



P R E S S R E L E A S E

Landmark Ruling: EU Court of Justice Defines Discriminatory Measures Against Women as Persecution

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On 04/10/2024, in a landmark decision, the Court of Justice of the European Union, Third Chamber, ruled that cumulative discriminatory measures against Afghan women under the Taliban, such as restrictions on education, employment, healthcare, and freedom of movement, qualify as acts of persecution under Directive 2011/95/EU. The decision underscores that Afghan women, as a group, face inherent risks, making them eligible for refugee status without needing an individual assessment based on personal circumstances.

"This ruling is crucial for Afghan women and girls, and for all women. It highlights that, 45 years after CEDAW's Art. 5 aimed to eliminate laws and customs based on the idea of inferiority of female sex and stereotyped roles of women, such laws and customs persist and even proliferate. Sex and nationality are explicitly protected in EU law. Despite that, EU asylum policies almost never consider sex as a ground for persecution of women, simply because they are women, and rarely consider the combination of the two", said Anna Zobnina, Strategy and Executive Director of the European Network of Migrant Women

This case focuses on **the protection of Afghan women seeking asylum due to oppressive measures imposed by the de facto authorities of Taliban**. The key question is whether these measures are sufficient to grant refugee status under Directive 2011/95 (the "Qualification Directive"), which outlines the standards for recognising third-country nationals or stateless persons as refugees or eligible for subsidiary protection. The Court was asked to determine if the Taliban's restrictions on Afghan women qualify as "acts of persecution" severe enough for automatic refugee status, without individual assessments.

The underlying question was **whether Afghan women, as a group, face inherent risks under the Taliban regime, necessitating international protection based solely on their sex and systemic discrimination**.

Key facts of the case:

Both applicants are Afghan nationals. AH fled Afghanistan after her father attempted to sell her and later applied for asylum in Austria, where her husband resided. FN never lived in Afghanistan but fled Iran due to lack of legal status, which prevented her from attending school and her mother from working. Austria initially denied their refugee status but granted subsidiary protection due to economic and social difficulties they would face in Afghanistan. Both women appealed, arguing that under the Taliban's current regime, the situation for Afghan women is so severe that it justifies granting refugee status, irrespective of lifestyle or personal circumstances.

Key Findings of the Court:

"It is unnecessary to establish that there is a risk that the applicant will actually and specifically be subject to acts of persecution if she returns to her country of origin," said the CJEU in its ruling.

The Court concluded that a combination of discriminatory measures - including the lack of legal protection against violence against women and girls and domestic abuse, forced marriage, and significant restrictions on healthcare, freedom of movement, employment, education, participation in sports, and political engagement - **does qualify as an act of persecution under the Qualification Directive**. Such a cumulative effect of discriminatory practices can be severe enough to **undermine human dignity, protected under Article 1 of the EU Charter of Fundamental Rights**. *"These measures, taken together, affect women in such a way that they reach the level of severity required to constitute acts of persecution,"* the court says, and altogether *"lead to the flagrant and dogged denial to Afghan women, on account of their sex alone, of fundamental rights related to human dignity."* Furthermore, the Court clarified that **national authorities do not need to consider personal circumstances other than sex or nationality when assessing whether discriminatory measures in a woman's country of origin amounts to acts of persecution**. This interpretation streamlines the process and underscores the importance of understanding the broader context of discrimination faced by women, aligning with the Istanbul Convention and CEDAW.

Implications for Women's Rights:

Monitoring reports adopted by the GREVIO experts on the implementation of relevant provisions of the Istanbul Convention by State Parties highlight the failure of many EU states to consider specific situations and needs of women during the evaluation of asylum claims. Similarly, the Council of Europe points to a **lack of migration and asylum policies sensitive to the rights of women or inclusive of specific protection and support mechanisms**.

In this context, this ruling represents a critical advancement in recognising the unique challenges that women encounter in the asylum process. **By affirming that cumulative discriminatory practices qualify as persecution, the Court has paved the way for more consistent protection for women and girls seeking refuge from oppressive conditions.**

"We welcome this landmark ruling, which recognises that systemic discrimination based on sex can constitute persecution and violations of women's and girls' human dignity. This is a crucial step toward safeguarding women's rights within the EU asylum framework, building on prior CJEU decisions addressing gaps in Directive 2011/95/EU, which has overlooked violence against women and girls as grounds for asylum. Women in many countries face widespread discrimination, and we urge judicial systems to apply the CJEU's reasoning to other contexts where women are oppressed due to their sex," said Alyssa Ahrabare, Advocacy and Legal Lead of the European Network of Migrant Women.

Moving Forward:

National courts will now have to comply with the CJEU decision, making it concretely easier for Afghan women to obtain refugee status. As EU member states implement this ruling, it is essential that they adopt a comprehensive approach to asylum applications, which adequately includes women and girls' specific needs and circumstances. **This decision not only enhances protections for Afghan women but also reinforces the EU's commitment to upholding fundamental rights for all individuals fleeing persecution.**

Link to the decision: [CURIA - Documents \(europa.eu\)](https://eur-lex.europa.eu/curia/doclist/curia/doclist.do?numdoc=102022000010001)

