



Resolution 1765 (2010)¹

Final version

Gender-related claims for asylum

Parliamentary Assembly

1. Fifty-two per cent of all refugees in Europe are women or girls. Many of them seek asylum due to persecution that is specific to their being female. These people deserve to be treated in a way that recognises their particular needs and any persecution and violence they may have faced due to their gender.

2. Gender-related persecution, where the victims are persecuted because they are women, and gender-based violence, such as rape, can give rise to international protection claims. According to non-governmental organisations (NGOs) and international organisations, states do not always take into account the gender dimension when assessing asylum applications. Persecution experienced by women and girls often differs from that experienced by men, but the asylum system still tends to regard it through the lens of male experiences.

3. Women and girls may face various forms of gender-related harm, persecution and gender-based violence. These include sexual exploitation, forced marriage, so-called “honour crimes”, forced abortion, forced pregnancy and forced sterilisation. During armed conflict, women and girls may be subjected to physical, sexual and psychological violence, including rape. Two other forms of harm that women, and girls in particular, may face are female genital mutilation and trafficking in human beings. They may also be victims of so-called honour crimes. The perpetrators of gender-based forms of violence (or harm) can be non-state as well as state actors.

4. Individuals who are gay, lesbian, bisexual or transgender also face particular forms of gender-related persecution and gender-based violence and often have to hide their sexual orientation or risk being harassed, or in extreme cases being beaten and even killed.

5. The Parliamentary Assembly has previously addressed different forms of gender-based violence, in particular in its [Resolution 1635 \(2008\)](#) on combating violence against women: towards a Council of Europe convention and [Resolution 1662 \(2009\)](#) on action to combat gender-based human rights violations, including the abduction of women and girls. Although many member states are stepping up their work in order to streamline a gender understanding into public decision making, policy and operations, this understanding does not always translate into the asylum process.

6. In addition to the problem of gender issues not being properly taken into account in the assessment of asylum claims, the asylum procedure in member states often makes it difficult for women to tell their full story. A woman who faces a male interviewer or interpreter can be reluctant to speak freely and give a full account of the violence she has experienced, whether gender based or not. Moreover, the officials involved in the asylum procedure often lack adequate training on gender issues and therefore fail to ask the right questions or to analyse the evidence before them properly. This problem may be exacerbated by the use of country of origin information that ignores gender issues or has little gender relevance. Furthermore, the social situation of

1. *Assembly debate* on 8 October 2010 (36th Sitting) (see [Doc. 12350](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mr Zernovskij; and [Doc. 12359](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Hägg). *Text adopted by the Assembly* on 8 October 2010 (36th Sitting). See also [Recommendation 1940 \(2010\)](#).



a woman in the asylum process may also work against her, whether in terms of her situation in detention or her situation in society in the host country, where she may continue to face forms of discrimination and even violence.

7. The Assembly recalls the recommendations set out in its [Resolution 1695 \(2009\)](#) on improving the quality and consistency of asylum decisions in the Council of Europe member states. It also recalls its [Resolution 1662 \(2009\)](#) and emphasises the relevance of these texts in tackling the issue of gender-based violence and gender-based persecution in asylum claims.

8. Women and girls seeking asylum in Council of Europe member states have the right to have their protection claims assessed by an asylum system that is sensitive, in all aspects of its policy and operation, to the particular forms of persecution and human rights abuses that women face because of their gender. Therefore, the Assembly calls on member states to:

8.1. ensure that gender-based violence is taken into account under the five different grounds of persecution (race, religion, nationality, membership of a particular social group or political opinion) in any asylum determination process and that “gender” is specifically included in the notion of a “particular social group” under the refugee definition set out in the 1951 UN Convention relating to the Status of Refugees (Geneva Convention), preferably by law, or at least in practice;

8.2. take into account that not only women and girls face gender-based violence and gender-related persecution, but that men and boys may also be victims;

8.3. take into account that gay, lesbian, bisexual or transgender persons are increasingly facing gender-based violence and gender-related persecution.

9. In order to ensure that asylum procedures are sufficiently sensitive to gender-related claims, the Assembly further recommends that member states:

9.1. identify, as early in the process as possible, women and girls that may have faced gender-based violence and gender-related persecution, and where appropriate ensure that they are registered in their individual capacity in order to remain independent of their husbands or male relatives when pursuing their applications;

9.2. ensure that women who might suffer trauma due to gender-based or other forms of violence are given sufficient time to reflect and recuperate before the asylum procedure is initiated, if necessary on the basis of a special temporary residence permit, which should, however, not preclude or replace the long-term residence permit that could be granted once refugee status has been established;

9.3. ensure that women are automatically provided with assistance and interpretation by female counsellors and interpreters when formulating their asylum claims and filling out their applications;

9.4. ensure that women fill out their asylum application themselves and that this is not done for them by husbands or other relatives;

9.5. similarly, avoid the presence of spouses and relatives during the asylum interview, and ensure the confidentiality of the asylum process if the victim of gender-based or other forms of violence requests it or if the sensitivity of the case so requires, including by holding in camera hearings during the appeal process;

9.6. guarantee that interviewers and interpreters dealing with female asylum seekers are always women. If for any reason this is not possible, the female asylum seeker should be informed of the right to have a woman interviewer or interpreter;

9.7. ensure that the asylum interview is carried out in a gender-sensitive way and, in particular, that questions relevant to gender-based violence and gender-related persecution are asked;

9.8. ensure that women are not hindered from accessing asylum procedures by lack of childcare opportunities or problems in queuing and obtaining appointments for their asylum claims, etc.

10. In order to ensure that the decision process sufficiently takes into account gender-related asylum claims, the Assembly also recommends that member states:

10.1. ensure that country of origin information is up to date on gender-based violence and gender-related persecution issues;

10.2. ensure that the asylum determination is carried out by an official who has received adequate training with a view to properly detecting the occurrence of gender-based violence and gender-related persecution that may give the right to refugee or other status;

- 10.3. take fully into consideration that the majority of gender-based violence and gender-related persecution is inflicted by private actors, but that the state retains the responsibility to protect victims, whether or not it is able to do so;
 - 10.4. take into account that a woman who has chosen not to avail herself of the protection of the state from which she is fleeing might have done so for fear of retaliation and further abuse (for example by male relatives), and make sure that this does not prejudice her claim for refugee status;
 - 10.5. restrict the use of internal flight alternatives for asylum seekers who invoke gender-related claims, taking carefully into account the availability of state protection in the area of relocation and the safety of the route, as well as the prevailing cultural and social conditions in the country and the possibilities to earn a living;
 - 10.6. ensure that claims for asylum on the grounds of gender-based violence are examined under the relevant procedures for acquiring refugee status under the 1951 Geneva Convention; however, if dismissed, it should still be possible to examine them under complementary forms of protection;
 - 10.7. consider indiscriminate sexual violence in the context of armed conflicts as a form of persecution liable to engage the 1951 Geneva Convention and, in any case, as sufficient grounds for granting a complementary form of protection;
 - 10.8. recognise cumulative discrimination as a form of persecution for the purposes of the 1951 Geneva Convention and, in any case, as sufficient grounds for granting a complementary form of protection;
 - 10.9. recognise that some forms of domestic violence can amount to persecution for the purposes of the 1951 Geneva Convention and/or for the granting of a complementary form of protection, in particular when such violence reaches a certain level of severity and when the authorities are unable or unwilling to protect the victim.
11. The Assembly considers that, in the asylum process, member states should, in particular, take into account the special problems faced by:
 - 11.1. victims of trafficking, notably women and girls, and in this respect:
 - 11.1.1. ensure that trafficking in human beings, in particular for sexual exploitation, is considered as a form of persecution on which a claim for asylum can be based;
 - 11.1.2. ensure that the collaboration of the woman or girl concerned with the police, prosecutor or judiciary should not be a precondition for the granting of asylum or other complementary form of international protection;
 - 11.2. victims or potential victims of female genital mutilation, and in this respect:
 - 11.2.1. recognise female genital mutilation and the risk of female genital mutilation as potential grounds for an asylum claim;
 - 11.2.2. take into account a well-founded fear of female genital mutilation concerning a daughter born after the flight of her parents, even when the parents have been in the country of asylum for some time;
 - 11.3. victims of rape, torture and sexual violence, and ensure, in particular, that they are exempt from accelerated asylum procedures and that they are given access to appropriate social and psychological care;
 - 11.4. victims or potential victims of forced sterilisation, and in this respect ensure that forced sterilisation is recognised as a potential ground for an asylum claim.
 12. Bearing in mind the particular vulnerability of female asylum seekers in relation to their social and legal situation before, during and after the asylum process, member states should ensure that:
 - 12.1. the physical safety of asylum-seeking women and girls is guaranteed, in particular if they are provided with collective accommodation or held in detention;
 - 12.2. female asylum seekers are provided with work permits to allow them independence and to avoid increasing their vulnerability and making them targets for exploitation.

13. In order for member states to ensure that gender-based violence and gender-related persecution are adequately taken into account in the asylum process, the Assembly urges member states to:

13.1. render their asylum systems and asylum procedures gender sensitive, including by providing compulsory training to officials;

13.2. undertake a gender-impact assessment of all current and proposed asylum policies and procedures and make adjustments to address discriminatory or negative effects due to gender;

13.3. collect and analyse statistics with regard to gender-based violence and gender-related persecution in asylum claims;

13.4. ensure that all asylum statistics are sex-disaggregated;

13.5. publish national asylum precedents concerning gender-based violence and gender-related persecution as a means of raising awareness and ensuring greater quality and consistency in European asylum systems.

14. The Assembly recommends that member states take all necessary measures to tackle the roots of gender-based violence and gender-related persecution, both within their own borders and also in countries of origin.