



UNHCR
The UN Refugee Agency

THE HELP/UNHCR COURSE ON THE ECHR
AND ASYLUM: UNHCR'S PERSPECTIVE
ON RECENT ECTHR'S DEVELOPMENTS
AND THE UPDATED COURSE

INTRODUCTION

UNHCR's interest in the ECtHR case law on asylum:

- Affecting whether and how the 1951 Convention is applied
ECtHR, Gebremedhin v. France
- Complementing certain areas of international refugee law
ECtHR, I.M. v. France
ECtHR, Mugenzi v. France

UNHCR's experience in Refugee Status Determination

- Interactions between these two legal regimes
- Common challenges in achieving high quality asylum decision making

HELP/UNHCR course on the ECHR and Asylum as a training tool to tackle some of these challenges

1. BACKGROUND

**Joint HELP/UNHCR E-learning course
(<http://help.ppa.coe.int/mod/scorm/player.php>)
currently being updated**

**In response to a training need identified through the
members of the HELP network and UNHCR practice in
Europe**

**Unprecedented in its comprehensive scope, practical
format, interactive methodology and content**

**Developed by a group of experts made of international
legal practitioners (3 lawyers and 1 migration judge)**

**Targeting legal practitioners including judges, lawyers,
NGO members dealing with asylum and ECHR issues**



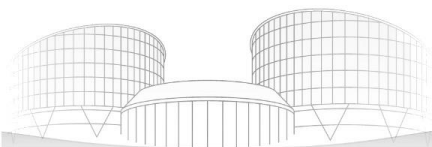
2. MAIN CONTENT AND FORMAT

4 substantive modules

- Art. 3 (non-refoulement)
- Art. 5 (detention)
- Art. 8 (family reunification)
- Art. 13 in conjunction with Art. 3 (effective remedy)

Analysis of the general scope and specific requirements of these articles in the asylum context + related case law

Ongoing update to reflect the latest developments of the ECtHR case law



3. HELP METHODOLOGY

Developed and implemented in line with the HELP Methodology

- newly published HELP Guidebook on Human Rights training methodology for legal professionals

Interactive and practical

- Assessment at the end of each module to test knowledge and skills

Adapted to the national system/context

- Issues of concern (e.g. collective expulsion and access to the asylum procedure at the border in Spain)
- Relevant case-law involving the concerned Member State
- National procedures (e.g. Right to an effective remedy)
- Role of the national trainer



4. OVERVIEW OF RELEVANT RECENT ECtHR'S CASE LAW INCLUDED IN THE UPDATED COURSE (1/4)

4.1. ACCESS TO THE TERRITORY (PUSH BACKS NON-ADMISSION AT THE BORDER)

ECtHR case law on Art. 3 and Article 13 ECHR (right to an effective remedy)

- *Gebremedhin v. France*
- *Hirsi and Others v Italy*

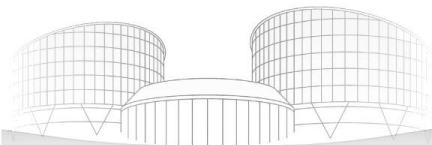
=> positive obligation to assess the risk irrespective of an asylum claim in certain circumstances

ECtHR case law on Art. 4 protocol 4

- *Hirsi and Others v. Italy*

=> extraterritorial application of the prohibition of collective expulsion

=> how individualised the assessment of the particular circumstances must be



4. OVERVIEW OF RELEVANT RECENT ECTHR'S CASE LAW INCLUDED IN THE UPDATED COURSE (2/4)

4.2. ASSESSMENT OF THE RISK IN THE ECTHR CASE LAW

The scope of the obligation to assess risk of ill treatment upon return

- Individual □ Group □ General

Tarakhel v. Switzerland

Salah Sheikh v. NL

Sufi and Elmi v. UK

- Positive obligation to assess all the potential grounds of ill-treatment

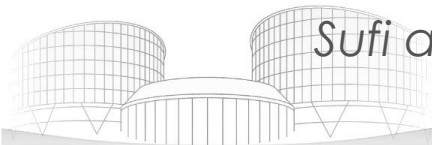
F.G. v. Sweden

*“It follows therefore that, **regardless of the applicant’s conduct**, the competent national authorities have an **obligation to assess, of their own motion, all the information brought to their attention** before taking a decision on his removal to Iran”*

- Applicability of Art. 3 to living conditions

M.S.S. v. Belgium and Greece

Sufi and Elmi v UK

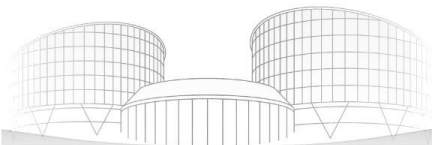


4. OVERVIEW OF RELEVANT RECENT ECTHR'S CASE LAW INCLUDED IN THE UPDATED COURSE (3/4)

4.2. ASSESSMENT OF THE RISK IN THE ECTHR CASE LAW

The quality of the risk assessment (Art. 3 ECHR, Art. 13 ECHR)

- **Procedural limb of Art. 3** (independent and close scrutiny, *Jabari v. Turkey*; flexible approach/ new elements, *M.D. and M.A. v. Belgium*)
- **General requirements under Art. 13** (arguable claim (UNHCR refugee status, *Jabari*), system as a whole, varying requirements)
- **Specific requirements under Art. 13 ECHR**
 - Close and rigorous scrutiny (examination of the substance of the claim)
M.S.S v. Belgium and Greece
 - Reasonable deadlines and “quality” of the procedure
I.M. v. France
 - Proper information (*A.Y. v. Greece*)



4. OVERVIEW OF RELEVANT RECENT ECTHR'S CASE LAW INCLUDED IN THE UPDATED COURSE (4/4)

4.3. RULES OF EVIDENCE IN THE ECTHR CASELAW

Shared burden of proof (individual circumstances and general situation)

J.K. and others v. Sweden
Salah Sheekh v. NL

Obligation to check the authenticity of a document

Singh and Others v. Belgium

Difficulty to adduce evidence

R.C. v. Sweden

Benefit of the doubt

- Providing it does not affect the core of the statement
- *A.F. v. France* (inconsistencies regarding the duration of the detention the applicant was subjected to and reliance on false identity)
- *M.A. v. Switzerland* (inconsistencies due to elapse of time and two distinct types of interview)

COI: “Objective and reliable sources” (*Salah Sheikh v. NL*)

UNHCR refugee status “must be given due weight” (*Jabari v. Turkey*)

