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Advocate General's Opinion in Case C-621/21 | Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)

### **Honour crime, forced marriage and domestic violence: Advocate General Richard de la Tour clarifies under which conditions third-country nationals may be eligible for international protection**

*A woman who risks being the victim of such acts upon being returned to her country of origin may be granted refugee status on the basis of her membership of 'a particular social group'*

Directive 2011/95 on international protection lays down the conditions for granting, on the one hand, refugee status and, on the other hand, subsidiary protection to which third-country nationals may be entitled. The grounds for obtaining **refugee status** include persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group. The directive also provides that **subsidiary protection** is available to third-country nationals who do not qualify as refugees but in respect of whom substantial grounds have been shown for believing that, if returned to their country of origin, they would face a real risk of suffering serious harm. The latter includes the death penalty, execution, torture or inhuman or degrading treatment or punishment.

The Administrative Court, Sofia (Bulgaria) is uncertain as to whether and, if so, what type of international protection should be granted to a Turkish national, of Kurdish origin, a (Sunni) Muslim and divorced, in view, inter alia, of the nature of the acts of violence to which she faces the risk of being exposed if she returns to her country of origin. That woman was forcibly married and, after numerous episodes of domestic violence and threats by her husband as well as by her biological family and her husband's family, she had to leave the matrimonial home. She entered into a religious marriage with another man in 2017, one year before the divorce from her first husband was pronounced. She is currently in Bulgaria and maintains before the competent national authorities that she fears for her life.

In the first place, Advocate General Jean Richard de la Tour examines the conditions in which the third-country national, who faces the risk of being the victim of an honour crime or a forced marriage and of being exposed to acts of domestic violence upon being returned to her country of origin, may **be granted refugee status on the basis of her membership of a 'particular social group'**. He recalls that the directive on international protection lays down two cumulative conditions: first, the members of the 'particular social group' must share an innate characteristic or a common background that cannot be changed. In that respect, the Advocate General refers to the provisions of Directive 2011/95,<sup>1</sup> which make it clear that gender-related aspects, including gender identity, are to

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<sup>1</sup> The second subparagraph of Article 10(1)(d) of Regulation (EU) 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).

be given due consideration to for the purposes of determining membership of a 'particular social group'. Second, that group must have a distinct identity in the third country because it is perceived as being different by the surrounding society.

As regards the first of those conditions, the Advocate General notes that the gender of the woman in question may be associated with an innate characteristic – namely her biological sex – 'that cannot be changed', within the meaning of the directive. As regards the second condition, the Advocate General specifies that gender is a sociological concept which is used in such a way as to take into account, beyond the biological sex, the values and representations associated with it. Thus, gender is a concept which serves to make it apparent that relationships between men and women, in a given society, and the inequalities that may follow owing to the male and female roles assigned on the basis of biological differences, are acquired and constructed by societies and may therefore evolve differently over time and according to societies and communities. The Advocate General thus takes the view that women, solely on account of their condition as women, are an example of a social group defined by innate and immutable characteristics liable to be perceived differently by society, according to their country of origin, by reason of the social, legal or religious norms of that country or the customs of the community to which they belong. The Advocate General concludes that the competent national authority may consider that the woman in question **belongs, because of her gender, to a 'particular social group'** on the ground that, by her return, she would be exposed in her country of origin to acts of serious marital violence that are traditional in certain communities.

The Advocate General also explains that the acts of persecution to which the woman in question may be exposed in her country of origin may be taken into account for the purpose of determining the distinct identity of a group in that country. He takes the view that it is the nature of the acts of persecution, which refer to particular victims, that allows the 'distinct identity' of a 'social group' to be characterised. The directive<sup>2</sup> refers to acts which are particularly representative of acts of gender-based violence, in that they are directed against a person because of his or her sex or identity or in that they disproportionately affect persons of a particular sex. As regards acts of domestic violence, they may be reflected in acts of extreme seriousness and in repeated violence capable of leading to a serious breach of the fundamental rights of the person.

In the second place, Mr Richard de la Tour clarifies that, as regards acts of persecution committed by a non-State actor, the ability and willingness of the country of origin to ensure effective protection from the acts of persecution must be established. **The competent national authority** must carry out an in-depth assessment on an individual basis of the application for international protection. It must take into account all relevant factors as they relate to the country of origin, including laws and regulations of that country and the manner in which they are applied. Following that assessment, the competent authority **must establish whether there is a causal link between**, on the one hand, the reasons on which those acts of violence are based, namely **the third-country national's membership of a particular social group, and**, on the other hand, **the absence of protection on the part of the authorities of the country of origin.**

Last, as regards the granting of subsidiary protection, the Advocate General is of the opinion that when the competent national authority establishes that, if she is returned to her country of origin, **that national will face the risk of being executed in the name of the honour of her family or her community or of being the victim of acts of torture or of inhuman or degrading treatment or punishment resulting from domestic violence**, that authority is required to classify those acts as **constituting 'serious harm'** within the meaning of the directive on international protection. In that context, the person concerned may be granted subsidiary protection.

In order to determine whether that risk is well founded, the competent national authority is required to establish whether the authorities of the third country or of the parties or organisations controlling it offer protection against that serious harm.

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<sup>2</sup> Recital 30 of Directive 2011/95.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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