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Court of Justice of the European Union

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Judgment in Case C-199/12, C-200/12, C-201/12
X, Y, Z v Minister voor Immigratie en Asiel

Homosexual applicants for asylum can constitute a particular social group who may be persecuted on account of their sexual orientation

In that context, the existence of a term of imprisonment in the country of origin sanctioning homosexual acts may constitute an act of persecution per se, provided that it is actually applied.

Pursuant to a European directive¹, which refers to the provisions of the Geneva Convention², 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 may claim refugee status. In that context, the acts of persecution must be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights.

X, Y and Z are nationals of Sierra Leone, Uganda and Senegal respectively. They seek refugee status in the Netherlands, claiming that they have a well-founded fear of being persecuted in their countries of origin by reason of their sexual orientation. Homosexual acts are a criminal offence in those three countries and may lead to serious punishment, from heavy fines to life imprisonment in certain cases.

The Netherlands Raad van State (Council of State, Netherlands), which is hearing the cases at final instance, has asked the Court of Justice about the assessment of applications for refugee status under the provisions of the directive. The national court asks the Court of Justice whether third country nationals who are homosexuals may be regarded as forming a 'particular social group' within the meaning of the directive. Furthermore, it wishes to know how the national authorities should assess what constitutes an act of persecution against homosexual activities in that context, and whether the criminalisation of those activities in the applicant's country of origin, which may lead to imprisonment, amounts to persecution.

In its judgment today, the Court of Justice considers, first of all, that it is common ground that a person's sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. In that connection, the Court recognises that the existence of criminal laws specifically targeting homosexuals supports a finding that those persons form a separate group which is perceived by the surrounding society as being different.

However, in order for a violation of fundamental rights to constitute persecution within the meaning of the Geneva Convention it must be sufficiently serious. Therefore, not all violations of the fundamental rights of a homosexual applicant for asylum will necessarily reach this level of seriousness. In that context, the mere existence of legislation criminalising homosexual acts cannot be regarded as an act affecting the applicant in a manner so significant that it reaches the level of seriousness necessary for a finding that it constitutes persecution within the meaning of the directive. However, a term of imprisonment which accompanies a legislative provision which

¹ 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, p. 12).

² Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. It was supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967

punishes homosexual acts may constitute an act of persecution per se, provided that it is actually applied.

In those circumstances, where an applicant for asylum relies on the existence in his country of origin of legislation criminalising homosexual acts, it is for the national authorities to undertake an examination of all the relevant facts concerning that country of origin, including its laws and regulations and the manner in which they are applied. In carrying out that examination, those authorities must determine, in particular, whether, in the applicant's country of origin, the term of imprisonment provided for by such legislation is applied in practice.

As to whether it is reasonable to expect that in order to avoid persecution an asylum seeker should conceal his homosexuality in his country of origin or exercise restraint in expressing it, the Court replies that it is not. The Court considers that requiring members of a social group sharing the same sexual orientation to conceal it is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. Therefore, an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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