

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

**Recommendation Rec(2004)9
of the Committee of Ministers to member states
on the concept of “membership of a particular social group” (MPSG)
in the context of the 1951 Convention relating to the status of refugees**

*(Adopted by the Committee of Ministers on 30 June 2004,
at the 890th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that, according to Article 1.a, paragraph 2, of the 1951 Convention relating to the Status of Refugees, the term “refugee” shall apply to any person who has a “well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”;

Taking into account the increasing number of cases where fear of being persecuted because of “membership of a particular social group” (MPSG) is claimed as grounds for refugee status and considering also the growing variety of reasons invoked to that effect;

Anxious to provide guidance to member states in applying this particular motif, as described in the Convention, which requires clarification, and to ensure a uniform application of the 1951 Convention in the member states of the Council of Europe;

Reiterating the liberal and humanitarian attitude of member states of the Council of Europe with regard to asylum;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and to other relevant universal and regional human rights instruments;

Bearing in mind Recommendation No. R (81) 16 on the harmonisation of national procedures relating to asylum; Recommendation No. R (94) 5 on guidelines to inspire practices of the member states of the Council of Europe concerning the arrival of asylum seekers at European airports; Recommendation No. R (98) 15 on the training of officials who first come into contact with asylum seekers, in particular at border points; Recommendation Rec(2001)18 on subsidiary protection;

Aware of Parliamentary Assembly Recommendation 1374 (1998) on the situation of refugee women in Europe and of Parliamentary Assembly Recommendation 1470 (2000) on the situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe,

Considers that a “particular social group” is a group of persons who have, or are attributed with, a common characteristic other than the risk of being persecuted and who are perceived as a group by society or identified as such by the state or the persecutors. Persecutory action towards a group may however be a relevant factor in determining the visibility of a group in a particular society.

The concept would in particular include:

- a. groups which may be defined by innate or immutable characteristics;
- b. groups comprised of persons who share a common or historical background or characteristic that either is unchangeable or so fundamental to their identity, conscience or human dignity that those persons should not be forced to renounce it;

Recommends that member states take into account the following principles when determining, in the context of Article 1. A, paragraph 2, of the 1951 Convention, whether a person is persecuted because of membership of a particular social group:

1. There is no hierarchy amongst the five grounds of the 1951 Convention, that is, race, religion, nationality, MPSG and political opinion. All are applicable on an equal basis. Depending on the circumstances of an individual case, grounds may overlap and an asylum seeker may be eligible for refugee status on more than one of the grounds;
2. The concept of MPSG should be interpreted in a broad and inclusive manner in the light of the object and purpose of the 1951 Convention. However, interpretation of the concept of MPSG should not extend the scope of the Convention to impose upon states obligations to which they have not consented;
3. There is no requirement that a group be cohesive in order to be recognised as a “particular social group”; it is not necessary for members of the group to know one another or to associate. Nor is it necessary that all members of the group are at risk of being persecuted;
4. The size of the group is irrelevant in determining whether the concept of MPSG applies;
5. Mere membership of a particular social group, as described above, will not normally be enough to substantiate a claim for refugee status. Each asylum claim must be considered individually with regard to the nexus between the MPSG and the existing risk of persecution. Furthermore, the factual circumstances in the country of origin need to be taken into account. There may, however, be special circumstances in individual cases where mere membership can be a sufficient ground for fearing persecution;
6. When considering asylum requests based on MPSG, the competent authorities should, in addition to general standards prescribed in relevant international instruments, pay particular attention to standards with regard to gender- and age- related issues, confidentiality of the request and information about the country of origin;

Invites member states to inform the ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) about the implementation of the principles stated above.