



## Handout | N. Vs Sweden

This case came before the European Court of Human Rights. It concerns N., a woman born in Afghanistan and living in Fagersta, Sweden.

13 August 2004 – N. and her husband, X., arrive in Sweden, illegally helped by a smuggler.

16 August 2004 – N. and X. apply for asylum and residence permits. They state they have been persecuted since 1996 because of X.'s involvement in the Communist party. This had also led to his arrest on 2 occasions, and to the couple's relocation to Kabul. X claims poor health: sleepiness, anxiety and aggressive behaviour. N. claims that her political stance was well known in Afghanistan, as she was a teacher for women: this was not accepted by the leading elite in Kabul.

29 March 2005 - the Migration Board rejects the couple's application. It argues that the situation in Kabul is better than in other parts of the country and questions the claim that the couple's lives will be in danger if they return to Afghanistan. The Migration Board rules that the information provided is too vague, and that poor mental health is not grounds for asylum.

2005 - The couple appeals the decision. In addition to the claims above, N. also informs the court that she has separated from her husband, lives alone and intends to pursue a divorce, even if X opposes it. This puts her at risk of serious persecution in Afghanistan as she would be considered to have brought dishonour both on X and on her family. She believes that X's family will seek revenge and that at best, she will become a social outcast. She also claims that she was not able to obtain a divorce in Afghanistan, pointing that the punishment for adultery in Afghanistan would be death by stoning.

19 March 2007 - The appeal is rejected. The court rules that X has failed to demonstrate that he would be of interest to the resistance groups in Afghanistan. With respect to N., the court points out that the former ban on education of women has now been replaced by a policy of affirmative action, and that a considerable time has passed since N. was involved in women's education. With respect to her private life, the court remarks that N. was not formally divorced, and according to her statement, she had not had an extra marital affair - so she would not be in danger of being punished for adultery. The court also notes that N. has not demonstrated that her family has rejected her, so she does have a network in Afghanistan.

4 September 2007 – N. appeals again, receives a refusal, which makes the decision final and the deportation orders enforceable.

27 October 2007, 28 January 2008 – N. invokes new circumstances and twice applies for a residence permit. She is refused.

February 2008 – she petitions the Court in Sweden for a divorce from X and intends to invoke the divorce as grounds to stop her deportation. X informs the court that he opposes the divorce.

19 November 2008 - The Court rejects the petition, claiming it has not competence, because the couple are not legal residents in Sweden.

17 October 2008 – N. requests a review of the asylum claim, and a stop to the deportation. She points to a worsening of the situation in Kabul, and a well-founded fear of persecution, as she has since started a relationship with a Swedish man and therefore risks the death penalty in Afghanistan. She claims to have had no contact with her family since 2005. The re-evaluation is rejected.

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17 February 2009 – All attempts to appeal this decision are rejected and the case is transferred to the police for enforcement of deportation.

28 April 2009 – N. brings the case to the European Court of Human Rights (ECHR). To the information presented above, she adds a letter from a Swedish man that confirms that they have been in a relationship since 2008 and have been living together in his apartment since April 2009. The Government declares that this information was not presented before by N., even though it might have been relevant to her asylum claim. The Government also says that N.'s mail address has not been changed to the man's apartment. The European Court notifies the government that it is not advisable to enforce the deportation orders while the trial is ongoing.



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### ROLE CARD FOR JUDGES

Your role is to decide whether the deportation of N. to Afghanistan would constitute a violation of Article 3. You are also responsible for presiding over the Court hearing. You need to ensure that each party presents their main arguments in no more than 5 minutes, and you need to prepare questions for each of the parties involved. The questions should be designed to give you the information that you need to make the decision. At the end of the hearing, each of the members of your group should present their decision and the arguments supporting it.

### Information on conditions facing women in Afghanistan

From UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers (July 2009)

In view of the serious and widespread human rights violations and ongoing armed conflict in many parts of the country, the UNHCR considers that a significant number of Afghan asylum seekers are in need of international protection. Applications by Afghan asylum-seekers should be determined on an individual basis, according to fair and efficient refugee status determination procedures, including the right of appeal. Favourable consideration should be given to the specific groups identified in these Guidelines, including, but not limited to (i) persons perceived as contravening Sharia law and members of minority religious groups; (ii) ethnic minority groups; (iii) persons associated with or perceived as supporting the Government, including civil society members; (iv) actual or perceived supporters of armed anti-Government groups; (v) journalists; (vi) persons associated with the People's Democratic Party of Afghanistan or other left-aligned political parties; (vii) women; (viii) children; and (ix) persons at risk of becoming victims of blood feuds.

Women are at particular risk of ill-treatment if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. Ill-treatment occurs in a variety of forms and may be inflicted by several actors, including family members. Such treatment includes domestic violence, excessive custodial sentences and degrading and inhuman treatment. The Shiite Personal Status Law (2009) requires women to comply with their husbands' sexual requests, and to obtain permission to leave the home, except in emergencies. The code has yet to be implemented and is currently under review as a result of international pressure.

Cases of physical violence perpetrated against women and girls in Afghanistan have increased by about 40% in the period from March 2007 to March 2008. Existing figures indicate that currently up to 80% of Afghan women are affected by domestic violence.

Afghan women, who have adopted a less culturally conservative lifestyle, such as those returning from exile in Iran or Europe, continue to be perceived as transgressing entrenched social and religious norms and may, as a result, be subjected to domestic violence and other forms of punishment ranging from isolation and stigmatization to honour crimes for those accused of bringing shame to their families, communities or tribes.

Unaccompanied women or women lacking a male "tutor" (mahram) continued to face limitations on conducting a normal social life. They include divorced women, unmarried women who are not virgins, and women whose engagements to be married have been broken. Unless they marry, which is very difficult given the social stigma associated with these women, social rejection and discrimination continue to be the norm. Many Afghan women are prevented from leaving the family compound without a burqa and a male companion, who has to be a husband or a close relative. Women without male support and protection generally lack the means of survival, given the social restrictions on women living alone, including the limitations on their freedom of movement. Unable to live independently, they face years of quasi-detention, prompting many to return to abusive family situations. The results of such "reconciliation" are generally not monitored and abuse or honour crimes committed upon return are often done with impunity. Furthermore, women's rights activists face threats and intimidation, particularly if outspoken about women's rights, the role of Islam or the behaviour of commanders.

### European Convention on Human Rights

#### Article 3 - Prohibition of torture

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*



## N. Vs Sweden

### ROLE CARD FOR N.

You have 30 minutes to discuss the case and prepare your opening statement, which needs to prove that the deportation of N. to Afghanistan would result into a violation of article 3.

N.'s claim is that:

- She faces a real risk of being persecuted or even sentenced to death as she has been separated from her husband and is now involved with another man
- She risks being subjected to inhuman and degrading treatment as her family has disowned her, and she has no social network or male protection in Afghanistan
- She believes that both her family and her husband's family will have been informed about her attempt to divorce her husband
- She is not able to divorce her husband in Afghanistan as she needs two witnesses to support her claim. Even so, she is still at risk of inhumane and degrading treatment.

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### ROLE CARD FOR THE SWEDISH GOVERNMENT

You have 30 minutes to discuss the case and to prepare your opening statement, which needs to prove that the deportation of N. to Afghanistan would not result into a violation of article 3.

You are claiming that:

While international reports confirm the very difficult conditions for women in Afghanistan, the situation in Kabul is slightly better, compared to the rest of the country.

The applicant did not provide sufficient proof that she is at real and concrete risk of being subjected to ill treatment, either by the government and/or at the hands of private individuals.

N.'s general credibility is in question, as her story was vague and lacked detail, particularly with respect to her extramarital affair. There is no indication that this affair is known to the Afghan authorities, or to her and her husband's family.

Legally, she is still married, and there is no indication that the Afghan authorities or the families are aware of her attempt to get a divorce in Sweden. It is still possible, under certain circumstances (e.g. if her husband is ill and that it endangered the wife) for her to divorce in Afghanistan.

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