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Judgment of the Court in Case C-222/22 | Bundesamt für Fremdenwesen und Asyl (Subsequent religious conversion)

An asylum application based on a religious conversion taking place subsequently to the departure from a person's country of origin may not be rejected automatically as abuse

An Iranian whose initial application for international protection was dismissed by the Austrian authorities lodged a fresh application ('subsequent application') for international protection in Austria. He stated that he had in the meantime converted to Christianity and, on that ground, feared persecution in his country of origin.

The applicant was then granted subsidiary protection status ¹ and a fixed-period residence permit. The Austrian authorities found that he had credibly demonstrated that he had converted to Christianity in Austria 'out of inner conviction' and that he actively practised his faith. For that reason, he risked being exposed to individual persecution in the event that he returned to his country of origin.

However, the Austrian authorities refused to grant him refugee status ². Austrian law makes the recognition of the status of refugee following a subsequent application subject to the condition that the new circumstance which the applicant has created by his or her own decision must constitute the expression and continuation of convictions held in the country of origin.

The Austrian administrative court asks the Court of Justice whether such a condition is compatible with the Qualification Directive ³. The Court answers in the negative.

The Qualification Directive does not permit a presumption that any subsequent application based on circumstances which the applicant has created by his or her own decision since leaving the country of origin stems from abusive intent and abuse of the procedure for the grant of international protection. Any subsequent application must be assessed on an individual basis.

Thus, where it is found, as in the present case ⁴, that the applicant has credibly demonstrated that he had converted to Christianity 'out of inner conviction' and actively practises that faith, that is such as to rule out the existence of abusive intent or abuse of the applicable procedure. If such an applicant fulfils the conditions provided for by the directive to qualify as a refugee, he must be granted that status.

However, where it is found that there is abusive intent and abuse of the applicable procedure, the granting of refugee status may be refused, even when the applicant has justified fears of being persecuted in his or her country of origin as a result of circumstances created by his or her own decision. In that case, he or she nevertheless retains the status of refugee under the Geneva Convention ⁵. In such a scenario, the applicant must be able to benefit from the protection guaranteed by that convention, which prohibits, inter alia, expelling or returning ('refouler') a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of, inter alia, his or her religion.

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

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

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

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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¹ Subsidiary protection is to be granted to a third-country national who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin, would face a real risk of suffering serious harm, which includes, inter alia, execution and inhuman or degrading treatment.

² Refugee status is to be granted in cases where a third-country national is persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group.

³ [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.

⁴ It is for the Austrian administrative court to verify whether that finding of the Austrian authorities is correct.

⁵ Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, which entered into force on 22 April 1954 and was supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967. The Court notes that a refusal to grant formal recognition of 'refugee status' within the meaning of the Directive does not prevent the applicant from qualifying as a refugee under the Geneva Convention.