

**Reference for a preliminary ruling from the Raad van State (Netherlands)  
lodged on 27 April 2012 - Minister voor Immigratie en Asiel v X  
(Case C-199/12)**

*Language of the case: Dutch*

**Referring court**

Raad van State

**Parties to the main proceedings**

*Applicant:* Minister voor Immigratie en Asiel

*Other party:* X

**Questions referred**

Do foreign nationals with a homosexual orientation form a particular social group as referred to in Article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 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 (OJ 2004 L 304; 'the Directive')?

If the first question is to be answered in the affirmative: which homosexual activities fall within the scope of the Directive and, in the case of acts of persecution in respect of those activities and if the other requirements are met, can that lead to the granting of refugee status? That question encompasses the following subquestions:

Can foreign nationals with a homosexual orientation be expected to conceal their orientation from everyone in their country of origin in order to avoid persecution?

If the previous question is to be answered in the negative, can foreign nationals with a homosexual orientation be expected to exercise restraint, and if so, to what extent, when giving expression to that orientation in their country of origin, in order to avoid persecution? Moreover, can greater restraint be expected of homosexuals than of heterosexuals?

If, in that regard, a distinction can be made between forms of expression which relate to the core area of the orientation and forms of expression which do not, what should be understood to constitute the core area of the orientation and in what way can it be determined?

Do the criminalisation of homosexual activities and the threat of imprisonment in relation thereto, as set out in the Offences against the Person Act 1861 of Sierra Leone, constitute an act of persecution within the meaning of Article 9(1)(a), read in conjunction with Article 9(2)(c) of the Directive? If not, under what circumstances would that be the case?