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GENDER EQUALITY COMMISSION (GEC)

Protecting the rights of migrant, refugee and asylum-seeking
women and girls

An overview of Council of Europe legal and policy standards,
actions and practical tools

Introduction

1. Protecting the rights of migrant, refugee and asylum-seeking women and girls is one of the six strategic objectives of [the Council of Europe Gender Equality Strategy 2018-2023](#).
2. The growing number of migrant, refugee and asylum-seeking women, and the precarious situation in which they are, raise concerns about their personal, physical and sexual safety and security – especially when they travel on their own, are pregnant, with small children, or are subject to intersectional discrimination. Due consideration should be given to their needs and circumstances and gender-responsive measures should be adopted to prevent discrimination, violence, harassment, trafficking and other forms of exploitation and abuse – including in times of crisis and natural disasters. In addition, measures need to be taken to ensure that migrant, refugee and asylum-seeking women have access to their human and social rights in relation to individual freedom, employment, housing, health, education, social protection and welfare where applicable; and access to information about their rights and the services available.
3. Victims of trafficking and gender-based violence among migrant, refugee and asylum-seekers need to be promptly identified as such and provided with adequate and gender-sensitive protection, treatment and care. Particular attention needs to be provided to girls and boys in this context.
4. Council of Europe and other international instruments should serve as a blueprint for all efforts and measures undertaken by the member States to protect the human rights of migrant, refugee and asylum-seeking women and girls. In particular, the [Istanbul Convention](#), the [Convention on Action against Trafficking in Human Beings](#), the [Lanzarote Convention](#), and the 1951 International Convention relating to the Status of Refugees, as well as relevant resolutions and reports of the Parliamentary Assembly of the Council of Europe on protecting refugee women and girls from gender-based violence and migration from a gender equality perspective, should be at the heart of efforts to protect and promote the rights of migrant, refugee and asylum-seeking women, girls and boys.
5. It is highly important to mainstream gender equality in all integration measures, so that both migrant women and men are aware of the need to respect and uphold gender equality law and policy, even if they do not correspond to the situation in their countries of origin. This would foster integration in European societies and labour markets and benefit all women and men, girls and boys. This work should be part of a general effort to make gender equality a norm accepted by both women and men in every society.

6. Migrant and asylum-seeking women and girls have specific protection needs. They may be fleeing gender-based violence but be unable or unwilling to disclose relevant information during a refugee determination process that does not respect gender and cultural sensitivities. Furthermore, women are often exposed to sexual harassment, violence and exploitation, and may be forced to silence to secure their own survival.

Council of Europe legal and policy standards, actions and practical tools

7. The European Convention on Human Rights and the European Social Charter¹ include non-discrimination clauses on the basis of sex² and rights that are directly relevant to migrant, refugee and asylum-seeking women and girls in the jurisdiction of Council of Europe member States.
8. The European Court of Human Rights (the Court) has indicated that immigration rules that discriminate on the basis of the sex of migrants already within the jurisdiction of the destination country result in a violation of the right to family life³. The Court has found a violation of the right to an effective remedy in the discriminatory treatment of displaced persons on the ground of sex, whereby refugee cards (and thus access to housing assistance) were denied to the children of displaced women, but not to the children of displaced men.⁴ The Court⁵ has also found that segregated areas for men and women in administrative detention facilities should be provided, as well as a gender-balance in staff ratios at those centres, and their adequate training on gender-sensitive issues.
9. One of the first Committee of Ministers Recommendations in the field of gender equality addressed the particular social, cultural and educational needs of migrant women, including their living and working conditions in the territory of member states (see Recommendation No. R(79)10 of the Committee of Ministers concerning women migrants). Other relevant Recommendations from the Committee of Ministers are: R(85)2 on legal protection against sex discrimination; Rec(2002)5 on the protection of women against violence; CM/Rec(2007)17 on gender equality standards and mechanisms; CM/Rec(2008)1 on the inclusion of gender differences in health policy, and CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building.

¹ For instance, right to shelter (Article 31§2), right to health (Articles 8, 11, 7, 19§2), right to education (Articles 9, 10, 15, 17, 19§§11-12), protection of the family and right to family reunion (Articles 16, 27, 19§6), prohibition of child labour under the age of 15 (Article 7§1 and §3), specific working conditions between 15 and 18 (Article 7), right to equal pay for work of equal value (Article 4§3), right to protection of maternity (Article 8).

² Article 14 of the European Convention on Human Rights and Article E of the European Social Charter.

³ *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 24 April 1985.

⁴ *Vrontou v. Cyprus*, 13 October 2015.

⁵ The European Court of Human Rights has developed case law establishing that a certain type of conduct or the lack of adequate conditions of detention taking into consideration the specific needs of women amounted to inhuman and degrading treatment. See http://www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf

10. The [Guidelines “Human rights in culturally diverse societies”](#), adopted by the Committee of Ministers in March 2016, call on member States to recognise that “individuals may require effective measures to solve the problem of multiple discrimination, particularly against women and the most vulnerable groups of individuals” (paragraph 31). In addition, member States should ensure equality between women and men in culturally diverse societies and the systematic integration of the gender equality dimension in the framework of securing human rights and fundamental freedoms – regardless of traditional or cultural attitudes (paragraph 32).
11. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention, 2011) is an important legally binding treaty which specifically addresses the protection of migrant, refugee and asylum-seeking women and girls. The Istanbul Convention places an obligation on parties to implement its provisions without discrimination on the ground of migrant, refugee, or other status (Article 4§3). It also addresses the particular difficulties which many asylum-seeking women victims of gender-based violence face in relation to their residence status. In particular, the Convention requires parties to ensure that gender-based violence against women is recognised as a form of persecution within the meaning of the 1951 Refugee Convention (Article 60). The Istanbul Convention introduces the possibility of granting women victims of violence an autonomous residence permit to escape an abusive relationship without losing their residence status, often dependent on that of their abusive spouse or partner (Article 59). Moreover, the Istanbul Convention reiterates the obligation to respect the principle of *non-refoulement*, i.e. the obligation to ensure that women victims of violence in need of international protection are not returned to any country where their life could be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment (Article 61).
12. Other key Council of Europe conventions of relevance for migrant and asylum-seeking women are: the Convention on Action against Trafficking in Human Beings, and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (The Lanzarote Convention). The Anti-Trafficking Convention requires Parties to take a gender equality approach in the fight against human trafficking (Articles 1§1, 5§3, 6§d and 17). Victims of trafficking must have access to fair and efficient asylum procedures, as well as be able to access a number of rights in terms of assistance, protection and compensation (Articles 10 to 16). The 5th General Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) referred to the increasing proportion of women and girls among asylum seekers and migrants, which heightens the risk of trafficking for the purpose of sexual exploitation.

13. Practical hygiene facilities, such as bathrooms and washrooms in refugee camps and administrative detention centres, tend to be often mixed and unprotected, making them hotspots for sexual attacks on women and girls. The Istanbul Convention establishes the obligation to introduce gender-sensitive procedures, guidelines and support services in the asylum process (Article 60§3).
14. [ECRI's General Policy Recommendation No. 16](#) on safeguarding irregularly present migrants from discrimination (March 2016) establishes that migrant and asylum-seeking women should have access to all medical services related to pregnancy (including ante- peri- and post-natal care), as well as to appropriate health and hygiene-related services (paragraph 24).
15. The [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) considers that there should be meaningful alternatives to detention for certain vulnerable categories of persons, including pregnant women and nursing mothers, children and families with young children. The "CPT standards" highlight the vulnerability of women in detention, calling for a "safe and decent custodial environment" for them. In addition, children should only be held in centres designed to cater for their specific needs and staffed with properly trained men and women. It is the CPT's position that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a child.
16. The Council of Europe Human Rights Commissioner, in the [Issue Paper on "Realising the right to family reunification of refugees in Europe"](#) (2017), points out that residence permits for family members enable legal protection and autonomy, and recommends granting "autonomous residence permits to spouses in accordance with the best practices and legal measures relating to violence against women and children". In 2016, the Commissioner published a [Human Rights Comment addressing the situation of refugee and migrant women and girls](#), which underlined that "single women travelling alone or with children, pregnant and nursing women, adolescent girls and elderly women are among those who are particularly at risk and require a co-ordinated and effective protection response".
17. The [First Report on the activities of the Secretary General's Special Representative on Migration and Refugees](#), published in February 2018, underlines that the Council of Europe should ensure that the human rights of migrants and refugees are respected during the migratory process. "Decent accommodation and minimum social rights, such as access to basic health care and education, should be enjoyed by all migrants while they are on our continent, regardless of their immigration status. Additional protections for the vulnerable, including women and children, should also be in place".

18. The [Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe \(2017-2019\)](#) recognises that “girls are particularly vulnerable to the risk of abuse, exploitation and harmful practices and attention will be paid to ensure that they benefit in practice from the protection provided by relevant human rights standards”.
19. The Council of Europe report on [“Child-friendly information for children in migration”](#) (February 2018), recognises that the situation for girls is particularly worrying due to the risk of abuse, exploitation and harmful practices, such as the risk of early and forced marriage, as well as the inadequacy and shortage of not just child-sensitive, but also gender-sensitive reception centres and accommodation. The report recommends that information materials should be adapted to gender in their content and distribution methods, taking into account the specific vulnerabilities of girls to trafficking, sexual and gender-based violence and sexual exploitation.
