

# Practical Guide on Membership of a Particular Social Group

Second edition



# **Practical Guide on Membership of a Particular Social Group**

**Second edition**

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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 facilitate and support the activities of EU Member States and Schengen associated countries (EU+ countries <sup>(1)</sup>) in the implementation of the Common European Asylum System (CEAS). According to its overall aim to promote a correct and effective implementation of the CEAS and to enable convergence, the EUAA develops common operational standards and indicators, guidelines and practical tools.

**How was this guide developed?** The first edition of this guidance was published in 2020. It was created by experts from across the EU, with valuable input from the European Commission, the United Nations High Commissioner for Refugees and the European Council on Refugees and Exiles <sup>(2)</sup>. The development was facilitated and coordinated by the EUAA (then EASO). Before its finalisation, a consultation on the guide was carried out with all EU+ countries through the Asylum Processes Network. The guide was adopted by the EUAA Management Board in May 2025.

This second edition integrates the relevant provisions of the reformed pieces of legislation of the new Pact on Migration and Asylum <sup>(3)</sup> and includes the new case-law of the Court of Justice of the European Union.

We would like to extend our thanks to the members of the working group who prepared the drafting of the second edition of this guide: Yvonne Bengtsson, Mi Christiansen, Stephen Hand, Laura Jesaulkova, Elsabe Johanna Klingbeil, Pawel Stefanek and Josine Sunter.

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

**How to use this guide?** This guide is structured in three main parts: 1) the legal basis, 2) the legal analysis, which forms the core of this guide, and 3) the concrete application of the legal analysis on several commonly encountered profiles. The last section of the guide includes a practical overview of the key points to remember, a summary of some of the most relevant judgments of the Court of Justice of the European Union in this field and legal reference.

It should be emphasised that this document does not provide country-specific guidance. For such guidance, concerning the applicability of the reason for persecution of ‘membership of a

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<sup>(1)</sup> The 27 EU Member States, complemented by Iceland, Liechtenstein, Norway and Switzerland.

<sup>(2)</sup> Note that the finalised guide does not necessarily reflect the positions of United Nations High Commissioner for Refugees and the European Council on Refugees and Exiles

<sup>(3)</sup> European Commission: Directorate-General for Migration and Home Affairs, ‘Pact on Migration and Asylum’, European Commission website, 21 May 2024, accessed 23 January 2025, [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en).

particular social group’ in the context of certain countries of origin, refer to the EUAA country guidance: <https://euaa.europa.eu/asylum-knowledge/country-guidance>.

**How does this guide relate to national legislation and practice?** This is a soft convergence tool. It is not legally binding and reflects commonly agreed standards.

**How does this guide relate to other EUAA tools?** This practical guide should be used in conjunction with other available practical guides and tools. All EUAA practical tools are publicly available online on the EUAA website: <https://euaa.europa.eu/practical-tools-and-guides>.

The EUAA practical guides, tools and judicial analyses to which this practical guide refers will be progressively updated between 2025 and 2027. The updates will align these publications with the legislative instruments of the Pact on Migration and Asylum. Once published, the updated publications will also be available online at the EUAA webpages listed directly above. This second edition is applicable only from June 2026. Before this date, and for any applications for international protection lodged before this date, the guide applicable is the EASO, *Guidance on Membership of a Particular Social Group*, March 2020, <https://euaa.europa.eu/publications/guidance-membership-particular-social-group>.

#### **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>CEAS</b>	Common European Asylum System
<b>EUAA</b>	European Union Agency for Asylum
<b>EU</b>	European Union
<b>EU+ countries</b>	EU Member States and Iceland, Liechtenstein, Norway and Switzerland
<b>FGM</b>	female genital mutilation
<b>LGBTIQ</b>	lesbian, gay, bisexual, trans, intersex and queer
<b>Member States</b>	EU Member States
<b>THB</b>	trafficking in human beings
<b>QD</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>QR</b>	<b>qualification regulation</b> — Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council
<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>SOGIESC</b>	sexual orientations, gender identities, gender expressions and sex characteristics
<b>UNHCR</b>	United Nations High Commissioner for Refugees



# Introduction

The 1951 Refugee Convention includes membership of a particular social group as one of the five grounds for a well-founded fear of persecution in the refugee definition <sup>(4)</sup>. This concept, though foundational in refugee law, is often challenging to interpret and apply due to its nuanced nature. It is not commonly used outside the context of the Refugee Convention and mainly derives its meaning from the Refugee Convention itself.

Given its intrinsic connection to the Refugee Convention, when discussing membership of a particular social group it is essential to consider the context of a well-founded fear of persecution. While it may be relevant to discuss political affiliations or ethnic groups within a specific country as an independent subject, such analysis becomes less meaningful outside the refugee framework, where the risk of persecution is the central concern. Membership of a particular social group is not a stand-alone concept and must be understood as part of a broader assessment involving persecution risk; it cannot be analysed in isolation without this critical context.

The concept of ‘membership of a particular social group’ is inherently contextual. As emphasised in the United Nations High Commissioner for Refugees (UNHCR) guidelines on international protection, there is no exhaustive or ‘closed list’ of particular social groups <sup>(5)</sup>. The concept should be interpreted within the diverse and evolving nature of groups in various societies. Furthermore, in the qualification regulation (QR) <sup>(6)</sup>, the perception of surrounding societies is recognised as a fundamental component of defining a particular social group.

Thus, this guidance does not aim to determine definitively which profiles qualify as particular social groups. Instead, it provides a legal framework for assessing whether a specific profile should be considered a particular social group in a particular country of origin, within the meaning of the refugee definition. This assessment must always account for the prevailing conditions and societal perceptions in the country of origin.

This guidance seeks to establish a standardised approach and shared terminology for applying the concept of ‘membership of a particular social group’ within the framework of the CEAS. To enhance practical usability, it pairs legal analysis with illustrative examples of commonly encountered profiles, demonstrating how these analyses may be applied in practice. The guide concludes with a summary of essential considerations, key points to remember, and a concise overview of significant judgments from the Court of Justice of the European Union relevant to particular social group determinations.

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<sup>(4)</sup> UN General Assembly, [Convention relating to the status of refugees](#), Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, and [Protocol Relating to the Status of Refugees](#), 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267 (referred to in EU asylum legislation and by the CJEU as ‘the Geneva Convention’).

<sup>(5)</sup> UNHCR, [Guidelines on international protection: ‘Membership of a particular social group’ within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 7 May 2002, p. 2.

<sup>(6)</sup> Article 10(1)(d)(ii) [Regulation \(EU\) 2024/1347](#) of the European Parliament and of the Council of 14 May 2024 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, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024).



# 1. Legal basis of the concept of membership of a particular social group

Membership of a particular social group is explicitly listed in both the Refugee Convention <sup>(7)</sup> and the QR as one of the five reasons for persecution. This section provides reference to the EU legislation concerning membership of a particular social group, and an overview of relevant case-law of the Court of Justice of the European Union (CJEU). The interpretation of the concept of a 'particular social group' is prone to evolve with time <sup>(8)</sup>.

## 1.1. Qualification regulation

The QR lays down the concept of 'membership of a particular social group' in Article 10(1)(d).



### Article 10 QR

1. *The following elements shall be taken into account when assessing the reasons for persecution:*

[...]

*(d) the concept of membership of a particular social group shall include, in particular, membership of a group:*

*(i) whose members share or are perceived to share an innate characteristic or a common background that cannot be changed, or a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and*

*(ii) which has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;*

[...]

*Depending on the circumstances in the country of origin, the concept of membership of a particular social group as referred to in point (d) of the first subparagraph shall include membership of a group based on a common characteristic of sexual orientation. Gender related aspects, including gender identity and gender expression, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.*

<sup>(7)</sup> UN General Assembly, [Convention relating to the status of refugees](#), Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. See Article 1A(2).

<sup>(8)</sup> UNHCR, [Guidelines on international protection: 'Membership of a particular social group' within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 7 May 2002, p. 2.



## 1.2. European Union case-law

For the purposes of this guidance, the following CJEU case law is taken into consideration (see extracts of official summaries of CJEU cases, Section [5. EU case-law](#)).



### **CJEU, *X, Y and Z*, 2013 <sup>(9)</sup>**

The CJEU was addressed with a preliminary ruling from the Raad van State (Netherlands) concerning the assessment of applications for international protection based on sexual orientation.

The referring Court raised three questions:

1. Whether homosexuals can constitute a particular social group (within the meaning of Article 10 [Directive 2011/95/EU](#) <sup>(10)</sup>).
2. How should it be assessed what constitutes an act of persecution concerning homosexual activities?
3. Does the criminalisation of homosexual activities amount to persecution?



### **CJEU, *F*, 2018 <sup>(11)</sup>**

The CJEU was asked by a Hungarian Court to give a preliminary ruling concerning the use of psychologists' expert opinions to verify the credibility of the statements made by an applicant who invokes a fear of persecution for reasons relating to his sexual orientation.



### **CJEU, *Ahmedbekova*, 2018 <sup>(12)</sup>**

The CJEU had been requested for a preliminary ruling by a Bulgarian Administrative Court concerning the interpretation of various provisions of the QD and the asylum procedures directive <sup>(13)</sup>. The referring Court asked nine questions in its request. The seventh question asked whether the fact that an applicant has brought a complaint against their own state of origin before the European Court of Human Rights establishes that applicant's membership of a particular social group, or constitutes a political opinion, within the meaning of Article 10(1)(e) QD.

<sup>(9)</sup> CJEU, judgment of 7 November 2013, [Minister voor Immigratie en Asiel v X, Y and Z](#), joined cases C-199/12 to C-201/12, EU:C:2013:720. Summary available in the [EUAA Case Law Database](#).

<sup>(10)</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>(11)</sup> CJEU, judgment of 25 January 2018, [F v Bevándorlási és Állampolgársági Hivatal](#), C-473/16, EU:C:2018:36. Summary available in the [EUAA Case Law Database](#).

<sup>(12)</sup> CJEU, judgment of 4 October 2018, [Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite](#), C-652/16, EU:C:2018:801. Summary available in the [EUAA Case Law Database](#).

<sup>(13)</sup> [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), (OJ L 180/60, 29.6.2013).

CJEU, *WS*, 2024 <sup>(14)</sup>

The CJEU was requested by a Bulgarian Administrative Court for a preliminary ruling regarding various provisions of the QD. The referring Court asked five questions in its request. With the first three questions, which were examined together, the referring Court asked in essence whether, depending on the circumstances in the country of origin, women in that country:

*may be regarded, as a whole, as belonging to ‘a particular social group’ constituting a ‘reason for persecution’ capable of leading to the recognition of refugee status, or whether the women concerned must share an additional common characteristic in order to belong to such a group* <sup>(15)</sup>.

CJEU, *K and L*, 2024 <sup>(16)</sup>

The CJEU was addressed by a Dutch District Court for a preliminary ruling regarding the interpretation of the concept of ‘membership of a particular social group’. The referring Court asked five questions.

In its first two questions, the court asked:

*in essence, whether Article 10(1)(d) and (2) QD must be interpreted as meaning that, depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men, enshrined in particular in Article 2 TEU, during their stay in a Member State, may be regarded as belonging to ‘a particular social group’, constituting a ‘reason for persecution’ capable of leading to the recognition of refugee status.* <sup>(17)</sup>

<sup>(14)</sup> CJEU, judgment of 16 January 2024, *WS v State Agency for Refugees under the Council of Ministers (SAR)*, C-621/21, EU:C:2024:47. Summary available in the [EUAA Case Law Database](#).

<sup>(15)</sup> CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 35.

<sup>(16)</sup> CJEU, judgment of 11 June 2024, *K and L v Staatssecretaris van Justitie en Veiligheid*, C-646/21, EU:C:2024:487. Summary available in the [EUAA Case Law Database](#).

<sup>(17)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 34.

## 2. Membership of a particular social group within the examination process

Membership of a particular social group is not a stand-alone concept; it cannot be analysed in isolation and must only be assessed in a context where a fear of persecution in the country of origin can be established.

The EUAA's guidance on qualification for international protection <sup>(18)</sup> presents the examination of an individual application for international protection as a step-by-step process.

The process through which the **elements of the refugee definition** are examined is described below. An assessment must be made at each step.

### Step 1: Preliminary considerations

The applicant is a third country national or a stateless person and they are outside their country of nationality or, when stateless, of former habitual residence.

### Step 2a: Persecution

The treatment feared by the applicant amounts to persecution, i.e. it is a sufficiently severe violation of basic human rights, or an accumulation of various measures which is sufficiently severe, taking the form mentioned inter alia in Article 9(2) QR.

### Step 2b: Well-founded fear

The fear of persecution is well-founded.

### Step 2c: Reason(s) for persecution

The persecution or the absence of protection against such acts is connected (at least in part) to one of the following (actual or imputed) reasons:

- race
- religion
- nationality
- **membership of a particular social group**
- political opinion.

<sup>(18)</sup> EASO, [Practical Guide on Qualification for International Protection](#), April 2018, p. 42.



### Step 3: Subsidiary protection

Eligibility for subsidiary protection is examined only when the applicant does not qualify for refugee status, i.e. if none of step 2a, 2b or 2c are met.

### Step 4: Protection in the country of origin

There is no protection in the country of origin, or the actors of protection are unable or unwilling to provide it; or protection is temporary or not effective, i.e. protection does not meet the criteria of Article 7 QR.

### Step 5: Internal Protection Alternative

It is established that there is no internal protection alternative available to the applicant, based on the criteria provided in Article 8 QR.

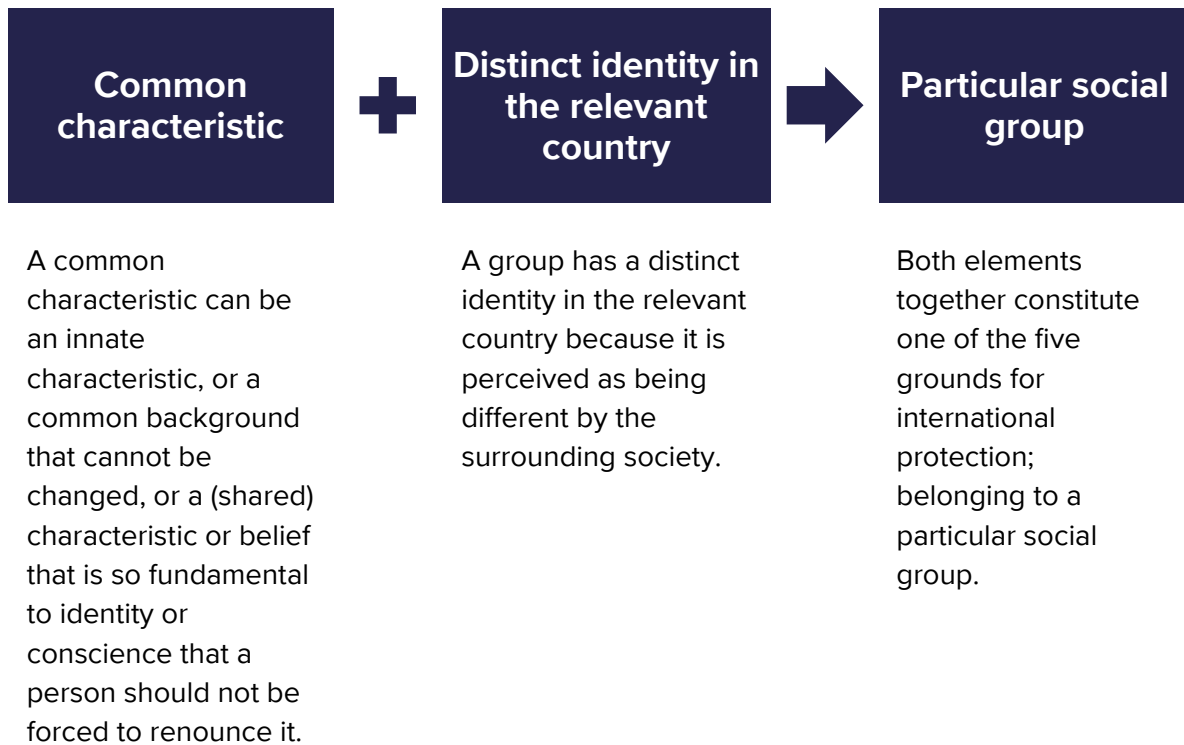
The concept of membership of a particular social group can only lead to the recognition of refugee status if there is also a well-founded fear for persecution, provided it is established that there is a connection between the fear and the reason for that fear.



### 3. Legal analysis

#### 3.1. Cumulative approach

Article 10(1)(d) QR defines a particular social group by two **cumulative** elements.



The cumulative approach means that the two criteria outlined above, respectively ‘common characteristic’ and ‘distinct identity’, both need to be met. In other words, it is not sufficient to establish that the group shares certain characteristics or background or beliefs. Such features at the level of the group must also be visible to others, so that the group is identified as being different.

The cumulative approach was reaffirmed in the CJEU judgments in the cases *X, Y and Z*, *WS* and *K and L* <sup>(19)</sup>.

<sup>(19)</sup> CJEU, 2013, *X and Y and Z*, op. cit., fn. 9, paragraph 45, reiterated in CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 40 and in CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 40.





CJEU, *X, Y and Z*, 2013 <sup>(20)</sup>

‘According to that definition, a group is regarded as a ‘particular social group’ where, inter alia, two conditions are met.

First, members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.

Second, that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society’. (paragraph 45)

### Note on UNHCR’s approach

In this context it has to be noted that unlike what is provided in the QR, UNHCR does not apply a ‘cumulative approach’. UNHCR lays down the concept of particular social group as follows.

*A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights. <sup>(21)</sup>*

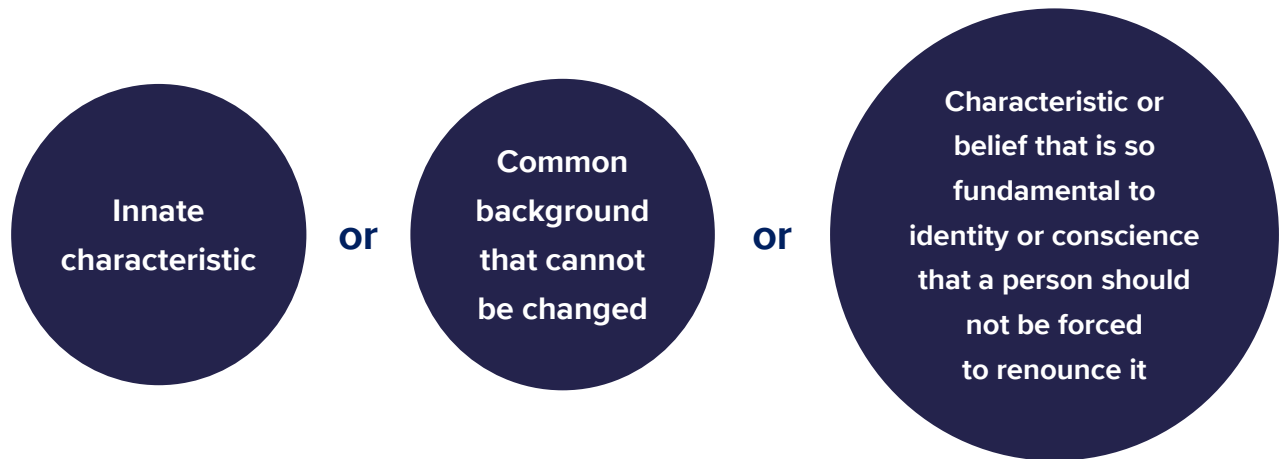
## 3.2. Common characteristic



This section focuses on the first set of requirements in Article 10(1)(d) QR relating to **a shared characteristic, background or belief**.

<sup>(20)</sup> CJEU, 2013, *X, Y and Z*, op. cit., fn. 9, paragraph 45.

<sup>(21)</sup> UNHCR, *Guidelines on international protection: ‘Membership of a particular social group’ within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, p. 3.



**Innate characteristics:** an innate characteristic refers to a trait that is inherent or intrinsic to the individual, often one with which a person is born. It is important to note that, while innate, this characteristic does not need to be immutable — meaning it is not required to be fixed, permanent, or unchangeable.

**Common background:** a common background can be defined by significant shared experiences, hereditary status, or other factors such as social or educational background. This background links individuals through meaningful aspects of their history or identity, creating a shared foundation for membership in a particular social group.

**Characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it:** these are typically characteristics related to a fundamental human right. A person cannot be forced to renounce it, nor should they be expected to conceal or exercise reserve in the expression of this characteristic or belief <sup>(22)</sup>. UNHCR states: ‘The definition of particular social group includes ... those [characteristics] which, though it is possible to change them, ought not to be required to be changed because they are so closely linked to the identity of the person or are an expression of fundamental human rights.’ <sup>(23)</sup>

It is important to recognise that the three categories of common characteristics outlined above are complementary. They may overlap and may be interpreted differently across Member States. These categories are unified by a common underlying principle, and an individual profile may align with multiple categories depending on national decision-making practices. For example, ‘age’, albeit not immutable, can be placed under ‘innate characteristic’ according to some practices or under ‘common background that cannot be changed’ according to others. When a characteristic fits reasonably into two or three categories, pinpointing the most appropriate category is not essential in order to proceed with the determination process. Conversely, it is important to always check all the categories before deciding whether the criterion of common characteristic is met.

<sup>(22)</sup> CJEU, 2013, [X, Y and Z](#), op. cit., fn. 9, and reiterated in CJEU, 2024, [K and L](#), op. cit., fn. 16, paragraph 63.

<sup>(23)</sup> UNHCR, [Guidelines on international protection: ‘Membership of a particular social group’ within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 7 May 2002, p. 3.



**The applicant does not need to actually possess the common characteristic.** As long as the characteristic is attributed or imputed to them in the country of origin, the condition of common characteristic is satisfied <sup>(24)</sup>.

Below you will find a non-exhaustive list of examples of frequently encountered common characteristics. It has to be kept in mind that in order to establish a particular social group, the common characteristics need to be complemented by an analysis of the distinct identity of the group in a particular country of origin.

- **Biological sex and gender:** sex and gender can be seen as innate characteristics, even when one's sex and gender are not immutable and can change. In the *WS* case <sup>(25)</sup>, the CJEU ruled that being a female constitutes an innate characteristic and therefore suffices to satisfy the condition of common characteristic.

In practice, the criterion of 'distinct identity' will, in most countries of origin, only be substantiated if biological sex and/or gender are combined with more common characteristics relevant for the surrounding society to perceive a particular group as being different.

- **Congenital conditions:** congenital conditions, such as albinism, can be considered an innate characteristic.
- **Disabilities** <sup>(26)</sup>: certain mental and physical disabilities may be considered innate characteristics, particularly when they are present from birth, such as blindness, deafness, or specific developmental disorders. Individuals living with other disabilities may be seen as sharing a common background that cannot be changed, creating a particular social group based on shared experiences and challenges. In particular, disabilities resulting from conflict or remnants of war may also fall within this category, underscoring the impact of external circumstances that permanently affect individuals physical or mental well-being.
- **Transgression of moral codes and contravention of prevailing norms:** certain acts of transgression of moral codes could constitute a common background that cannot be changed.

In the *WS* case, the CJEU ruled that refusing or escaping from a forced marriage may be regarded as a 'common background that cannot be changed' <sup>(27)</sup>.

In the *K and L* case, the CJEU ruled that women who genuinely come to identify with the fundamental value of equality between men and women during their stay in a Member State share a common background that cannot be changed <sup>(28)</sup>.

<sup>(24)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 47.

<sup>(25)</sup> CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 42.

<sup>(26)</sup> 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others', Article 1 of the United Nations, [The Convention on the Rights of Persons with Disabilities and Optional Protocol](#), (A/RES/61/106), adopted on 13 December 2006 at the UN Headquarters, New York, entered into force 3 May 2008.

<sup>(27)</sup> CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 51.

<sup>(28)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 45.



In other cases, contravening social norms could be related to a belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.

In the *K and L* case, the Court ruled that the fact that a woman who ‘genuinely come[s] to identify with the fundamental value of equality between women and men’ may be considered to have ‘a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it’ <sup>(29)</sup>. Women may wish to benefit from that equality in their daily lives, including being free to make their own life choices that are fundamental to their identity. This includes choices regarding their education and career, the extent and nature of their activities in the public sphere, the possibility of achieving economic independence by working outside the home, their decision on whether to live alone or with a family and the free choice of a partner <sup>(30)</sup>.

Parents’ refusal to have their child undergo female genital mutilation (FGM) could also be considered ‘a characteristic or belief that is so fundamental to the identity or conscience that a person should not be forced to renounce it’.

Parents’ refusal to have their child undergo FGM could also be considered ‘a characteristic or belief that is so fundamental to the identity or conscience that a person should not be forced to renounce it’.

- **Sexual orientation and gender identity** can be regarded as characteristics so fundamental to identity or conscience that a person should not be forced to renounce them.
- **Serious conditions and illnesses:** some conditions and serious illnesses, for example HIV/AIDS, could be considered a common background that cannot be changed.
- **Kinship ties:** this could be seen as an innate characteristic (e.g. the family one is born into) or common background which cannot be changed (e.g. due to marriage or a particular family situation) <sup>(31)</sup>

### **The common characteristic cannot be exclusively limited to sharing a common fear of persecution.**

It should be noted that the common characteristic cannot be solely the fear of persecution itself. The CJEU reaffirmed in the *WS* case, that membership of a particular social group is to be established independently of the acts of persecution of which the members of that group may be victims in the country of origin <sup>(32)</sup>. Persecutory conduct cannot define the particular social group. Otherwise, any individual having a well-founded fear of persecution would constitute a particular social group and thus would qualify for refugee status. The other reasons for persecution (race, religion, nationality and political opinion) would then be deprived of all meaningful content, as the mere fact of having a well-founded fear would be sufficient to be granted refugee status.

<sup>(29)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 44.

<sup>(30)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 44.

<sup>(31)</sup> CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 50.

<sup>(32)</sup> CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 55.



UNHCR guidelines also highlight the importance of this principle, as it defines a particular social group as ‘... a group of persons who share a common characteristic other than their risk of being persecuted’ <sup>(33)</sup>.

### 3.3. Distinct identity



Following the assessment of the common characteristic, it needs to be established whether the group has **a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.**

Defining **identity** is inherently complex, as various theoretical frameworks exist for understanding its nature and formation. However, the QR offers clear guidance on how to establish the existence of a distinct identity within the context of membership of a particular social group, as part of the refugee definition. According to the QR, a particular social group is recognised as having a distinct identity in the relevant country when it is perceived by the surrounding society as being different.

1. Distinct identity needs to be analysed according to the conditions prevailing in the country of origin

Article 10(1)(d) QR states that the group ‘has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society’.

The distinct identity depends on the specific context prevailing in a given country of origin. A group can be perceived as being different (within the meaning of the QR) in one country but not in another.

Therefore, it is not possible to conclude that a certain profile constitutes a particular social group by definition or from an abstract point of view. The existence of a distinct identity always has to be assessed in light of the national context in the country of origin.

Assessing the existence of a particular social group within a specific country requires access to accurate, relevant, and up-to-date country of origin information. It is also important to note that a particular social group does not need to have a distinct identity that is recognised across the entire country of origin. The group’s existence may, in some cases, be confined to

<sup>(33)</sup> UNHCR, [Guidelines on international protection: ‘Membership of a particular social group’ within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 7 May 2002, point 11.



specific regions or areas within the country, particularly those from which the applicant originates <sup>(34)</sup>.

## 2. Being perceived as different by the surrounding society

At this stage, the key question for a case officer is to determine whether the concerned group is perceived as being different by the surrounding society.

When examining whether a group is perceived by the surrounding society (in the country of origin) as being different, several indicators can be used. In the *WS* case <sup>(35)</sup>, the CJEU ruled that ‘women may be perceived as being different by the surrounding society and recognised as having their own identity in that society, in particular because of social, moral or legal norms in their country of origin’.

The two indicators described below relate to (a) stigmatisation or being singled out by legal norms and (b) stigmatisation or standing out by society (i.e. social or moral norms). As such, these indicators are not prerequisites for establishing a distinct identity; they are provided as examples of indicators that may be helpful in specific circumstances for the identification of a social group.

The perception of the surrounding society does not necessarily need to refer to the society of the country of origin as a whole. In the *WS* case, the Court reaffirmed that the surrounding society that is relevant may coincide with the entirety of the country of origin or be more restricted, for example part of the territory or population of that country <sup>(36)</sup>.

The perception of being different should neither be understood as something necessarily negative. For example, a privileged social class may be perceived as being different by the surrounding society.

### (a) Stigmatised or singled-out by laws

In the *X, Y and Z* case, the CJEU ruled that the existence of criminal laws targeting a specific group (in that case, homosexuals) supports a finding that the group is perceived as being different by the surrounding society and thus, that it has a distinct identity in the relevant country.

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<sup>(34)</sup> This is without prejudice to the examination of the internal protection alternative, which is conducted in the context of the risk assessment.

<sup>(35)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14, paragraph 52.

<sup>(36)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14, paragraph 54.

CJEU, *X, Y and Z*, 2013 <sup>(37)</sup>

*In that connection, it should be acknowledged that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports a finding that those persons form a separate group which is perceived by the surrounding society as being different. (paragraph 48)*

*Therefore, the answer to the first question referred in each of the cases in the main proceedings is that Article 10(1)(d) of the Directive must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group. (paragraph 49)*

The existence of criminal laws that target a specific group, or laws that are discriminatory against certain groups, may support a finding that those groups are perceived as being different by the surrounding society.

#### (b) Stigmatised or seen as standing out by society

As a particular social group is related to a surrounding society, it is important to understand how the society operates and treats groups differently.

This can become apparent through acts or beliefs of discrimination or ostracism or granting privileges to certain groups.

Discrimination or ostracism may consist of, amongst others, restricted access to jobs, housing, medical treatment or education. Particular social groups can be considered as pariah groups or as standing apart from the rest of society or the population in the country of origin or specific area(s) in the country of origin.

Certain traditions and customs, or religious or political beliefs may also stigmatise certain groups. In countries or regions where the prevalence rate of FGM is high, women and girls of a certain age who have not undergone FGM may be perceived as different by the surrounding society, and thus have a distinct identity.

In the *WS* case, the Court ruled that women (as a whole) could be considered as having a distinct identity in countries of origin where women are, on account of their gender, 'exposed to physical or mental violence, including sexual violence and domestic violence' <sup>(38)</sup>. In the same judgment, the Court affirmed that women who refuse or end a forced marriage could be considered as having a distinct identity if, on account of their behaviour, 'they are stigmatised

<sup>(37)</sup> CJEU, 2013, *X, Y and Z*, op. cit., fn. 9, paragraphs 48 and 49.

<sup>(38)</sup> CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 57.

and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence’ <sup>(39)</sup>.



CJEU, *WS*, 2024 <sup>(40)</sup>

*Consequently, women, as a whole, may be regarded as belonging to a ‘particular social group’, within the meaning of Article 10(1)(d) of Directive 2011/95, where it is established that, in their country of origin, they are, on account of their gender, exposed to physical or mental violence, including sexual violence and domestic violence. (paragraph 57)*

*... women who refuse forced marriages, where such a practice may be regarded as a social norm within their society, or who transgress such a norm by ending that marriage, may be regarded as belonging to a social group with a distinct identity in their country of origin if, on account of that behaviour, they are stigmatised and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence. (paragraph 58)*

### 3.4. Membership

In accordance with the QR, the distinct identity as well as the perception of being different refer to the group as a whole. The surrounding society should have some general awareness that a particular social group exists among society and perceive its members differently.

Individually, a member of a particular social group can be ‘invisible’ or ‘unnoticeable’ by the surrounding society, but the mere fact of sharing the common characteristics of that particular social group makes the person a member of that group. For example, one’s sexual orientation may not be visible to the surrounding society if the applicant does not talk about it openly. The existence of a **particular social group** is not based nor dependent on activities or actions conducted by its members. A particular social group may exist – and often does – without any inherent activity attached to it.

**Cohesion among members of a particular social group is not a necessary criterion** for membership. Members of a particular social group do not need to know each other, nor do they need to have any personal connection or interaction. The essential factor is that the individuals share a common characteristic that distinguishes them from the broader society. It is not required that members have any direct relationship with one another. Furthermore, the subjective belief of an individual that they do not belong to a group with others who share the same characteristic is irrelevant in establishing membership. The focus is on the objective

<sup>(39)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14, paragraph 58.

<sup>(40)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14.





existence of the common characteristic, not on the personal perception of the individuals involved <sup>(41)</sup>.

**Concealment or reserve/restraint.** In the *X, Y and Z* case, the CJEU ruled that applicants should not be expected to conceal a characteristic that is so fundamental to their identity that they cannot be required to renounce it. Moreover, the Court specified that an applicant cannot be reasonably expected to exercise reserve in the expression of sexual orientation. The fact that they could avoid a risk of persecution by exercising greater restraint than a heterosexual in expressing sexual orientation is not to be taken into account in that respect.

Similarly, in the *K and L* case, the CJEU ruled that, for women identifying with the value of gender equality, the fact that they could avoid the risk of being persecuted by exercising restraint in expressing this value should not be taken into account <sup>(42)</sup>.



#### CJEU, *X, Y and Z*, 2013 <sup>(43)</sup>

*As far as concerns the first of those conditions, it is common ground that a person's sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. (paragraph 46)*

*In that connection, it is important to state that requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. (paragraph 70)*

*The fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect. (paragraph 75)*

*When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation. (paragraph 76)*

<sup>(41)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 44; see also UNHCR, [Guidelines on international protection: 'Membership of a particular social group' within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 7 May 2002, point 15.

<sup>(42)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 63.

<sup>(43)</sup> CJEU, 2013, *X, Y and Z*, op. cit., fn. 9, paragraphs 46, 70, 75 and 76.



**CJEU, *K and L*, 2024 <sup>(44)</sup>**

*In the present case, it is for the referring court to ascertain, in particular, whether the applicants in the main proceedings genuinely identify with the fundamental value of equality between women and men, ... by seeking to benefit from that equality in their daily lives, with the result that that value constitutes an integral part of their identity and whether, as a result, they would be perceived as being different by the surrounding society in their country of origin. The fact that they could avoid the genuine risk of being persecuted in their country of origin on account of that identification by exercising restraint in expressing it is not to be taken into account in that respect ... (paragraph 63)*

**The size of a group, i.e. the number of members or persons composing the group, is not relevant when assessing the existence of a particular social group.**

Indeed, a particular social group can be composed of a very small number of persons (e.g. persons with a rare disease / disability), or on the contrary of a higher number of persons (e.g. lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) persons in an entire country). It is worth recalling that other reasons for persecution (race, religion, nationality and political opinion) may also encompass a very high or very low number of persons. Moreover, there are numerous well-documented historical examples of dominant minority groups persecuting a majority for reasons of a Convention ground.

The word ‘particular’, in the term ‘particular social group’ refers to the fact that the group is identifiable. It is not understood to relate to the size of the group <sup>(45)</sup>.

### **Conclusion on the existence of a particular social group**

The fulfilment of both the common characteristic criterion and the distinct identity criterion leads to the conclusion that the applicant belongs to a particular social group, thereby establishing the existence of one of the five grounds for persecution within the refugee definition.

<sup>(44)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16.

<sup>(45)</sup> UNHCR, *Guidelines on international protection: ‘Membership of a particular social group’ within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, point 18.



### 3.5. Nexus (for reasons of)

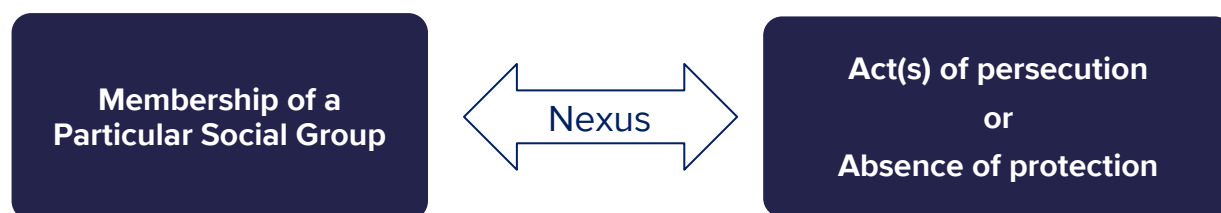
The mere fact of being a member of a particular social group is not sufficient to qualify for refugee status.

Hence, once the applicant's membership of a particular social group has been established, the next step is to examine the existence of a nexus between the applicant's membership and their fear of persecution, or absence of protection.

The **nexus (for reasons of)** is the causal link between:

- membership of a particular social group and the well-founded fear of persecution; or
- membership of a particular social group and the absence of an effective and non-temporary protection against an act of persecution as per Article 7(2) QR, and in particular the unwillingness of the actors of protection to provide protection against the feared persecutions, where the act of persecution itself is not linked to a reason for persecution.

The nexus between the membership of a particular social group and the fear of persecution coming from either the act(s) of persecution or absence of protection is essential.



Example of unwillingness to provide protection: a homosexual man is the victim of criminal acts, which are not due to his sexual orientation or another Convention ground; but the competent authorities refuse to investigate the crimes or, where necessary, provide physical protection to him because of his sexual orientation.

### 3.6. Specific considerations

#### 3.6.1. Plurality of motives

The plurality of motives refers to the situation in which an act of persecution is committed for more than one motive, not all of which are reasons for persecution. The presence of at least one reason for persecution, as an effective contributing factor among the other motives, is sufficient to apply the refugee definition.



### 3.6.2. Plurality of reasons for persecution

Depending on the circumstances of an individual case, one or more reasons for persecution may overlap or may be equally applicable. In addition to membership of a particular social group, other reasons for persecution (race, religion, nationality, political opinion) may be applicable to one and the same act of persecution. For example, in the *K and L* case, the Court stated that, depending on the circumstances, persecution against women on the basis of their identification with the value of gender equality, could be on the grounds of membership of a particular social group, religion and/or political opinion <sup>(46)</sup>.

The case officer should therefore always remain attentive to the existence of other grounds for persecution.

### 3.6.3. Individual assessment

It should be noted that when establishing a well-founded fear of persecution, it is not a requirement that every member of the particular social group be at risk of persecution. As with the other reasons for persecution, not all members of a particular social group will necessarily qualify for refugee status.

A member of a particular social group may have a well-founded fear of persecution based on their membership, while another member of the same group may not have any fear of persecution. Likewise, there could be personal circumstances under which a member of a particular social group enjoys protection while other members of the same particular social group do not.

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<sup>(46)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16, paragraph 52.



## 4. Application of the analysis on membership of a particular social group

This section is intended to illustrate the application of the principles described in the previous sections of the guidance. The profiles detailed in this section have been chosen to show how the analysis can be carried out in practice. They are **not examples of particular social groups as such**. As stated above, particular social groups should always be established in light of the individual characteristics and the specific context in the country of origin.

When assessing if an individual belongs to a particular social group, it is particularly important for the decision-maker to **refrain from relying on stereotyped concepts and culturally biased generalisations or assumptions**, particularly in relation to the presence or absence of certain visible characteristics <sup>(47)</sup>.

### 4.1. Profiles related to sexual orientations, gender identities, gender expressions and sex characteristics

Sexual orientation, gender identity and gender expression are explicitly mentioned in the second subparagraph of Article 10(1) QR.



#### Article 10(1) QR

[...]

*Depending on the circumstances in the country of origin, the concept of membership of a particular social group as referred to in point (d) of the first subparagraph shall include membership of a group based on a common characteristic of sexual orientation. Gender related aspects, including gender identity and gender expression, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.*

<sup>(47)</sup> UNHCR, [UNHCR intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z](#), 28 September 2012, p. 12.



### 4.1.1. Common characteristic

In the *X, Y and Z* case, the CJEU considered that sexual orientation is a characteristic so fundamental to identity that one should not be forced to renounce it:



CJEU, *X, Y and Z*, 2013 <sup>(48)</sup>

*As far as concerns the first of those conditions, it is common ground that a person's sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. That interpretation is supported by the second subparagraph of Article 10(1)(d) of the Directive, from which it appears that, according to the conditions prevailing in the country of origin, a specific social group may be a group whose members have sexual orientation as the shared characteristic. (paragraph 46)*

Moreover, the Court ruled that an applicant should not be expected to conceal, in order to avoid persecution, a characteristic that is so fundamental to their identity that they cannot be required to renounce it. The Court specified that an applicant cannot be reasonably expected to exercise reserve (in the expression of their sexual orientation) and that the fact that they could avoid the risk by exercising greater restraint than a heterosexual in expressing their sexual orientation is not to be taken into account in that respect.



CJEU, *X, Y and Z*, 2013 <sup>(49)</sup>

*In that connection, it is important to state that requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. (paragraph 70)*

*Therefore, an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution. (paragraph 71)*

As mentioned above, the distinction between the different types of common characteristics (innate characteristic, common background, or characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it) are complementary and not always clear-cut. Some may for example consider sexual orientation as an innate characteristic. This illustrates how the common characteristic can be substantiated by different argumentations <sup>(50)</sup>.

<sup>(48)</sup> CJEU, 2013, *X, Y and Z*, op. cit., fn. 9, paragraph 46.

<sup>(49)</sup> CJEU, 2013, *X, Y and Z*, op. cit., fn. 9, paragraphs 70 and 71.

<sup>(50)</sup> UNHCR, *Guidelines on International Protection: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, paragraph 47.



### 4.1.2. Distinct identity

As sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC) is a common characteristic, the second question in order to establish whether the individual in question belongs to a particular social group is whether the group has a distinct identity based on this common characteristic, i.e. if this group is perceived as being different by the surrounding society because of their sexual orientation, gender identity and/or gender expression.

The relevant question for a case officer is how the perception of being different manifests itself. In the *X, Y and Z* case, the Court gives importance to the existence of criminal laws specifically targeting homosexuals. This can support a finding that homosexuals form a distinct group, which is perceived by the surrounding society as being different.



**CJEU, *X, Y and Z*, 2013 <sup>(51)</sup>**

*In that connection, it should be acknowledged that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports a finding that those persons form a separate group which is perceived by the surrounding society as being different. (paragraph 48)*

*Therefore, the answer to the first question referred in each of the cases in the main proceedings is that Article 10(1)(d) of the Directive must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group. (paragraph 49)*

The stigmatisation of persons due to their SOGIESC may result from criminal or discriminatory laws or policies, from unofficial state practices, but also from the surrounding society itself. The existence of a criminal law is not a requirement to establish a distinct identity related to SOGIESC.

In countries in which there are no laws criminalising or discriminating persons due to their SOGIESC, LGBTIQ persons may nevertheless have a distinct identity, if for example a culture of intolerance prevails in the surrounding society.

If the common characteristic and the distinct identity criteria are met, it can be concluded that the existence of a particular social group can be established in the context of a certain country of origin or part thereof.

<sup>(51)</sup> CJEU, 2013, [X, Y and Z](#), op. cit., fn. 9, paragraphs 48 and 49.



### 4.1.3. Nexus

Merely establishing an applicant's membership of a particular social group in their country of origin is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership to the particular social group and a well-founded fear of persecution, or absence of protection against such persecution.

Reasons for the persecution can be based on a plurality of motives (see Section [3.6.1. Plurality of motives](#)) whereby for example the act of persecution is motivated by criminal reasons, as well as by the victim's membership of a particular group (e.g. extortion of LGBTIQ persons for financial gain).

In situations where a culture of intolerance prevails, the actor of persecution is often a non-state actor, where the actors of protection might be unable or unwilling to provide protection; or the protection offered is not effective and of a temporary nature.

## 4.2. Gender

Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another <sup>(52)</sup>.



### Recital 40 QR

*It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'. For the purpose of defining a particular social group, issues arising from an applicant's sexual orientation or gender, including gender identity and gender expression, which could be related to certain legal traditions and customs, resulting in, for example, genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of being persecuted. Depending on the circumstances, disability could be a characteristic for the purpose of defining a particular social group.*

<sup>(52)</sup> UNHCR, [Guidelines on International Protection: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 23 October 2012, paragraph 47.





### Article 10(1) QR, first subparagraph

*... Gender related aspects, including gender identity and gender expression, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.*



### Article 9(2)(f) QR

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

*[...]*

*(f) acts of a gender-specific or child-specific nature.*

In certain societies, discriminatory laws and societal practices that target women based solely on their gender exist. While the mere presence of such a law or practice does not automatically establish the existence of a particular social group, it serves as a crucial indicator that requires further examination within the context of the country of origin. This includes assessing how deeply embedded the law or practice is in the societal perception of gender identity, how it is enforced or applied, and the specific ways in which it disproportionately affects women. A comprehensive analysis must consider whether the law or practice creates a distinct identity for women as a group.

The CJEU has been called upon to rule on the interpretation of membership of a particular group, in the context of two cases related to gender.

In the *WS* case <sup>(53)</sup>, the CJEU ruled that, depending on the circumstances in the country of origin, **‘women’** as a whole (see Section [4.2.1. Particular social group of women](#)) could be regarded as a particular social group. In the same judgment, the Court considered that **women who refuse or escape forced marriage** (see Section [4.2.2. Women who refuse forced marriage](#)) could also form a particular social group, depending on the conditions prevailing in the country of origin.

Moreover, in the *K and L* case <sup>(54)</sup>, the CJEU affirmed that, depending on the circumstances in the country of origin, **‘women who genuinely come to identify with the fundamental value of equality between women and men during their stay in a [European Union] Member State’** may be regarded as belonging to a “particular social group” (see Section [4.2.3. Women identifying with the value of gender equality](#)).

<sup>(53)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14.

<sup>(54)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16.

Finally, in addition to the profiles on which the CJEU ruled on, cases related to female genital mutilation (see Section [4.2.4. Female genital mutilation](#)) as well as other profiles are commonly encountered in practice (see Section [4.2.5. Other possible gender-related profiles](#)).

#### 4.2.1. Particular social group of women

In the *WS* case, the Court ruled that **women as a whole may constitute a particular social group**, as well as more restricted groups of women, depending on the circumstances in the country of origin.



CJEU, *WS*, 2024 <sup>(55)</sup>

*... Article 10(1)(d) of Directive 2011/95 must be interpreted as meaning that, depending on the circumstances in the country of origin, women in that country, as a whole, and more restricted groups of women who share an additional common characteristic may be regarded as belonging to 'a particular social group', as a 'reason for persecution' capable of leading to the recognition of refugee status. (paragraph 62)*

##### (a) Common characteristic

The Court affirmed that **being a female constitutes an innate characteristic**. The Court specified that this does not rule out the possibility for women to have additional innate characteristics or other common characteristics.

The fact of being a female suffices to satisfy the first condition for identifying a particular social group of women.



CJEU, *WS*, 2024 <sup>(56)</sup>

*In the second place, as regards the first condition for identifying a 'particular social group', laid down in the first subparagraph of Article 10(1)(d) of Directive 2011/95 and referred to in paragraph 40 of the present judgment, namely sharing at least one of the three identifying features referred to in that provision, the fact of being female constitutes an innate characteristic and therefore suffices to satisfy that condition. (paragraph 49)*

*That does not rule out the possibility that women who share an additional common feature such as, for example, another innate characteristic, or a common background that cannot be changed, such as a particular family situation, or a characteristic or belief that is so fundamental to identity or conscience that those women should not be required to renounce it, may also belong to a 'particular social group' within the meaning of Article 10(1)(d) of Directive 2011/95. (paragraph 50)*

<sup>(55)</sup> CJEU, 2024, [WS](#), op. cit., fn. [14](#).

<sup>(56)</sup> CJEU, 2024, [WS](#), op. cit., fn. [14](#).



## (b) Distinct identity

To determine whether women, as a whole, constitute a particular social group in a given country of origin, the case officer must assess whether women are collectively perceived as distinct by the surrounding society. This involves a comprehensive evaluation of how societal norms, legal frameworks, and cultural attitudes towards women shape their collective identity. The assessment must be grounded in an objective understanding of the societal context, ensuring that women's status as a social group is evaluated in relation to the broader dynamics of gender, power and persecution within the specific country of origin.

In the *WS* case, the Court indicates that the distinct identity may result from social, moral or legal norms in the country of origin.



CJEU, *WS*, 2024 <sup>(57)</sup>

*In the third place, as regards the second condition for identifying a 'particular social group', relating to the 'distinct identity' of the group in the country of origin, it is clear that women may be perceived as being different by the surrounding society and recognised as having their own identity in that society, in particular because of social, moral or legal norms in their country of origin. (paragraph 52)*

Moreover, the existence of discrimination or persecution suffered by women, on account of their gender, may constitute a relevant factor to determine that women, as a whole, are perceived to be distinct in particular because of the social, moral or legal norms of the country of origin in question.

The fact that in a given country of origin, women are, on account of their gender, 'exposed to physical or mental violence, including sexual violence and domestic violence', supports the finding that women may have a distinct identity in that country <sup>(58)</sup>.



CJEU, *WS*, 2024 <sup>(59)</sup>

*... women, as a whole, may be regarded as belonging to a 'particular social group', within the meaning of Article 10(1)(d) of Directive 2011/95, where it is established that, in their country of origin, they are, on account of their gender, exposed to physical or mental violence, including sexual violence and domestic violence. (paragraph 57)*

<sup>(57)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14.

<sup>(58)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14, paragraph 57.

<sup>(59)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14.



### (c) Nexus

In countries of origin where the existence of a particular social group of women has been identified, **the mere fact that an applicant is a woman is not sufficient to qualify for refugee status.**

The other qualification criteria of the refugee definition need to be met. In particular, it must be established that the applicant has a well-founded fear of persecution, on account of her being a member of the particular social group of women.

### 4.2.2. Women who refuse or end forced marriage

In the *WS* case, the Court affirmed that, in countries where forced marriage constitutes a social norm, women who refuse forced marriage or who transgress the social norm by ending that marriage, may be considered as forming a particular social group.

#### (a) Common characteristic

The Court ruled that refusing or ending a (forced) marriage may be regarded as a ‘common background that cannot be changed’.



CJEU, *WS*, 2024 <sup>(60)</sup>

*In the light of the information in the order for reference, it should be noted, in particular, that the fact that women have escaped from a forced marriage or, for married women, have left their homes, may be regarded as a ‘common background that cannot be changed’ within the meaning of that provision. (paragraph 51)*

#### (b) Distinct identity

Women sharing this common background (i.e. having escaped from a forced marriage or being married and having left their home) may be considered as forming a particular social group, if it is established that they are perceived as being different by the surrounding society in their country of origin.

The distinct identity may result from the existence of social, moral or legal norms, including the practice of forced marriage.

Moreover, the existence of discrimination and/or persecution against women who refuse forced marriage or who transgress social norms by ending forced marriage, may support the finding that they are perceived as being different by the surrounding society. Such acts may include, for example stigmatisation, ostracism, acts of violence or social exclusion <sup>(61)</sup>.

<sup>(60)</sup> CJEU, 2024, *WS*, op. cit., fn. 14.

<sup>(61)</sup> CJEU, 2024, *WS*, op. cit., fn. 14, paragraph 58.

CJEU, *WS*, 2024 <sup>(62)</sup>

*... women who refuse forced marriages, where such a practice may be regarded as a social norm within their society, or who transgress such a norm by ending that marriage, may be regarded as belonging to a social group with a distinct identity in their country of origin if, on account of that behaviour, they are stigmatised and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence. (paragraph 58)*

#### 4.2.3. Women identifying with the value of gender equality

In the *K and L* case, the CJEU ruled that, depending on the circumstances in the country of origin, **women, including minors, who genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State** may be regarded as belonging to ‘a particular social group’.

CJEU, *K and L*, 2024 <sup>(63)</sup>

*... Article 10(1)(d) and (2) of Directive 2011/95 must be interpreted as meaning that, depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may be regarded as belonging to ‘a particular social group’, constituting a ‘reason for persecution’ capable of leading to the recognition of refugee status. (paragraph 64)*

##### (a) Common characteristic

The Court ruled that the fact that a woman genuinely identifies with the fundamental value of equality between women and men may be considered **‘a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it’**.

The fact that the applicant does not see herself as part of a group with other women sharing the same fundamental value is irrelevant. The belief in gender equality is intrinsic to her identity and does not require group affiliation to be recognised as a characteristic central to her conscience and personal integrity <sup>(64)</sup>.

<sup>(62)</sup> CJEU, 2024, [WS](#), op. cit., fn. 14.

<sup>(63)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16.

<sup>(64)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16.

CJEU, *K and L*, 2024 <sup>(65)</sup>

*In that regard, first, as the Advocate General points out in point 34 of his Opinion, the fact that a woman genuinely identifies with the fundamental value of equality between women and men, in so far as it presupposes a desire to benefit from that equality in her daily life, entails being free to make her own life choices, particularly in relation to her education and career, the extent and nature of her activities in the public sphere, the possibility of achieving economic independence by working outside the home, her decision on whether to live alone or with a family, and the free choice of a partner, choices which are fundamental to her identity. In those circumstances, the fact that a woman who is a third-country national genuinely comes to identify with the fundamental value of equality between women and men may be considered ‘a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it’. In that regard, the fact that that national does not consider that she forms a group with other third-country nationals or all women who identify with that fundamental value is irrelevant. (paragraph 44)*

Moreover, the Court affirmed that the fact that young women, including minors <sup>(66)</sup>, have stayed in a Member State during a phase of their lives in which a person’s identity is formed, and that, during that stay, they have genuinely come to identify with the fundamental value of equality between women and men, is capable of constituting ‘**a common background that cannot be changed**’ <sup>(67)</sup>.

CJEU, *K and L*, 2024 <sup>(68)</sup>

*... the fact that young women who are third-country nationals have stayed in a host Member State during a phase of their lives in which a person’s identity is formed, and that, during that stay, they have genuinely come to identify with the fundamental value of equality between women and men, is capable of constituting ‘a common background that cannot be changed’, within the meaning of the first indent of the first subparagraph of Article 10(1)(d) of Directive 2011/95. (paragraph 45)*

Identifying with the fundamental value of equality between women and men does not necessarily require political or religious affiliation. However, in certain contexts, this identification may intersect with political or religious beliefs, and persecution based on this identification can have multiple grounds. When an individual’s commitment to gender equality aligns with political or religious values, persecution for holding such beliefs can be attributed to membership in a particular social group, as well as political opinion or religion. In these

<sup>(65)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16.

<sup>(66)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 45.

<sup>(67)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16, paragraph 45.

<sup>(68)</sup> CJEU, 2024, *K and L*, op. cit., fn. 16.



cases, the persecution is not solely due to the individual's belief in gender equality, but also because this belief may overlap with broader political or religious ideologies, thus rendering the individual vulnerable to persecution for multiple reasons under the refugee definition <sup>(69)</sup>.

The determining authority needs to ascertain that the applicants **genuinely** identify with the fundamental value of equality between women and men, i.e. that the applicant seeks to benefit from that equality in their daily lives, and that this value constitutes an integral part of their identity. The applicant should **not be expected to conceal or exercise restraint** in expressing that identification <sup>(70)</sup>.

### ➤ Identifying with the fundamental value of equality between women and men

The Court provided elements of what should be understood concerning 'women who identify with the fundamental value of equality between women and men'. According to the Court, for a woman this entails:

*being free to make her own life choices, particularly in relation to her education and career, the extent and nature of her activities in the public sphere, the possibility of achieving economic independence by working outside the home, her decision on whether to live alone or with a family, and the free choice of a partner, choices which are fundamental to her identity* <sup>(71)</sup>.

The Court affirmed that the fact that an applicant genuinely comes to identify with the fundamental value of equality between women and men during their stay in a Member State **cannot be considered as circumstances which they have created by her own decision** since leaving her country of origin. Moreover, it also **cannot be considered as activities in which the applicant engaged** since leaving the country of origin **for the sole or main purpose of creating the necessary conditions for applying for international protection**, within the meaning of Article 5(2) QR <sup>(72)</sup>.

### (b) Distinct identity

Women who genuinely identify with the fundamental value of equality between women and men during their stay in a Member State, may have a distinct identity in their country of origin as they may be perceived as being different, on account of this identification, and as a result of **social, moral or legal norms** <sup>(73)</sup>.

<sup>(69)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16, paragraph 52.

<sup>(70)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16, paragraph 63.

<sup>(71)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16, paragraph 44.

<sup>(72)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16, paragraph 62.

<sup>(73)</sup> CJEU, 2024, [K and L](#), op. cit., fn. 16, paragraph 49.



#### 4.2.4. Female genital mutilation

The World Health Organization defines female genital mutilation (FGM) as all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons <sup>(74)</sup>.

FGM is a harmful traditional practice and is considered as a human rights violation of girls and women <sup>(75)</sup>.

As cited above, recital 40 QR refers explicitly to ‘certain legal traditions and customs, resulting in for example genital mutilation’, which should be given due consideration during the assessment of an application.

##### (a) Common characteristic

Depending on the specific context of the country of origin, a particular social group may be constituted by women and girls who share the common characteristic of either not having undergone FGM in accordance with local traditions or who continue to refuse to undergo the practice. This group can be defined through multiple dimensions: it may be based on innate characteristics such as age, gender, or ethnicity; a common background, such as the decision not to undergo FGM; and/or a characteristic or belief fundamental to one’s identity or conscience, particularly the personal or cultural conviction against FGM.

It can also include women and girls who have already undergone a type of FGM but who nevertheless still face a risk of undergoing an additional type of FGM <sup>(76)</sup>.

##### (b) Distinct identity

To determine whether the group of women and girls who have not undergone FGM, in line with local traditional practices, constitutes a particular social group, it is essential to assess whether this group possesses a distinct identity within the relevant country of origin. This includes examining whether such women and girls are perceived as different by the surrounding society.

In countries or regions where FGM is widespread, women and girls who have not undergone the practice, or who are not considered to have undergone it ‘sufficiently’ according to local norms, may be seen as distinct and separate from those who have undergone the procedure. Their distinct identity could be evidenced by social ostracism, as these women and girls may be stigmatised as ‘unclean’ or ‘morally questionable’ by their community. For instance, societal rejection may be demonstrated by men refusing to marry women who have not undergone FGM, further isolating them from the broader social fabric.

Moreover, women and girls who actively oppose FGM, or who refuse to participate in this harmful practice, may be seen as transgressing entrenched social mores, thereby exposing

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<sup>(74)</sup> WHO, *Classification of female genital mutilation*, 2007.

<sup>(75)</sup> WHO, [Eliminating Female genital mutilation - An interagency statement OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO](#), p. 8.

<sup>(76)</sup> UNHCR, [Guidance Note on refugee claims relating to female genital mutilation](#), May 2009, p. 5, point 6.





them to significant stigmatisation and discrimination. This applies not only to women and girls themselves but may also extend to men who oppose FGM on behalf of their daughters. In such contexts, both the refusal to conform to societal expectations regarding FGM and the active stance against it can establish a clear and definable social group marked by persecution or risk of harm.

### (c) Nexus

Establishing an applicant's membership of a particular social group (in the present case, it could be 'girls or women who have not undergone FGM and/or refuse to undergo it, in country X'), is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of the particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

In this case, where the form of persecution feared is of being subjected to FGM, a causal link between the act of persecution and the ground will be easy to establish. Moreover, other risks of persecution, such as severe forms of discrimination or ostracism, may also exist.

## 4.2.5. Other possible gender-related profiles

The following is a list of commonly encountered examples of women who share additional common characteristics, which could potentially qualify them as forming a particular social group in specific countries of origin. It is important to emphasise that these examples are not universally applicable to all countries or societies. The recognition of a particular social group must always be assessed in the specific context of the country of origin, taking into account the unique cultural, legal and social circumstances that may impact the group's recognition and the risks they face. Therefore, each case should be evaluated based on a thorough understanding of the local context and the experiences of women within that specific society.

- **Women who have been victims of rape or other forms of sexual violence** and who face stigmatisation by the surrounding society.
- **Women who were formerly prostitutes** and who face ostracism or other forms of discrimination, punishment or ill-treatment.
- **Women who are survivors of human trafficking** and who are ostracised by their family and society in general (see Section [4.4. Victims of trafficking in human beings](#)).
- **Women transgressing social mores**, e.g. women who, based on a deeply-rooted conviction, refuse to follow traditional cultural norms related to the 'expected' role of a woman in the family. These include the profiles described in Section [4.2.2. Women who refuse forced marriage](#)) and Section [4.2.3. Women identifying with the value of gender equality](#)).



## 4.3. Children

In accordance with the CRC, a child is any human being below the age of 18.

Recital 37 QR reads:

*Depending on the circumstances, acts of persecution of a gender-specific or child-specific nature might include, inter alia, under-age recruitment, genital mutilation, forced marriage, child trafficking and child labour, and trafficking for sexual exploitation.*

The situation of children can be significantly influenced by factors such as their actual age (particularly very young children) and the absence or lack of supportive social networks. These elements must always be carefully considered when determining whether children belong to a particular social group.

Below is a list of commonly encountered examples of groups of children who, due to their shared characteristics, could be considered a particular social group in specific countries of origin. However, it is crucial to emphasise that these examples are not universally applicable across all countries or societies. The existence and recognition of a particular social group must be assessed in the specific context of the country of origin, or even specific regions within that country.

- **Girls with intact genitalia who refuse to undergo FGM** (see profile under Section [4.2.5. Other possible gender-related profiles](#)).
- **Children who refuse to follow traditional cultural norms who are perceived to be different by the surrounding society**, e.g. girls who study or go to school in cultures where access to education is reserved for boys, children who refuse forced marriage.
- **Victims of child trafficking who are ostracised** (see Section [4.4. Victims of trafficking in human beings](#)). Children are particularly vulnerable to trafficking, including for sexual exploitation, marriage, domestic work, modern slavery, begging, illegal adoption, criminal activities.
- **Children accused of witchcraft.**



## 4.4. Victims of trafficking in human beings

Directive 2011/36/EU <sup>(77)</sup> provides a definition of trafficking in human beings (THB).



### Article 2 Directive 2011/36/EU

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:  
The recruitment, transportation, transfer, harbouring or receipt of persons, including exchange or transfer of control over that person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
2. A position of vulnerability occurs when the person has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities or the removal of organs, or the exploitation of surrogacy, of forced marriage, or of illegal adoption.

THB cases may cover a variety of situations, such as:

- victims who have **been trafficked in their country of origin and who fled** to the country of asylum to apply for international protection;
- victims who have been **trafficked outside their country of origin**, whether in a third country (e.g. transit country) or in the country of asylum, and who apply for international protection;
- individuals who have never been trafficked but who **fear of being trafficked** in their country of origin, and who fled the country of asylum to apply for international protection.

This section focuses on particular social groups constituted of former victims of THB. It does not cover the case of individuals who have never been trafficked, and who are exposed to the risk of being trafficked due to their membership to a particular social group.

<sup>(77)</sup> [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011).



#### 4.4.1. Common characteristic

Former victims of trafficking can be considered as a group of persons who share the common past experience of having been trafficked, which can be seen as a ‘common background that cannot be changed’.

#### 4.4.2. Distinct identity

In order to establish the existence of a particular social group, it has to be examined whether the group defined by a shared common characteristic has a distinct identity in the relevant country of origin.

The fact of being stigmatised, alienated or discriminated against in their country or area of origin, can be an indication that victims of THB are perceived as being different by the surrounding society, and thus that the distinct identity criterion of Article 10(1)(d) QR is met. The perception will often depend on the type of exploitation that the victim has undergone. Victims of labour exploitation or organ theft for example may be viewed differently than victims of sexual exploitation.

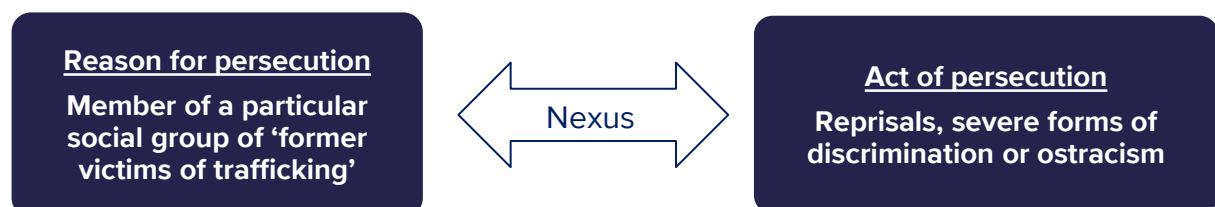
#### 4.4.3. Nexus

Establishing an applicant’s membership of a particular social group (in the present case it could be ‘former victims of THB’), is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant’s membership of the particular social group of ‘former victims of THB’ and a well-founded fear of persecution, or an absence of protection against such persecution.

As a member of a particular social group of ‘former victims of THB’, an applicant can be exposed to a variety of acts of persecution, such as reprisals, severe forms of discrimination or ostracism.

In the latter case, the situation would be as described as below.





## 4.5. Persons living with disabilities and illness

In this section, different profiles can be explored, e.g. persons born with a disability or congenital disorder, persons who acquired a disability due to war, its aftermath or an accident, or persons suffering from serious illnesses.

### 4.5.1. Common characteristics

Persons living with a disease, a disability or a genetic disorder may be considered as either sharing an innate characteristic or as sharing a common background that cannot be changed, depending on their individual circumstances.

### 4.5.2. Distinct identity

Discrimination and stigmatisation of persons living with disabilities or certain illnesses can take different forms, and result from laws, customs, traditions or myths. Depending on personal circumstances, discrimination may apply to all areas of social life, including access to education, employment or health, and more generally to the exercise of a wide range of civic, political, economic, social and cultural rights.

### 4.5.3. Nexus

Establishing an applicant's membership of a particular social group (in the present case it could be 'persons living with (name of the disability or illness)'), is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

In some cases, persons living with disabilities or suffering from particular physical or mental medical conditions may be at risk of serious human rights violations and thus have a well-founded fear of killing, torture or inhuman or degrading treatment or punishment. Depending on the context in the country of origin and on individual circumstances, severe discrimination and stigmatisation against persons living with disabilities or illnesses may also amount to persecution within the meaning of Article 9 QR.

As with all the profiles and examples mentioned in this guidance, the profiles below are intended to illustrate the application of the principles described in the previous sections. They are not to be considered as particular social groups in abstract terms, as the existence of particular social groups can only be established in light of the specific context in the country of origin.



#### 4.5.4. Persons living with a disability

Persons living with a disability include those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others <sup>(78)</sup>.

##### (a) Common characteristic

Depending on personal circumstances, persons living with disabilities can be considered as either sharing an innate characteristic, or as sharing a common background that cannot be changed.

##### (b) Distinct identity

Depending on the specific context in the country of origin and on personal circumstances, persons living with a disability may face discrimination and stigmatisation in many areas of life. Such discrimination and stigmatisation against persons with certain disabilities may indicate that these persons are perceived as being different by the surrounding society and thus, that they have a distinct identity in their country of origin <sup>(79)</sup>.

##### (c) Nexus

Establishing an applicant's membership of a particular social group (in the present case it could be 'persons living with (name of the disability)', is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

Depending on conditions prevailing in the country of origin and on individual circumstances, members of a particular social group of 'persons living with a disability' can be exposed to a variety of acts of persecution, including severe violations of human rights.

The case may also be that discrimination and stigmatisation against persons living with a disability amount to persecution within the meaning of Article 9 QR.

#### 4.5.5. Persons living with albinism

Albinism is a rare, non-contagious, genetically inherited condition that affects people worldwide regardless of ethnicity or gender. It is a result of a significant deficit in the

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<sup>(78)</sup> Article 1 of the United Nations, [The Convention on the Rights of Persons with Disabilities and Optional Protocol](#), (A/RES/61/106), adopted on 13 December 2006 at the UN Headquarters, New York, entered into force 3 May 2008.

<sup>(79)</sup> UN, [Report of the Office of the United Nations High Commissioner for Human Rights - Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities](#), 9 December 2016, p. 4, point 6.



production of melanin and is characterised by the partial or complete absence of pigment in the skin, hair and eyes <sup>(80)</sup>.

**(a) Common characteristic**

Persons living with albinism can be considered as sharing an innate characteristic.

**(b) Distinct identity**

Depending on the context in the country of origin, persons living with albinism may face numerous forms of discriminations, due to laws, traditions, customs or prevailing myths <sup>(81)</sup>.

These types of discrimination may support a finding that persons living with albinism are perceived as different by the surrounding society, and thus that they have a distinct identity in those particular countries where such discrimination exist.

**(c) Nexus**

Establishing an applicant's membership of a particular social group (in the present case it could be 'persons living with albinism'), is not sufficient to qualify for refugee status.

The other inclusion criteria of the refugee definition also need to be met. In particular, there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and a well-founded fear of persecution, or an absence of protection against such persecution.

Depending on the context in the country of origin and on individual circumstances, persons living with albinism may face the risk of serious human rights violations, including killing, torture or inhuman or degrading treatment.

Severe discrimination and stigmatisation against persons living with albinism may also amount to persecution within the meaning of Article 9 QR.

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<sup>(80)</sup> UN Human Rights Council, [Report of the Independent Expert on the enjoyment of human rights by persons with albinism](#), A/HRC/31/63, 18 January 2016, p. 5, point 12.

<sup>(81)</sup> UN Human Rights Council, [Report of the Independent Expert on the enjoyment of human rights by persons with albinism](#), A/HRC/31/63, 18 January 2016, p. 6, points 14 and 16.



## Key points to remember

Seven general considerations recur throughout the guide. They have been listed here as key points to remember and should always be borne in mind when dealing with the concept of membership of a particular social group.

**Membership of a particular social group is in itself not sufficient to qualify for refugee status. The other elements of the refugee definition also need to be met, including the existence of a well founded fear of persecution and its nexus to the particular ground.**

- Merely establishing an applicant's membership to a particular social group is not sufficient for them to qualify for refugee status. Indeed, the other inclusion criteria of the refugee definition also need to be met. In particular, the applicant must have a well-founded fear of persecution and there must be a nexus (i.e. a causal link) between the applicant's membership of a particular social group and the persecution (or the absence of protection against such persecution) and it has to be established that there is no protection available in the country of origin.
- In the context of an assessment of an application for international protection, membership of a particular social group is only discussed in conjunction with a fear for persecution. Membership of a particular social group is not a stand-alone concept. It must only be assessed in a context where a fear of persecution in the country of origin can be established.

For more information, see Section [3.5 Nexus \(for reasons of\)](#).

**A particular social group is composed of members who share a common characteristic other than the mere fact of fearing persecution.**

- As much as membership of a particular social group should not be assessed outside the context of a fear for persecution, a shared fear of persecution is not, in itself, sufficient to conclude on the existence of a particular social group. In other words, a group cannot exist solely on account of the fact that it is at risk of being persecuted.

For more information, see Section [3.2 Common characteristic](#).





**The existence of a particular social group always has to be analysed according to the conditions prevailing in the country of origin and with regard to the surrounding society.**

- The existence of a particular social group is dependent on the national context in the country of origin. In particular, the distinct identity has to be established in relation to the respective country, where the group should be 'perceived as being different by the surrounding society'.
- It is therefore impossible to state or identify a list of profiles that would constitute particular social groups in abstract terms, that would be valid regardless of the country of origin. All examples given in this guidance are merely intended to illustrate the underlying legal analysis.

For more information, see Section [3.3 Distinct identity](#).

**The definition of 'membership of a particular social group' follows a cumulative approach.**

- Article 10(1)(d) QR provides that, for membership of a particular social group to be established, the two conditions need to be satisfied cumulatively: common characteristics and perceived distinct identity.

For more information, see Section [3.1 Cumulative approach](#).

**The size of the group is not relevant.**

- Where possible, it may be preferable to define more specific groups. However, the actual size of the population included in a particular social group, as for the other reasons for persecution, is not of relevance to establishing its existence.

For more information, see Section [3.4 Membership](#).

**Cohesiveness of the group is as such not required.**

- Cohesiveness among members of the group is not a requirement. Members of the group do not need to know each other, nor do they need to be connected in any way.

For more information, see Section [3.4 Membership](#).

**Not all members of the group need to be at risk of being persecuted.**

- It is not necessary for all members of the group to have been singled out for persecution.

For more information, see Section [3.6 Specific considerations](#).



## 5. EU case-law

Below is the CJEU case-law that is taken into consideration for the purposes of this guidance.



### CJEU, *Summary of Judgment – X, Y and Z*, 2013 (extracts) <sup>(82)</sup>

1. Article 10(1)(d) of Directive 2004/83 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that the existence of criminal laws which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.

Article 10(1) of the directive, which defines what constitutes a particular social group, membership of which may give rise to a genuine fear of persecution, requires, *inter alia*, that two cumulative conditions be satisfied. First, members of that group must share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. Second, that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.

As far as concerns the first of those conditions, it is common ground that a person's sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. That interpretation is supported by the second subparagraph of Article 10(1)(d) of Directive 2004/83, from which it appears that, according to the conditions prevailing in the country of origin, a specific social group may be a group whose members have sexual orientation as the shared characteristic. The second condition assumes that, in the country of origin concerned, the group whose members share the same sexual orientation has a distinct identity because it is perceived by the surrounding society as being different.

(see paras 44-47, 49, operative part 1)

2. Article 9(1) of Directive 2004/83 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the mere fact that homosexual acts are criminalised does not, in itself constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.

Where an applicant for asylum relies on the existence in his country of origin on legislation criminalising homosexual acts, it is for the national authorities to undertake, in the course of

<sup>(82)</sup> CJEU, *Summary – Judgment of the Court (Fourth Chamber), joined cases C 199/12 to C-201/12 – X, Y and Z*, 7 November 2013. Reference to full judgment at fn. 9.



*their assessments of the facts and circumstances under Article 4 of Directive 2004/83, an examination of all the relevant facts concerning that country of origin, including its laws and regulations and the manner in which they are applied, as provided for in Article 4(3)(a) of that directive. In undertaking that assessment it is, in particular, for those authorities to determine whether, in the applicant's country of origin, the term of imprisonment provided for by such legislation is applied in practice. It is in the light of that information that the national authorities must decide whether it must be held that in fact the applicant has a well-founded fear of being persecuted on return to his country of origin.*

*(see paras 58-61, operative part 2)*

*3. Article 10(1)(d) of Directive 2004/83 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, read together with Article 2(c) thereof, must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member State are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.*

*In that connection, requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. It follows that the person concerned must be granted refugee status, in accordance with Article 13 of the directive, where it is established that on return to his country of origin his homosexuality would expose him to a genuine risk of persecution within the meaning of Article 9(1) of the directive. The fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect.*

*(see paras 70, 75, 76, operative part 3)*



**CJEU, *Summary of Judgment – F*, 2018 (extracts) <sup>(83)</sup>**

1. *It must be noted that the statements made by an applicant for international protection relating to his sexual orientation constitute, having regard to the particular context in which applications for international protection are made, merely the starting point in the process of assessment of the facts and circumstances envisaged under Article 4 of Directive 2011/95 (see, by analogy, judgment of 2 December 2014, A and Others, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 49). It follows that, although it is for the applicant for international protection to identify his sexual orientation, which is an aspect of his personal identity, applications for international protection on the basis of a fear of persecution on grounds of that sexual orientation may, in the same way as applications based on other grounds for persecution, be subject to the assessment process provided for in Article 4 of that directive (see, by analogy, judgment of 2 December 2014, A and Others, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 52).*

*(see paras 28, 29)*

2. *In that regard, it must be recalled that sexual orientation is a characteristic which is capable of proving an applicant's membership of a particular social group, within the meaning of Article 2(d) of Directive 2011/95, where the group of persons whose members share the same sexual orientation is perceived by the surrounding society as being different (see, to that effect, judgment of 7 November 2013, X and Others, C-199/12 to C-201/12, EU:C:2013:720, paragraphs 46 and 47), as is confirmed, moreover, by Article 10(1)(d) of that directive. It follows nevertheless from Article 10(2) of that directive that, when the Member States assess whether an applicant has a well-founded fear of being persecuted, it is immaterial whether he actually possesses the characteristic linked to the membership of a particular social group which attracts the persecution, provided that such a characteristic is attributed to him by the actor of persecution.*

*Accordingly, it is not always necessary, in order to adjudicate on an application for international protection based on a fear of persecution on grounds of sexual orientation, to assess the credibility of the applicant's sexual orientation in the context of the assessment of the facts and circumstances laid down in Article 4 of Directive 2011/95.*

*(see paras 30-32)'*

<sup>(83)</sup> CJEU, *Summary – Judgment of the Court (Third Chamber), case C-473/16 – F*, 25 January 2018. Reference to full judgment at fn. 11.


**CJEU, *Summary of Judgment – Ahmedbekova*, 2018 (extracts) <sup>(84)</sup>**

5. The involvement of an applicant for international protection in bringing a complaint against his country of origin before the European Court of Human Rights cannot in principle be regarded, for the purposes of assessing the reasons for persecution referred to in Article 10 of Directive 2011/95, as proof of that applicant's membership of a 'particular social group', within the meaning of Article 10(1)(d) of that directive, but must be regarded as a reason for persecution for 'political opinion', within the meaning of Article 10(1)(e) of the directive, if there are valid grounds for fearing that involvement in bringing that claim would be perceived by that country as an act of political dissent against which it might consider taking retaliatory action.

*In that regard, it should be noted that Article 10(1) of Directive 2011/95 must be read in conjunction with Article 10(2) of that directive. According to Article 10(2) of Directive 2011/95, 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.*

*Therefore, regardless of whether an Azerbaijani national's involvement in bringing a complaint against the European Court of Human Rights, for the purposes of supporting a finding that the governing regime disregards fundamental rights, conveys a 'political opinion' on the part of that national, it should be ascertained, in the course of the assessment of the reasons for persecution invoked in the application for international protection lodged by that national, whether there are valid grounds for fearing that that involvement would be perceived by the regime as an act of political dissent against which it might consider taking retaliatory action. 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.*

*By contrast, the class of persons to which the applicant for international protection belongs, where such is the case, through her involvement in bringing a claim before the European Court of Human Rights, cannot in principle be regarded as a 'social group' within the meaning of Article 10(1)(d) of Directive 2011/95. For it to be found that there is a 'social group', within the meaning of that provision, two cumulative conditions must be satisfied. First, members of that group must share an 'innate characteristic', or a 'common background that cannot be changed', or share a characteristic or belief that is 'so fundamental to identity or conscience that a person should not be forced to renounce it'. Second, that group must have a distinct identity in the relevant country, because it is perceived as being different by the surrounding society (judgment of 7 November 2013, *X and Others*, C-199/12 to C-201/12, EU:C:2013:720, paragraph 45). (see paras 85-90, operative part 5)*

<sup>(84)</sup> CJEU, *Summary – Judgment of the Court (Second Chamber), case C-652/16 – Ahmedbekova*, 4 October 2018. Reference to full judgment at fn. 12.

**CJEU, *Summary of Judgment – WS*, 2024 <sup>(85)</sup>**

*Ruling on a request for a preliminary ruling, the Court, sitting as the Grand Chamber, has provided clarification on one of the reasons for persecution capable of leading to the recognition of refugee status, namely ‘membership of a particular social group’ <sup>(86)</sup>, where the applicant for international protection is a woman who claims a fear, if she were to return to her country of origin, of being killed or subjected to acts of violence inflicted by a member of her family or community due to the alleged transgression of cultural, religious or traditional norms.*

*WS is a Turkish national of Kurdish origin. She arrived legally in Bulgaria in June 2018 and thereafter joined a family member in Germany, where she lodged an application for international protection. Following a request from the German authorities, WS was taken back by the Bulgarian authorities for the purpose of examining her application for international protection, pursuant to a decision adopted in February 2019 by the National Agency for Refugees <sup>(87)</sup> (‘the DAB’).*

*During interviews conducted in October 2019, WS stated that she had been forcibly married at the age of sixteen and subjected to domestic violence. WS fled the marital home in September 2016. In 2017, she entered into a religious marriage and, in May 2018, had a son from that marriage. After she left Türkiye, she officially divorced her first husband in September 2018, despite his objections. She states that, for those reasons, she fears that his family would kill her if she were to return to Türkiye.*

*By a decision adopted in May 2020, the President of the DAB rejected WS’s application for international protection, taking the view, first, that the conditions for granting refugee status had not been satisfied. The reasons relied on by WS, in particular the acts of domestic violence or death threats made against her were not relevant because they could not be linked to any of the reasons for persecution set out in the Law on Asylum and Refugees, which transposes Directive 2011/95 into Bulgarian law. Furthermore, WS did not claim to have been persecuted based on her gender.*

*Second, WS was refused subsidiary protection status. It was considered that she did not satisfy the conditions required for that purpose since, in the first place, neither the official authorities nor certain non-State entities had taken action against her that the State is not in a position to control. In the second place, WS had not informed the police that she had been subject to criminal assaults, had not lodged a complaint and had left Türkiye legally.*

*The action brought by WS against that decision was dismissed.*

*In April 2021, based on new evidence, WS made a subsequent application for international protection, claiming a well-founded fear of persecution on account of her membership of a*

<sup>(85)</sup> CJEU, [Summary – Judgment of the Court \(Grand Chamber\), case C-621/21 – WS](#), 16 January 2024. Reference to full judgment at fn. 14.

<sup>(86)</sup> Under Article 2(d) of Directive 2011/95 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 (OJ 2011 L 337, p. 9).

<sup>(87)</sup> Darzhavna agentsia za bezhantsite (State Agency for Refugees, Bulgaria).





particular social group, namely women who are victims of domestic violence and women who are potential victims of honour killings, by non-State actors against whom the Turkish State is not able to defend her. Objecting to her being sent back to Türkiye, she states that she fears being the victim of an honour killing or being forced to marry again.

In May 2021, the DAB refused to reopen the procedure for granting international protection, taking the view, *inter alia*, that WS had not submitted any significant new evidence relating to her personal situation or her country of origin.

Hearing an appeal against that decision, the referring court decided to seek a ruling from the Court on the interpretation of Directive 2011/95, inviting it to clarify the substantive preconditions governing the grant of international protection and the type of international protection to be granted in such circumstances.

#### *Findings of the Court*

First, the Court examines whether, under Directive 2011/95, depending on the circumstances in the country of origin, women in that country may be regarded, as a whole, as belonging to 'a particular social group' as a 'reason for persecution' capable of leading to the recognition of refugee status, or whether the women concerned must share an additional common characteristic in order to be regarded as belonging to such a group.

In that regard, the Court states, first of all, that the Istanbul Convention <sup>(88)</sup> lays down obligations coming within the scope of Article 78(2) TFEU, which empowers the EU legislature to adopt measures relating to a common European asylum system, such as Directive 2011/95. Thus, that convention, in so far as it relates to asylum and non-refoulement, is one of the treaties in the light of which that directive is to be interpreted <sup>(89)</sup>, even though some Member States, including the Republic of Bulgaria, have not ratified it.

Next, the Court points out that it is apparent from Article 10(1)(d) of Directive 2011/95 that a group is to be considered a 'particular social group' where two cumulative conditions are satisfied. In the first place, the members of the relevant group must share at least one of the three identifying features referred to by that provision <sup>(90)</sup>. In the second place, that group must have a 'distinct identity' in the country of origin.

As regards the first condition for identifying a 'particular social group', the Court states that the fact of being female constitutes an innate characteristic and therefore suffices to satisfy that condition. That does not rule out the possibility that women who share an additional common feature such as, for example, a common background that cannot be changed <sup>(91)</sup>, may also belong to that category for the purposes of that provision.

<sup>(88)</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, which was concluded in Istanbul on 11 May 2011, signed by the European Union on 13 June 2017 and approved on behalf of the European Union by Council Decision (EU) 2023/1076 of 1 June 2023 (OJ 2023 L 143 I, p. 4) ('the Istanbul Convention'). That convention has been binding on the European Union since 1 October 2023.

<sup>(89)</sup> Under Article 78(1) TFEU.

<sup>(90)</sup> Namely an 'innate characteristic', a 'common background that cannot be changed' or a 'characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it'.

<sup>(91)</sup> The Court notes in particular that the fact that women have escaped from a forced marriage or left the marital home may, *inter alia*, be regarded as a common background that cannot be changed, within the meaning of that provision.



*As regards the second condition for identifying a ‘particular social group’, the Court states that women, whether or not they share an additional common characteristic, may be perceived as being different by the surrounding society and recognised as having their own identity in that society, in particular because of social, moral or legal norms in their country of origin.*

*Lastly, the Court states that membership of a ‘particular social group’ is to be established independently of the acts of persecution <sup>(92)</sup> of which the members of that group may be victims in the country of origin. Nevertheless, discrimination or persecution suffered by persons sharing a common characteristic may constitute a relevant factor where, in order to ascertain whether the second condition for identifying a social group is satisfied, it is necessary to assess whether the group in question appears to be distinct in the light of the social, moral or legal norms of the country of origin in question.*

*Consequently, women, as a whole, may be regarded as belonging to a ‘particular social group’, within the meaning of Article 10(1)(d) of Directive 2011/95, where it is established that, depending on the circumstances in their country of origin, they are, on account of their gender, exposed to physical or mental violence, including sexual violence and domestic violence. Furthermore, more restricted groups of women who share an additional common characteristic <sup>(93)</sup> may be regarded as belonging to a social group with a distinct identity in their country of origin if, on account of that characteristic, they are stigmatised and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence.*

*Second, the Court examines whether, where an applicant claims a fear of being persecuted in his or her country of origin by non-State actors, Directive 2011/95 requires a link to be established between the acts of persecution and at least one of the reasons for persecution referred to in Article 10(1) of Directive 2011/95. It states that, under Article 9(3) of that directive, read in conjunction with other provisions <sup>(94)</sup>, recognition of refugee status presupposes that a link be established between, on the one hand, the aforementioned reasons for persecution and, on the other, either the acts of persecution <sup>(95)</sup> or the absence of protection, by the ‘actors of protection’ <sup>(96)</sup>, against acts of persecution perpetrated by ‘non-State actors’. Thus, in the case of an act of persecution perpetrated by a non-State actor, the condition laid down in Article 9(3), referred to above <sup>(97)</sup>, is satisfied where that act is based on one of the reasons for persecution mentioned in Article 10(1) of that directive, even if the absence of protection is not based on those reasons. That condition must also be regarded as being satisfied where the absence of protection is based on one of the reasons for persecution set out in the latter provision, even if the act of persecution perpetrated by a non-State actor is not based on those reasons. Consequently, where an applicant claims a fear of being persecuted in his or her country of origin by non-State actors, it is not necessary to establish a link between one of the reasons for persecution*

<sup>(92)</sup> Within the meaning of Article 9 of Directive 2011/95.

<sup>(93)</sup> As an example of an additional common characteristic, the Court refers to the situation of women who refuse forced marriages, where such a practice may be regarded as a social norm within their society, or who transgress such a norm by ending that marriage.

<sup>(94)</sup> In this instance, read in conjunction with Article 6(c) and Article 7(1), in the light of recital 29 of Directive 2011/95.

<sup>(95)</sup> Within the meaning of Article 9(1) and (2) of Directive 2011/95.

<sup>(96)</sup> Those ‘actors of protection’ are defined in Article 7 of Directive 2011/95.

<sup>(97)</sup> This condition is provided for in Article 9(3) of Directive 2011/95.



referred to in Article 10(1) of Directive 2011/95 and acts of persecution, if such a link can be established between one of those reasons for persecution and the absence of protection from those acts by the actors of protection <sup>(98)</sup>

Third, the Court holds that the concept of serious harm <sup>(99)</sup>, capable of leading to the recognition of subsidiary protection status <sup>(100)</sup>, covers the real threat to the applicant of being killed or subjected to acts of violence inflicted by a member of his or her family or community due to the alleged transgression of cultural, religious or traditional norms. To reach that conclusion, it states that Article 15(a) and (b) of Directive 2011/95 <sup>(101)</sup> defines 'serious harm' as 'the death penalty or execution' or 'torture or inhuman or degrading treatment or punishment of an applicant in the country of origin'. In view of the objective of Article 15(a) of Directive 2011/95 of ensuring protection for persons whose right to life would be threatened if they were to return to their country of origin, the term 'execution' in that provision cannot be interpreted as excluding harm to a person's life solely on the ground that it is caused by non-State actors. Thus, where a woman runs a real risk of being killed or subjected to acts of violence inflicted by a member of her family or community because of the alleged transgression of cultural, religious or traditional norms, such serious harm must be classified as 'execution' within the meaning of that provision.



#### CJEU, *Summary of Judgment – K and L*, 2024 <sup>(102)</sup>

Hearing a reference for a preliminary ruling from the rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting at 's-Hertogenbosch, Netherlands), the Court, sitting as the Grand Chamber, rules on the question whether third-country nationals who are minors identifying with the fundamental value of equality between women and men due to their stay in a Member State may be regarded as belonging to 'a particular social group' constituting a 'reason for persecution' capable of leading to the recognition of refugee status. <sup>(103)</sup>

K and L are sisters of Iraqi nationality, born in 2003 and 2005, respectively. They arrived in the Netherlands in 2015 and have stayed there continuously since. Their applications for asylum, submitted in November 2015, were rejected in February 2017. In April 2019, they

<sup>(98)</sup> Within the meaning of Article 7(1) of that directive.

<sup>(99)</sup> Laid down in Article 15(a) and (b) of Directive 2011/95.

<sup>(100)</sup> Within the meaning of Article 2(g) of Directive 2011/95

<sup>(101)</sup> Read in the light of recital 34 of Directive 2011/95

<sup>(102)</sup> CJEU, *Summary – Judgment of the Court (Grand Chamber), case C-646/21 – K and L*, 11 June 2024. Reference to full judgment at fn. 16.

<sup>(103)</sup> Under Article 10(1)(d) of 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 (OJ 2011 L 337, p. 9), for the purpose of assessing the reasons for persecution, a group is to be considered to form a 'particular social group' where in particular its members share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

*submitted subsequent applications<sup>(104)</sup>, which were rejected as manifestly unfounded in December 2020. In challenging those rejection decisions, K and L are arguing before the referring court that, due to their long stay in the Netherlands, they have become ‘westernised’. They fear persecution if they were to return to Iraq because of the identity they have formed in the Netherlands, characterised by the adoption of norms, values and conduct that are different from those of their country of origin, which have become so fundamental to their identity and conscience that they cannot renounce them. They submit that they are therefore members of a ‘particular social group’, within the meaning of Article 10(1)(d) of Directive 2011/95.*

*In those circumstances, the referring court is uncertain, first, as to the interpretation of the concept of ‘membership of a particular social group’ and, second, as to the manner in which the best interests of the child are to be taken into consideration, as guaranteed in Article 24(2) of the Charter of Fundamental Rights of the European Union, in the procedure for examining applications for international protection.*

#### *Findings of the Court*

*In the first place, the Court states that a group is to be regarded as a ‘particular social group’ where two cumulative conditions are satisfied. First, the persons who may belong to it must share at least one of three identifying features, namely an ‘innate characteristic’, a ‘common background that cannot be changed’ or a ‘characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it’. Second, that group must have a ‘distinct identity’ in the country of origin ‘because it is perceived as being different by the surrounding society’.*

*As regards the first of those conditions, the fact that a woman genuinely identifies with the fundamental value of equality between women and men, in so far as it presupposes a desire to benefit from that equality in her daily life, entails being free to make her own life choices, particularly in relation to her education and career, the extent and nature of her activities in the public sphere, the possibility of achieving economic independence by working outside the home, her decision on whether to live alone or with a family, and the free choice of a partner, choices which are fundamental to her identity. In those circumstances, the fact that a third-country national genuinely comes to identify with that fundamental value may be considered ‘a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it’.*

*As regards the second condition, relating to the ‘distinct identity’ of the group in the country of origin, women may be perceived as being different by the surrounding society and recognised as having their own identity in that society, in particular because of social, moral or legal norms in their country of origin. That condition will also be satisfied by women who share an additional common characteristic, such as the fact that they genuinely come to identify with the fundamental value of equality between women and men, where those norms in their country of origin have the result that those women, on*

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<sup>(104)</sup> Under Article 2(q) of 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 (OJ 2013 L 180, p. 60) a ‘subsequent application’ is a further application for international protection made after a final decision has been taken on a previous application.



account of that common characteristic, are also perceived as being different by the surrounding society.

*It follows that women, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a 'particular social group', constituting a 'reason for persecution' capable of leading to the recognition of refugee status.*

*In that regard, the Court points out that the fact that a third-country national genuinely comes to identify with that fundamental value during her stay in a Member State cannot be regarded as circumstances which that national has created by her own decision since leaving her country of origin <sup>(105)</sup>, or as an activity the sole or main purpose of which was to create the necessary conditions for applying for international protection <sup>(106)</sup>. Suffice it to note that, where such identification has been established to the requisite legal standard, it can in no way be equated with the abusive intent and abuse of the procedure which Article 5(3) of Directive 2011/95 is intended to combat.*

*In the second place, the Court finds that where an applicant for international protection is a minor, the competent national authority must take into account, after an individual examination, the best interests of that minor when assessing the merits of his or her application for international protection.*

*On that issue, the Court states, first, that, pursuant to Article 51(1) of the Charter of Fundamental Rights, Member States are to comply with Article 24(2) thereof when they are implementing Union law and therefore also when they are examining a 'subsequent application'. Second, since Article 40(2) of Directive 2013/32 does not draw any distinction between a first application for international protection and a 'subsequent application' as regards the nature of the elements or findings capable of demonstrating that the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95, the assessment of the facts and circumstances in support of those applications must, in both cases, be carried out in accordance with Article 4 of that latter directive.*

*Furthermore, for the purpose of assessing an application for international protection based on a reason for persecution such as 'membership of a particular social group', a long stay in a Member State may be taken into account, especially where it coincides with a period during which an applicant who is a minor has formed his or her identity.*

<sup>(105)</sup> See Article 5(3) of Directive 2011/95.

<sup>(106)</sup> See Article 4(3)(d) of Directive 2011/95.





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