application for asylum of a woman of Afghan nationality, a Member State is entitled to take into consideration her gender and nationality alone

Two women with Afghan nationality challenge the refusal by the Austrian authorities to recognise their refugee status before the Austrian Supreme Administrative Court. They claim that the situation of women under the new Taliban regime alone justifies being granted that status.

According to the Austrian court, the return to power of that regime in 2021 has serious implications for the fundamental rights of women. It establishes many discriminatory measures consisting, for example, in depriving them of any legal protection against gender-based and domestic violence and forced marriage, requiring them to cover their entire body and face, restricting their access to healthcare and freedom of movement, prohibiting them from engaging in gainful employment or limiting the extent to which they can do so, prohibiting their access to education and excluding them from political life.

The Austrian court considers that women with Afghan nationality belong to ‘a particular social group’ within the meaning of Directive 2011/95.¹ Those women may be exposed in Afghanistan to acts of persecution on account of their gender. That national court therefore asks the Court of Justice, first, **whether the discriminatory measures** described above, **taken as a whole, can be classified as acts of persecution** which may justify the recognition of refugee status. It asks, second, whether the competent national authority, in the individual assessment of an application for asylum submitted by a women of Afghan nationality, is required to take into consideration elements other than her nationality and gender.

First, the Court answers that some of the measures in question must be classified alone as ‘acts of persecution’, because they constitute a serious breach of a fundamental right. This is true of forced marriage, which is comparable to a form of slavery, and the lack of protection against gender-based violence and domestic violence, which constitute forms of inhuman and degrading treatment.

Even if, taken separately, the other measures do not constitute a sufficiently serious breach of a fundamental right to be classified as acts of persecution, the Court considers that, taken as a whole, those measures constitute such acts. Given that those measures have a cumulative effect and are applied deliberately and systematically, they blatantly deny fundamental rights related to human dignity.

Second, regarding the individual examination of an application for asylum of a woman of Afghan nationality, the Court takes into consideration the situation of women under the current Taliban regime as set out in, inter alia, the reports issued by the European Union Asylum Agency (EUAA) and the United Nations High Commissioner for Refugees (UNHCR). The Court finds that **the competent authorities of the Member States are entitled to**

consider that it is unnecessary to establish that there is a risk that the applicant will actually and specifically be subject to acts of persecution if she returns to her country of origin. It is sufficient to take into account her nationality and gender alone.

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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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

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¹ [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.