

## WiRL Public Seminar Series 2023/2024

# Seminar Two: Coming in from the Cold? Group-based Refugee Determination for Women at Risk of Gender-based Violence

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# Group-based Refugee Status Determination

- Refugee Convention silent
- Historically, reliance on group-based refugee protection (country of origin and lack of protection)
- Myth of difference ([Chimni 1998](#); Einarsen 2011)
- UNHCR (2015) *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status* ([HCR/GIP/15/11](#))
- Less resource intensive
- Addresses backlog of asylum decisions
- Use of “risk categories” in Country of Origin Information (COI) and Country Guidance (in the EU)

# Recent Court of Justice of the European Union (pending) Cases

- Case C-621/21: *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*. CJEU judgment, 16 January 2024
- Cases C-608/22 and C-609/22 (pending): *AH and FN v Bundesamt für Fremdenwesen und Asyl and Others*. AG de la Tour Opinion, 9 November 2023
- Case C-646/21 (pending): *K, L v Staatssecretaris van Justitie en Veiligheid*. AG Collins Opinion, 13 July 2023

# The Scope of Individual Assessments

## AH & FN (C-608/22 and C-609/22)

- Supreme Administrative Court of Austria: is it *“sufficient, for the granting of asylum status, that a woman is affected by those measures in the country of origin merely on the basis of her gender, or is it necessary to assess a woman’s individual situation in order to determine whether she is affected by those measures– to be considered in their entirety – within the meaning of Article 9(1)(b) of Directive 2011/95/EU?”*
- AG de la Tour Opinion:
  - Women are at risk solely on account of their presence in Afghanistan (§73)
  - Discriminatory measures individually reaching the level of seriousness (persecution) (§73)
  - “In such circumstances, in my view, there is nothing to prevent a competent authority from considering, in the light of all the information at its disposal, that it is not necessary to establish that the applicant is targeted because of distinctive characteristics other than her gender” (§74)

# The Scope of Individual Assessments

- A false dichotomy between group-based approaches and individual assessments? (Querton, Consolidating Group-Based Refugee Protection, 12 February 2024, <https://verfassungsblog.de/consolidating-group-based-refugee-protection/>)
- Article 4 EU Qualification Directive 2011
  - 3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account: [...]*
    - (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;*
- In WS (Case C-621/21), the CJEU said: “In accordance with Article 4(3) of that directive, the assessment of whether an applicant’s fear of being persecuted is well-founded must be individual in character and be carried out on a case-by-case basis with vigilance and care, solely on the basis of a specific evaluation of the facts and circumstances [...]” (§60)

# “Different Assessment Methods”

- Not a departure from previous CJEU approaches (see *Elgafaji* (Art. 15(c)))
- Article 3 EU Qualification Directive 2011
 

*Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.*
- “Those standards may, inter alia, consist in relaxing the conditions under which refugee status is granted and must not undermine the general scheme or objectives of that directive” (AG de la Tour, §76, relying on C-91/20 *LW v Bundesrepublik Deutschland*, 9 November 2021 and C-652/16 *Ahmedbekova*, 4 October 2018)
- Also reflected in practice of the European Court of Human Rights (See for example *NA v the United Kingdom* (2009) 48 EHRR 15, para. 116)
- Important opportunity for CJEU to consolidate principle of refugee protection

# Potential Pitfalls of Group-based Refugee Determination

- Continued Over-Reliance on the Ground of ‘Particular Social Group’ (C 621/21, C-646/21, C-608/22 and C-609/22)
- Restrictive categorisation of the group at risk (e.g.: women without a male network - Querton, [Non-State Actors of Protection](#), RSQ 2023)
- Group-based approaches to refusals (e.g.: Zimbabweans in South Africa - [Vanyoro](#), RSQ 2023)
- Failing to give proper attention to individual characteristics and circumstances

# Group v Individual RSD Procedures?

- Burson claims most refugee status determination procedures have individual and group aspects to it ([2021](#))
- Prima facie determinations with lighter burden of proof, or simply on basis of single characteristic
- Global Compact on Refugees 2018, para. 61

*In the context of large refugee movements, group-based protection (such as prima facie recognition of refugee status) can assist in addressing international protection needs, where considered appropriate by the State.*
- However, requirement of singling-out and group-based protection requires high threshold (Querton, [Conflict Refugees](#), CUP 2023)