



Conversion based asylum claims

European notes on expert advice and expert reports

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1. Introduction

At the Dutch *Gave Foundation* we have been campaigning for about three years for the improvement of asylum procedures and decisions concerning Christians from countries where they face the risk of religious persecution.

This short note summarizes European directives and judgements concerning the availability of expert advice to immigration officials and the acceptance of third party statements from churches and experts.

2. Immigration officials must be able to seek expert advice

When an immigration official is to decide on a conversion based asylum claim he must be able to seek the advice of a theologian, meaning that either the immigration authority employs such experts or has a list of theologians who have agreed to give advice when being called upon.

Also, their advice must be disclosed to the applicant and his legal assistance or representative.

2.1. DIRECTIVE 2013/32/EU (Procedure directive)

Article 10 section 3: *Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:*

(...)

d. the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

Article 12 section 1:

With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

(...)

d. they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;

Note the following:

- ▶ Seeking advice is not mandatory, but the possibility to do so is.
- ▶ Such expert advice is part of the motivation of a decision and must thus be open to examination on behalf of the applicant.
- ▶ Indirectly, these statements in the procedure directive also support the right of applicants to seek and use expert advice themselves (section 2) on grounds of 'equality of arms'.

3. Third party statements must be taken into account

This includes statements from theologians, pastors and churches concerning an applicant's conversion or faith.

3.1 Directive 2011/95/EU (Qualification Directive)

Article 4 section 1 and 2:

1 Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.

2 The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

Note the following:

- ▶ Statements from theologians, pastors and churches concerning an applicant's conversion or faith are documents regarding the applicant's background and reasons for applying for international protection (in conversion based asylum claims) and thus relevant elements according to the qualification directive.

3.2 ECHR 43611/11 (F.G. v Sweden) 23rd March 2016

Section 144: In case of a sur place conversion, the authorities have to assess *whether the applicant's conversion was genuine and had attained a certain level of cogency, seriousness, cohesion and importance.*

Section 157: *Moreover, before the Grand Chamber the applicant has submitted various documents which have not been presented to the national authorities, for example, his written statement of 13 September 2014 (about his conversion, the way he currently manifests his Christian faith in Sweden and how he intends to manifest it in Iran if the removal order is executed), and the written statement of 15 September 2014 by the former pastor at the applicant's church (see above §§ 96-97). In light of the material presented before the Court and of the material previously submitted by the applicant before the national authorities, the Court concludes that the applicant has sufficiently shown that his claim for asylum on the basis of his conversion merits an assessment by the national authorities. It is for the domestic authorities to take this material into account, as well as any further development regarding the general situation in Iran and the particular circumstances of the applicant's situation.*

Note the following:

- ▶ domestic authorities will have to accept third party statements like those from pastors and churches as evidence for the claimed conversion.
- ▶ 'domestic authorities' in the definition of the ECHR includes both the government and the courts. This is derived, e.g. from decision 70602/14 (J.G. v. Netherlands) 5th July 2016, where section 39 uses 'domestic proceedings' and 'national authorities' as reference to all national parties involved in protecting the applicant against *refoulement* that are further defined (in section 47) as the administrative and judicial authorities.

(In the Netherlands at least this observation is important as courts tend not to accept third party statements as relevant evidence although the Immigration Authority does do so according to official policy).