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Introduction

The European Union’s Common Asylum Policy, established under Article 3 TEU and Article 78 TFEU, is a shared competence aimed at ensuring a uniform protection framework across Member States. It is grounded in the principle of non-refoulement and shaped by European values and fundamental rights.

The Common European Asylum System (CEAS) is based on the 1951 Geneva Convention and the 1967 Protocol, which define refugee status and prohibit returning individuals to territories where they face persecution.

Although these instruments do not oblige States to grant asylum, the CEAS developed harmonised criteria through Directives 2011/95/EU and 2013/32/EU, outlining qualification standards and procedural safeguards.

Article 18 of the Charter of Fundamental Rights of the EU recognises asylum as a fundamental right, with the CJEU ensuring consistent interpretation of legal concepts such as “acts of persecution” or “membership of a particular social group.”

Central to this discussion is whether gender-based discrimination can, per se, justify asylum. In light of the Taliban regime’s systemic oppression of women, the CJEU in Cases C-608/22 and C-609/22 addressed whether Afghan women, solely by reason of their gender and nationality, could be presumed to have a well-founded fear of persecution warranting refugee status under EU law.



Case Law

CJEU, Judgment of the Court (Third Chamber) 4 October 2024, Joined cases C-608/22 and C-609/22, *AH and FN v Bundesamt für Fremdenwesen und Asyl*, ECLI:EU:C:2024:828

CJEU, Judgment of the Court (Grand Chamber) 11 June 2024, Case C-646/21, *K and L v Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2024:487



Legislation

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 (2004). Official Journal of the European Union L 304, pp. 12–23

Council Decision (EU) 2023/1076 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement (2023), Official Journal of the European Union L 1431, pp. 4–6.

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (2011), Official Journal of the European Union L 337, pp. 9-26.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (2013), Official Journal of the European Union L 180, pp. 60–95.

United Nations (1951) Convention relating to the Status of Refugees.

United Nations (1967) Protocol relating to the Status of Refugees.



Conclusion

Following the Taliban’s return to power, Afghan women and girls have faced systemic persecution, rendering gender equality illusory. Their exclusion from public life, restrictions on movement and education, and lack of protection from gender-based violence constitute violations of human dignity and justify their flight and fear of return.

In its 2024 ruling (*AH and FN v Bundesamt für Fremdenwesen und Asyl*), the CJEU held that the cumulative impact of these measures qualifies as “acts of persecution” under Directive 2011/95/EU. It recognised Afghan women as a “particular social group” entitled to international protection, without requiring an individualised assessment beyond gender and nationality.

This interpretation, consistent with the Geneva Convention, CEDAW, and the Istanbul Convention, affirms that Member States may presume a well-founded fear of persecution. The judgment strengthens the EU’s human rights framework, reinforcing the principle that systemic gender-based oppression constitutes sufficient grounds for refugee status under Union law.

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