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Perception of distinct identity

Perceiving the group as a distinct one does not in itself imply a negative connotation.

Perception by the surrounding society may be influenced by culture, customs or traditions. This means that to assess this criterion, case officers must take into due consideration the relevant country of origin information. The ‘distinct identity’ criterion may be fulfilled with regard to one country and not another.

The existence of criminal law, which specifically targets certain persons, would support a finding that those persons should be regarded as forming a particular social group. Practices of discrimination may also demonstrate that the criterion of ‘distinct identity’ is fulfilled.

Specific considerations

Gender, gender identity and sexual orientation

For the purposes of defining a particular social group, issues arising from an applicant’s **gender, including gender identity and sexual orientation**, which may be related to certain legal traditions and customs, resulting in, for example, genital mutilation, forced sterilisation or forced abortion, should be given due consideration. This is insofar as they are related to the applicant’s well-founded fear of persecution.

Sexual orientation/sexual identity. This refers to a person’s capacity for profound emotional, affectional and/or sexual attraction to and/or intimate and sexual relations with individuals of a different gender, the same gender or more than one gender. It may be understood as a continuum between exclusive heterosexuality at one end and exclusive homosexuality at the other, with bisexuality in between. The understanding of sexual orientation varies significantly in different countries and cultures.

Sexual orientation is an intrinsic characteristic of the individual and there is no doubt that it may be a common characteristic for the definition of a particular social group.

It should be noted that sexual orientation cannot be understood to include acts considered criminal in accordance with national law of the Member States.

Gender identity. This refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Gender goes beyond the biological sex of a person. It is the social, cultural and psychological construct that societies build on the basis of sex and refers to the ‘roles’ prescribed to the two sexes.

Persecution based on gender, gender identity and sexual orientation often involves non-state actors, including the family of the applicant.

Additional guidance on what groups constitute particular social groups may exist at national level.

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