

Presentation to the Drafting Committee on migrant women (GEC-MIG)

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Relevant case-law of the ECtHR in respect of migrant women

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Structure of the presentation

- I. Reception conditions
- II. Immigration detention
- III. Asylum procedures
- IV. Article 3 removal cases (*non-refoulement*)
- V. Assistance to be provided to persons due to be removed
- VI. Trafficking in human beings
- VII. Family reunification



I. Reception conditions

- The Court has not yet rendered a judgment addressing the specific needs of migrant girls and women in respect of reception conditions
- In *N.T.P. and Others v. France*, it examined the temporary stay of a woman and her three minor children in a privately run shelter funded by the authorities for some three months until they could lodge an asylum application



I. Reception conditions

- Not specifically related to women, but of relevance:
 - Tarakhel v. Switzerland [GC] – Dublin transfer of vulnerable individuals / adequacy of reception conditions
 - N.H. and Others v. France – failure to provide access to reception conditions for adult male asylum-seekers (no specific vulnerabilities)



II. Immigration detention

- Compliance with domestic law required (which may feature additional requirements for detaining migrants / asylum-seekers which go beyond the requirements set out in *Saadi v. the United Kingdom* [GC])
- The detention of vulnerable individuals will not be in conformity with Article 5 § 1(f) if the aim pursued by detention can be achieved by other less coercive measures, requiring the domestic authorities to consider alternatives to detention in the light of the specific circumstances of the individual case.



II. Immigration detention

- Immigration detention of vulnerable individuals may moreover raise issues under Art. 3, with particular attention being paid to the conditions of detention, its duration, the person's particular vulnerabilities and the impact of the detention on him/her
- Detaining children with their parent(s) may also raise issues under Art. 8 of the Convention in respect of both children and adults (overview in *Bistieva and Others v. Poland*)



II. Immigration detention of vulnerable women

- Aden Ahmad v. Malta
 - Single woman with particular vulnerability: fragile health and personal emotional circumstances (previously experienced miscarriage in detention)
 - Detained for over 14 months
 - Lack of female staff, lack of access open air and exercise, cold
 - Violation of Art. 3 (cumulatively)

- Mahmudi and Others v. Greece:
 - Highly pregnant woman detained without medical supervision
 - Violation of Art. 3

III. Asylum procedures

- Procedural guarantees typically assessed under Art. 13 in conjunction with Art. 3
- In respect of provision with information in a language the person understands, access to interpreters and/or legal assistance where required: *M.S.S. v. Belgium and Greece* [GC]
- Accelerated procedures / gender-based claim: *R.D. v. France*



IV. Article 3 removal cases

- The Court accepted that a number of gender-based risks invoked by women in the event of their removal would meet the threshold of Article 3
- Where the Court found that a removal would not give rise to a violation of Article 3, it did so based on the consideration that the woman concerned did not run a “real risk” of such ill-treatment



IV. Article 3 removal cases

- Situation of widespread sexual violence (M.M.R. v. the Netherlands (dec.))
- Lack of a male support network (R.H. v. Sweden)
- Ill-treatment of a separated woman (N. v. Sweden)
- Ill-treatment inflicted by family members in view of a relationship (R.D. v. France)
- Honour killings and forced marriage (A.A. and Others v. Sweden)
- Female genital mutilation (R.B.A.B. v. the Netherlands; Sow v. Belgium).
- Forced prostitution and/or return to a human trafficking network: L.O. v. France (dec.).

IV. Article 3 removal cases

Two Grand Chamber judgments of 2016, which are not related to gender/women, are of particular relevance in respect of the distribution of the burden of proof / duties to examine on part of the authorities:

- F.G. v. Sweden [GC] § 127:
 - Obligation of asylum-seeker to substantiate individual risk
 - Authorities cannot be expected to discover grounds on which an applicant chose not to rely or not to disclose
 - However, if the authorities are made aware of facts relating to a specific individual that could expose him/her to a risk of ill-treatment (e.g. membership of a group systematically exposed to ill-treatment), they are obliged to carry out an assessment of that risk of their own motion in view of the absolute nature of Art. 2/3.

IV. Article 3 removal cases

- J.K. v. Sweden [GC]:
 - § 98: The general situation in the country of destination, including the ability of its public authorities to provide protection, has to be established proprio motu by the competent domestic immigration authorities
 - §§ 99-102: Past ill-treatment provides a strong indication of a future, real risk of treatment contrary to Article 3, in cases in which an applicant has made a generally coherent and credible account of events that is consistent with information from reliable and objective sources about the general situation in the country at issue. In such circumstances, it will be for the Government to dispel any doubts about that risk

V. Assistance to be provided to persons due to be removed

As regards the existence and scope of a positive obligation under Article 3 to provide medical, social assistance or other forms of assistance to aliens due to be removed, compare and contrast:

- *Hunde v. the Netherlands* (dec.)
- *Shioshvili and Others v. Russia* (concerning a heavily pregnant applicant and her young children, whose stay in connection with the removal was caused by the authorities)



VI. Trafficking in human beings

Cases of trafficking in human being which concerned migrant women:

- Domestic servitude (Siliadin v. France; C.N. v. the United Kingdom)
- Sexual exploitation (Rantsev v. Cyprus and Russia; L.E. v. Greece; T.I. and Others v. Greece)



VII. Family reunification

- *Hode and Abdi v. the United Kingdom*: Breach of Art. 14 taken in conjunction with Art. 8 because one applicant, the post-flight spouse of the other applicant, a recognised refugee, was not allowed to join him in the respondent State, whereas refugees married prior to the flight and immigrants with temporary residence status could be joined by their spouses.
- The family reunification procedure needs to be flexible (for instance in relation to the use and admissibility of evidence for the existence of family ties), prompt and effective (*Tanda-Muzinga v. France*; *Mugenzi v. France*).
- Pending GC case: *M.A. v. Denmark* (no gender-specific aspect)