



# Practical Guide on Political Opinion



# **Practical Guide on Political Opinion**

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On 19 January 2022, the European Asylum Support Office (EASO) became the European Union Agency for Asylum (EUAA). All references to EASO, EASO products and bodies should be understood as references to the EUAA.



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## About the guide

**Why was this guide created?** The mission of the European Union Agency for Asylum (EUAA) is to support EU Member States and associated countries (EU+ countries) 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, the EUAA develops common practical tools and guidance.

**How was this guide developed?** This guide was created by experts from across the EU, with valuable input from the European Commission, the United Nations High Commissioner for Refugees (UNHCR) and the European Council on Refugees and Exiles.

Thanks are expressed to the members of the working group who prepared the drafting of this guide: Ms Aimilia Voulvouli and Mr Robert Markovski. We would like to extend our thanks to the following members of academia, judges and officials of EU+ countries' administrations and of the UNHCR, who participated in the EUAA Thematic Conference on Political Opinion and provided valuable input through their presentations and shared materials to the development of this practical guide: Judge Holger Böhmann, Judge Cindy Carroll, Dr Catherine Dauvergne, Dr Constantin Hruschka, Mr Maxime Lismonde, Dr Stephen Meili, Ms Marina Pinault, Dr Tania Racho, Ms Astrid Smis, Dr Hugo Storey, Ms Denise Venturi and Dr Cornelis Wouters.

The development was facilitated and coordinated by the EUAA. Before its finalisation, a consultation on the guide was carried out with all Member States through the EUAA Asylum Processes Network.

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

This guidance should be used in conjunction with the EUAA's practical guides, *Practical Guide: Qualification for international protection*, *Practical guide on the use of country of origin information by case officers for the examination of asylum applications* and *Practical Guide: Evidence assessment*, and the judicial analysis *Qualification for International Protection (Directive 2011/95/EU) – A judicial analysis*.

**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 as adopted by the EUAA Management Board on 21 November 2022.

### Disclaimer

This guide was prepared without prejudice to the principle that only the Court of Justice of the European Union can give an authoritative interpretation of EU law.







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## List of abbreviations

Abbreviation	Definition
<b>CJEU</b>	Court of Justice of the European Union
<b>COI</b>	country of origin information
<b>EASO</b>	European Asylum Support Office
<b>EUAA</b>	European Union Agency for Asylum
<b>EU</b>	European Union
<b>EU+ countries</b>	Member States of the European Union and the associated countries
<b>IPA</b>	internal protection alternative
<b>Member States</b>	Member States of the European Union
<b>QD (recast)</b>	<b>qualification directive</b> – 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)
<b>Refugee Convention</b>	The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (referred to in EU asylum legislation and by the CJEU as ‘the Geneva Convention’)
<b>UNHCR</b>	United Nations High Commissioner for Refugees





# Introduction

Political opinion is often considered to be the most ‘straightforward’ of the five Geneva Convention grounds. The layperson often associates the term ‘refugee’ with the term ‘political’. Yet, decision makers continue to encounter specific challenges when dealing with international protection claims based on this ground.

Among other difficulties, misconceptions remain about what may qualify as a ‘political opinion’. In addition, of key importance, and something that is often overlooked, is the actor of persecution’s perception of what constitutes a political opinion and the political opinions imputed to the applicant. It is also not an easy task for case officers to identify the relevant topics to explore or elements to consider depending on the general context in the country of origin and the personal circumstances of an applicant who relies on (imputed) political opinions in their asylum claim. The identification of the nexus between the feared act of persecution and the ground of political opinion raises its own challenges. These are but a few of the difficulties faced.

Against this background, the aim of this practical guide is to provide case officers with a framework for the examination of applications for international protection based on political opinion.

This practical guide is structured around three main chapters.

Chapter 1, [‘Defining political opinion – general principles and legal basis’](#), outlines the general principles and legal basis of political opinion as a reason for persecution. In this chapter, different types of manifestation of political opinion are presented.

Chapter 2, [‘Assessing claims related to political opinion in practice’](#), focuses on assessing claims related to political opinion in practice. Topics to explore during the personal interview are described and guidance is provided when assessing the risk and making the legal analysis.

Chapter 3, [‘Specific asylum claims based on the political opinion ground’](#), provides guidance when dealing with specific asylum claims based on political opinion, including examples of topics to explore during the examination of the case.





# 1. Defining political opinion – general principles and legal basis

## 1.1. Relevant legal provisions

Political opinion is explicitly listed as one of the five reasons for persecution in both the recast qualification directive of 2011 (QD (recast)) and the 1951 Refugee Convention. While the latter does not provide further explanations on the term, the QD (recast) describes, in a non-exhaustive manner, the elements to which the concept of political opinion applies in the specific context of international protection claims.



### Article 10(1)(e) QD (recast) <sup>(1)</sup> – reasons for persecution

*[T]he concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 <sup>(2)</sup> and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.*

The concept of political opinion is closely related to provisions found in both the EU legal framework and other international human rights instruments. Notably, the Charter of Fundamental Rights of the European Union (3), to which the QD (recast) explicitly refers in recital 16, mirrors in Article 11 (freedom of expression and information) of rights that had been previously set out in the European Convention on Human Rights (4) and the International Covenant on Civil and Political Rights (5).

<sup>(1)</sup> [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) (OJ L 337, 20.12.2011).

<sup>(2)</sup> Article 6 QD (recast):

*Actors of persecution or serious harm include: (a) the State; (b) parties or organisations controlling the State or a substantial part of the territory of the State; (c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.*

<sup>(3)</sup> EU, [Charter of Fundamental Rights of the European Union](#), 26 October 2012, 2012/C 326/02.

<sup>(4)</sup> Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14](#), 4 November 1950, ETS 5. See, in particular, Articles 10 and 11.

<sup>(5)</sup> UN General Assembly, [International Covenant on Civil and Political Rights](#), 16 December 1966, United Nations, Treaty Series, Vol. 999, p. 171. See, in particular, Articles 19, 21, 22 and 25.





## Article 11 of the Charter of Fundamental Rights of the European Union – freedom of expression and information

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*

2. *The freedom and pluralism of the media shall be respected.*

It has long been recognised that the concept of political opinion should be construed broadly <sup>(6)</sup>, and this approach is also reflected in the wording of the QD (recast).

## 1.2. What is a political opinion in the context of international protection?

Taking the definition set out in the QD (recast) as a starting point, a ‘political’ opinion includes, but is not limited to, an opinion, thought or belief about the policies and methods of the state or the party that controls the state or a substantial part of its territory <sup>(7)</sup>. An opinion may be considered political if it concerns the nature, policies and practices of an entity such as a state or a non-state actor exercising similar powers. Furthermore, an opinion may also be considered ‘political’ if it pertains to non-state actors against whom the state (or similar parties) cannot, or is not willing to, provide protection.

This definition offers a wide field in which political opinions or perceived political opinions can be identified. However, to determine if an opinion, thought or belief is political, it will always be necessary to analyse it in the context of the society in which it is held or perceived to be held. The scope of the notion of ‘political opinion’ (i.e. which actions, positions or expressions of thoughts are considered political) can vary greatly depending on the context. Citing relevant case-law from New Zealand <sup>(8)</sup>, the United Nations High Commissioner for Refugees (UNHCR) has confirmed in its guidance documents that political opinion must always be understood within the specific context: ‘... political opinion needs to reflect the reality of the geographical, historical, political, legal, judicial and socio-cultural context of the country of origin’ <sup>(9)</sup>.

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<sup>(6)</sup> Hathaway, J. C. and Foster, M., *The Law of Refugee Status*, 2nd edition, Cambridge University Press, Cambridge, 2014, pp. 405–7.

<sup>(7)</sup> Article 10 QD (recast).

<sup>(8)</sup> Refugee Status Appeal Authority (New Zealand), decision of 11 September 2008, No [76044](#), para. 84.

<sup>(9)</sup> UNHCR, *Guidance note on refugee claims relating to victims of organised gangs*, 2010, para. 46.



The following (non-exhaustive) parameters <sup>(10)</sup> can guide the case officer to assess whether the opinion, when expressed or imputed in that specific context, may be perceived as being of a political nature:

- the type of political regime
- the type of interests at stake: private or public
- the reasons behind the unwillingness and inability of the state to protect, when the actor of persecution is a non-state actor
- the existence of a political agenda, when the actor of persecution is a non-state actor
- the patterns of behaviour of the actor of persecution.

These parameters are explained further in the sections below.

Note also that an opinion does not necessarily need to conflict with the policy or practice of an authority in order to qualify as ‘political’ (see also Section [1.2.3. ‘Non-state actors of persecution: willingness and ability of the state to protect’](#)).

### 1.2.1. The type of political regime

The type of political regime in which an act is (or is not) carried out and in which an opinion, thought or belief is held or expressed is a major factor influencing whether such acts/opinions are considered political. An action or opinion that may not be considered political in one regime may be political in another. In general, the less democratic the political regime in the country of origin, the more likely it is that an opinion is considered ‘political’ – and therefore potentially problematic – by those who exert sociopolitical control.

In order to better understand the context in which an opinion may be considered political, it is crucial to consider the type of the ruling regime in the applicant’s country of origin, and at the hold and control that those who exercise power exert over certain extensive areas of society, and over individuals’ private lives. There are many different ways to categorise and define political regimes, ranging from full democracies to authoritarian and totalitarian regimes.

In the methodology of the *Democracy Index 2021* <sup>(11)</sup>, the Economist Intelligence Unit describes the following types of regimes.

**Full democracies:** *Countries in which not only basic political freedoms and civil liberties are respected, but which also tend to be underpinned by a political culture conducive*

<sup>(10)</sup> Catherine Dauvergne speaks about the need for ‘markers’, markers ‘to give guidance about what aspects of context matter and what a decision-maker should take into account in defining government, state, or opposition.’ See Dauvergne, C., ‘Toward a new framework for understanding political opinion’, *Michigan Journal of International Law*, Vol. 37, No 2, 2016, pp. 291–4.

<sup>(11)</sup> Economist Intelligence Unit, *Democracy Index 2021 – The China challenge*, 2022. The report is produced by the Economist Intelligence Unit, the research and analysis division of The Economist Group. It is available for download upon request (<https://www.eiu.com/n/democracy-index-2021-less-than-half-the-world-lives-in-a-democracy>).



*to the flourishing of democracy. The functioning of government is satisfactory. Media are independent and diverse. There is an effective system of checks and balances. The judiciary is independent and judicial decisions are enforced. There are only limited problems in the functioning of democracies.*

**Flawed democracies:** *These countries also have free and fair elections and, even if there are problems (such as infringements on media freedom), basic civil liberties are respected. However, there are significant weaknesses in other aspects of democracy, including problems in governance, an underdeveloped political culture and low levels of political participation.*

**Hybrid regimes:** *Elections have substantial irregularities that often prevent them from being both free and fair. Government pressure on opposition parties and candidates may be common. Serious weaknesses are more prevalent than in flawed democracies – in political culture, functioning of government and political participation. Corruption tends to be widespread and the rule of law is weak. Civil society is weak. Typically, there is harassment of and pressure on journalists, and the judiciary is not independent.*

**Authoritarian regimes:** *In these states, state political pluralism is absent or heavily circumscribed. Many countries in this category are outright dictatorships. Some formal institutions of democracy may exist, but these have little substance. Elections, if they do occur, are not free and fair. There is disregard for abuses and infringements of civil liberties. Media are typically state-owned or controlled by groups connected to the ruling regime. There is repression of criticism of the government and pervasive censorship. There is no independent judiciary. <sup>(12)</sup>*

In general, full democracies and, to varying degrees, flawed democracies tend to at least tolerate the expression of political opinions, even when those opinions challenge the government's policies. In democracies, freedom of speech is generally constitutionalised. People exercise their political rights freely and are entitled to express their political opinion with no fear of persecution. Where interference from private actors occurs, protection from intrusions from such activities is often guaranteed or provided by the authorities through enforced legislation. Limitations to political rights must be regulated by law and proportionate to a legitimate objective (e.g. protection of the public interest), according to international law.

The same cannot be said of other types of regimes, where, in contrast, (legal or actual) limitations to the exercise of political rights gradually increase as we move from a flawed to a hybrid democracy, and, finally, to an authoritarian regime. Persecution for political opinion may occur in flawed democracies, notably where the actor of persecution is a non-state actor. However, in general, persecution is more common in hybrid or authoritarian regimes.

It should also be highlighted that, among authoritarian regimes, there can be significant differences in the form of governance or basis of power, such as theocracies, dictatorships and totalitarian regimes. Some regimes focus mainly on safeguarding their ideology, and will be satisfied as long as nobody openly opposes it. In other regimes, the authority of the ruler takes

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<sup>(12)</sup> Economist Intelligence Unit, *Democracy Index 2021 – The China challenge*, 2022, pp. 66–7.



the centre stage, in the sense that ‘the word of the ruler is law’. Such regimes are inclined to demand that the position of the ruler is undisputed, and that no citizen puts the authority of the ruler in doubt in public. Other types of regimes, most notably authoritarian regimes, go further and also demand control over the private lives and even the thoughts of their citizens.

The type of regime is a relevant factor in establishing which acts, absence of acts, opinions, thoughts or beliefs are considered political. For example, while choosing a particular school or youth organisation for one’s child is viewed as a personal choice of parents in most societies, it can be seen as an expression of a political opinion in an authoritarian or totalitarian regime, in which a leader expects or demands that children be part of the youth organisation affiliated with the ruling party.

Next to the nature of the regime, the policy priorities can also influence what is seen as political. For example, under a government that is built on a populist agenda gravitating around national identity, activities or opinions that are understood to be multicultural may be perceived by the government as having a political dimension.

### **1.2.2. Type of interests at stake: private or public**

An opinion is normally political only when it transcends purely private or individual interests. Politics<sup>(13)</sup> in general deals with power relations in the society as a whole.

However, whether the opinion first arose out of self-interest is not relevant to its political nature; for example, a business person who protests against discriminatory treatment by government officials to defend the survival of their business, who mobilises other business persons and proposes how the government administration can be reformed may be considered to be expressing a political opinion.

At the same time, actions taken or opinions expressed out of self-interest can still be perceived by the actor of persecution as going against their political or societal aims.

Furthermore, there is no need for the opinion to be that of a political party or organisation. Opinions can be expressed in the context of other types of organisations and in a professional or personal capacity.

In addition, some opinions may, at first glance, seem to constitute an opinion that is not political, such as those regarding how someone dresses or the sexual relations in which they engage, because they seem to refer merely to a personal choice. However, if the opinion concerns laws (including customary, religious or other social norms) that have the power to determine certain behaviour as mandatory or prohibited, for instance regulating the way individuals dress (e.g. imposing head covering for women) or which sexual relations are considered illegitimate, then it may be described as a political opinion because it ultimately concerns the practices and policies of a state.

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<sup>(13)</sup> See, for example, the definition of politics in the *Longman Dictionary of Contemporary English*: ‘1 [uncountable] ideas and activities relating to gaining and using power in a country, city etc’. (<https://www.ldoceonline.com/dictionary/politics>).





### **1.2.3. Non-state actors of persecution: willingness and ability of the state to protect**

In line with the wording of the QD (recast), an opinion does not need to be explicitly an opinion on the government and its institution to be political. Political opinions can also pertain to non-state actors, with the important caveat that they concern non-state actors against which the state (or similar parties) is unable or unwilling to provide protection. More concretely, opinions dealing with the major power structures and transactions of non-state actors within a society can also be considered political. It will be important to assess to what extent these power structures and transactions are established, supported or condoned by the state.

An opinion on gender roles, for example, can have political dimensions when it reflects or puts into doubt the major power structures or transactions within a society. For example, a woman who leaves her husband for personal reasons, but who does this in a society where a woman is not entitled, either by laws or custom, to initiate divorce or separation from her husband, may not receive support from the surrounding society or protection from the state against possible retaliation by her husband. This is because her actions are perceived to throw into doubt fundamental power structures within the society, often encoded in laws or otherwise supported by the government. The extent to which such actions can be perceived to be politically significant needs to be assessed in the concrete context of the society, taking into account its laws, the way they are implemented, the formal or informal recognition of organisations representing social norms, the power they enjoy in society and the support they receive from the government. The collusion of the state is an important element here that can drag an opinion on a non-state actor into the political realm. However, when the powers in the society are so strong that the state is simply unable to provide protection, being perceived to go against these societal powers may be considered as constituting a political opinion.

### **1.2.4. Non-state actors of persecution: existence of a political or societal agenda**

To assess if an opinion of an applicant against a non-state actor, or a dispute between an applicant and a non-state actor, may be perceived as being political, it is important to consider the nature, objectives and *modi operandi* of the actor and the existence, or not, of a political or societal narrative.

When the main purpose of the organisation or actor is criminal, a conflict with such an actor is not likely to be political. Opinions regarding the actor's activities, opinions or actions that aim to prevent the organisation from attacking or pressuring the applicant, if they aim only to redress a personal wrong, and remain of a private nature, will generally not be considered as having a political dimension. This scenario would generally remain a private dispute between one individual and another (or group of others). The main questions will thus relate to the ability or willingness of the state to protect the applicant against those activities, and whether or not the state would provide protection for reasons related to the (imputed) political opinions of the applicant.





It is not uncommon, however, for certain non-state organisations to combine criminal or terrorist objectives with political objectives, in that they desire to gain control over territory and/or impose certain rules on a society. Where an organisation exercises state-like powers, or takes up functions normally attributed to the state, any opposition to its policies or methods may be considered as having a political connotation. The more the organisation wants, as an aim in itself, to be a structuring force in society, rather than merely to create a suitable environment in which to conduct illicit activities, the more opposition to that organisation may be perceived as being political.

Indicators that an organisation may have societal and political ambitions include robust rhetoric about the structuring of society and politics, and a willingness to provide and/or exercise control over certain aspects of the state, such as societal rules, litigation and/or justice mechanisms, infrastructure, social welfare programmes, healthcare and education. Some criminal or terrorist organisations may also have different ‘wings’, one of which could be considered as pursuing a political or social action. This will add to the indications that such a non-state actor sees itself as a political and/or social actor, and heightens the likelihood that an opinion against it would be considered as being political.

In such cases, it is the applicant’s opinion of the non-state actor that could be perceived as political, if the applicant questions the policies and actions related to society that are promoted by the non-state actor. Nevertheless, the inability or unwillingness of the state to protect the applicant from the non-state actor, or collusion between the state and the non-state actor of persecution, through corruption for example, will be an important additional element to consider when assessing the extent to which the applicant’s opinions of the actors concerned and the ensuing conflict can be considered political. For example, the inability of the state to protect the applicant may be linked to the territorial and societal power of the non-state actor of persecution.

### **1.2.5. Patterns of behaviour of the actor of persecution**

The political nature of an opinion depends, to a large extent, on the significance the actor of persecution attributes to the topic on which an opinion is expressed or imputed, which may also depend on the timing of the expressed or imputed opinion and the channel that is used to convey the opinion. The context in which an opinion is expressed or imputed is central, as detailed in previous sections.

#### **Example**

An opinion drafted in a daily newspaper related to the functioning of the health system may not be considered significant by the authorities in a situation of ‘business as usual’. The opinion may however gain in significance and political importance in the eye of the authorities if that same opinion is issued by a specialist, through social media, at a time of a pandemic when the authorities are under a negative spotlight related to their ability to cope with the situation.



Certain indicators related to the behaviour of the actor of persecution will help you in assessing whether an opinion expressed (or imputed) in relation to a topic may be perceived as opposing the actor's methods and policies, and thus be seen as political. These indicators relate mainly to the importance the actor of persecution attributes to the topic the opinion relates to, which can be deduced from the following (non-exhaustive) list of questions to consider.

- The official narrative of the actor of persecution in relation to the topic. What is the message shared by the actor of persecution in public through official media? Is there any kind of propaganda in relation to it? Is it a recurring topic?
- The way the actor of persecution treats the matters related to that topic. Are expressions of opinions on the topic criminalised? Repeated patterns of persecution in relation to the expression (or imputation) of opinions related to a topic may provide you with information on the risk the applicant may be subjected to (see Section [2.3.3. 'Perception of the applicant's \(imputed\) political opinion by the actor of persecution'](#)). It may also be an indication of the political significance this topic has for the actor of persecution.
- The importance the actor attaches to the channel used to convey the opinion. For example, if a state has set up an elaborate surveillance system to monitor the content of the social media of its citizens, this suggests that government attaches considerable importance to opinions shared on social media (see Section [3.7. 'Political opinion expressed on social media'](#)).
- The investment in intelligence services or operations to monitor (all or specifically targeted) activities or opinions in the country, and possibly abroad, and the extent and scope of such monitoring activities.

## 1.3. Manifestations of political opinion

A political opinion can manifest itself in different ways. When it is expressed, its articulation can take on diverse forms (see Section [1.3.1. 'Expressed political opinion'](#)). Conversely, it is also possible to hold a political opinion without voicing or acting upon it (see Section [1.3.2. 'Unexpressed political opinion'](#)). Finally, a political opinion can be imputed by the actor of persecution (see Section [1.3.3. 'Imputed political opinion'](#)).

### 1.3.1. Expressed political opinion

Expressing political opinions results in public exposure, at least to some extent. The number of people who become aware of the applicant's opinions depends on the channels through which those opinions were expressed.

It is important to note that the expression of a political opinion does not necessarily imply a desire to confront an authority, and the desire to confront the authority should not be required from the applicant.

When a political opinion is expressed, it is generally its content (the opinion itself) and the way in which it is expressed that may alert the actor of persecution as to its political nature.



A political opinion may be expressed in several ways: formally or informally, individually or as part of a group. It should be emphasised that all forms of expression are equally valid in the context of international protection. There is no requirement whatsoever for an opinion, in order to be considered political, to be expressed by an adherent of an organisation, for example a member of a political party.

#### **(a) Adherence to an organisation**

A common way to express one's political opinion is by formally or informally adhering to an organisation. Political organisations usually have an established project or mission and a set of shared values. They conduct actions or campaigns to implement or promote their set objectives. They also have an established structure, with one or more representatives fulfilling different functions and responsibilities.

Examples of such organisations are political parties and movements, civil society organisations (e.g. non-governmental organisations, citizen committees and student associations) and trade unions.

##### Formal adherence to an organisation

Formal adherence to an organisation includes being a founder member, becoming a member or taking up a role in the organisation.

Becoming a member of an organisation means to take steps to strengthen and formalise one's association with it. It generally reflects the desire to support the organisation or to increase one's support of it, to be part of it and/or be able to play a role in its management. Therefore, being a member of an organisation may generally entail a higher level of involvement in its activities.

##### Informal adherence to an organisation

Short of being a 'member', a person can also associate with an organisation by becoming a 'sympathiser'. The main difference between formal and informal adherence is that, with informal adherence, a sympathiser shares the views of the organisation but has not gone through the necessary steps to be admitted as a formal member. Furthermore, sympathisers are less likely to exercise any official responsibility within or on behalf of the organisation.

A sympathiser's support for a particular organisation may be limited to sharing its convictions, ideas, goals, etc. It could also extend to carrying out activities of the same nature and extent as formal members of the organisation would, except for those activities exclusively linked to membership.

The line between mere sympathy towards and formal membership of an organisation is not always clear, and, therefore, it is not necessary to be a member of an organisation for an opinion that is sympathetic to its goals to be considered political.



### **(b) Adherence to informal movements**

The expression of one's political opinion does not require adherence to an established organisation. A political opinion may also be expressed by joining uncoordinated, unstructured and spontaneous movements outside the realm of a formal entity. Examples of such movements could be decentralised protest movements (e.g. anti-corruption or anti-war movements) or progressive citizen initiatives (e.g. parallel socioeconomic networks).

### **(c) Individual expression of political ideology/views**

Furthermore, individuals may have their own, distinct, original thoughts, and their own way of expressing them, and these need not be aligned with the views of any existing movement or organisation. This is true, for example, of individuals who express political opinions in private, or who adopt non-conforming behaviour or attire, and also of journalists, bloggers, authors and artists who express political opinions through their work, books, the internet or other channels.

## **1.3.2. Unexpressed political opinion**

Political opinions are usually expressed in one way or another, but occasionally an individual may choose to keep their political opinions to themselves.

There are a range of reasons why someone might choose to conceal their views, for example if there is the risk that outwardly expressing a political opinion could result in harm to the person holding that opinion or to those close to them (e.g. family, relatives). Situations of unexpressed political opinions are therefore more likely in countries of origin where the authorities apply very repressive policies in relation to the opinion at issue. Social or family pressure may also prevent a person from sharing their political opinions.

In other situations, particularly in dictatorships and totalitarian regimes, it is not necessary to explicitly express a political opinion to be persecuted: the refusal to openly display support for the regime or to feign allegiance is often sufficient.

The right to disclose one's opinion is enshrined in the right to freedom of expression, which is a fundamental human right. Even if a person has not made their opinions public before, one cannot expect them to remain silent on an opinion they hold. In particular, it cannot be expected that a person will withhold or keep withholding their opinion to avoid facing potential persecution in the case of return <sup>(14)</sup>.

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<sup>(14)</sup> This is consistent with the reasoning held by the Court of Justice of the European Union (CJEU) in relation to the concealment of one's religion or the concealment of one's sexual orientation, which may be considered to be applicable, *mutatis mutandis*, to the expression of political opinions. See the following judgments. CJEU, judgment of 5 September 2012, *Bundesrepublik Deutschland v Y and Z*, C-77/11 and C-99/11, ECLI:EU:C:2012:518. Summary available in the [European Union Agency for Asylum \(EUAA\) Case Law Database](#). CJEU, judgment of 7 September 2013, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, joined cases C-199/12 to C-201/12, ECLI:EU:C:2013:720. Summary available in the [EUAA Case Law Database](#). See also UNHCR, [Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 201701423/1/V2, 201704575/1/V2 and 201700575/1/V2 before the Council of State](#), 28 February 2018. Note that a request for a preliminary ruling on this topic was made by the Raad van State (Netherlands) to the CJEU on 2 March 2022. This question, which is still pending, has been registered by the court as [case number C-151/22](#). You will find the judgment in the [EUAA Case Law Database](#) once the CJEU rules on the questions that were submitted.



### 1.3.3. Imputed political opinion

An imputed political opinion is an opinion that is attributed by the actor of persecution to the applicant. The applicant does not need to really hold, or have done anything to lead to the belief that they hold, the political opinion that is imputed to them. It suffices that the actor of persecution has the perception that the applicant holds such an opinion or otherwise attributes it to them.

There are various reasons why an actor of persecution could impute a political opinion to the applicant. Generally, it is either the actions or the omissions of the applicant that lead the actor of persecution to associate them with a particular political opinion. However, such imputation could also stem from other characteristics of the applicant, for example their status or membership of a specific group.

Below are some examples of factors that may contribute to an actor of persecution attributing a political opinion to an applicant. In some situations, depending on the nature of the regime and how threatened it feels at a certain point in time, such factors may, in themselves, lead to attributing a political opinion. In other cases, they can be an element contributing to the imputation.

It should be noted that, imputation of a political opinion sometimes overlaps with other convention grounds, for example when the actor of persecution attributes a certain political opinion to a person due to their belonging to an ethnic or religious group that traditionally has a certain political affiliation (overlap with the ground of race or religion). For further insight, see Section 2.4. 'Legal analysis'.

#### (a) Accidental, isolated or opportunistic participation in political acts

The actor of persecution may impute a political opinion to the applicant because the latter has engaged in some form of political act, even though this was not the result of a genuinely held political opinion. For example, an applicant may have accompanied a friend to a political protest once, as a favour or for companionship, rather than due to an inner conviction. Similarly, someone may have attended a political meeting out of mere curiosity or for opportunistic reasons (e.g. free handouts, networking opportunities), without this act being backed by any genuine political opinion. In the context of *sur place* claims, the applicant may see their political participation as an opportunity to increase their chances of being granted international protection (see Section 3.6. 'Political opinion expressed *sur place*').

#### (b) Failure to adhere to the state party where adherence is mandatory

In some political regimes, state control is so far-reaching that the whole society is organised through the views of the controlling state party. In such regimes, working for the state, for example, requires showing allegiance to the ruling party. The most common obligation would be the obligation for any person wanting to work for the state to become a member of the state party and swear allegiance to it. Beyond that, a person may be pressured to take part in some organised activities or to act upon request of the party. In such situations, refusal to take part in some activities or actions or refusal to swear allegiance could be viewed as the expression of a political opinion. It may be considered as an anti-regime mindset. The real motivations





(moral, religious, political, practical, familial, etc.) to refuse allegiance or to refuse to submit to the obligations imposed by the regime are of no importance. What matters is how the actor of persecution perceives such refusal.

### **(c) Contact with foreign authorities or organisations**

In some countries, the fact of having (had) contacts with foreign authorities or organisations, or even private companies, may be considered by the actor of persecution as a form of anti-regime mindset, even treason, regardless of the real motivations of the applicant. This can be the case when the regime is particularly suspicious of foreign influences and feels that such influences could undermine its authority. It should be noted that contact with foreign authorities, organisations or companies is often associated with having access to funds, which may strengthen the perception of a threat to the government.

For example, from the perspective of the actor of persecution, working in the country of origin for foreign companies or foreign authorities (as in the case of interpreters, security guards, civilian contractors, administrators and logistics personnel, etc.) may be considered as holding a political opinion. Applying for international protection <sup>(15)</sup> or coming back from abroad (e.g. from Europe) after a long period may also trigger the attention of a potential actor of persecution, who may take the view that the applicant was abroad to conduct compromising activities (e.g. anti-regime activities or activities on behalf of or at the request of the authorities of a foreign country). In other cases, returnees may be perceived as having been ‘westernised’ (see Section 3.3. ‘[Political opinions imputed because of an \(irregular\) stay abroad](#)’). This may especially be the case if the relations between the authorities of the country of origin and those of the destination country are tense, and even more so if those relations have been suspended.

### **(d) Belonging to a particular family**

If the applicant belongs to a family known by the actor of persecution to have a specific political affiliation, the whole family may be perceived as holding that political opinion. In some countries, for example, family names are associated with political parties or leanings. An actor of persecution may also assume that the members of the family of a well-known politician or member of an organisation would support that family member and thus share their political views. As a result, these family members may be associated with the same political opinion by the actor of persecution, even if the bond remains, in fact, strictly familial (see Section 3.2. ‘[Family members](#)’).

### **(e) Professional or social activities**

The creation of an association with a purely civic or humanitarian aim (to provide support to the population, e.g. through food or educational programmes) may be perceived as the expression of a political opinion, depending on the societal context.

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<sup>(15)</sup> European Asylum Support Office (EASO), *Qualification for International Protection (Directive 2011/95/EU) – A judicial analysis*, December 2016, p. 46.





### **(f) Originating from a specific area**

The place of residence or origin may also lead the actor of persecution to attribute political views to the applicant. Originating from and/or living in a particular region or city, or in a specific neighbourhood, or moving residence to a specific area, could be considered by the actor of persecution as a sign of political inclination, perhaps because that city or neighbourhood is an opposition stronghold or because of strong prejudice on the part of the actor of persecution in relation to those living in the neighbourhood.

### **(g) Creative activities**

While creative activities (literature and poetry, performing arts, visual and plastic arts, etc.) may sometimes aim to express a political stance, this is not always the case. An artist may have no political intentions, but their work may be interpreted politically, particularly if it touches on social themes. This is especially true in countries where artistic expression is strictly framed, or where some forms of artistic expression are forbidden or treated with suspicion. In some countries, specific forms of artistic expression may even be considered an act of opposition to the authority and its rules.

### **(h) Civil servants and members of law enforcement or the judiciary**

Non-state actors may impute political opinions to state representatives when such representatives embody their opponent. In such situations, civil servants, military forces, police agents, etc., may be considered as sharing the political views of the authority they represent, depending on the country of origin.

Similarly, the authorities of a new regime may impute to the representatives of the former authorities the ideas and opinions that were those of the supplanted regime.



#### **Key points to remember**

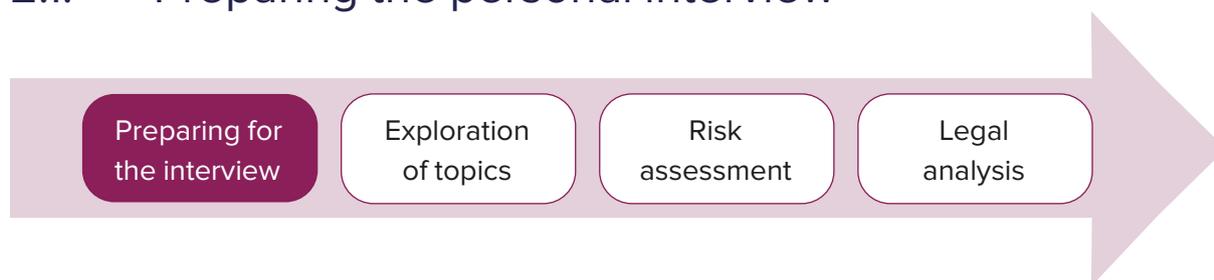
- Whether an opinion is 'political' needs to be assessed within its cultural, societal, legal and political contexts. A major factor in this assessment is the type of political regime in which an opinion is held and/or expressed. Other parameters are the extent to which private or public interests are the motivation for the opinion and the nature and objectives of any non-state actor of persecution. The importance the actor of persecution attributes to the topic the opinion relates to is also an important parameter.
- There are many different ways to express a political opinion, including formal and informal adherence to organisations, adherence to informal movements and individual forms of expression.
- There may be valid reasons why an applicant has not previously expressed their political opinion in their country of origin. Therefore, unexpressed political opinion can also be a ground for persecution.
- There are many situations in which a political opinion may be imputed by the actor of persecution, based either on the applicant's actions and omissions or on the applicant's other characteristics.



## 2. Assessing claims related to political opinion in practice

This chapter aims to present the necessary steps for the case officer to follow when assessing claims based on political opinion during the examination of the case.

### 2.1. Preparing the personal interview



Gathering information is a crucial step for the proper assessment of a claim for international protection and is an ongoing process throughout the examination. New information may emerge at any point in the process, from the moment the application for international protection is submitted until the risk assessment is conducted. For example, if, during the personal interview, new, unanticipated, information emerges, you will need to analyse this new information, reconsider the previous information in the light of the new information and adapt the interview accordingly. Therefore, the gathering of information requires you to be responsive, open-minded and adaptive.

The preparation phase (preparing for the personal interview) typically involves two aspects: gathering information from the case file and gathering country of origin information (COI).

For claims related to political opinion, it will be important to go to the core of the applicant's persona. This is done in order to identify the applicant's individual background, circumstances and political profile. This is covered in Section [2.2. 'Topics to explore during the personal interview'](#).

#### 2.1.1. Information from the case file

You should prepare by familiarising yourself with all available information from the case file. In principle, you will be able to rely on the information that was gathered during the registration process: the initial oral statements of the applicant and/or written statements in relation to the object of their claim for international protection and the documentary evidence submitted by the applicant.

Depending on national practice on the information gathered during the registration, you could familiarise yourself with any links the applicant has with any political movement, the applicant's opinions and the basic elements of their fears due to their (imputed) political opinion. There



may be many reasons why certain information is unavailable at this stage, but missing information should not have an impact on the next steps in the process.

It may be that the case file already contains pieces of documentary or other evidence submitted by the applicant in the early stages of the procedure. These pieces of evidence may be in different formats, such as videos, membership cards, testimonies, attestations from political parties or organisations, and contribution cards, and could be originals or copies.

The information gathered from the file may give you a **preliminary** indication as to the **political profile** of the applicant. This will allow you to proceed with more focused research into the relevant COI and to make a first assessment of the pieces of evidence that have already been submitted <sup>(16)</sup>.

### 2.1.2. Country of origin information

The gathering of COI needs to be determined by the specific political profile of the applicant. Thus, your approach and the scope and depth of your research will differ depending on the availability of information. There are four principal purposes for gathering information on the political context in the country of origin <sup>(17)</sup>.

- Firstly, it allows you to familiarise yourself with the **general political situation** in the country of origin of the applicant as well as the situation as regards security and human rights and/or the socioeconomic environment.
- Secondly, it will enable you to obtain relevant and adequate information that will form the basis of the subsequent **credibility assessment** of the applicant's claimed political profile (external credibility).

#### Example

If the applicant is a member of a certain political organisation or movement, you would need to gather information on the organisation itself. Such information could include details on its leadership, structure, purpose and goals, which you can use when conducting the interview to help you assess whether the applicant has made a credible claim that they are, in fact, a member of the organisation and, if applicable, have held the claimed role.

- Thirdly, researching the COI means finding relevant and adequate information to assess the elements that do or do not substantiate the applicant's **need for international protection based on their (imputed) political opinion**. This includes the applicant's well-founded fear of persecution, including future risk; different types of harm; specific aspects of the ground(s) for international protection; indiscriminate violence; the protection possibilities; and the application of the internal protection alternative (IPA) concept.

If you can identify the applicant's political opinion from the case file, for example through their membership of a political organisation or movement, you would

<sup>(16)</sup> For further general guidance, see EASO, *Practical Guide: Personal interview*, December 2014, Section 1.2.1.

<sup>(17)</sup> See also EASO, *Practical guide on the use of country of origin information by case officers for the examination of asylum applications*, December 2020, pp. 19–20.





need to gather COI as detailed above. The degree of risk depends on the specific circumstances in the specific country <sup>(18)</sup>. Therefore, assessing claims related to political opinion requires relevant and up-to-date COI to enable you to develop a comprehensive understanding.

- Finally, COI research allows you to discover potential grounds for **exclusion**.

When COI is not already available, you may need to request or research information relevant to the application <sup>(19)</sup>. Keep in mind that source assessment in COI research is central. You need to ensure that you have information from different angles. When using social media as sources of information, you should be aware that the content may be deceptive.

**Lack of COI** does not necessarily mean that the claimed fact/event did not take place. For example, lack of COI can be due to limited access to information in the country of origin, or due to the smaller scale and prominence of the claimed event. Therefore, lack of COI should not in itself lead to a negative credibility finding <sup>(20)</sup>. The case file will not always provide you with the details necessary for more strategic and structured preparation for the interview. The topics below can serve as general starting points as to which COI to research to prepare for an interview on political opinion.

The topics below are provided as examples that may be helpful in gathering information. The list should **not** be regarded as **exhaustive**. Nor should the topics be regarded as relevant in every case, since the level of detail you can go into will depend on the amount of information already available in the case file.

- Existence of ill-treatment due to political opinion <sup>(21)</sup>.
- Types of opinions and behaviours that are considered by the regime or other potential actors of persecution to be expressions of an adverse political opinion.
- Identifying potential groups or individuals at risk in relation to political opinion.
- Identifying potential actors of persecution (e.g. the state, non-state actors).
- Relevant political events and their consequences (especially if linked to the organisation or informal movement the applicant alleges to be involved in).
- Review of legislation and policy related to political opinion and how it is applied in practice. If acts included in expressing political opinions are criminalised, the gathering of information should also focus on how these laws are applied in practice.

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<sup>(18)</sup> As detailed in Section 1 'Defining political opinion – General principles and legal basis', what constitutes a political opinion needs to be assessed within the cultural, societal, legal and political context in which the opinion (imputed or not) exists.

<sup>(19)</sup> EASO, *Practical Guide: Evidence assessment*, March 2015, Section 1.3.2.2. 'Country of origin information (COI)' (update forthcoming).

<sup>(20)</sup> EASO, *Practical Guide: Evidence Assessment*, March 2015, Section 1.3.2.2. 'Country of origin information (COI)' (update forthcoming).

<sup>(21)</sup> If the information in the file contains the political opinion of the applicant, you would focus your research on COI relating to that specific political opinion. This is equally valid for all the points in the list.





- If the applicant relies on an imputed political opinion, determine the existence of the imputed political opinions and their extent. Are specific groups such as those mentioned in Section 1.3.3. 'Imputed political opinion' subjected to imputed political opinion? Does the applicant belong to such a group?
- The existence of politically motivated prosecution and punishment.
- The monitoring activities and capabilities of the actor of persecution (in the country of origin and abroad).
- Empirical information on the political organisation if the applicant claims to have adhered to the ideas of a specific organisation: goals, functioning, hierarchy, logo, slogan, history, the authorities' view of the organisation, modes of operations, etc.



### Related EUAA tool

#### *Practical Guide on Use of Country of Origin Information by Case Officers for the Examination Of Asylum Applications*

This practical guide provides information on how to use COI at different stages of the examination of applications for international protection, including the credibility assessment. In addition to finding more detailed information on how to use COI for the credibility assessment, the guide contains information on what is meant by relevant and accurate COI or COI that is up to date and gathered from various sources.

## 2.1.3. Country-specific guidance

Country-specific guidance can help you to direct your attention to the key issues at stake and adapt the interview strategy accordingly.

Apart from any available national guidance on specific countries, the case officer should consult available EUAA country guidance documents for relevant countries<sup>(22)</sup> as laid out in Article 11(3) of the EUAA regulation<sup>(23)</sup>. Based on the common analysis of the situation in a given country of origin by senior officials from EU+ countries, country guidance documents provide guidance on how to assess commonly encountered profiles (including profiles that have a link with the ground of political opinion) with regard to qualification for international protection. Depending on the country, relevant sections may include the topics of political opponents, journalists, civil servants of a former ruler, people who are affiliated with foreign organisations and other profiles that may be deemed to have a well-founded fear of persecution for reasons of political opinion (often interlinked with other grounds, e.g. religion). UNHCR<sup>(24)</sup> also publishes similar country guidance materials, such as eligibility guidelines and international protection considerations.

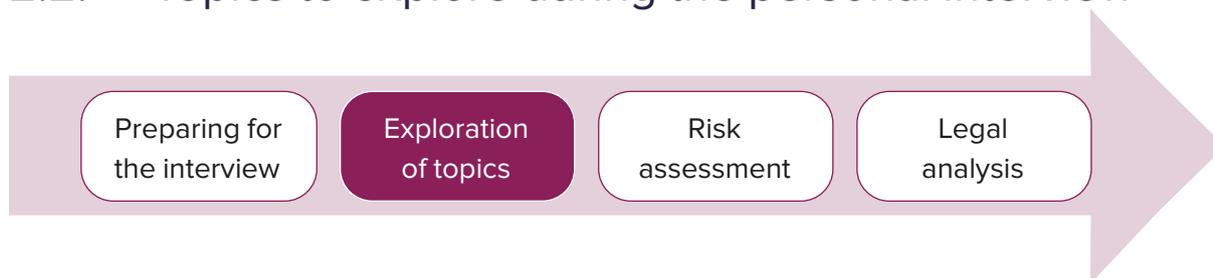
<sup>(22)</sup> All EUAA country guidance documents are available online (<https://euaa.europa.eu/asylum-knowledge/country-guidance>).

<sup>(23)</sup> Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, (OJ 468/1, 30.12.2021).

<sup>(24)</sup> All UNHCR handbooks and guides are available online (<https://www.unhcr.org/search?comid=4a2789926&cid=49aea93ae2&tags=GIP>).



## 2.2. Topics to explore during the personal interview

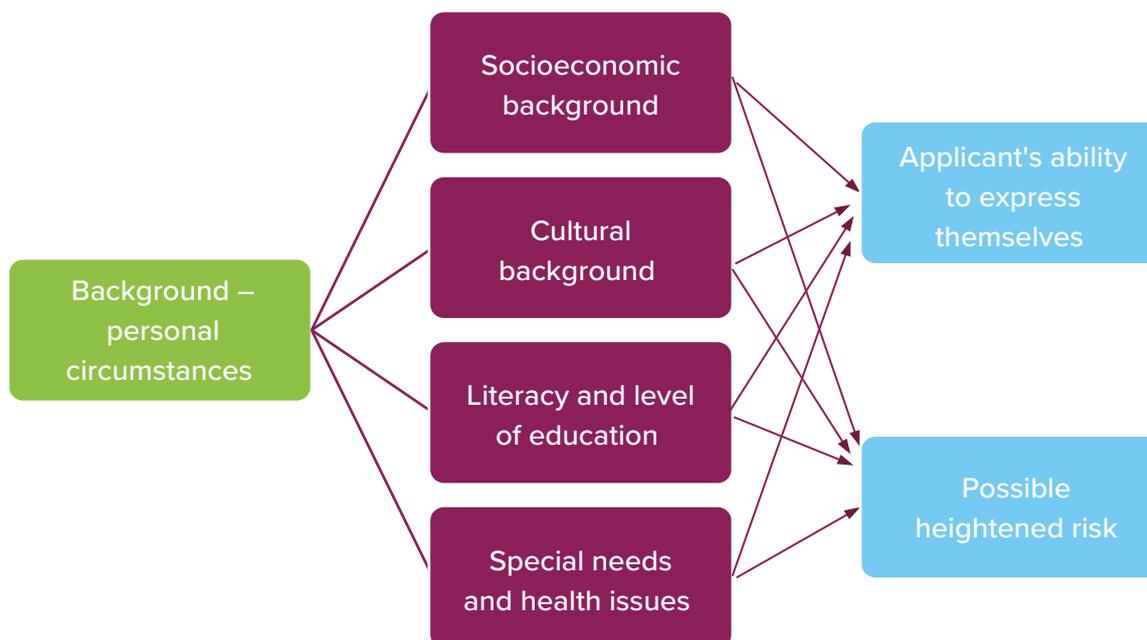


This section covers the relevant topics to explore during the personal interview when examining claims under the political opinion ground. The topics presented are not exhaustive, as each application is examined on a case-by-case basis and further/other themes may need to be explored during the interview.

### 2.2.1. Explore the applicant's individual background and personal circumstances

Before going into the specific topics relating to the applicant's political opinion, the first step in the interview should be to establish the applicant's individual background and personal circumstances, for example socioeconomic and cultural background, level of education, literacy level, special needs and health issues.

**Figure 1. Individual background and circumstances**



The purpose is to provide you with an understanding of the ability of the applicant to express themselves and to establish the expectations that can be placed upon them when accounting for matters relating to political opinion and activities. In general, an illiterate



applicant of very low socioeconomic status and with little or no education is unlikely to be able to provide a detailed and in-depth account of their political opinion, activities, role and responsibilities or of the structure of the political organisation or movement of which the applicant is a member or which the applicant supports and its values, goals and purpose. Thus, the establishment of the applicant's ability to express themselves is also fundamental to the subsequent credibility assessment.

At the same time, the background and personal circumstances may indicate a heightened (or reduced) risk of persecution or serious harm. For example, depending on the situation in the country of origin, a political activist who belongs to a family with a strong political reputation may be at a higher risk of persecution than an activist who does not come from a well-known family. In this way, the background and personal circumstances of the applicant may influence the risk assessment (see Section [2.3.5. 'Relevant personal circumstances'](#)).

### **2.2.2. Explore the political profile of the applicant**

When the applicant claims fear of ill-treatment due to their political opinion, you would naturally need to gather information on, explore and establish the political profile of the applicant. The political profile typically consists of the applicant's political opinion, activities, level of involvement and level of exposure, and will thus provide fundamental information needed to make the credibility and risk assessments later in the process. Therefore, exploring and establishing the applicant's political profile is fundamental.

In the case of applicants who do hold a political opinion, you need to explore the personal conviction of the applicant, and the personal motivations that have led them to embrace a particular political opinion.

#### **(a) Personal conviction and motivations of the applicant**

A political opinion is an opinion about the nature, policies or practices of a state or of an entity that has the capacity, legitimately or otherwise, to exercise societal power or authority (see Section [1.2. 'What is a political opinion in the context of international protection?'](#)). Hence, there may also be a broader and deeper aspect to political opinion relating to reflections that are more abstract.

An important aspect to investigate is the applicant's motivation for and reflections on the political idea or movement they claim to support. The applicant, through the lens of their political opinion, should look at, and analyse, society in their country of origin and explain its shortcomings as they perceive them and the alternative society they visualise. You need to convey to the applicant the importance of describing and explaining their political idea in a reflective way.

Exploration of how holding the political opinion manifests itself in the applicant's everyday life, the significance of the political identity for the applicant and how important the political expression is to the applicant can also fulfil a purpose in terms of assessing the applicant's reflections.





However, accounting for political motivation and ideas is **not limited to explaining an ideology in a well-reasoned and consistent way**. The political motivation may well be inspired, for example, by direct emotional or even impulsive reactions to wrongdoings that are committed against family members or other people with whom the applicant may identify.

Examining the applicant's motivations for embracing a political opinion allows the assessment of the **sincerity and profoundness** of their claimed political opinion at a later stage in the process.

### Example

In a country where merely committing to a particular idea may be associated with severe risk, the way the political opinion was formed, and why, may give you indications as to the sincerity and/or profoundness of the commitment. Typically, embracing and pursuing an adverse political opinion in a repressive country is more likely to be considered a conscious act and a contemplative decision, since it is associated with risk and has a significant impact on the individual's life. Therefore, the applicant may generally be expected to provide a detailed and comprehensive account of their reasons for adhering to the political opinion, in a reflective way, as well as a detailed and comprehensive account of the political opinion itself.

In some cases, it is a strong conviction about misconduct in the country of origin, in some cases in combination with adverse personal experiences, that has prompted the political opinion. This applicant may have been brought up in a region where their minority's rights have been denied for decades and their family has been committed to the cause of defending its rights for generations. The applicant's motivation for adhering to their family's political opinion may, in this case, be natural and a consequence of being brought up with it.

In other cases, the reasons for embracing a political opinion may be inexplicit and unclear or not based on a strong personal conviction, and the applicant may not participate in any activities related to the political opinion. This applicant may have read a flyer and decided to embrace a political opinion in a country where holding that political opinion puts you at great risk of persecution. In such cases, further examination is called for, since it appears to be a decision lightly taken given the high risk of being subjected to ill-treatment.

Generally, the greater the **level of involvement**, conviction and political activity, the more the applicant is expected to be able to give an account of their political opinion. Of course, in some cases, expectations should be lower, for example if the applicant is illiterate, little educated and has merely been a supporter of a political organisation and has not been involved in any activities.





### Examples of topics to explore related to motivation

- Reasons for embracing the political idea in a self-reflective way.
  - What prompted the development of the political opinion?
  - How was the opinion developed?
  - Motivation for embracing such an opinion.
- The applicant should be asked to account for the political idea in a self-reflective way.
- In what way does holding the political opinion manifest itself in the applicant's everyday life? What is the significance of the political identity for the applicant and what is the importance to them of expressing the political opinion?

### (b) Knowledge of wider political context: structures, laws, events

The act of leaving the country of origin for fear of persecution due to a political opinion may be assumed to presuppose a certain level of awareness and knowledge of the risks associated with having such a political opinion. This awareness can manifest in different ways. This part of the interview should have an overall focus on self-reflective aspects. Even if the applicant has not been personally subjected to past problems or threats, they would typically be expected to have knowledge of the perceptions of various actors (such as society, state, non-governmental groups) and their reactions towards individuals holding the same political opinion as the applicant.

It is a matter of eliciting the applicant's reflections on why they would be at risk and what they base this conclusion on.

Below is a non-exhaustive list of topics to focus on that can be helpful when exploring the applicant's awareness.

### Examples of topics to explore related to knowledge of wider political context

- The provisions in the law regarding freedom of expression.
- Specific provisions in the law regarding the applicant's political opinion and/or activities, and the treatment of such opinions and activities:
  - depending on the level of the applicant's involvement and their level of education, it could perhaps be expected that they have knowledge of the relevant legal provisions, for example on illegal activities in the country of origin.
- The treatment of these cases by the courts, if there is persecution by the state.
- The possibility of receiving protection from law enforcement agencies if the actor of persecution is not the state:
  - if the possibility exists, the effectiveness of this protection and the applicant's access to it;
  - if there is no such possibility, the reasons for drawing this conclusion.



### (c) Adherence to a political organisation (activities, knowledge)

Expressed political opinions consist of formal or informal adherence to established political organisations and informal adherence to political thoughts / adherence to informal movements (see Section 1.3.1. 'Expressed political opinion').

The exploration of the political profile of the applicant will be slightly different depending on whether the expression was through formal or informal adherence.

#### Formal adherence

Formal adherence to an established political organisation is when one's political opinion is expressed by adhering to an existing political organisation or by creating such an organisation and becoming a formal (founder) member of it.

This type of organisation may have an established project or mission, and its members may share values, and conduct actions or campaigns to implement or promote the organisation's set objectives. It may also have an established structure with one or several representatives, possibly with diverse functions and responsibilities. Examples of such organisations are political parties and movements, civil society organisations and trade unions.

Figure 2 shows some examples of activities that are frequently mentioned in asylum claims by members of political organisations, some of which are addressed in the guide.

**Figure 2. Examples of activities**





When it comes to applicants who claim to be **formal members** of a political organisation, you need to explore the steps taken to become a member and the details surrounding the adherence to the organisation and/or the political opinion. Example topics are provided in the box below.

#### Examples of topics to explore related to adherence to the political organisation or holding of a political opinion

- Steps taken to become a member.
- Specificities surrounding the adherence to the organisation.
- How the applicant first became aware of the opinion/organisation.
- How the applicant came across information on the organisation.
- The reasons for joining the organisation.
- Where the first meeting with representatives of the organisation took place and how it was arranged.
- Specificities on admission procedure (if any) and issuance of membership certificate.

Keep in mind that, if adherence to an adverse political opinion or organisation is associated with risk, meetings with others are unlikely to have taken place openly. If the applicant claims that the contacts have taken place openly in a repressive country, further investigation is necessary.

In addition to exploring the admission procedure, you may consider it relevant to explore the applicant's knowledge of the organisation of the political movement they have adhered to. Keep in mind the purpose of this exploration. Indeed, where the mere membership of a political organisation is enough to create a risk upon return, it will be relevant to explore the applicant's general knowledge of the organisation. On the other hand, if the level of involvement in the organisation is central regardless of formal membership, it will be more relevant to focus the exploration on the activities of the applicant within the organisation, rather than on the applicant's knowledge of the organisation itself. It is for you to assess the relevance of going through these topics, and, if you go through them, to assess which ones are more relevant to the future assessment of the need for international protection.

#### Examples of topics to explore related to knowledge of the political organisation of a political opinion

- The applicant's knowledge of the political situation in general in the country of origin.
- Knowledge of the political organisation itself, such as:
  - goals/ideology
  - logo/slogan
  - functioning
  - structure and hierarchy
  - ties with other organisations
  - history
  - the authorities' view of the organisation.





This section focuses on how to conduct the interview relating to some of the activities identified above. These activities are frequently cited in applications for international protection from members of political organisations.

Applicants claiming to be merely a **formal member** (not active in any way) of a political organisation in a country where membership in itself will subject them to risk are typically expected to have a high level of motivation and knowledge of the political opinion advocated by the organisation. Such applicants would therefore be expected to provide a relatively detailed and self-reflective account of their political opinion (refer to Section [2.2.2\(a\) 'Personal conviction and motivations of the applicant'](#)) that motivates them to adhere to the organisation. Typically, you could expect them to provide a reasonable account of why they decided to become a member (which, in itself, is associated with risk), but not to be active. It could be expected that they provide reasonable and detailed accounts of how they came into contact with the organisation in this context of risk, considering their background and personal circumstances. This may or may not affect their capability to describe and give detailed accounts. If the applicant's accounts of the organisation and of their motivations and political opinion are vague, you will need to explore possible explanations for this.

Applicants claiming an active role would typically also be expected to provide information in relation to the activities they were personally involved in.

For example, if the applicant has **distributed promotional materials or leaflets**, you need to pose questions as to the content of the material itself, the circumstances in which it was handed to the applicant, how it was distributed by the applicant thereafter and what the applicant tried to achieve through the distribution of the materials. They would typically also be expected to account for their political opinion and motivations in such a manner as described in the example above.

When investigating **attendance at political meetings**, you need to focus on the details. This includes the applicant's role during the meeting (if any); the place of the meeting; the organiser; the attendees; the political message conveyed; in what way the applicant received information on the details of the meeting, such as location, time and date; and if any precautionary measures were taken by the organiser or by the applicant (and in what way), and, if so, what those measures were. Applicants claiming **attendance at political meetings** would, in general, be expected to give relatively detailed accounts of the meetings and the surrounding circumstances, such as the topics that were discussed, the agenda and if there were any special reasons for holding the meeting. Underlying elements of motivation, conviction and interest are also generally involved when deciding to attend political meetings of which the topic is to advance an adverse political opinion in a context of risk.

The focus should thus be on the details, motivation and self-reflection that the applicant provides, considering their background and personal circumstances, which may or may not affect their capability to describe and give detailed accounts. If the applicant is not able to account for specifics, such as the purpose of the meetings or what was discussed or conveyed, you will need to investigate further. Questions to ask include how they were informed of and invited to the meeting and by whom, and their reflections on deciding to attend the meetings (in the context of the risks).





When investigating **participation in events such as protests**, you need to explore when and where the protest took place, the applicant's role and actions, how many people attended, who organised the protest, the purpose of the protest, whether there were any specific demands, whether the applicant was identified, whether the applicant or other participants were subjected to ill-treatment, etc. The applicant should also be asked to give an account, as detailed as possible, of what took place during the protest from their own perspective. Bear in mind that the participant may have had only a limited view of the protest and may therefore be unable to answer some of these questions.

Applicants claiming to have had a **prominent or leading role** in the organisation are typically expected to have more detailed knowledge of the organisation and of the tasks they have performed as leader of the organisation. They would also be expected to be able to provide detailed, comprehensive and self-reflective accounts of the reasons for adhering to the political opinion. Therefore, you need to investigate the level of detail that the applicant can provide regarding matters such as the political programme of the organisation and its goals, purposes, political ideas, hierarchy, history and structure. Questions concerning the applicant's history in the organisation from becoming a member to acquiring the leading role should also be investigated, as should the circumstances under which the applicant came to be entrusted with the leading role.

When investigating an applicant's claim to have **organised meetings**, you need to explore the nature and details of how the applicant could contact members and distribute information of when and where the meeting would take place; the planning and coordination of the meetings; how to get hold of meeting venues (especially if the venue was not provided by affiliates of the organisation); where the meetings were held; and what precautions were taken to, for example, make sure that the meetings would not be revealed.

When investigating the files of applicants claiming to have been **recruiting members**, you need to explore the nature of the role, under which circumstances the applicant assumed the role, how the applicant sought out new recruits, how they identified potential recruits and what precautions were taken. The applicant should also be asked to explain the recruitment process: the preparation, the first approach, the dialogue, the arguments used to recruit, etc.

When investigating the files of applicants assigned to tasks in a political organisation that might **require special knowledge or skills**, you may need to investigate the personal traits and skills of the applicant and how and why the applicant was assigned a prominent role. This may provide relevant information for the credibility assessment. It could also be relevant to examine the underlying circumstances that led to the applicant being assigned a leading role and/or specific tasks.

#### Informal adherence

Informal adherence to established political organisations is when the sympathiser shares the views, convictions, ideas, goals, etc., of the organisation, but is not a formal member. They may be just as active (or potentially more active) than formal members.





 Formal adherence should not be taken as a more genuine form of expression than informal adherence in the context of international protection.

Informal adherence to political thoughts / adherence to informal political organisations occurs when expression of a political opinion is linked to unorganised, unstructured, and even spontaneous, movements to which people may adhere in an informal way. Furthermore, the person concerned may have their own distinct, original thoughts, and their own way of expressing them, and these need not be aligned with the views of any existing movement or organisation. An example of informal adherence, and one that is increasingly common, is the use of the internet to express a political opinion, which is covered in Section [3.7. 'Political opinion expressed on social media'](#).

There are many similarities between informal and formal adherence to established political organisations. Therefore, many of the topics to explore during the interview would be similar to those for the formal member, since the focus needs to be on the applicant's political opinion, activities and level of exposure.

Typical activities that can be classified as showing informal adherence to a political thought or movement include attending demonstrations or taking part in events open to supporters, but also drafting press articles, maintaining a blog or participating in other **activities on the internet** (refer to Section [3.7. 'Political opinion expressed on social media'](#)).

Depending on how the political motivation came about and the activities the applicant pursued, they will have acquired **knowledge** of the political situation and, above all, about their own political party or organisation. The latter will include elements such as its goals, logo, slogan, functioning, hierarchy, history and the authorities' view of the organisation.

The applicant's individual background and personal circumstances should always be considered, as should their level of involvement and commitment, role in the organisation, activities, ability to express themselves, etc. It may not always be equally relevant to explore the applicant's motivation for adhering to their political opinion and knowledge of their political opinion, and a detailed and self-reflective account of the abovementioned cannot always be expected.

#### **(d) Unexpressed political opinion**

An unexpressed political opinion is still a political opinion, even if it is concealed.

The questions in the first part of the personal interview conducted with an applicant who claims to have unexpressed political opinions are similar to those asked in a personal interview conducted with an applicant who claims to have expressed convictions and motivations. These include:

- how the applicant first became aware of the opinions and/or organisation;
- how they came across information that made them aware of it;
- what prompted the development of the political opinions;
- how their opinions were developed;
- how they have lived their political opinions and how these opinions are reflected in their choices in life.





You also need to ask the applicant to tell you, following a period of self-reflection:

- if and how they have been affected by the decision not to express their beliefs;
- the factors they took into consideration when deciding not to express and act upon their beliefs;
- their reasons for not formally adhering to a political organisation and/or expressing their political opinion.

### 2.2.3. Explore imputed political opinion

An imputed political opinion is an opinion that is attributed to the applicant by the actor of persecution (refer to Section 1.3.3. '[Imputed political opinion](#)'). The applicant does not need to have the political opinion that is imputed to them.

To explore a possible imputed political opinion, it is pivotal to have a good understanding of the actors of persecution through the available COI. What are their motives, which groups have they been persecuting in the past and on which indications do they base their reasons for initiating persecution against a person? The focus of the interview will then be to explore why the actor of persecution would attribute a political opinion to the applicant and if the applicant possesses the characteristics that would lead the actor of persecution to engage in persecution.

Note that the burden of proof as to the intentions of the actor of persecution does not rest on the applicant. It is for the determining authorities to assess if the connection between the persecution and the imputed political opinion of the applicant is plausible <sup>(25)</sup>.

Taking into account the available information on the behavioural patterns of the actor of persecution and on how other persons in similar situations were treated, you will need to gather information on the behaviour of the applicant and circumstances surrounding them that have led the authorities or other actors to impute a political opinion to them. What needs to be plausible is that the actor of persecution de facto attributes a political opinion to the applicant.

Below are useful examples of characteristics, actions and behaviours, based on which the actor of persecution may impute a political opinion.

- Failure to adhere to the state party where adherence is mandatory.
- Contact with foreign authorities.
- Belonging to a particular family.
- Originating from a specific area.
- Involvement (voluntarily or incidentally) in a (one-off) event or activity that may associate them with a political opinion. Activities in which the applicant engages for

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<sup>(25)</sup> CJEU, request for a preliminary ruling of 19 November 2020, *EZ v Bundesrepublik Deutschland*, C-238/19, ECLI:EU:C:2020:945, paras 55 and 56.



purely opportunistic reasons may still be a cause for the actors of persecution to impute a political opinion.

- Artistic activities.
- State representatives.
- Profession.
- Certain behaviour: clothing choice, being in possession of certain books, going to underground entertainment clubs, following certain singers or influencers, drinking alcohol, taking drugs, activities associated by the authorities with a stance against the regime or not in accordance with regime policy.
- Certain non-actions, for example not participating in parades or not attending a place for religious worship.
- Westernisation of people who have returned to their country of origin after staying abroad.

If the applicant, for example, claims to **belong to a particular family or to be associated with a particular individual or group**, the examination can focus on the concept of ‘guilty by association’. You need to examine and map the applicant’s interactions/connections, such as family members, relatives, friends, colleagues, and their political activities and previous ill-treatment. You should look for indications as to how the authorities are aware of these connections and how they perceive them. If the applicant does not have detailed information on how these connections might be perceived by the authorities or other actors, you should instead rely more on COI.

Imputed political opinions may also be the result of a **one-off activity or event** in which the applicant has participated in a rather incidental, or even potentially opportunistic, manner. That would be the case, for example, if the applicant has accompanied a friend or acquaintance to a demonstration, while not sharing the political opinions that were expressed. An applicant may also be incidentally caught up in a particular event (being in the wrong place at the wrong time, for example). If the applicant relies on such incidental events to show that political opinions have been / may be imputed to them, you need to explore the events in detail. In addition, you need to look for COI on how persons in similar situations were treated and to what extent the actors of persecution allowed them to defend themselves.

**For further guidance** on special situations of imputed political opinion, see Sections 3.1 to 3.4.

#### **2.2.4. Explore past problems and threats**

The question of whether the applicant’s political opinion and/or activities have come to the attention of the actor of persecution, and how the actor acted upon it, is fundamental (refer to Section [2.3.3. ‘Perception of the applicant’s \(imputed\) political opinion by the actor of persecution’](#)). This practical guide has so far addressed how you should conduct the interview to identify how the applicant has expressed their opinion and where the applicant stands.



Together with the available COI, you would be able to understand if that level of involvement or exposure is sufficient to be of interest to the potential actor of persecution.

This section addresses the question of how to conduct the interview in those cases where the applicant claims that their political opinion has come to the attention of the actor of persecution.

The attention can take various forms, such as confrontation, ill-treatment, arrests, imprisonment, warnings, interrogations, abuse of the applicant and/or their family members and threats. In this case, you would need to focus on how the attention of the actor of persecution has manifested (i.e. how the actor of persecution has acted upon the knowledge of the applicant's political opinion and what the applicant has been subjected to), and identify the reason behind the attention from the actor of persecution, more specifically if the reason is really the applicant's political opinion.

#### **Examples of topics to explore related to past problems and threats due to political opinion and actors of persecution**

- The circumstances surrounding the past problems of / threats to the applicant.
- The possible problems of or threats made to other people with similar characteristics.
- The reason(s) behind the problems/threats, and the reasons for the applicant reaching that conclusion.
- The people causing these problems for / responsible for these threats against the applicant (and people with similar characteristics).
- If these persons have identified themselves in any way and, if so, how?
- What the perpetrators said during the incident(s).
- If the applicant's political opinion was mentioned.
- The personal and individual link between the confrontation and the applicant, if any. This can be explored by posing questions to determine whether the confrontation was targeted solely towards the applicant, or if others, for example the whole neighbourhood, were targeted with similar confrontations and if the other victims also hold an adverse political opinion.
- The timeline in relation to the commencement of the applicant's political activities and the time of the exposure or confrontation. This is one element that could help to assess the nexus between these activities and the problems incurred.
- The time elapsed between the confrontations (if several), and between the last confrontation and the time when the applicant left the country of origin. This will provide you with one basis on which to assess the risk upon return.
- The whereabouts of the applicant after being exposed to problems/threats, for example whether solutions were found to avoid the consequences of their exposure (such as moving to another location), or not (remaining at home until leaving the country), and what happened (to them, or others) after they had been exposed to these problems/threats, and before they left the country. In addition, investigate any events that happened after they left their country of origin.



- The status and position of the people behind the problems/threats.
  - This is of particular importance, especially if the actor is not the state, in order to assess the ability of the actor of persecution to pursue persecution in the future and in other parts of the country of origin (if **IPA** is assessed), and with regard to the protection the applicant can receive.

It may not always be the case that the applicant's political opinion or activities have been exposed to the actors of persecution before leaving the country of origin. That does not mean that the applicant is not at risk of being exposed upon return. Therefore, you need to gather information on the applicant's activities, as mentioned in the examples above, to be able to assess (in the credibility and risk assessments later in the process) if the applicant will be at risk of being exposed and subjected to risk upon return.

## 2.2.5. Explore the reflection of the applicant on their situation upon return

The risk assessment is a prospective examination of the future risk upon return. Therefore, you need to gather information on the applicant's reflections on if and how they would express their political opinion upon return. The issues to be assessed are the probability that the applicant would express their political opinion, the likelihood that the authorities would find out about this, and their probable reaction if it was brought to their attention.

### Examples of topics to explore related to the reflection of the applicant on their situation upon return

- How would the applicant act on their political opinion if returned (expression or non-expression)?
- What is the reason(s) behind this decision?
- The question regarding the applicant's perceptions of what they would be subjected to if returned may also be relevant to explore in this context. This is because their answer could provide information relating to the reason(s) behind the applicant's decision to leave and not to return.
- You would also need to ask questions related to any possible change in circumstances that could have an impact on the risk assessment if the applicant has experienced past problems or threats. This will allow you to assess if there are good reasons to think that the risky behaviour will not be repeated in the case of return. In order to complete the risk assessment, you will need to explore these topics with the applicant (see Section [2.3.4. 'Past problems and/or threats'](#)).



### Disclaimer

You would need to take into consideration whether the question regarding the manifestation of political opinion upon return is relevant to the particular case, since it may not always be

applicable. In cases where the authorities are already aware of the applicant and their political opinion, these questions may not be relevant. The right to disclose one's opinion is enshrined in the right to freedom of expression, which is a fundamental human right. Even if a person has not made their opinions public before, one cannot expect them to remain silent and keep withholding their opinions to avoid facing potential persecution in the case of return (see Section 1.3.2. 'Unexpressed political opinion').

## 2.3. Risk assessment



Risk assessment is a forward-looking assessment of the risk that the applicant, in the case of return, may be exposed to with a reasonable degree of likelihood <sup>(26)</sup>. The risk is defined by what may happen, the reasons why it may happen or the circumstances in which it may happen and the persons or groups from whom the threat originates.

Once you have assessed the credibility of all material facts related to the fear(s) of the applicant based on their (imputed) political opinion, you need to reach a conclusion as to which fears are accepted and those that are not. Your risk assessment will be carried out based on the **material facts that you have accepted and the currently available information** <sup>(27)</sup>.

### Example scenario

An applicant has stated that she has a leading role in the opposition party, Y. Based on your assessment of her statements and of the other pieces of information that she has submitted to support the material fact linked to her adherence to, and position in, party Y, you have accepted that the applicant was a member of party Y. However, her statements (and other evidence) were not credible as to her alleged leading position in the party. Your risk assessment will therefore be based on the fact that the applicant was only a member of party Y. You will thus not assess the risk incurred by leading members of party Y, although the fears expressed by the applicant were mainly linked to this position.

<sup>(26)</sup> EASO, *Practical Guide: Evidence assessment*, March 2015, Section 3.1 'Analyse the well-founded fear of persecution / real risk of serious harm', p. 20 (update forthcoming).

<sup>(27)</sup> EASO, *Practical Guide: Evidence assessment*, March 2015, Section 3.1 'Analyse the well-founded fear of persecution / real risk of serious harm', p. 20 (update forthcoming).



Several factors will have an influence on the likelihood that something would happen to the applicant in the event that the risks identified come to pass. Depending on the case, those factors will have to be weighted for you to be able to reach an assessment of the reasonable likelihood of the risk faced by the applicant. These factors form the ‘risk profile’ of the applicant. The list below is not exhaustive, and you should always be open-minded and take into consideration any relevant factor that may affect the applicant’s risk upon return.

The political profile of the applicant, the way the applicant is perceived, the past problems or threats experienced and their personal circumstances will allow you, in combination with the available COI, to assess the risk to which the applicant might be exposed. The factors relevant to an applicant who holds a political opinion have been added to the tables below, which summarise the two main applicant profiles: that of an applicant who holds a political opinion (see Section [2.3.1. ‘Political profile’](#)), and that of an applicant to whom political opinions have been imputed (see Section [2.3.2. ‘Imputed political opinion’](#)).

### 2.3.1. Political profile

The applicant’s political profile is a combination of diverse factors that define the political identity of the applicant. It comprises the applicant’s political opinions, the ways they were or are expressed, the responsibilities taken up by the applicant and the impact of these activities.

Having a comprehensive picture of the political profile of the applicant is key to an adequate risk assessment. Answering the following questions in relation to the facts that you have accepted will help you in defining the political profile of the applicant.

POLITICAL PROFILE	
<b>Level of involvement/ expression</b>	<ul style="list-style-type: none"> <li>• What has the applicant done in relation to their political opinions (nature of activities)?</li> </ul>
<b>Level of responsibility</b>	<ul style="list-style-type: none"> <li>• If applicable, what is the level of responsibility of the applicant within the movement/organisation?</li> </ul>
<b>Level of impact of actions</b>	<ul style="list-style-type: none"> <li>• If the applicant has expressed their political opinions, are their activities/actions public or known?</li> <li>• If they are, to what extent?</li> <li>• What is the (potential) impact of the activities of the applicant?</li> <li>• Based on the COI, does the actor of persecution put in place monitoring measures to look for opinions such as those held by the applicant?</li> </ul>
<b>Perception of the actor of persecution</b>	<ul style="list-style-type: none"> <li>• See questions in Section <a href="#">2.3.3 ‘Perception of the applicant’s (imputed) political opinion by the actor of persecution’</a>.</li> </ul>
<b>Past problems and/or threats</b>	<ul style="list-style-type: none"> <li>• See questions in Section <a href="#">2.3.4 ‘Past problems and/or threats’</a>.</li> </ul>
<b>Personal circumstances</b>	<ul style="list-style-type: none"> <li>• See questions in Section <a href="#">2.3.5 ‘Relevant personal circumstances’</a>.</li> </ul>





It is important for you to identify where the applicant stands. Based on the available **COI** on the political context, you will understand the level of risk and, therefore, be able to determine if the political profile of the applicant would put them at risk if they were to be returned.

COI is considered throughout the risk assessment process, as it will shed light on the attitude of the actor of persecution, its policies for monitoring activities considered undesirable, and its reactions to a particular opinion. The COI is a key element that will guide you through each step of the reasoning.

It is important that the COI at your disposal is not limited to a general description of the political situation (election system, organisation, etc.), but that it focuses on the current situation in relation to the respect or violations of political rights of the people in the country of origin of the applicant.

The more precise and specific the COI is to the situation of persons sharing a similar political profile to that of the applicant, the easier it will be for you to have a picture of the risk that the applicant would face upon return.

### **Example scenario**

You have accepted that the applicant is a member of trade union F, and that her involvement in her country of origin was limited to some basic secretarial activities within the union, such as sending emails, organising meetings, keeping the list of members updated and similar tasks.

Based on the information at your disposal, you know that members of major trade unions sometimes face intimidation and detention for fictitious motives. However, the COI does not indicate which trade unions are considered as 'major', or whether F would be considered as such. By reporting that those risks happen 'sometimes', without concrete description of the circumstances in which those risks occur, you will not know which members of these major unions are exposed to that risk, or if all members are equally exposed, regardless of their rank or activities, or gender, or if specific circumstances are at play in cases where such risks have been reported. The available information is not precise enough for you to be able to draw a reasoned conclusion on the potential risk for the applicant.

If important information you need to make the risk assessment is unavailable, you could either contact your colleagues with COI expertise with precise questions, or conduct COI research of your own, taking into account all COI quality standards <sup>(28)</sup>.

Based on the answers, you should have a clear view of the level of political involvement, visibility and potential exposure of the applicant.

If the political opinion of the applicant remains unexpressed, you will need to base the risk assessment on the information available on the risks that other persons with similar opinions faced when they expressed these opinions.

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<sup>(28)</sup> Further useful information can be found in EASO, *Judicial practical guide on country of origin information – Compilation of jurisprudence*, 2018.





## 2.3.2. Imputed political opinion

If you accept all material facts underlying a possible imputed political opinion, to what extent will this lead to real risk in the case of return?

Answering the questions in this table in relation to the facts that you have accepted will help you to assess information regarding the perception of the applicant's political opinion by the actor of persecution.

IMPUTED POLITICAL OPINION	
<b>Level of visibility and awareness</b>	<ul style="list-style-type: none"> <li>• Are the characteristics or events, based on which the actor of persecution may impute a political opinion, known to the authorities? How and to what extent?</li> <li>• Based on the COI, does the actor of persecution put in place monitoring measures to look for opinions such as the ones imputed to the applicant?</li> </ul>
<b>Perception of the actor of persecution</b>	<ul style="list-style-type: none"> <li>• See questions in Section <a href="#">2.3.3 'Perception of the applicant's (imputed) political opinion by the actor of persecution'</a>.</li> </ul>
<b>Past problems and/or threats</b>	<ul style="list-style-type: none"> <li>• See questions in Section <a href="#">2.3.4 'Past problems and/or threats'</a>.</li> </ul>
<b>Personal circumstances</b>	<ul style="list-style-type: none"> <li>• See questions in Section <a href="#">2.3.5 'Relevant personal circumstances'</a>.</li> </ul>

Further information on how to assess risk and to use COI in relation to specific situations of imputed political opinions can be found in Chapter [3. 'Specific asylum claims based on the political opinion ground'](#).

## 2.3.3. Perception of the applicant's (imputed) political opinion by the actor of persecution

Holding a political opinion or participating in political activities may create a risk only if the actor of persecution perceives the action, omission, situation or behaviour as taking a political stance and the actor of persecution would react to that political stance in some way (see Section [2.4.2. 'Nexus / \(for reasons of\)'](#)). Based on the political profile of the applicant, and the way it has been discovered (or imputed to them), and your knowledge of the situation in the country of origin, you will be able to estimate the risk that something would happen to the applicant in the case of return.

Answering the questions in the following table in relation to the facts that you have accepted will help you to assess information regarding the perception of the applicant's political opinion by the actor of persecution.

You will be able to answer these questions only if you rely on precise, relevant and up-to-date COI related to the behaviour of the actor of persecution.





On the other hand, if COI is lacking because non-governmental or international organisations, the press or any other body is prevented from reporting on the actor of persecution's response to the expression of undesirable political ideas, this gives a strong indication of the actor of persecution's perception of political opposition, and its attitude towards those who may report on that perception and on the reactions to that perception.

PERCEPTION OF THE ACTOR OF PERSECUTION	
<b>COI</b>	<ul style="list-style-type: none"> <li>• Based on the COI, what is the perception of the regime towards opinions and activities such as those imputed to the applicant?               <ul style="list-style-type: none"> <li>▪ How does the actor of persecution react towards opinions and activities such as those imputed to the applicant? Do people with similar political opinions face problems/threats?</li> <li>▪ If so, what types of problems or threats do other persons with similar profiles face?</li> <li>▪ Under which conditions or circumstances have they faced these problems or threats?</li> <li>▪ How likely is it that the applicant's opinion and/or behaviour will lead to a similar reaction from the authorities towards the applicant? Are there elements that would increase that likelihood?</li> </ul> </li> <li>• Based on the COI, do the potential actors of persecution allow for a fair process in which the applicant can defend themselves (and, if the opinions were wrongly imputed, explain why the political opinion was wrongly imputed to them)?</li> </ul>

#### 2.3.4. Past problems and/or threats

The past problems of and threats against an applicant and their direct surroundings need also to be considered, as past events can be strong indicators of the risks the applicant may be subjected to in the case of return.

If you have accepted that the applicant has experienced one or several problems in relation to their (imputed) political opinion, there is an increased likelihood that the applicant may be subjected again to such treatment or conduct in the case of return. It could also be that less serious incidents could lead to more severe events in the future. In addition, the applicant may not have been the target of the problem or the threat, but may base their fears on problems or threats experienced by others. You will therefore need to assess the likelihood that these problems or threats would recur in the case of return, and in which form or to what intensity, considering any good reasons you have to think that they would not.



You should keep in mind that, if it is accepted that the applicant has experienced one or several **past problems that amount to persecution or to direct threats of persecution**, the burden of proof is shifted. In these cases, there is a presumption that the applicant is going to be subjected again to that persecution in the case of return, unless you have good reason to consider that such persecution will not be repeated <sup>(29)</sup>.

Here are some questions to consider in relation to past events to which the applicant has been subjected and that you have accepted. The answers to these questions will have an impact on your risk assessment.

PAST PROBLEMS AND/OR THREATS	
<b>Past problems and/or threats incurred by the applicant and their direct surroundings</b>	<ul style="list-style-type: none"> <li>• Has the applicant experienced any past personal problem(s) that would allow you to reasonably predict how the actor of persecution would react to the opinions of the applicant in the case of return?</li> <li>• Have relatives or people who share the opinions of the applicant had problems or been threatened because of their political opinions or because of their relation to the applicant?</li> </ul>
<b>Past persecution (and direct threats thereof)</b>	<ul style="list-style-type: none"> <li>• Do the past problems experienced by the applicant amount to a past persecution or direct threat?</li> <li>• If this is the case, are there good reasons to consider that such persecution will not be repeated?</li> </ul>
<b>Good reasons to consider that the problem/persecution will not be repeated</b>	<ul style="list-style-type: none"> <li>• Has there been a change in the political opinions of the applicant that would affect their fear of persecution? Is the change genuine or is it based on fear? Would this change make a difference to the perception by the actor of persecution? Would the initial opinions still be imputed to the applicant?</li> <li>• Has there been any change in the circumstances that could have an impact on the problem or threat not being repeated? These circumstances can relate to the personal circumstances of the applicant and/or the specific circumstances of the problem or threat.</li> <li>• Has there been a significant improvement in the political situation in the country of origin of the applicant that has led to a decreased level of persecution? Has this change proven to be durable and of sufficient extent to affect the situation of the applicant?</li> <li>• Has a long time passed between the last problems or threats and the time the applicant left the country of origin, during which time these problems or threats were not repeated, without there being a direct reason why the actor of persecution has not pursued the threats?</li> </ul>

<sup>(29)</sup> Article 4(4) QD (recast). See also EASO, *Practical Guide: Evidence assessment*, March 2015 (update forthcoming).

You will be able to assess a change of circumstances in the country of origin only if you rely on relevant, precise and up-to-date COI. COI will allow you to assess the nature of the change in circumstances, its extent and its durability.

### 2.3.5. Relevant personal circumstances

In addition to the political views or actions of the applicant, the risk may also be, negatively or positively, influenced by personal circumstances. Gender, socioeconomic status, age, etc., may all be factors that influence the risk. Before reaching the risk assessment phase, you should have identified these potential personal circumstances and assessed which are to be accepted, along with the related material fact. The accepted personal circumstances of the applicant will need to be considered in the risk assessment.

#### Example scenario

In a country where certain types of political activism are persecuted, being a woman in addition to being a political opponent may increase the risk upon return. On the other hand, if that woman enjoys a strong social or economic position and has a well-established network, this may be a risk-decreasing factor.

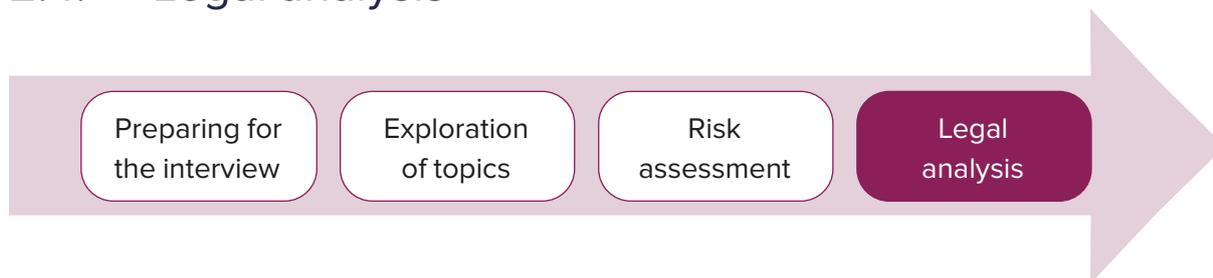
Keep in mind that personal circumstances may also in themselves be material facts that may create additional risks for persecution, as seen in Section 2.4.2(b), ‘Other reasons for persecution’. This guide, though, focuses only on the examination of the risk(s) linked to the (imputed) political opinions of the applicant. For further information related to the assessment of personal circumstances and their relation to the material fact under consideration and the risk assessment, refer to the EUAA practical guide on evidence assessment <sup>(30)</sup>.

#### RELEVANT PERSONAL CIRCUMSTANCES

Based on the COI, are there personal circumstances not necessarily directly linked to the political views or activities of the applicant that may impact (increase or decrease) the risk upon return of the applicant?

<sup>(30)</sup> EASO, *Practical Guide: Evidence assessment*, March 2015, Section 1.3.2.2 ‘Country of origin information (COI)’ (update forthcoming).

## 2.4. Legal analysis



Following the risk assessment, the case officer proceeds with the legal analysis of the case. The first component of the legal analysis is establishing whether the acts feared by the applicant amount to persecution. If that is the case, the case officer then proceeds with establishing the reasons for the persecution.

As explained in Chapter 1. ‘[Defining political opinion – general principles and legal basis](#)’, political opinion should be understood in a broad sense; a political opinion can be expressed, unexpressed, real or imputed.

With this in mind, the case officer needs to assess first whether the forms of expression and/or actions described by the applicant can qualify as political opinion <sup>(31)</sup>.

### 2.4.1. Well-founded fear of persecution

Whether the act(s) feared amount(s) to persecution is based on the consequences that an applicant with certain political dispositions, real or imputed, may face if returned.

When making this assessment, case officers should bear in mind that the applicant should not be expected or required to suppress their political views to avoid persecution.



#### Related EUAA tool

For further guidance, see EASO, *Practical Guide: Qualification for international protection*, April 2018, Section ‘Refugee status’, ‘Persecution and well-founded fear’.

In cases where the well-founded fear of persecution has been established, the case officer proceeds with examining the reasons for persecution, (imputed) political opinion being one of them.

<sup>(31)</sup> An analysis of Member State jurisprudence regarding the ground of (imputed) political opinion can be found in EASO, *Qualification for International Protection (Directive 2011/95/EU) – Judicial analysis*, December 2016, Section 1.5.2.5 ‘Political opinion (Article 10(1)(e))’.



## 2.4.2. Nexus / (for reasons of)

Refugee status is granted only once it is established that the persecution feared is due to the (imputed) political opinion.

The causal link between the applicant's opinion and the events feared upon return is not obvious to establish in all cases. Keep in mind that the persecutory intention of the persecutor does not need to be demonstrated by the applicant. It is important to remember that it is not for the applicant to prove the connection between the persecution and the reasons that lead to this persecution, as such a burden of proof would be inconsistent with the provisions for the assessment of applications<sup>(32)</sup>. National authorities must assess, in the light of all the relevant circumstances put forward by the applicant, the plausibility of the connection between the reasons for persecution and the consequences that the applicant will be exposed to<sup>(33)</sup>.

### Note on UNHCR's approach

*While the definition speaks of persecution 'for reasons of political opinion' it may not always be possible to establish a causal link between the opinion expressed and the related measures suffered or feared by the applicant. Such measures have only rarely been based expressly on 'opinion'.*

*More frequently, such measures take the form of sanctions for alleged criminal acts against the ruling power. It will, therefore, be necessary to establish the applicant's political opinion, which is at the root of his behaviour, and the fact that it has led or may lead to the persecution that he claims to fear<sup>(34)</sup>.*

### (a) Perception of the applicant's political opinion by the actor of persecution

The perception of the applicant's political opinion by the persecutor and the action(s) taken by the persecutor due to this perception are important factors to consider when examining the reason for persecution.



### Article 10(2) QD (recast)

*... 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.*

<sup>(32)</sup> As laid out in Article 4 of the asylum procedures directive (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)).

<sup>(33)</sup> For further details, see CJEU, judgment of 19 November 2020, *EZ v Bundesrepublik Deutschland*, C-238/19, ECLI:EU:C:2020:945, paras 54–58. Summary available in the [EUAA Case Law Database](#).

<sup>(34)</sup> UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, reissued, Geneva, April 2019, para. 81.





When examining the perception of the applicant's opinion by the persecutor, note that actions may be deemed political in the country of origin in question notwithstanding that they may be low level or not even overtly political <sup>(35)</sup>.

Where opinions are imputed, the existence of political activity is not a prerequisite, and the key question is the perception of the persecutor and their views regarding activities that they define as and consider political.

An important element to assess is whether there are valid grounds that the involvement of the applicant will be perceived by the regime as an act of political dissent against which it might consider taking retaliatory action (see summary below on the CJEU's ruling in case C-652/16).

### CJEU, request for a preliminary ruling, 2018, *Ahmedbekova*, paragraphs 84–90 <sup>(36)</sup>

In this case, Mrs Ahmedbekova and her son, both Azerbaijani nationals, had applied for international protection in 2014 and claimed fear of persecution on the basis of, among other things, the fact that Mrs Ahmedbekova had participated in filing a claim against Azerbaijan before the European Court of Human Rights. She considered that this demonstrated her political opinions.

In relation to the question of the referring court as to whether the fact of having filed a complaint before the European Court of Human Rights could be relevant to the assessment of the application for international protection of Mrs Ahmedbekova and her son, the following are noted <sup>(37)</sup>.

- **The intention of the applicant to convey a 'political opinion'** that the regime disregards human rights by bringing a complaint against the European Court of Human Rights **is not the central point of the assessment** of the fear of being persecuted based on 'political opinions'.
- What needs to be assessed are the following:
- **the perception by the regime** of that involvement **as an act of political dissent**;
- the fact that the regime might consider taking **retaliatory action against that act**.

*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 <sup>(38)</sup>.*

<sup>(35)</sup> EASO, *Qualification for International Protection (Directive 2011/95/EU) – Judicial analysis*, December 2016, p. 53.

<sup>(36)</sup> CJEU, judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Deputy Chair of the State Agency for Refugees (Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite)*, request for a preliminary ruling, case C-652/16, ECLI:EU:C:2018:801, paras 84–90. Summary available in the [EUAA Case Law Database](#).

<sup>(37)</sup> CJEU, judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Deputy Chair of the State Agency for Refugees (Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite)*, request for a preliminary ruling, case C-652/16, ECLI:EU:C:2018:801, para. 86. Summary available in the [EUAA Case Law Database](#).

<sup>(38)</sup> CJEU, judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Deputy Chair of the State Agency for Refugees (Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite)*, request for a preliminary ruling, case C-652/16, ECLI:EU:C:2018:801, para. 87. Summary available in the [EUAA Case Law Database](#).





## (b) Other reasons for persecution

There is no need for political opinion to be the exclusive or sole reason for persecution. The motives of the persecutor may be mixed and include other reasons that can fall within the scope of Article 10 QD (recast). What needs to be substantiated is that political opinion was at least one substantial contributing factor to persecution<sup>(39)</sup>. For example, (imputed) political opinion may be linked to other grounds, such as the following:

- religion (e.g. the association of religious activities with political opposition activities, apostates seen as threats to the regime or core state values);
- ethnicity (e.g. association with political preferences);
- nationality (e.g. when a conflict between national groups is combined with political movements, particularly where a political movement is identified with a specific nationality)<sup>(40)</sup>;
- membership of particular social group<sup>(41)</sup> (e.g. being the member of a family that is politically categorised as being opposed to the authorities, or as having some members known for their political opinions against the regime; organisations for lesbian, gay, bisexual, transgender and intersex persons' rights being perceived as opposing the government).

### 2.4.3. Protection in the country of origin

The next step to take in the legal analysis is to examine the availability of protection in the country of origin. If protection cannot be provided by the actors of protection in the area of persecution, the possibility of an IPA is examined.

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<sup>(39)</sup> On plurality of motives for persecution, see also Supreme Administrative Court (Czech Republic), judgment of 30 September 2008, *SN v Ministry of Interior*, 5 Azs 66/2008-70 (see the [European Database of Asylum Law English summary](#)).

<sup>(40)</sup> UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4, para. 75.

<sup>(41)</sup> See also CJEU, judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Deputy Chair of the State Agency for Refugees (Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite)*, request for a preliminary ruling, case C-652/16, ECLI:EU:C:2018:801, para. 90. Summary available in the [EUAA Case Law Database](#).





## Article 7 QD (recast) – actors of protection

1. Protection against persecution or serious harm can only be provided by:

(a) the State; or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State;

provided they are willing and able to offer protection in accordance with paragraph 2.

2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors [...] take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.

3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Union acts.

It is often found that, in cases where the persecution is due to the applicant's political opinion, the actor of persecution is the state. In these cases, protection will not, in principle, be available, as state actors are presumed to operate throughout the country.

When assessing the availability of protection, case officers should bear in mind that any social and financial support provided by private actors, such as the family or the clan of an applicant, falls short of constituting protection in accordance with Article 8 QD (recast) <sup>(42)</sup>.

The situation in the country of origin is an aspect to which the case officer should always pay due attention, to correctly assess the effectiveness of protection. For example, when powerful political organisations are involved, they are considered 'private actors', but the state may not have the resources to provide effective protection within the meaning of Article 7(2) QD (recast).

Where the actor of persecution is the state, there is a presumption that the IPA will also not be available. Where it is concluded that the persecutor is a private actor, the criteria of safety, travel, admittance and reasonableness to settle in the IPA location must be assessed.



### Related EUAA tool

For the application of the IPA, refer to EASO, [\*Practical Guide on the Internal Protection Alternative\*](#), May 2021.

<sup>(42)</sup> CJEU, 20 January 2021, [\*Secretary of State for the Home Department \[UK\] v OA \(Somalia\)\*](#), C-255/19, EU:C:2021:36. Summary available in the [EUAA Case Law Database](#).

It is stressed that the nexus between the applicant's opinion and the persecution feared is established where the state is unwilling to protect the applicant due to their political opinion. This could be the case, for example, if an applicant, after being a victim of a common crime, addresses the police authorities for support and assistance and they refuse to provide it due to the political opinion of the applicant.

#### 2.4.4. Act(s) amounting to real risk of serious harm

In cases where a causal link between the applicant's political opinion and the persecution feared is not substantiated, case officers must examine if any other reasons for persecution apply.

If this is not the case, the next step in the legal analysis is to proceed with examining the application of subsidiary protection.

Article 15 QD (recast) specifies the scope of the 'serious harm' to be assessed.



#### Related EUAA tool

For further guidance, refer to *EASO, Practical Guide: Qualification for international protection*, April 2018, Section 'Subsidiary protection'



#### Key points to remember

- For claims related to political opinion, it will be important to explore the core of the applicant's persona. This is done in order to identify the applicant's individual background, circumstances and political profile.
- The personal conviction and motivation of the applicant, their knowledge of the wider political context and their activities (formal or informal adherence to a political organisation) are necessary aspects to explore. Keep in mind that an unexpressed political opinion is still a political opinion, even though it is concealed.
- When exploring imputed political opinion, you need to gather information on the behaviour of the applicant and the circumstances surrounding them that have led the authorities or other actors to impute a political opinion to them, taking into account the available information on the behavioural patterns of the actor of persecution and on how other persons in similar situations were treated.
- To assess the risk, you need to consider all accepted material facts, providing you with the 'risk profile' of the applicant – their political profile, the reasons why political opinions were imputed to them (if any), the perception and reaction of the actor of persecution towards such (imputed) opinions, and any past problems and/or threats – while considering all personal circumstances that could enhance or decrease the risk in the case of return. All this needs to be examined in the light of relevant and up-to-date COI.
- In the legal analysis, it first needs to be assessed whether the forms of expression and/or actions described by the applicant can qualify as political opinion.



- The perception of the applicant's political opinion by the persecutor and the action(s) taken due to this perception are important factors to consider when examining the reason for persecution.
- The causal link between the applicant's opinion and the events feared upon return is not obvious to establish in all cases. Keep in mind that the persecutory intention of the persecutor does not need to be demonstrated by the applicant.





### 3. Specific asylum claims based on the political opinion ground

This chapter provides guidance on how to deal with specific asylum claims based on political opinion, including examples of topics to explore during the examination of the case <sup>(43)</sup>.

#### 3.1. Military service

It is important to stress that states have the legitimacy to impose military service, and therefore refusing to serve is not a valid ground for international protection. It is within the powers of the state to impose punishments for desertion or evasion of military service. Military service, however, must have a legal basis, be implemented in a non-arbitrary and non-discriminatory manner, and be based on military needs and plans. Any punishment for refusal to perform military service should be non-discriminatory, proportionate and provided for in the law. It must also be possible to challenge call-up for military service in a court of law <sup>(44)</sup>.

Case officers may encounter cases where refusal to perform military service could lead to persecution or serious harm. This could be the case, for example, if those who refuse to serve receive inhuman or degrading treatment as the punishment for refusing to serve in the military is disproportionate and/or amounts to a threat to life, or if no alternative service is made available for conscientious objectors.

The focus of this chapter is to outline the link between the refusal to perform military service and the political opinion ground. Political opinion in cases of refusal to perform military service can be imputed, but the refusal itself can also be an expression of political opinion. This can be the case if the applicant opposes the use of military force or the means and methods of the state agents, or opposes the policy of the government directly.

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<sup>(43)</sup> This chapter aims to describe specific situations from the perspective of the fear of persecution based on the political opinion ground. The asylum-related jurisprudence of the CJEU or the European Court of Human Rights that is mentioned in this chapter is thus that which is available for that ground at the time of publication of this guide. You may find further (national) and/or updated case-law in the [EUAA Case Law Database](#) by using the [search function](#) and the keyword 'political opinion'.

<sup>(44)</sup> Refer to UNHCR, *Guidelines on International Protection No 10: Claims to refugee status related to military service within the context of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 12 November 2014, p. 2. In addition, in accordance with para. 171 in UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, reedited, Geneva, January 1992:  
*171. Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.*





### 3.1.1. Relevant terminology

Before outlining the key elements to consider when examining claims relevant to military service, it is important to mention relevant terminology on the topic.

- **Military service:** service or acts performed in the service of the armed forces of a state. It may be performed during peacetime or during an armed conflict. It can follow a voluntary entry into the military, or be based on a compulsory conscription. Non-state actors cannot impose military conscription.
- **Alternative service:** service performed by conscientious objectors as a substitute for conscription into the armed forces of the state. Alternative service may take the form of civilian service outside the armed forces (e.g. in a public health facility, voluntary work for a charitable institution) or a non-combatant role within the army (e.g. a position as a cook or an office worker).
- **Draft evasion:** when a civilian fails to register for or comply with a call for recruitment for compulsory military service.
- **Desertion:** when a soldier serving within the armed forces leaves their military post or function without leave, or resists being called to fulfil military obligations.

### 3.1.2. Persecution for reasons of (imputed) political opinion in the context of military service

There are several circumstances in which refusal to perform military service can lead to persecution for reasons of (imputed) political opinion.

- **Conscientious objection.** The absence of the recognition of conscientious objection and the absence of the option to participate in an alternative form of service may, for conscientious objectors, in itself be considered a serious human rights violation that would amount to persecution<sup>(45)</sup>. A relevant example could be a pacifist conscientious objector in a country where there is no recognition or process for acquiring the status of conscientious objector nor the option of alternative service.

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<sup>(45)</sup> In European Court of Human Rights, judgment of 7 July 2011, *Bayatyan v Armenia*, 23459/03, ECLI:CE:ECHR:2011:0707JUD002345903, para. 110, the court noted that: *Article 9 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] does not explicitly refer to a right to conscientious objection. However, it considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.*



- **Discrimination and/or ill-treatment** during the military service. Sometimes applicants have encountered discrimination and ill-treatment during military service. This can be the case for those with opposing views to government policies, who may be subject to discrimination and ill-treatment because of their political opinion. Another relevant example is that of conscripts from specific locations who are deployed to the front at a disproportionate rate shortly after their enlistment, and with minimal combat training, as a form of punishment for the disloyalty to the regime shown by certain groups in the part of the country where those conscripts come from.
- **Disproportionate and/or arbitrary punishment** of the deserter or draft evader, because of their political opinion. In some cases, the punishment meted out to applicants who refuse to perform military service is disproportionate or arbitrarily applied because of the (perceived) political opinion or background of the applicant.
- **Prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion** as set out in Article 12(2) QD (recast). In accordance with Article 9(2)(e) QD (recast), an act of persecution can take the form of prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion. Relevant examples may relate to draft evasion and draft desertion during a civil war <sup>(46)</sup>.



### Article 9(2)(e) QD (recast) – acts of persecution

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

[...]

e. prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);

<sup>(46)</sup> The political opinion ground may be relevant in other cases as well (see UNHCR, *Guidelines on International Protection No 10*, paras 53 and 54), for example if a soldier becomes aware of criminal activities (see also Section 3.4 'Denunciation of, or resistance to, corruption and other criminal behaviour by the authorities') and in cases where the ground of political opinion may be applicable to family members of a conscientious objector, draft evader or deserter who is identified as having an allegiance to a particular political cause (see also Section 3.2. 'Family members').



### 3.1.3. Topics to explore during the personal interview

When examining claims related to refusal to perform military service, the following elements are key.

#### (a) Clarify the situation of the applicant

##### Examples of topics to explore on the situation of the applicant with regard to their military service status

- Identify the exact status of the applicant with regard to military service (eligible for conscription / draft evader / deserter).
- Prior preparation based on relevant COI is necessary, which can include the following:
  - the legal framework regulating military service in the country in question;
  - the punishments for refusal to serve;
  - the existence and relevance of arrangements for conscientious objectors;
  - the existence of an alternative form of service;
  - the possibility of exemptions or deferrals and the procedure to request for these;
  - the conditions and treatment experienced by conscripts to military service and the duration of compulsory service;
  - possible discriminatory aspects of the law and its application with regard to political dissidents;
  - the consequences of draft evasion / desertion, and the perception of state agents of those refusing to perform military service;
  - the existence and nature of the conflict in the country or region in question, if applicable.

#### (b) Relevant documentation produced by the applicant with regard to military service

##### Examples of topics to explore on the documentation produced by the applicant

- **Explore whether the applicant can provide specific documentation, for example a letter stating that the applicant has been conscripted and summoning them to military service or, in the case of reservists, reserve lists.**
- Explore whether expectations regarding documents related to the military service are linked to the national situation. The case officer needs to be familiar with the relevant procedures, for example:
  - **the steps for conscription;**
  - **conditions for exemption from military service;**
  - **notifications received by the authorities.**



**(c) Activities and positions of the applicant during military service (if they have served in the military)**

**Examples of topics to explore on the activities and/or positions of the applicant during military service**

- Where did the applicant serve, and for how long (e.g. in which branch of armed forces (army, air force, navy) did the applicant serve, and in which division/battalion/brigade/unit)?
- Which positions/ranks did the applicant consecutively hold (e.g. locations of camps or training facilities where they were stationed)?
- Which training courses did the applicant undertake?
- What were the applicant's consecutive tasks and duties (e.g. tasks of the unit and of the applicant, weapons used, manoeuvres they participated in)?
- Examine possible documentation (e.g. official communication or military identity card).

When exploring the topics above:

- keep in mind that the applicant's situation, for example previously holding a central position and then deserting, may be a risk-impacting circumstance in some cases;
- be alert to possible exclusion triggers <sup>(47)</sup>.

**(d) Objection to military service and reasons why**

**Examples of topics to explore on possible objection to military service and the reasons for that objection**

- Explore whether the applicant objects to military service and why.
  - Does the applicant object to military service in general or is their objection relevant only to the particular military operations the applicant is (likely) to be requested to take part in?
  - When did the applicant make that decision, what were the surrounding circumstances and how was this decision formed?
  - Does the objection relate to the existence of unlawful conflicts, including the methods of warfare and/or human rights violations?
  - Is there a possibility of the applicant being involved in excludable acts in the context of a conflict?
  - Does the applicant fear discrimination and/or ill-treatment during military service?
- Explore whether those reasons stem from the applicant's political opinion.
  - Does the applicant fear ill-treatment or discrimination due to their political opinion?
  - Does the applicant refuse to take part in a civil war?
  - Does the applicant claim conscientious objection linked to their political conviction?

<sup>(47)</sup> For more information on the exclusion grounds and on the interview with a focus on exclusion, refer to EASO, *Practical Guide: Exclusion*, Chapter 4, January 2017.



When exploring the topics above, keep in mind that, in some cases, the applicant's political opinion will be not actual, but imputed by the state. This can be the case where the COI indicates that the regime views those refusing military service as political dissidents or in countries at civil war or with authoritative regimes.

#### **(e) Reaction of the authorities to the refusal to perform military service**

##### **Examples of topics to explore on the reaction of the authorities**

- Has the applicant been approached by the authorities because of their refusal to perform military service?
- Has the applicant been threatened by the authorities because of their objection to military service?
- After the desertion or draft evasion, has a notification/letter been sent to the applicant?
  - If yes, what did it contain? Have the authorities contacted the applicant through other means? If yes, in which manner or using which recruitment methods?

#### **(f) Awareness of the authorities of the applicant's political opinion**

##### **Examples of topics to explore on the awareness of the authorities of the applicant's possible political opinion**

- Are there incidents revealing that the authorities are aware of the political opinion of the applicant?
- Have there been explicit references to the applicant's (imputed) political opinion by the authorities?
- Have there been threats against the applicant using political insinuations?
- Has the applicant expressed their political opinion in other instances in the past?
- Has the applicant been involved in political activities against the regime in the past, thereby revealing their opposition to the authorities?
- Are there indications that the authorities see draft evaders and deserters as political opponents?



### (g) Existing conditions of military service

#### Examples of topics to explore on the situations and conditions that the applicant would be exposed to during military service

- Is there a possibility of a threat to life or freedom?
- Is there a risk of committing excludable acts during conflict?
- Is there a risk of human rights violations (e.g. forced labour, sexual abuse)?
- Is there a risk of prosecution and disproportionate punishment?
- Is there a risk of ill-treatment and/or discriminatory measures?
- How are persons in a similar situation as the applicant treated during military service?
- Explore possible indirect consequences that could derive from non-military and non-state actors, for example:
  - physical violence, severe discrimination and/or harassment by the community or other forms of punitive retribution for draft evasion or desertion (e.g. suspension of rights to own land, enrol in school or university, or access social services).
- If there is an ongoing conflict in the country, explore the nature and characteristics of this conflict, the warfare methods applied and possible human rights violations or the risk of committing excludable acts when performing military service. Prior preparation by researching the relevant COI is essential.

### 3.1.4. Legal analysis

Following the examination of the topics mentioned above, case officers can proceed with assessing whether the applicant has a well-founded fear of the expected consequences due to this refusal to perform military service and whether those consequences reach the threshold of persecution. The next step is to establish why persecution occurred, whether it was because of (imputed) political opinion, (an)other reason(s), or a combination of (imputed) political opinion and (an)other reason(s) (for further details, see Section [2.4. 'Legal analysis'](#)).

The existence of a connection between at least one of the reasons for persecution and the consequences feared following the refusal to perform military service needs to then be substantiated. Keep in mind that, in the context of a civil war, there is a presumption that refusal to perform military service under the conditions of Article 9(2)(e) QD (recast) relates to one of the reasons for persecution as defined in the QD (recast). Within this context, it is for the national authorities to ascertain the plausibility of the connection between the reasons for persecution and the prosecution and punishment. See also the summary of the CJEU judgment of *EZ v Bundesrepublik Deutschland* at the end of this section.

It is important to remember that, in many situations, refusal to perform military service can also be linked to an expression of religious beliefs or be motivated by membership of a particular social group, where the acts of persecution would be linked to the same reasons <sup>(48)</sup>.

*The well-founded fear of persecution may be directly based on the applicant's race, for example where conscripts from a particular racial group face harsher conditions than other recruits or are the only ones subject to the draft. Similarly, children may face forced recruitment because they belong to a targeted ethnic group <sup>(49)</sup>.*



#### Related EUAA tool

Refer to the EUAA, *Practical Guide on Interviewing Applicants with Religion-based Asylum Claims*, 2022, Section 4.4. 'Conscientious objectors to military service for reasons of religion'.

This section of the guide deals with applications for international protection motivated by a refusal to fulfil military obligations in the country of origin due to conscientious objection for reasons of religion.

#### CJEU, 2020, *EZ v Bundesrepublik Deutschland*, summary of paragraphs 26–61 <sup>(50)</sup>

In the framework of a request for a preliminary ruling, the CJEU was asked to interpret Articles 9(2)(e) and 9(3) QD (recast), which includes, among the possible acts of persecution, the 'prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2).'

This summary of the ruling is drafted in the form of principles drawn from the ruling.

EZ is a Syrian national who left Syria in 2014 to avoid performing his military service, as he feared participating in the civil war. He submitted an application for international protection in 2016 based on this ground.

The following criteria must be met in order to apply Article 9(2)(e) QD (recast).

- **The persecution must arise from the refusal to perform military service.** Consequently, that refusal must be the **sole means to avoid participating in the crimes** referred to in Article 12(2)(a) (paras 26–32).
  - If the applicant could **avail themselves of a procedure** for obtaining the status of conscientious objector, but did not, unless that procedure was not available to them, **that would exclude the protection** under Article 9(2)(e).

<sup>(48)</sup> CJEU, judgment of 19 November 2020, *EZ v Bundesrepublik Deutschland*, C-238/19, ECLI:EU:C:2020:945, paras 26–61. Summary available in the [EUAA Case Law Database](#), para. 47.

<sup>(49)</sup> UNHCR, *Guidelines on International Protection No 10*, 12 November 2014, p. 11.

<sup>(50)</sup> CJEU, judgment of 19 November 2020, *EZ v Bundesrepublik Deutschland*, C-238/19, ECLI:EU:C:2020:945, paras 26–61. Summary available in the [EUAA Case Law Database](#).

- **If no procedure exists** to refuse to perform military service, the objector cannot **be required to formalise their refusal** with a given procedure. Due to the unlawful nature of the refusal and the prosecution and punishment the applicant could be exposed to, it would be unreasonable to expect them to express their refusal to the authorities.
- It has to be established that there is **an actual refusal** to perform their military service. This is to be assessed by taking all relevant facts into consideration (COI, relevant statements and documentation presented by the applicant, the applicant's individual position and personal circumstances).
- It is for the **national authorities to assess if performing military service would necessarily, or at least very probably, lead the applicant to commit excludable acts** as referred to in Article 12(2); this is also the case when the applicant does not know what their future field of operation will be (paras 33–38).
  - This assessment must be based on all **relevant evidence** (COI at the time of the decision, individual position and personal circumstances of the applicant).
  - This assessment needs to establish whether **the overall situation** makes it credible that such crimes would be committed.
  - **Indirect participation** in the commission of such crimes (for instance, through logistical or technical support, rather than being part of the combating troops) does not exclude, as a matter of principle, the application of Article 9(2)(e).
  - It should be assumed that, in the context of **an all-out civil war** characterised by repeated and systematic commission of war crimes, crimes against humanity or other crimes listed in Article 12(2) QD (recast)<sup>(51)</sup>, by the army, using conscripts, that the performance of military service will involve committing such crimes, directly or indirectly, regardless of the applicant's field of operations.
- There must be a **connection between the reasons for being persecuted and the acts of persecution** listed in Article 9(2)(e) (paras 45–61).
- There is a **strong presumption of a connection** with one of the five reasons for persecution as defined in Article 2(d) when the applicant fears prosecution or punishment for refusal to perform military service, where performing military service would include committing war crimes and crimes against humanity (paras 57–61).

This strong presumption is based on the fact that:

*refusal to perform military service, particularly where it is punishable by heavy sanctions, suggests that there is a high degree of conflict in political or religious values and opinions between the person concerned and the authorities of the country of origin.*

[...]

<sup>(51)</sup> Article 12(2) QD (recast):

2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

*[I]n the context of armed conflict, particularly civil war, and where there is no legal possibility of avoiding military obligations, it is highly likely that the authorities will interpret the refusal to perform military service as an act of political opposition, irrespective of any more complex personal motives of the person concerned <sup>(52)</sup>.*

- It is not for the applicant to prove this connection but **for the competent national authorities to assess**, in the light of all the circumstances adduced by the applicant for international protection, **the plausibility of that connection** (paras 54–56).

## 3.2. Family members

One of the most common profiles of imputed political opinion is when the applicant is at risk of persecution or serious harm because one of their family members is politically active.

In this specific situation, we have to look into the activities of the (extended) family and the risks that these activities might create for other family members.

### 3.2.1. Fear of persecution based on family relations

When the applicant has a family member present in the country of asylum and it has been established by the determining authority, or stated by the applicant, that this family member has a well-founded fear of persecution, then it may be necessary to examine whether, depending on the individual circumstances, the applicant is exposed to the threat of persecution because of the family tie to the person at risk <sup>(53)</sup>. In other words, when the members of a family have applied for international protection in the country of asylum and one of them is recognised as a beneficiary due to their political activity or stated political opinion, then the determining authority may need to examine if the rest of the family members are also at risk in the country of origin because of the family connection they have with the beneficiary. In this situation, the family bond itself creates a fear for an applicant, which must be distinct from the situation where all members of the family have been targeted for their political activity.

In practice, access to information in these cases is rather straightforward since a lot of the information needed to establish the bond and the protection needs of the applicant exists in

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*(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;*

*(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.*

<sup>(52)</sup> CJEU, judgment of 19 November 2020, *EZ v Bundesrepublik Deutschland*, C-238/19, ECLI:EU:C:2020:945, paras 49 and 50. Summary available in the [EUAA Case Law Database](#).

<sup>(53)</sup> See recital 36 QD (recast): 'Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status'; CJEU, judgment of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova, Rauf Emin Ogla Ahmedbekov v Deputy Chair of the State Agency for Refugees (Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite)*, C-652/16, ECLI:EU:C:2018:801, para. 50.



the file of the case of the family member who is already a beneficiary due to their activity<sup>(54)</sup>. You will, in this case, cross-check the information with the applicant and proceed with an in-depth examination of their case, in order to assess if the applicant is also exposed to risks because of their connection to the beneficiary. This is especially the case if the applicant and the beneficiary are members of the same nuclear family.

Keep in mind that children or even the spouse may not always be (fully) aware of the risk they may face. In these cases, you will have to explore the risk to family members, starting from the statements of the main applicant.

Usually, the family members who could face risk or persecution or serious harm due to the political activity of another member of this family will be members of the nuclear family, that is, the wife or husband and the children. However, the risk is not necessarily confined to members of the nuclear family. Members of the extended family who have a close connection/relation to the politically active member might also be at risk. For example, adult siblings who are living together, adult children who live with their parents, an adult living with their spouse's family, relatives who have the same business or extended family members who share the same interests and activities.

If the applicant belongs to the extended family of the beneficiary and the link is less direct than for the members of the nuclear family, it is still necessary to identify and assess the possible risk to the applicant due to the family link. The case file of the beneficiary with all the information that will support the assessment should be available and accessible and the cases might also be linked depending on national practice.

Be aware that children can also be politically active and hold particular political opinions independently of adults, and that this may expose them to a risk of persecution. The extent to which children may be held accountable will differ according to the cultural context in the country of origin and the age of the child. It is, for example, not uncommon for national liberation or protest movements to be driven by student activists, including schoolchildren. In this case, the parents or other family members might be at risk because of their link to the politically active child.

In some cases, the family member who is politically active might not be present in the country of asylum. In these cases, the risks to the applicant might not be so easily identified or directly linked to the risks of the family member. However, the risk in these cases can be just as real. For this situation, it is important to explore, during the personal interview, if there are any (extended) family members who are politically active, and to assess the possible impact on the applicant, taking into consideration the relevant COI.

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<sup>(54)</sup> For the issue of access to family members' files, refer to EASO, *Practical Guide: Evidence assessment*, March 2015 (update forthcoming).





### 3.2.2. Topics to explore during the personal interview

In all of the above cases, it is important to have collected specific information in order to be able to assess if the link with the family member could put the applicant at risk. Below is a list of examples of topics that you need to explore during the personal interview and take into consideration for your assessment.

#### Examples of topics to explore during the personal interview

- The profile of the family member who is or was politically active. What exactly are the activities that they are or were involved in or the opinions that they have expressed, their level of involvement and their visibility?
- The acts of persecution or serious harm that the politically active family member has already been subjected to. What exactly has happened to them? Were there threats, mistreatment, acts of violence or other acts that could amount to persecution against them?
- The relationship and the link between the applicant and the family member who has been or is threatened to be subjected to acts of persecution or serious harm. Does the applicant belong to the nuclear family or to the extended family? How close are they? Are they (still) in contact?
- What is the knowledge of the applicant regarding this family member and their activities?
- Depending on country of origin, documentary proof as evidence of the family link may be available.
- The profile and the status of the actor of persecution. Is it the state or a private actor? How strong is it? Could it reach the applicant? What is the relation between this actor of persecution and the applicant?
  - If the actor of persecution is the state, it is more probable that the family members could be monitored and persecuted. For private actors/organisations, it is important to assess the role and the power they have in society and, in particular, the relation they develop with the authorities.
- Are there any indicators that the (potential) actor of persecution perceives the applicant (or the family) as a political opponent or threat?
- Possible threats, violent acts or other acts that could amount to persecution that the applicant themselves might have experienced. In this case, there is a strong indication that the family link might also cause risks for the applicant in the future.
- If other members of the nuclear or extended family have been subjected to threats, violent acts or other acts that could amount to persecution. In this case, there is an indication that this could happen to other family members<sup>(55)</sup>. Do the actors of persecution also target family members in cases not linked to the applicant and their family?

<sup>(55)</sup> See also UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4, para. 43:

*These considerations need not necessarily be based on the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded.*





It is also important to keep in mind that a family bond with an individual who is politically active may increase the risk of an applicant who has their own opinion and activities. The applicant may have a lower level of involvement, but still attract a high level of visibility due to the family relations. In those cases, the family context may increase the risk of persecution.

### 3.2.3. Relevant country of origin information

A crucial element for your assessment is reliable, accurate and up-to-date COI. COI can help you understand what kind of evidence can be expected to substantiate the family link (e.g. if the country has an advanced administrative system that issues documents such as family composition documents).

Going deeper into your assessment, you might find information on how the members of the family of politically active persons are treated. In particular, you can expect to find relevant information if the actor of persecution is the state or known organisations. This might be more difficult if the actors are individuals. Of course, this always depends on the activities in which the politically active person participates and the role they play in the country and its political environment. In any case, the COI can provide the context of the situation that you are assessing. The COI evidence must be combined with the evidence provided by the applicant (documents, other evidence) in order to reach a conclusion.

### 3.2.4. Reasons for persecution

If it has been established that the well-founded fear of persecution of the applicant is due to the bond with the politically active member of the family, then the reason for this persecution is highly likely to be political opinion.

Aside from political opinion, the reason for persecution could also be assessed under membership of a particular social group. In this case, the members of a particular (well-known) family could constitute a particular social group if they fulfil the conditions that are provided by the QD (recast). This can especially be the case for bigger families whose members share similar fundamental characteristics or beliefs, for example linked to their political background, and who are perceived as different by the wider society. In some countries, the family name alone could result in specific characteristics, opinions and attitudes being attributed to the person. Membership of a particular social group could therefore apply, and there could be an overlap between political opinion and membership of a particular social group, or both reasons may be equally applicable <sup>(56)</sup>.

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<sup>(56)</sup> For overlapping or equally applicable reasons with the membership of a particular social group, see EASO, *Guidance on Membership of a Particular Social Group*, March 2020, Section F) 'Specific considerations', b. 'Plurality of reasons for persecution', p. 18.



### 3.3. Political opinions imputed because of an (irregular) stay abroad

One of the specific situations of imputed political opinion is related to the risk that applicants could face upon return to the country of origin because of an (irregular) departure from the country of origin and an (irregular) stay abroad. For some countries, the act of departing (irregularly) from the country and/or staying (irregularly) abroad, either in any country abroad or in specific countries, is not tolerated. Government officials might be interested in how applicants fled the country, who assisted them and their activities during their stay in the third country.

The fact that the applicant has asked for international protection may be an aggravating factor. Authorities of the country of origin might be interested in what exactly the applicant said during their application for international protection. An application for international protection can be perceived by the authorities as implying a criticism against the government. Failed applicants might be tortured both as a form of punishment for perceived criticism of the government and for the purposes of interrogation on their activities and statements.

It is possible that the applicant is not aware of this risk upon return. In this case, when, based on the applicant's profile and the COI, you are aware that such a risk exists and that there is a reasonable likelihood that this may give rise to acts of persecution upon return, you need to **explore this risk further with the applicant during the personal interview**, even when it has not explicitly been put forward by the applicant themselves.

#### 3.3.1. Relevant considerations

COI is central in these cases because the risk upon return is not necessarily based on the behaviour of the applicant, such as the expression of a political opinion against the authorities. Rather, the risk may come from having left the country illegally, having been abroad for a long period or having asked for international protection abroad. This is the main information you need to search for with regard to how the country would treat the applicant upon return. Organisations that assist returnees with the reintegration process in their country of origin may have more detailed information on how returnees are treated upon return.

While it will be straightforward to establish that the person has applied for international protection or has stayed abroad for a certain period of time, you will need detailed COI to assess the credibility of the applicant having left their country of origin illegally. What are the established border procedures and how did the applicant manage to circumvent these? What are the different levels of treatment upon return?

In some countries, it is common practice to interrogate people who return following an illegal exit, a forced return or a long stay abroad. However, not all interrogations have the same purpose, and they do not take always the same form. You need to know the potential extent of this interrogation in the country of origin of the applicant by taking into account the specificities of the personal circumstances. An interrogation can range from routine questioning with little



risk (reasonable degree of likelihood) of the applicant being mistreated to an interrogation in which mistreatment, or even torture, is likely.

It is also important to obtain information on the way the applicant will return. Is there a possibility that the applicant will be forcibly escorted back to their country of origin after their application for international protection has been rejected? Forced returns, often coordinated between the host country and the country of origin, risk attracting attention and may make it more likely that the applicant will be singled out and questioned upon return.

Finally, an element that could have added value for your assessment is the relations between the country of origin and the country of asylum. The treatment upon return by the authorities could also depend on the country that the person is returning from. A hostile relationship between the two countries might mean that an individual receives harsher treatment upon their return to the country of origin, especially if they fled illegally. Some countries may also consider an applicant as ‘westernised’ after having spent time in Western countries. People who have travelled and/or lived in Western countries might be automatically perceived as having adopted appearances and fashion choices, ideas and/or societal and political attitudes that are seen to be ‘Western’ or ‘European’, against the societal and legal norms of their country.

### 3.3.2. Topics to explore during the personal interview

#### Examples of topics to explore during the personal interview

- The way in which the applicant left their country. Whether someone left the country of origin legally or illegally, or overstayed their exit visa, may have a significant impact on the risk of ill-treatment by the authorities upon return.
- The applicant’s profile in the country of origin, but also the activities and the profile that they had during their stay in the country of asylum. The greater the profile, the greater the likelihood that the applicant will be scrutinised upon return. If the person and their activities in the country of asylum were highly visible, their return might arouse the interest of the authorities. The profile of the applicant can have an impact on the interest of the authorities in focusing on the applicant leaving the country and staying in another. If it emerges during this interrogation that the applicant had a political profile, the reason for the interest of the authorities might shift from the departure and the stay to the political opinion/activities.





### 3.4. Denunciation of, or resistance to, corruption and other criminal behaviour by the authorities

Another specific situation that can be related to (imputed) political opinion is when the applicant has denounced or expressed resistance to corruption or other criminal behaviour by the authorities<sup>(57)</sup>. There is general agreement that, in some, but not all, circumstances, protesting against governmental corruption will evince a political opinion<sup>(58)</sup>.

The main question in this situation is as follows.

- Could the opinions or the actions of denunciation, reaction or resistance taken by the applicant against the authorities be considered an expression of a ‘political opinion’ by the applicant or be perceived as such by the actors of persecution?

The starting point in this situation is to examine the extent to which the corruption in question permeates the state<sup>(59)</sup>. Is this corruption conducted by a private person, who may be well connected to / protected by the authorities, or by a government official who may or may not have support from the wider state apparatus, or is it about the policy of the government itself, which organises or at least condones corruption?

The next point to assess is the reaction of the authorities to the applicant’s behaviour, and if and how they try to defend their choices and practices. To what extent has the applicant been targeted by the authorities? What needs to be defined is whether this persecution is due to the applicant’s political opinion or not. To decide this, it has to be assessed whether there is a nexus between the acts of persecution and the political opinion.

The motivation behind the actions/reactions of both the applicant and the authorities is the main element that you need to consider. Actions that are self-interested, private or individual are less likely to be considered as showing a political opinion than those that are altruistic, group based or public<sup>(60)</sup>. Keep in mind that, depending on the circumstances, even an ad hoc reaction to an illegal activity of the authorities might be sufficient to establish a nexus between risk and political opinion.

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<sup>(57)</sup> A request for a preliminary ruling was made by the Lietuvos vyriausiosios administracinės teisės (Lithuania) on 30 April 2021 to the CJEU in relation to this topic. This question, which is still pending at the time of publication of this guide, has been registered by the court as [case C-280/21](#). You will find the judgment in the [EUAA Case Law Database](#) once the CJEU rules on the question that was submitted.

<sup>(58)</sup> Dauvergne, C., ‘Toward a new framework for understanding political opinion’, *Michigan Journal of International Law*, Vol. 37, No 2, 2016, p. 271.

<sup>(59)</sup> Dauvergne, C., ‘Toward a new framework for understanding political opinion’, *Michigan Journal of International Law*, Vol. 37, No 2, 2016, p. 272.

<sup>(60)</sup> Dauvergne, C., ‘Toward a new framework for understanding political opinion’, *Michigan Journal of International Law*, Vol. 37, No 2, 2016, p. 272.





### 3.4.1. Topics to explore during the personal interview

#### Examples of topics to explore during the personal interview

- The exact activities of the authorities that the applicant is reacting to.
  - Do these acts reflect systematic and extensive corruption in the way that the state functions and within the majority of the institutions of the state? Or is this, rather, an ad hoc, isolated, illegal activity by one government official or a small group of government officials? To what extent do these government officials have support from the broader state apparatus?
- The activities of, and expression of opinion by, the applicant.
  - Is the applicant systematically expressing their opinion against activities of the authorities that could be characterised as corrupt or illegal? Is the interest of the applicant limited to their personal disadvantages, or does it extend to the interests of a group? Is this, to some degree, an organised movement fighting against the government and these practices or is it an ad hoc reaction to an illegal activity? How public is this expression of opposition against the corruption or the illegal activities? What is the applicant's profile and role in the situation?
- The actor of the corruption or the illegal act.
  - Which levels of the state hierarchy does the corruption reach or to whom is the illegal act related? How powerful and influential is this actor in the hierarchy of the state? There might be a different reaction if the corruption comes from the prime minister or from a low-level politician. On the other hand, even a low-level politician might be well connected. Under which authority has the act taken place (local or national, limited to a specific department or extended to the whole system), and have the officials abused their power for private interests, or is the act part of their official role(s) and duties?
- Complaint mechanisms.
  - Are there mechanisms or avenues within the state against corruption? How do they function? Has the applicant tried to use such mechanisms? If yes, what was the result? If not, why not? Are these mechanisms effective?
- Past persecution or serious harm.
  - Has the applicant already been ill-treated or threatened by the authorities? Was the applicant accused of something they have admitted to doing? Or were they possibly accused of committing something fabricated? Who accused them? Was the accuser the authority that the applicant is speaking or acting against or another body?
- National protection.
  - Did the applicant try to request protection from the police in the country of origin? If not, why not? If yes, what was the result?





### 3.4.2. Country of origin information

The COI is crucial for your assessment since it will help you define the context, particularly the following aspects.

- The level and the depth of corruption or illegal activity on the part of the authorities that exists in the country. How widespread is this behaviour in the way that the authorities function and how high up the hierarchy does it spread?
- The way that people who react to corruption are treated by the authorities, either when they are fighting systematically against corruption or when they come across illegal behaviour occasionally. What is the response by the authorities when these persons proceed with official accusations?
- The existence of mechanisms or avenues within the state to file complaints against corruption and how efficient they are.
- The level of protection that persons who denounce corruption receive from the authorities and the extent to which they are in danger because of their activities, opinions or even knowledge.

### 3.5. Illegal acts committed by the applicant and motivated by a political opinion

A person fleeing prosecution or punishment for an illegal act would not normally qualify as a refugee. However, under certain circumstances, applicants may have a well-founded fear of persecution because they are being disproportionately or unfairly prosecuted for illegal acts for political reasons <sup>(61)</sup>. This section deals with claims on the ground of prosecution and/or punishment for politically motivated acts. An example of this is when a political activist is being prosecuted for hacking into a government website or for vandalising a governmental building, but not for holding a political opinion per se (e.g. a political activist is being prosecuted for membership of a forbidden political party).

It may happen that the authorities of the country of origin fabricate charges, for example accusing a member of the political opposition of financial misconduct based on false evidence. The authorities may even prosecute or punish behaviour that is not, in itself, illegal. One such example would be if the applicant has been charged for handing out political leaflets on a university campus even though distributing flyers is not actually illegal in their country. In this case the authorities are charging the applicant in order to hinder the expression of political positions deemed problematic.

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<sup>(61)</sup> See also UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4, paras 56–60.





Sometimes, authorities in the country of origin may have legitimate reasons for prosecuting and punishing an individual for breaking the law out of political conviction. It is only under certain circumstances that prosecution and punishment for illegal acts committed by the applicant will reach the level of persecution. This will be the case where prosecution and punishment are used, in a discriminatory or disproportionate manner, as a pretext to punish the applicant for expressing their political convictions.

In order to assess whether applicants who allege that they are being persecuted for having committed an illegal act out of political motives have a legitimate claim to refugee status, both the illegal act itself and the punishment and prosecution need to be examined in detail, and the nexus with political opinion must be verified.

### 3.5.1. Illegal act

Before examining the illegal act in detail, you should keep in mind that what is considered illegal in the applicant's country of origin may not be considered as such according to the laws of the host country; the qualification of the act as 'illegal' will thus depend on the country of origin.

Furthermore, when an applicant alleges that the authorities will prosecute them, you should clarify whether the behaviour at issue is indeed considered illegal by the authorities of the country of origin. To do so, you should consult relevant COI, notably under which charges the national legislation may criminalise such behaviour and how this is carried out in practice.

Similarly, if the applicant alleges being the victim of false accusations (i.e. fabricated charges are used as a pretext to undermine them politically), you should refer to relevant COI to help you determine how likely it is that the authorities would resort to such methods.

When examining the illegal act, you should also note the following points.

- If the authorities prosecute simply for holding a political opinion (e.g. disseminating political material with 'illegal' content), this prosecution may, in itself, amount to persecution.
- Acts protected by human rights treaties cannot be considered illegal (beyond any legal and legitimate limitations laid out in the treaties themselves) by the asylum authority (e.g. legitimate exercise of freedom of expression cannot be criminalised as hate speech).
- The illegal act cannot be so serious that it is liable to fall within the scope of one of the exclusion clauses<sup>(62)</sup>. Depending on the national set-up, you may need to refer to a specialised case officer or unit to help you make this assessment<sup>(63)</sup>. In any case, be careful to collect enough information and distinguish between the facts admitted by

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<sup>(62)</sup> For more information on the exclusion grounds, refer to EASO, *Practical Guide: Exclusion*, January 2017; and EASO, *Practical Guide on Exclusion for Serious (Non-political) Crimes*, December 2021.

<sup>(63)</sup> UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/IP/4/ENG/REV. 4, paras. 56–60.



the applicant and those attributed to them by state authorities, which might amount to a ground for exclusion. For example, in some countries of origin, authorities resort to overly extensive or abusive anti-terror legislation that qualifies even acts of minor importance as ‘terrorist acts’.

The applicant’s prosecution or punishment for an illegal act committed out of political conviction may be legitimate. This can occur in cases where the qualification of the act as ‘illegal’ does not, as such, violate any human rights principles, and the prosecution itself is non-discriminatory, fair and proportionate. However, if the prosecution or punishment is disproportionate or discriminatory due to the applicant’s political opinion (or another convention ground), the applicant may have a valid claim for refugee status.

### 3.5.2. Disproportionate and discriminatory prosecution or punishment

In these types of claims, the question is essentially whether prosecution for the illegal act amounts to persecution, as set out in Article 9(2)(c) QD (recast), and whether the act of persecution is linked to the ground of political opinion.



#### Article 9(2)(c) QD (recast) – acts of persecution

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

[...]

(c) prosecution or punishment which is disproportionate or discriminatory;

The initiation of criminal prosecution and the decision to bring a case in front of a criminal court can already be disproportionate or discriminatory. This would be the case, for instance, if the prosecuting authorities diverge from their usual prosecuting practice and initiate proceedings against the applicant for an act that, while being formally penalised by their criminal law, is, in practice, rarely prosecuted or not prosecuted at all (e.g. certain minor offences). For example, consider a case where an applicant sprayed non-violent political messages on the walls of a bridge with little damage done to the walls. If, according to their national practice, the authorities of the country of origin would normally not prosecute offenders for damage done on such a small scale, but decide to do so because of the applicant’s political views, this selective prosecution could amount to discriminatory or disproportionate prosecution.

Prosecution and punishment would be considered disproportionate if the sentence sought by the prosecuting authorities or the sentence imposed by the criminal court is, for reasons related to the political opinion of the applicant, excessive in relation to the gravity of the offence. This would manifestly be the case, for example, if a heavy prison sentence is handed down for an act that would, in most jurisdictions, be considered a misdemeanour. This would be the case if, for example, a political activist breaks a curfew to distribute humanitarian aid and is served a heavy prison sentence of several years. The same would hold if the sanction is implemented in a discriminatory manner, for example a prison sentence that would normally be suspended for a minor offence is enforced in the case of the applicant solely because of their political opinion or background.



### 3.5.3. The nexus with political opinion

In order to give rise to refugee status, the nexus between the discriminatory or disproportionate prosecution or punishment for an illegal act and the ground of political opinion must be established (see Section 2.4. 'Legal analysis' for guidance on how to establish the nexus). In general, it may not be straightforward to establish that the authorities' discriminatory or disproportionate prosecution or punishment is due to the applicant's political motivation behind the illegal act, and not the illegal act per se. It is likely that you will have to infer the persecutor's intent from circumstantial, rather than from direct, evidence. Evidence may include COI on the rule of law in the country, the independence of the judiciary and the misuse of criminal proceedings to punish politically active individuals (particularly individuals with profiles similar to that of the applicant). Any judicial documents submitted by the applicant should also be viewed in the context of the country's criminal code and the criminal procedure practices, in particular with regard to the penalties envisaged by national law for the conduct at issue. Particular attention must be paid to trials conducted *in absentia* when they are not frequently conducted in the country of origin, but are nonetheless pursued in particular for persons with a political background.

### 3.5.4. Topics to explore during the personal interview

The following topics may be relevant to explore in cases of applicants who invoke being persecuted for illegal acts committed with political motivation. The applicant, depending on their individual profile, may not be reasonably expected to provide detailed statements on the points listed below. Applicants with a lower level of education in particular cannot be expected to understand and be able to explain legal terminology and legal proceedings in great detail. Furthermore, when more general questions on the (judicial) behaviour of the authorities are asked during the personal interview, the applicant's answers must be assessed against available COI and the applicant must be asked about any inconsistencies between their own statements and the COI. For this reason, it is crucial to have collected, prior to the personal interview, the relevant COI regarding the situation of the judiciary in the country (appointment of the judicial authorities, interaction with politics) and the rule of law record in the country in general.

#### Examples of topics to explore during the personal interview

- Circumstances (e.g. time, place, people involved, applicant's personal role) in which the act was committed.
- Applicant's reasons for committing this act.
- Whether the act is illegal according to the law of the country of origin.
- The sentence envisaged for this offence by national criminal law.
- Circumstances in which the applicant was caught.
- Reactions of the authorities after the commission of this illegal act (e.g. whether the applicant was summoned, questioned, arrested, detained, and the conditions therein).
- What the authorities communicated to the applicant in this respect.
- Exact stage of criminal proceedings in relation to this act.



- Documentary evidence of the criminal proceedings.
- Previous criminal record.
- What makes the applicant think that prosecution or punishment is discriminatory and/or disproportionate? Why does the applicant think the authorities' reaction is due to the applicant's political opinion? How does the applicant think that their case would proceed and be treated?
- Applicant's awareness of treatment of individuals with a similar political profile by judicial authorities.
- Applicant's knowledge of how the judicial authorities usually deal with these offences.
- Availability of legal support to defend the applicant and possibility of appealing against the allegedly wrongful conviction (if already convicted).
- Chances of a defence or an appeal succeeding in the country of origin.

### 3.6. Political opinion expressed *sur place*



#### Article 5 QD (recast) – *sur place* claims

2. *A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.*
3. *Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin.*

A person may not have a well-founded fear of persecution at the time of leaving their country, but such a fear may arise post departure, making them a refugee *sur place*. This section looks at applicants who claim to have a fear of persecution based on political opinion as a result of their own actions while abroad.

*Sur place* claims based on the applicant's political activities abroad can arise in a variety of contexts, both as first-time and as subsequent applications. Possible scenarios are detailed below.

First-time applications.

- The applicant engaged in political activities in their country of origin, but left for other, unrelated, reasons (e.g. work). They continued or intensified their political activities in the host country and are applying for international protection based on these activities.
- The applicant did not engage in any political activities in their country of origin and left for other, unrelated, reasons (e.g. study). They started engaging in activities only

after arriving in the host country and are applying for international protection based on these activities.

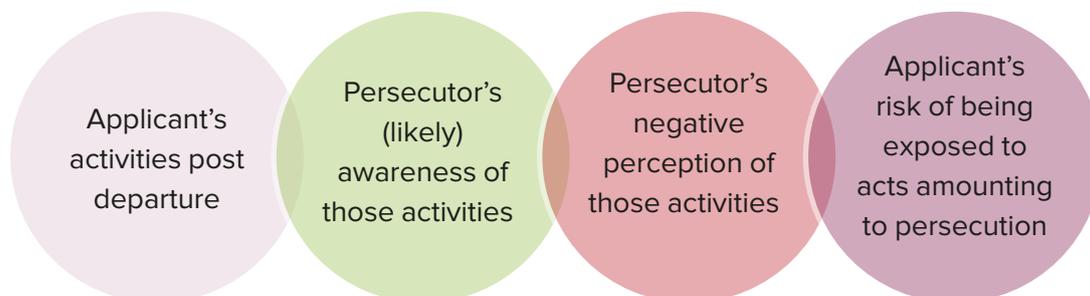
- The applicant has been engaged in political activities in their country of origin; however, the fear of persecution arose at a later stage, post departure, due to changes in the situation in the country of origin (e.g. following a change in the regime).

Subsequent applications.

- The applicant's first application for international protection was based on political persecution, but was unsuccessful as their political activities or the fear of persecution was not credible or well founded. The applicant makes a subsequent application, putting forward new or intensified political activities in the host country as new elements.
- The applicant first applied for international protection based on other grounds (e.g. security situation), but that application was rejected. They make a subsequent application, putting forward political activities in the host country as new elements.
- The applicant puts forward changes in the situation in the country of origin as new elements (e.g. following a change in the regime).

In order to establish that an applicant has a well-founded fear of persecution for reasons of political opinion as a result of their activities in the host country, the following elements need to be addressed.

**Figure 3. Elements of *sur place* claims based on activities of the applicant since their departure (Article 5(2) QD (recast))**



For *sur place* claims based on political opinion, the applicant's activities and the actor of persecution's awareness present some particularities, guidance on which is provided below.

### 3.6.1. Activities post departure

#### (a) Activities pertaining to the applicant's actual or imputed political opinion

The applicant's activities abroad can be any action that may be perceived as political by the actor of persecution regardless of whether this political opinion is falsely attributed to or is really held by the applicant. For instance, an applicant may be actively involved in the political activities of an opposition party in exile, or a political opinion may be imputed to them by the mere fact of them socialising with fellow citizens who are themselves at political odds with their



government. Or a political opinion may be imputed to them simply because they have attended sociocultural activities organised by community organisations associated with certain political groups. Refer also to Section [1.3. 'Manifestations of political opinion'](#).

**(b) Activities may be carried out in the host country or a third country**

Activities post departure are most commonly activities that the applicant engaged in in the host country, but they may also have taken place in third countries, including countries of transit. Online activities are also frequently encountered in the context of *sur place* claims (refer to Section [3.7. 'Political opinion expressed via social media'](#)).

**(c) Activities may be new, or the continuation of a political opinion held in the country of origin**

Article 5(2) QD (recast) emphasises that relevant activities are especially those that 'constitute the expression and continuation of convictions or orientations held in the country of origin'. It should be noted that the emphasis is placed on political opinions 'held' by the applicant when they were still in the country of origin, and not necessarily expressed or acted upon as well. The applicant may, for example, simply not have been able to express their political opinion out of fear, especially if they come from a country with a highly repressive regime. Nonetheless, this emphasis does not exclude the fact that the relevant activities or opinions can also be new. In this sense, a wide range of situations can be envisaged, from a situation where an applicant has never expressed their political opinion at all in the country of origin to one where they have been politically very active. Yet, in practical terms, the more an opinion has been expressed in the country of origin, the easier it will be for the applicant to demonstrate that any activities post departure truly reflect their genuine political opinion.

While 'continued' activities strengthen an application for international protection, you should be aware that **new, post-departure, activities** may also give rise to a need for international protection<sup>(64)</sup>. There can be many valid explanations as to why an applicant has become politically active only after leaving their country of origin.

**Example**

The following list provides examples of possible reasons why an applicant has taken up activities only after their departure.

- Adult applicants may have developed a new political awareness during their stay abroad for a variety of reasons. For example, they may have become critical of their country of origin's political system as a result of socialising with a politically active fellow citizen, after having better access to uncensored information about their country of origin, after hearing critical intellectual assessments during their studies or simply as a result of experiencing life in a democratic country.
- With regard to applicants who were still children or young adults when they left the country of origin, the lack of maturity and autonomy can explain why the applicant did not previously hold any explicit political opinions.

<sup>(64)</sup> EASO, [Qualification for International Protection \(Directive 2011/95/EU\) – Judicial analysis](#), December 2016, p. 89.





- Events may have taken place in the country of origin since the applicant's departure that may not have the necessary impact to trigger the application of Article 5(1) QD (recast) but are significant enough to provoke a change in the applicant's political disposition. For instance, the political atmosphere in the country of origin may have gradually degenerated as the regime's authoritarian tendencies increased while the applicant has been abroad.

With regard to **subsequent applications**, and without prejudice to the Refugee Convention, the QD (recast) introduced an optional provision for Member States that aims to avoid abuses of the international protection regime. In accordance with Article 5(3) QD (recast), Member States may decide to 'not normally' grant 'refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin' <sup>(65)</sup>. This provision may be applied only if it has been transposed in national legislation, and its implementation will depend on national practice.

If it is applied, you may take into account the fact that there is a substantial evidentiary burden on the applicant regarding the risk of persecution or serious harm <sup>(66)</sup>. Furthermore, keep in mind that what matters is the risk assessment, which is always objective and forward-looking. Thus, even if the applicant has acted in bad faith, it remains that the actor of persecution may persecute them based on imputed political opinion and that the person is therefore in need of international protection.

It has to be noted that Article 5(3) QD (recast) is limited to refugee status and does not extend to subsidiary protection status. Moreover, the principle of *non-refoulement* should, in all cases, be respected <sup>(67)</sup>.

### 3.6.2. The actor of persecution's awareness of the applicant's activities

A central question that needs to be answered in *sur place* asylum claims based on political opinion is whether the alleged actor of persecution is, or may reasonably become, aware of the applicant's actions abroad.

<sup>(65)</sup> For further information and jurisprudence on the application of Article 5(3) QD (recast), please refer to the EASO, *Qualification for International Protection (Directive 2011/95/EU) – Judicial analysis*, December 2016, pp. 91–92. Note also that a request for a preliminary ruling was made by the Verwaltungsgerichtshof (Austria) on 29 March 2022 to the CJEU on this topic. This question, which is still pending at the time of publication of this guide, has been registered by the court as [case number C-222/22](#). You will find the judgment in the [EUAA Case Law Database](#) once the CJEU rules on the question that was submitted.

<sup>(66)</sup> See also in Article 4(3) QD (recast):  
*The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account: [...] whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country.*

<sup>(67)</sup> A request for a preliminary ruling was made by the Verwaltungsgerichtshof (Austria) on 29 March 2022 to the CJEU on this topic. This question, which is still pending at the time of publication of this guide, has been registered by the court as [case number C-222/22](#). You will find the judgment in the [EUAA Case Law Database](#) once the CJEU rules on the question that was submitted.



In some cases, the applicant may be able to submit evidence that the authorities are already aware of their activities abroad and have shown interest in the person (e.g. family members have been questioned about the applicant's activities abroad or police or judicial investigations have taken place *in absentia*).

More often, though, the applicant will not be able to show such direct proof of the persecutor's awareness of their activities. In that case, it will need to be established whether it is likely that the applicant's activities have come to the attention of the actor of persecution. This assessment needs to take into account various factors. The list below is non-exhaustive, and factors may overlap.

- **Type and level of activities.**

In general, the type, frequency and visibility of activities will have an impact on the authorities' ability to detect an applicant they may consider to be a political threat. However, this will greatly depend on the specific country of origin and the regime's monitoring of their diaspora (see point immediately below). Generally, though, activities carried out rarely, anonymously and only on the margin of the political scene are less likely to come to the knowledge of the actor of persecution than regular activities carried out in the applicant's own name, and in which they play a central role, and those that take place in the public eye. Keep in mind that even informal activities may give rise to the need for international protection. Similar considerations apply here as for expressions of political opinion in the country of origin.

- **Authorities' monitoring activities abroad.**

The manner in which the country of origin's authorities follow their diaspora's activities on foreign territory can be a decisive factor. Some regimes have developed wide-reaching observation mechanisms through their diplomatic missions, through associated organisations (such as cultural foundations or religious establishments) and by infiltrating oppositional political events and groups in exile. The presence of the local community in the country of asylum and its size can also have a possible effect in terms of reporting to the authorities of the country of origin. The authorities may also learn about the applicant's activities by monitoring online activities (see Section [3.7. 'Political opinion expressed via social media'](#)).

- **Screening of returnees.**

In specific countries of origin, nationals who return to their country may undergo a screening process by their authorities for the mere reason of having stayed abroad and/or due to their specific personal circumstances (e.g. students, illegal exit, forced return). The screening of returnees may therefore increase the likelihood that the authorities dig into an applicant's past and discover their *sur place* activities. In addition, other members of the diaspora may be interrogated upon return and the authorities may thus obtain information on citizens who are politically active abroad. For specific guidance related to return, refer to Section [3.3. 'Political opinions imputed because of an \(irregular\) stay abroad'](#).

- **General treatment of particular groups.**

If the applicant belongs to a particular group that is already subject to monitoring activities by the government, such as an ethno-religious minority, this may also increase the likelihood of the applicant's activities being identified by the authorities.

While the applicant's individual statements and circumstances are of the utmost importance when assessing the 'activities' element, it is crucial to look at relevant COI when examining the elements pertaining to the authorities themselves (i.e. monitoring, screening and the general treatment of particular groups).



#### **Key point to remember**

Where the actor of persecution is a non-state actor (such as militias, community groups, political parties), the factors to be taken into account in assessing whether they are likely to know about the applicant's activities may differ greatly from those pertaining to state actors, depending on the means of the non-state actor. If non-state actors are not well structured or have little authority over their territory or community, the applicant may need to explain in a more detail how these actors are likely to learn about their activities.

### **3.6.3. Topics to explore during the personal interview**

In addition to exploring topics that pertain to different forms of political expression, the following topics may be particularly relevant to *sur place* claims based on political opinion.

#### **Examples of topics to explore regarding first-time applications (continued or new activities)**

- Timeline, place, nature and visibility of all the applicant's political activities.
- If the applicant mentions previous activities in country of origin, have they experienced any previous problems with the actor of persecution? What are the applicant's reasons for not, at that time, leaving the country despite these problems?
- If the applicant mentions previous activities in the country of origin, but discontinued them before leaving, what were the reasons for this discontinuation?
- If the applicant was not politically active in the country of origin, what were the reasons for this?
- Even if the applicant never expressed their political opinion in the country of origin, were there any situations/incidents that led the applicant to become aware of their 'political conscience' in the country of origin (e.g. conflict with authorities, unfair treatment, political events)? If so, what are their reasons for holding back on becoming politically active?
- If the applicant mentions fear of the authorities, explore the applicant's knowledge of the authorities' treatment of politically active persons, including examples of politically active people and their fate.

### Examples of topics to explore regarding subsequent applications (new or intensified activities)

- Explanations of the timing of political activism: reasons and decisive factors behind new or intensified activism.
- If the applicant was not politically active in the country of origin, what were the reasons for this?
- Even if the applicant never expressed their political opinion in the country of origin, were there any situations/incidents that led the applicant to become aware of their 'political conscience' in the country of origin (e.g. conflict with authorities, unfair treatment, political events)? If so, why did they not act on it?
- If the applicant claims that they were politically active before the subsequent application, but did not mention it during their first application, what are the reasons for not disclosing their activities earlier?
- If there are contradictions with the statements the applicant made during their first application (e.g. statements regarding their political beliefs or activities, contradicting timelines, reasons for leaving the country), ask them to explain.

### Examples of topics to explore regarding the awareness of the actor of persecution

- What makes the applicant think that the authorities are aware or are likely to become aware of their activities?
- Is the applicant aware of any reactions from the authorities to their activities? Do they have any documentary or other evidence?
- If the applicant mentions monitoring of citizens abroad, what does the applicant know about the actor of persecution's methods for monitoring?
- Is the applicant aware of any individuals who have participated in similar activities abroad who were spotted by the authorities? What does the applicant know about their fate?

## 3.7. Political opinion expressed via social media

Whether *sur place* or in their country of origin, applicants may make use of the internet to express their political opinions. The internet is a powerful tool of expression, as the potential reach of the content published on the web may be extensive.

Making one's political views public through the internet may provide swift and easy visibility and exposure to the author, regardless of their real level of political involvement. However, not all publications on the internet reach their potential audience in the same way, and may have very different weight in terms of perception by the actor of persecution.

Every individual case is unique, and the rules of the evidence assessment are applicable to the expression of political opinions on the web. This section does not aim to repeat elements that have been addressed in the sections above or in the forthcoming practical guide on evidence assessment <sup>(68)</sup>. You will, nevertheless, find in this section some indicators that specifically apply to this topic:

- to assess whether an opinion expressed on social media may be considered as political by the actor of persecution;
- to assess whether the actor of persecution may / is likely to know or knows about the opinion expressed through social media.

### 3.7.1. Is the opinion expressed on social media perceived as a political opinion by the actor of persecution?

Having the correct knowledge of the situation in the country of origin is central to enable you to decide if the potential actor of persecution would perceive the internet publication as a political opinion.



#### Key point to remember

Keep in mind that what seems to be apolitical at first glance may be considered, in the social and political context, as displaying a political stance (see Section 1.2. [‘What is a political opinion in the context of international protection?’](#)). For example, publishing on social media one’s own experience of a medical service in a public hospital during a pandemic may, in the national political and social context, be considered by the health authorities as a criticism targeting the ability of national authorities to fulfil their obligations towards their citizens, and be perceived as a political opinion.

#### (a) What is the official rhetoric of the actor of persecution on and about social media? What is its ‘cyber awareness’?

The way in which the potential actor of persecution uses, manages and views social networks gives a valuable indication of how it perceives social media in general and the activities that are deployed in social media by individuals: What are the means dedicated to them? What are the tools that are developed and strategies that are used by the actor of persecution in relation to social media? What is the official narrative it has in relation to social media? Is it, for example, considered as a strategic communication and political tool?

#### (b) Is there a specific legal framework on the use of social media?

Authorities may exercise extensive control over the content available on the internet and may even go so far as to interrupt the possibility of connecting to the internet on their territory to avoid opinions or information being shared or made public, either in the country or outside the country.

<sup>(68)</sup> EASO, *Practical Guide: Evidence assessment*, March 2015 (update forthcoming).



When the use of (some) social media is legally restricted, or criminalised, this gives a strong indication as to the (political) importance the actor of persecution attaches to the expression of opinions through social media. If the basis for such restrictions is said to be national security or public order, then this is generally a strong indication that the forbidden use of social media is perceived as a political activity. This will also apply to situations in which the misuse of social media is criminalised, depending on what, in practice, is considered as constituting misuse.

**(c) Are activities on social media monitored?**

Potential actors of persecution may put in place tools and procedures to trace, track and impede undesirable political stances. Online activities that are monitored by the actor of persecution are likely to be perceived as having a certain (political) significance, depending on the general and individual context.

**3.7.2. Has the actor of persecution knowledge of the publication(s) on social media?**

**(a) Surveillance of activities on social media by the actor of persecution**

The scope of the monitoring, and its efficiency, will give indicators as to the likelihood that certain online publications are singled out and come to the attention of the actor of persecution. The surveillance activities may be generalised, that is, all possible ‘subversive’ activities are monitored, or target specific groups considered to have critical profiles, such as journalists, activists and influencers.

The actor of persecution may put in place rather elementary technical tools of surveillance or, in contrast, have highly developed information technology systems and algorithms. The more sophisticated the tools used, the higher the likelihood that the actor of persecution has or may have knowledge of the online activities that they survey.

**(b) What is the coverage of the publication?**

Publications on the internet can have significant viewer potential. However, just because the potential exists, it does not mean that every publication on the internet has a large audience and that this audience includes the actor of persecution. You would need to check the reach of the applicant’s internet publication. That reach will depend on both (a) the behaviour of the actor of persecution (is it actively looking for such publications?) and (b) the publicity given to the publication by the author (how and where was the publication done, and what is its reach even for the more passive viewer?). Then (c) the accessibility and (d) the availability of the internet publication may also be good indicators of whether the actor of persecution may become aware of its existence.

You will need to take into account all relevant general and individual circumstances, as well as any explanations the applicant would have, before coming to conclusions on the likelihood of the actor of persecution knowing about a publication. The examination process is based on the combination of all different factors, and needs to be assessed by taking into account the context of the country of origin.





- (a) Where the actor of persecution has **active monitoring policies** towards online publications of the kind published by the applicant, the chances of the persecutor knowing about them are going to be higher. This is the case even where the publicity given by the applicant to their publication(s) is proportionately limited.

If the actor of persecution demonstrates more passive behaviour, the chances of them knowing about the publication are going to be lower, and will depend more on the promotion of the publication itself rather than on the demeanour of the actor of persecution.

- (b) The **publicisation/visibility of the publication** itself may depend on several factors. You will need to look for cues that will allow you to know how likely it is that the information has reached or may reach the actor of persecution. The question is 'Is it a rather confidential publication (with a limited number of views or a limited potential) or is it intended, based on the media used and the tools in place, to be seen by a large number of people or has the publication otherwise spread over the internet beyond the intention of the author?'

- Some internet pages may allow you to see the **number of views, likes**, etc. This may give an idea as to the number of people who have accessed the publication. Be aware that, on some web pages, the number of 'views' reflects not the number of different people who have seen the publication but, rather, the number of times the page was visited. This means that multiple visits by the same person, including the author themselves, will be considered as different 'views'. The number of views is one factor to take into account, but the 'importance' of the number will depend on the national context, and perhaps also on other factors, such as the recency of the views (e.g. a large number of view, many years previously may be considered less relevant than a smaller number of recent views).
- **The number of 'followers' of the author**, if applicable, may give an idea of the number of possible viewers. The fact that a person is followed by a large number of people makes it more likely that their publications are viewed and their opinions are known and shared.
- **The importance of the type of medium used and of its impact.** On the internet, not all media have equivalent impact and scope. You should consider the medium on which the publication has been published. Was it published in a mainstream newspaper web page or a private blog? If you are aware of the functioning of different social media (Facebook, YouTube, Instagram, TikTok, etc.), and of the impact of each medium in the country of origin, you will be able to assess the potential reach of the publication. It is not the same to publish in a personal or private blog as it is to write an article on the blog of an opposition party. The latter will probably be followed by more people (and in particular by the actor of persecution), while the former may remain quite confidential.

- (c) **Accessibility.** Who can access this information and how easily can it be accessed?

Internet publications are not always meant to be seen by everyone. You should thus check if the page is public, and to what extent, or if it has remained private or limited to



a restricted number of viewers (e.g. (some) ‘friends’, subscribers to a newsletter), and to what extent the information may be shared with additional recipients (e.g. whether it is possible to share the page electronically).

Another question you may ask yourself is if anyone may stumble upon the information, whether by chance or through a simple search, or if it is so difficult to find that only those who have very detailed information about the publication would find/see it.

### Example

For example, if the applicant has only one publication, and it is necessary to enter very specific or lengthy information or keywords into a search engine, or to search for exact phrases (by placing the search term in quotation marks), to be able to find the publication, or if it is necessary to know the URL to access the publication, it is highly unlikely that someone who does not already have all this information will come across this publication. It is therefore not considered information that is highly publicised.

- (d) **Availability.** Is the page still available on the internet? The author may remove a page or alter the content after it was published. When an applicant refers to internet publications, you should pay attention to the way in which the information is provided to you by the applicant. Has the applicant presented you with only a printout of an internet page? Is that page still available on the internet, and, if not, why not? If it is no longer available on the internet, you might be interested in checking the reasons this publication would still be relevant as evidence of a material fact or how it may still indicate a risk to the applicant upon return.

Keep in mind, however, that electronic evidence leaves a cyber footprint and may have an infinite life, which allows you to find or recover the publications even after the author has deleted them.



### Key point to remember

Remember that all criteria need to be considered together. For instance, a publication that was erased at the time of the flight or that has been online for a short period of time may be known by the actor of persecution depending on the level of surveillance it applies.

## 3.7.3. Patterns of repression as an indicator of future risk

The risk upon return related to publications on social media will depend, among others, on the surveillance activities (see above) and patterns of behaviour of the actor of persecution, that you may identify based on COI, towards certain (or all) online activities. Repeated acts of repression will give you indications on how the actor of persecution reacts to a use of social media that is considered as unwanted. Such patterns may include, for example, the use of detention, ill-treatment, confiscation of connected material (computers/phones), demands to obtain passwords of social networks, obligations to commit not to use social networks any more or the use of criminal proceedings.



### 3.7.4. Practical considerations related to the gathering of information and evidence assessment

#### (a) Before the personal interview takes place

If the applicant has already mentioned specific publications on the internet as a piece of evidence during the registration/lodging phase, you may conduct preparatory research.

Looking for the internet publication(s) before the personal interview yourself (or through a dedicated service of your administration, if available) will help you to prepare the relevant questions to ask the applicant in relation to the content and the reasons for the publication. It will also allow you to assess how easily this information is accessible and available, and during the interview you will be able to present the elements you have previously found online to the applicant. It may be more difficult to research and make an assessment during the interview if you have restricted access to the internet during the interview. Any step that you can take before the personal interview occurs will help you substantially.



It is important that you take all the necessary security precautions applicable in your administration before you access content on the internet. It is advisable to consult with your information and communications technology service to check what is authorised. The following are examples of such precautions.

- That the security system of the device that is used to access the information is up to date.
- That you protect yourself from exposure. For example, it is recommended that you use dummy accounts to visit a social media account, not your own credentials, to avoid being personally identified.

#### (b) Probative value

When assessing evidence gathered on social media, you should be mindful of its characteristics before coming to conclusions on its probative value. The risk may be high that content is inaccurate, biased, intentionally misleading or dubious. In addition, social media content is often user generated. When assessing information obtained through social media accounts, particular attention must be paid to identifying the source and cross-checking the content <sup>(69)</sup>. The identity of the author of a post and private accounts can be easily usurped. Information on social media can also be changed easily. You may find additional information on this topic in the EUAA practical guides on evidence assessment and the use of COI by case officers <sup>(70)</sup>.

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<sup>(69)</sup> EASO, *Practical guide on the use of country of origin information by case officers for the examination of asylum applications*, 2020, p. 56.

<sup>(70)</sup> EASO, *Practical Guide: Evidence assessment*, March 2015 (update forthcoming); EASO, *Practical guide on the use of country of origin information by case officers for the examination of asylum applications*, 2020, p. 56.



### (c) Videos and images on the internet

The applicant may submit videos or images posted on social media to substantiate their claim. These videos or images, as with any other content that is published on the internet, may be either a publication by the applicant themselves (a video or image that is their work) or a publication in which the applicant claims to have been exposed as the subject of the images (e.g. the applicant claims to have been filmed or photographed during a political demonstration). The first situation is mostly covered by Section 3.7.2(b) ‘[What is the coverage of the publication?](#)’ (although it is applicable to both situations). The content of this section is related to the second situation, where the applicant claims they could be spotted on a video or images that have been published on the internet.

You should check which material fact the video/images are linked to as evidence. You then need to assess what can be seen, and what may be inferred from the images. If possible, you should look at the images alongside the applicant for them to be able to describe them, and for you to be able to ask the applicant questions and assess the probative value of the video/images.

Ask yourself whether the circumstances of the event during which the images have been taken are identifiable, and what are the relevant elements that would allow you to come to that conclusion. Keep in mind that what is on the internet should be assessed with caution.

For example, having a video or picture with some people marching with a banner does not necessarily mean that those who are holding the banner were marching during the specific event the applicant is referring to. You would need to find other cues to identify the context in which the images were taken before being able to reach a conclusion on the submitted evidence and its relation to the material fact that it is meant to support.



#### Tips

- To facilitate your viewing of a video, you may ask the applicant the precise time point at which the relevant images appear in the video (hour, minute and second). Indeed, sometimes applicants refer to images that cannot easily be identified in the video, above all when the person(s) is/are not easily recognisable, and the video is long.
- It is recommended that, when researching social media, you take screenshots of relevant posts, making sure that the date on which the page was accessed is visible. The screenshots may then be inserted in the applicant’s file. This will prevent the information from being lost if the applicant (or someone else) deletes posts before the personal interview takes place or the final decision is issued.

When the applicant claims to be visible in a video, you need to assess if the applicant can be recognised. Ask yourself whether it is possible to recognise the applicant’s physical features, and whether the applicant could be identified (i.e. would the actor of persecution know that this person is the applicant?). Even if the applicant may be recognised and identified by people close to them, it does not mean that a third party would be able to identify a person that they are not actively searching for. In some cases, identifiers may be present elsewhere (e.g. through indications in the video, indications in the descriptive elements of the video, comments).





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