

[Home](#) > Belgium - X v. Commissioner-General for Refugees and Stateless Persons, 26 November 2019, N° 229 288

Belgium - X v. Commissioner-General for Refugees and Stateless Persons, 26 November 2019, N° 229 288

Country of Decision:

Belgium

Country of Applicant:

Ivory Coast

Date of Decision:

26-11-2019

Citation:

Belgian Council for Alien Law Litigation, 26 November 2019, N° 229 288

Court Name:

Council for Alien Law Litigation

Keywords:

Assessment of facts and circumstances

Gender Based Persecution

Membership of a particular social group

Previous persecution

Real risk

Well-founded fear

Relevant Legislative Provisions:

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [1] > [Article 2](#) [2]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [1] > [Article 4](#) [3]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [1] > [Article 9](#) [4]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [1] > [Article 10](#) [5]

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [1] > [Article 13](#) [6]

Headnote:

The fact that an asylum applicant has already been persecuted in the past or has already suffered serious harm is a serious indication of the well-founded fear of the claimant, or of the real risk of suffering serious harm, unless there is good reason to believe that this persecution or serious harm will not happen again.

When an applicant has suffered female genital mutilation in her country of origin, there is a rebuttable presumption that she will again be the victim of such persecution because of her membership in the social group of Ivorian women.

Facts:

The applicant, an Ivorian national, was subject to female genital mutilation by her family at twelve years old. At age fourteen, she was forced to marry her late husband, who had two other wives, and was slaved around the house. After the death of her husband in 2016, her family announced that she was to marry his younger brother. With the help of her uncle, she arrived in Brussels alone in January 2018 and submitted an application for international protection on 2 February 2018.

In February 2019, the Commissioner-General for Refugees and Stateless Persons rejected her application noting a lack of credibility regarding her allegedly forced marriage, by reason of the incompatibilities between her allegations and the objective information obtained by the authorities. It also mentioned considered the fear that she or her daughter would endure female genital mutilation in Ivory Coast not to be very probable, because her daughter did not accompany the applicant in Belgium.

The applicant appealed against this decision before the Council.

Decision & Reasoning:

The Council recalled that the Commissioner was under the obligation to enumerate the reasons which led him to believe that the applicant had not established her well-rounded fear of being persecuted or a real risk of serious harm if she was to return to the Ivory Coast. Under article 48/7 of the 15 December 1980 Belgian Law on Aliens, the fact that an asylum applicant has already been persecuted in the past or has already suffered serious harm is a serious indication of the well-founded fear of the claimant, or of the real risk of suffering serious harm, unless there is good reason to believe that this persecution or serious harm will not happen again.

In view of the very nature of the harm in this specific case, which creates a risk of repetition, and the seriousness of female genital mutilation in that it is an irreversible attack on the physical integrity of the woman, the Court found that the presumption underlying article 48/7 was not rebutted in the present case. It ruled that the mutilation undergone constituted sufficient proof of the risk that she will again be the victim of such persecution, by reason of her membership in the social group of Ivorian women. The decision of the Commissioner-General was overturned and the applicant was recognised as a refugee.

Outcome:

Appeal granted.

Observations/Comments:

For a statistic analysis of FGM-based asylum claims in Europe, see (french) :

<https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5163edf14> [7]

For a detailed account of the situation in Belgium, see :

<https://plus.lesoir.be/262997/article/2019-11-26/excision-et-asile-les-filles-reconnues-refugiees-sont-elles-privees-du-droit-la> [8]

This summary was written by Sinéad Gough, LLM Student at Queen Mary University of London.

Attachment(s):

[SKM_554e19120512210 - FGM presumption of future persecution.pdf](#)[9]

Other sources cited:

Décision de refus du statut de réfugié et de refus de la protection subsidiaire

Désignation BAJ

Article publié sur [www.http://jacquesrogershow.com](http://jacquesrogershow.com) [10]

COI Focus

Article publié sur Fondation GAMS

National / Other Legislative Provisions:

[15 December 1980 Law on Aliens \(Law \(Loi du 15 décembre 1980 sur l'accès au territoire le séjour](#) [11]

[l'établissement et l'éloignement des étrangers\)](#) [13]

[Articles 48 to 48/7](#) [14]

Links:

[1] <https://www.asylumlawdatabase.eu/node/4038>

[2] https://www.asylumlawdatabase.eu/node/4038#toc_70

[3] https://www.asylumlawdatabase.eu/node/4038#toc_95

[4] https://www.asylumlawdatabase.eu/node/4038#toc_140

[5] https://www.asylumlawdatabase.eu/node/4038#toc_153

[6] https://www.asylumlawdatabase.eu/node/4038#toc_188

[7] <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5163edf14>

[8] <https://plus.lesoir.be/262997/article/2019-11-26/excision-et-asile-les-filles-reconnues-refugiees-sont-elles-privees-du-droit-la>

[9] https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/SKM_554e19120512210%20-%20FGM%20presumption%20of%20future%20persecution.pdf

[10] <http://www.http/jacquesrogershow.com>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/15-december-1980-law->

aliens-law-loi-du-15-d%C3%A9cembre-1980-sur-l%E2%80%99acc%C3%A8s

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/le-s%C3%A9jour>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/l%E2%80%99%C3%A9tablissement-et-l%E2%80%99%C3%A9loignement-des-%C3%A9trangers>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/articles-48-487>