

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as refugees or as persons who otherwise need international protection and the content of the protection granted (repealed)

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

- 1 Acts of persecution within the meaning of article 1 A of the Geneva Convention must:
 - a be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
 - b be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
- 2 Acts of persecution as qualified in paragraph 1, can, *inter alia*, take the form of:
 - a acts of physical or mental violence, including acts of sexual violence;
 - b legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
 - c prosecution or punishment, which is disproportionate or discriminatory;
 - d denial of judicial redress resulting in a disproportionate or discriminatory punishment;
 - e prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
 - f acts of a gender-specific or child-specific nature.
- 3 In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

Article 10

Reasons for persecution

- 1 Member States shall take the following elements into account when assessing the reasons for persecution:
 - a the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
 - b the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

- c the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- d a group shall be considered to form a particular social group where in particular:
 - 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, and
 - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

- e the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2 When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Article 11

Cessation

- 1 A third country national or a stateless person shall cease to be a refugee, if he or she:
 - a has voluntarily re-availed himself or herself of the protection of the country of nationality; or
 - b having lost his or her nationality, has voluntarily re-acquired it; or
 - c has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
 - d has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
 - e can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;
 - f being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2 In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Article 12

Exclusion

- 1 A third country national or a stateless person is excluded from being a refugee, if:
 - a he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive;
 - b he or she is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.
- 2 A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:
 - a he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - b he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;
 - c he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
- 3 Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.