

Fleeing Homophobia
Attachment 8

English translation of pages 21 and 22 of NC Guidelines 2005

SOCIAL GROUP

The concept of Social Group has been intentionally phrased in an open way and it must be interpreted extensively.

The social group can be defined both according to a fundamental characteristic (such as gender, sexual orientations, age, memberships of a family unit or past experience) and to a factor so fundamental to identity or conscience that a person belonging to that group should not be forced to renounce it, as for instance, in the case of a membership to a union [...].

The concept is not confined to specific groups of persons being defined in a restraining way. Moreover, it is not required a membership relation established on a voluntarily basis nor a factual cohesion among members.

References to gender or sexual orientation do not imply that this reason of persecution necessarily applies to all women or homosexuals. Its application shall depend on particular circumstances and to the situation existing in the country of origin. It shall depend also on the characteristic of the act of persecution and the victim.

Interpretation of this concept should extend to groups of individuals deemed, by their law, to be members of inferior classes. In this way, the legal system would implicitly tolerate the persecution from private individual or other non-state persons or group of individuals to whom the law is applied discriminately. Interpretation should also be extended to individuals without a protection status, as their State refuses to apply the laws that should grant protection to them.

Persecution may stem from membership to a specific social group when it may be perceived as not loyal to the Government or when for political views, experiences or financial conditions of its members or for the group itself, that membership is considered as a threat to the government activities.

However, granting a protective status requires the existence of particular circumstances justifying the suspect of persecution, as the fact of simply belonging to a specific social group is not sufficient.

Listed below there are some judicial reasoning identifying the social groups through the gender, sexual orientation, family unit, class, caste or voluntary association criteria.

The EC Directive pays particular attention to the definition of social group. Article 10 states that a group represents a particular social group when its members 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. Such a group has a distinct identity in the country of origin where it is perceived as being different by the surrounding community.

The following paragraph, even in more details, specifies that 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. In this respect, the EC Directive highlights the fact that sexual orientation cannot be understood to include acts considered to be criminal under the domestic law of the Member States. It is possible, however, to refer to some gender related aspects, without by themselves alone creating a presumption for the applicability of the Article.