

The religiously qualified international protection: the Conversions as criteria for granting refugee status.

The Court of Luxembourg is called upon, out of court, to interpret Article 5, paragraph 3, of Directive 2011/95/EU, laying down rules on the qualification of third-country nationals or stateless persons as beneficiaries of international protection, on a uniform status for refugees or persons entitled to subsidiary protection and on the content of the protection granted. The question arises in Austrian territory following the continuous requests for asylum, submitted by an Iranian JF citizen, converted to Christianity, persecuted religion in Iran, which are constantly rejected by the Bundesamt für Fremdenwesen und Asyl (Federal Office for the Law of Aliens and the Right to Asylum, Austria), compared with the offer of a subsidiary protection guarantee that allows the applicant only a temporary residence permit, once the minimum requirements assessed on an individual basis. Upstream of the refusal of the Austrian administration to qualify the applicant, with refugee status under the aforementioned Directive, is the consideration of the lack of an essential precondition: or that at the time of his transfer to Austrian territory was not configurable the problem of the persecution of the Christian faith. Given this consideration, the request is even perceived as an abuse or instrumentalization. The courts overturn the positions taken by the administration. The requested Administrative Court states that the lack of evidence of intention to undertake a conversion process, already demonstrated in the country of origin, is not sufficient to deny recognition of refugee status. Finally, on application to the Verwaltungsgerichtshof (Administrative Court, Austria), the receiving court suspends with a reference for a preliminary ruling for the interpretation of European legislation in the sense that the aforementioned art. 5 precludes "national legislation making the recognition of refugee status conditional upon a repeated application under Article 2 letter q) of Directive 2013/32, based on a risk of persecution arising from circumstances which the applicant himself has established after departure from the country of origin, on the dual condition that those circumstances are covered by the activities permitted in the Member State concerned and constitute the expression, and the continuation of a conviction of the applicant already manifested in the country of origin". The application of the legislation by the Member States is subject to the exercise of a mere option, in addition to the clarification that "normally" refugee status is inapplicable if the risk of persecution claimed by the applicant in support of a subsequent application (to the main one) is based «on circumstances determined by the applicant himself after departure from the country of origin», does not exclude a different assessment by the local authorities and, therefore, the granting of the status. Invoked the application of the Geneva Convention art. 33, and noted a certain ambiguity of the translation of the term «unbeschadet» contained in the Directive, which may mean «in accordance with», but also, vice versa, «without taking into account», the Court pointed out that the individual assessment of the case did not reveal an abusive intention to exploit the applicable procedure and, even more incisively, states that the rule in question cannot

be interpreted as introducing a presumption that any subsequent application based on circumstances determined by the same applicant after departure from the country of origin, constitutes an abuse, a presumption that the applicant would have the burden of rebutting. It is up to the local administration to assess the likelihood of the asylum seeker being subjected to persecution on religious grounds by returning to his country of origin, and therefore, since the provisions of the Geneva Convention, recalled by art. 5 of the Directive, do not admit applications with reservation, no contracting State will expel or reject, in any way, a refugee towards the borders of the territories where his life, or his freedom, would be threatened because, in particular, of his religion. In conclusion art. 5 is to be interpreted as constituting an obstacle to national legislation making the granting of refugee status for persecution of a religious nature subject to the fact that the risk conditions laid down by the applicant (in this case, his conversion to Christianity, officially recognized here as a persecuted religion) are the expression and continuation of a conviction of the applicant already manifested earlier in the country of departure. In concluding the Court of Luxembourg with this decision, it has the dual effect of combining the right to international protection with the right to religious freedom, which becomes the case where there is a risk of religiously oriented persecution, requirement to obtain refugee status in Europe, and confirm the worrying figure of the escalation of persecution, in some Islamic countries, against members of Christian churches.

Cristiana Maria Pettinato

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=283282&pageIndex=0&doclang=IT&mode=req&dir=&occ=first&part=1&cid=187436>