

18 May 2016

Convention relating to the Status of Refugees



de Rechtspraak



Convention relating to the Status of Refugees

Oslo, 18 May 2016

The Convention, original text

28 July 1951 adopted

22 April 1954 entry into force

Fixed temporal limit: “events occurring before 1 January 1951”

Optional geographical limit: events meaning “events in Europe”

The 1967 Protocol

“[..] it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention, irrespective of the dateline of 1 January 1951.”

Most countries accessed to the protocol.

Hardly anymore temporal or geographical limits

Refugee

Any person who, owing to well-founded fear of being persecuted for reasons of **race, religion, nationality, membership of a particular social group** or **political opinion** is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Interpretation of the Convention/Protocol

- no (global) court entrusted with interpretation;
- jurisdiction only on national level;
- Handbook and Guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (reissued December 2011)

Principles of refugee protection

Reading the definition

- Outside the country
- Well-founded fear
- Persecution, not prosecution
- Authorities or non-state agents

Principles of refugee protection

Recognizing a refugee

- A person does not become a refugee because of his recognition: he is recognized because he is a refugee
- Two-step process
- Overlap of different grounds

Grounds: race

- in its widest sense: all kinds of ethnic groups that are referred to as “races” in common usage;
- as a result of racial discrimination, a person’s human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights, or where the disregard of racial barriers is subject to serious consequences.

Grounds: religion

Prohibition of

- membership of a religious community
- worship in private or in public
- religious instruction.

Serious measures of discrimination imposed on persons because they practice their religion or belong to a particular religious community.

Includes the freedom of a person to change his religion and his freedom to manifest it in public or private

Grounds: nationality

- not only 'citizenship', but also membership of an ethnic or linguistic group (overlap with race)
- Adverse attitudes and measures directed against a national (ethnic, linguistic) minority;
- in certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution.
- not always clear: persecution for reasons of nationality? Or for reasons of political opinion?

Grounds: political opinion

Holding political opinions that

- differ from those of the authorities;
- and are not tolerated by authorities;
- and which authorities know of

Grounds: membership of a particular social group

- normally: persons of similar background, habits or social status.
- no confidence in the group's loyalty to the Government or because the political outlook, antecedents or economic activity of its members, or the very existence of the social group as such, is held to be an obstacle to the Government's policies.

Grounds: membership of a particular social group

- a group cannot be defined as a particular social group solely because it's suffers from or fears for persecution
- no need for cohesiveness within the group
- not necessary that all members of the group risk persecution
- Size doesn't matter

Grounds: membership of a particular social group

How to define a particular social group?

The “protected characteristics approach” or “immutability approach”

- Is the group united by an immutable characteristic or by a characteristic that is so fundamental to human dignity that a person should not be compelled to forsake it

Grounds: membership of a particular social group

The “social perception approach”

- Does the group share a common characteristic which make it cognizable in society or sets it apart from society at large.

Grounds: membership of a particular social group

The combined approach (UNHCR Handbook)

- “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.”

Grounds: membership of a particular social group

In other words: a particular social group is a group:

- with an innate, unchangeable characteristic; and/or
- with a former status of any kind, that cannot be changed; and/or
- with a voluntary characteristic, that is so fundamental to its human dignity, that it cannot be compelled to forsake it.

Grounds: membership of a particular social group

Some examples of a PSG

- members of the nobility of a former Eastern European kingdom;
- members of the landed gentry in pre-communist Romania
- farmers in areas of military operations in El Salvador
- a former funeral director and his wife engaged in the private sector in pre-communist Poland

Grounds: membership of a particular social group

- a woman from Trinidad subject to spousal abuse over 15 years
- homosexual and bisexual men and women in countries where their sexual conduct, even with adults and in private, is illegal;
- dispossessed landlords who have abandoned their claim to property after revolution, but are still subject to stigma;
- members of the Tamil minority fleeing from Sri Lanka;

Grounds: membership of a particular social group

- young males who have evaded or deserted from compulsory military service in countries engaged in active military operations condemned by the international community;
- members of stigmatised professional groups and trade unions;
- soldiers of the army of the former regime in South Vietnam;
- Roman Catholics and ethnic Chinese fleeing from Vietnam

Grounds: membership of a particular social group

Some examples of not a PSG

- the "capitalist class" in a former East European country;
- an Indian woman who had married out of her caste;
- members of a recreational club;
- a person accused of corruption in Ghana;
- a person who had been a member of an Irish terrorist group and was suspected, in Ireland, of permitting hostages to escape;

Grounds: membership of a particular social group

- a Bolivian migrant drug offender fearful of punishment as a drug informant if he were returned to Bolivia;
- a member of the wealthy Sikh community returning to the Punjab with money which would be subject to the risk of robbery and extortion;
- an Iranian seaman imprisoned in Australia for importation of illegal drugs liable to further heavy punishment if returned to Iran;

Grounds: membership of a particular social group

- a stepson of a Columbian storekeeper whose shop was blown up by a drugs cartel when he refused to trade for them.

Grounds: membership of a particular social group

Court of Justice of the European Union (CJEU)

Homosexuals from

- Sierra Leone (10 years to life);
- Uganda (maximum life);
- Senegal (1 to 5 years)

Grounds: membership of a particular social group

The Court: in order to be regarded as a PSG:

- 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.

“a persons sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it”;

Grounds: membership of a particular social group

- that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.
“it should be acknowledged that the existence of criminal laws, which specifically target homosexuals, supports a finding that those persons form a separate group which is perceived by the surrounding society as being different.”

Grounds: membership of a particular social group

European Court of Human Rights (ECtHR)
23505/09 (women)

Afghan woman in Sweden, separated from her husband and intending to divorce him. Therefore;

- criticised by some friends
- broken with Afghan traditions
- dishonoured both her own and husband's family
- disowned her family and risks reprisals from husband's family

Grounds: membership of a particular social group

The Court:

- She had lived in Sweden for five years, and may be perceived as not conforming to the gender roles ascribed to her by Afghan society, tradition and legal system
- She has a real and genuine intention of not living with her husband
- After return to Afghanistan her husband may decide to resume their married life together against the applicant's wish

Grounds: membership of a particular social group

- women have to comply with husbands' sexual requests
- 80% of Afghan women affected by domestic violence; legitimate
- women will not seek help because of their fears of police or retaliation by perpetrators of violence
- low social status and social stigmas deter women from going against their families to pursue justice, particularly in cases of domestic abuse.

Grounds: membership of a particular social group

- unaccompanied women or women lacking a male "tutor" (divorced women, unmarried women who are not virgins, and women whose engagements to be married have been broken) face limitations on conducting a *normal* social life;
- Unless they marry, which is very difficult given the social stigma associated with these women, social rejection and discrimination continue to be the norm.

Grounds: membership of a particular social group

- Many Afghan women are prevented from leaving the family compound without a burqa and a male companion, who has to be a husband or a close relative.
- Women without male support and protection generally lack the means of *survival*, given the social restrictions on women living alone, including the limitations on their freedom of movement.

Grounds: membership of a particular social group

- Unable to live independently, they face years of quasi-detention, prompting many to return to abusive family situations. The results of such "reconciliation" are generally not monitored and abuse or honour crimes committed upon return are often done with impunity."

Principle of non refoulement

Article 33 of the Convention:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Closing time

- Any questions or remarks?
- Thank you for your kind attention!