



Religious persecution as reason of granting international protection

Findings of the Court of Justice of the European Union

This exercise is based on the CJEU judgment in joined cases C-71/11, C-99/11, YZ.

Response to question 1

In the operative part of the judgment the CJEU stated:

- *not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an ‘act of persecution’ within the meaning of that provision of the Directive;*
- *there may be an act of persecution as a result of interference with the external manifestation of that freedom, and*
- *for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an ‘act of persecution’, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment (...).*

The CJEU also held that:

(...) the applicant’s fear of being persecuted is well founded if, in the light of the applicant’s personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

In the reasoning the CJEU held that:

57 Freedom of religion is one of the foundations of a democratic society and is a basic human right. Interference with the right to religious freedom may be so serious as to be treated in the same way as the cases referred to in Article 15(2) of the ECHR, to which Article 9(1) of the Directive refers, by way of guidance, for the purpose of determining which acts must in particular be regarded as constituting persecution.



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58 However, that cannot be taken to mean that any interference with the right to religious freedom guaranteed by Article 10(1) of the Charter constitutes an act of persecution requiring the competent authorities to grant refugee status within the meaning of Article 2(d) of the Directive to any person subject to the interference in question.

59 On the contrary, it is apparent from the wording of Article 9(1) of the Directive that there must be a 'severe violation' of religious freedom having a significant effect on the person concerned in order for it to be possible for the acts in question to be regarded as acts of persecution.

60 Acts amounting to limitations on the exercise of the basic right to freedom of religion within the meaning of Article 10(1) of the Charter which are provided for by law, without any violation of that right arising, are thus automatically excluded as they are covered by Article 52(1) of the Charter.

61 Nor can acts which undoubtedly infringe the right conferred by Article 10(1) of the Charter, but whose gravity is not equivalent to that of an infringement of the basic human rights from which no derogation can be made by virtue of Article 15(2) of the ECHR, be regarded as constituting persecution within the meaning of Article 9(1) of the Directive and Article 1A of the Geneva Convention. (...)

67 Accordingly, a violation of the right to freedom of religion may constitute persecution within the meaning of Article 9(1)(a) of the Directive where an applicant for asylum, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive. (...)

69 Given that the concept of 'religion' as defined in Article 10(1)(b) of the Directive also includes participation in formal worship in public, either alone or in community with others, the prohibition of such participation may constitute a sufficiently serious act within the meaning of Article 9(1)(a) of the Directive and, therefore, persecution where, in the country of origin concerned, it gives rise to a genuine risk that the applicant will, inter alia, be prosecuted or subject to inhuman or degrading punishment by one of the actors referred to in Article 6 of the Directive.

It can therefore be assumed that actions of the Chechen authorities against Aslan K. constituted a violation of freedom of religion. It can also be assumed that these violations constituted an act of persecution – namely unlawful deprivation of liberty or the use of torture constitute a serious violation of human rights. For this reason, Aslan K. met the conditions to be granted with international protection.

Response to question 2

In the reasoning of the judgment the CJEU held that:

62 For the purpose of determining, specifically, which acts may be regarded as constituting persecution within the meaning of (...) the Directive, it is unnecessary to distinguish acts that interfere with the 'core areas' ('forum internum') of the basic right to freedom of religion, which

do not include religious activities in public ('forum externum'), from acts which do not affect those purported 'core areas'.

63 Such a distinction is incompatible with the broad definition of 'religion' given by (...) the Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a 'severe violation' within the meaning of (...) the Directive include serious acts which interfere with the applicant's freedom not only to practice his faith in private circles but also to live that faith publicly.

64 That interpretation is likely to ensure that (...) the Directive is applied in such a manner as to enable the competent authorities to assess all kinds of acts which interfere with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they are sufficiently severe as to be regarded as amounting to persecution.

65 It follows that acts which, on account of their intrinsic severity as well as the severity of their consequences for the person concerned, may be regarded as constituting persecution must be identified, not on the basis of the particular aspect of religious freedom that is being interfered with but on the basis of the nature of the repression inflicted on the individual and its consequences (...).

66 It is therefore the severity of the measures and sanctions adopted or liable to be adopted against the person concerned which will determine whether a violation of the right guaranteed by Article 10(1) of the Charter constitutes persecution within the meaning of the Directive.

It should be assumed that the existence of two aspects of freedom of religion (external and internal) is not relevant to the assessment of the existence of persecution. Therefore it shouldn't be taken into consideration by the administrative authority.

The question whether the violation of freedom of religion constitutes an act of persecution depends on the character of actions taken by the perpetrators of persecution, and not in what aspect this freedom was violated. Thus, the authorities could not refuse to grant Aslan K. protection, motivating that he could avoid persecution by practicing his religion in a private place.

Moreover, as the CJEU underlined in the operative part of its judgment

(...) in assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

Follow-Up Question

In your national context, how do you deal with such situations?

Guidance for facilitators

- The facilitator distributes pages with case description (fact, law, questions).
- The participants should read the background info and discuss the questions.
- After the participants have discussed the questions above, the facilitator should present the findings of the CJEU + the follow-up question and subsequently distribute the pages with case solution (findings of the CJEU).
- The participants should discuss the findings and the follow-up question.
- The results of the working group will subsequently be presented in the plenum.

Note: Before starting, the participants should appoint one note taker and one person to present the results of their working group to the plenum.