Migration Law
Introduction

This course addresses one of the most compelling political and legal dilemmas of our society today – the obligation of states towards migrants, asylum-seekers and refugees. The course deals with the legal regulation of migration with a strong focus on the rights of refugees and persons in need of protection. The course also aims at proving deeper understanding of the relevant EU law.

It is highly recommended that you do the readings for each lecture. This will allow each lecturer to engage in a more profound discussion of the pertinent legal issues and challenges.

This document contains a list of readings assigned for each lecture and seminar which is required as a minimum for the preparation. There is a wide literature on international migration law and on the concrete topics that we are going to cover during the course. Here you will be referred to the most useful ones. There is no compulsory textbook for the course. B Opeskin, R Perruchoud and J Redpath-Cross, Foundations of International Migration Law (Cambridge University Press, 2012) offers a very good overview of the subject. However, you are not required to buy it.

Useful databases on refugee law and asylum in Europe:

- **European Database of Asylum Law** (EDAL)
- **European Council on Refugees and Exiles** (**ECRE**)
- **Asylum Information Database** (**AIDA**)

Welcome!

If you have any questions, do not hesitate to contact me.

Dr. Vladislava Stoyanova
The Migration Law Regime

(lecture) Prof. Gregor Noll

25 April 2018

To warm up for the course, please listen to this Guardian podcast, which offers a global sweep on current migration issues:

https://www.theguardian.com/world/audio/2017/jan/05/migration-a-critical-point-in-modern-history-project-podcast

Border control has a human cost. Go to http://www.borderdeaths.org/
Press the red button (1990-2013) and watch the timeline.

What can these three publications teach us about the role of the law in
immigration? How can the deaths reported by borderdeaths.org be justified? Who is accountable for them? Is democracy capable of producing humane immigration and refugee laws?

**Academic readings**

IOM offers a 17-page primer on “International Migration Law”, providing you with a basic overview of the legal rules at work in international migration:


Now, by way of introduction, we will also be looking at migration law through the eyes of another discipline: economics. Kevin O’Rourke is an economic historian who offers insight into an era when migration was free. How did this impact the world economy? And did it make the world more equal or not? I learnt a lot from this piece. Kevin O’Rourke, “Globalization and Inequality: Historical Trends”, NBER Working Paper Series (2001), [http://spazioweb.inwind.it/uwcades/papers/glob_ineq_history.pdf](http://spazioweb.inwind.it/uwcades/papers/glob_ineq_history.pdf)

- The 1951 Refugee Convention

(lecture) Dr. Vladislava Stoyanova
25 April 2018

**Readings:**


NOTE this book is available on line via the university database system. You are required to read only certain pages from the book:
- On Well-founded Fear – Pages 91-92, 110-114
- On Persecution – Pages 182-183, 193-208
- On Failure of State Protection – Pages 288-289, 297-303
- On Nexus – Pages 362 – 367, 390-394

Instructions:
For the purpose of the lecture, I have limited the required readings to the above mentioned sources. However, you should keep in mind that for the purpose of your preparation for the seminars and for purpose of the exam, you will have to consult further sources to enrich your understanding of the refugee definition and the scope of people who could be eligible for complementary forms of protection. Useful databases:
- ECRE Asylum information database http://www.ecre.org/component/content/article/63-projects/323-asylum-information-database.html
- Refworld http://www.refworld.org/ (UNHCR’s repository of documents, case law and legislation)

In addition, you should keep in mind that the classical works on the issue are:

- J. Hathaway, The Rights of Refugees under International Law (Cambridge: Cambridge University, 2005)
Protection under Article 3 of the European Convention on Human Rights
(lecture) Dr. Vladislava Stoyanova
26 April 2018

Readings

2. N. v. The United Kingdom, ECtHR Application No. 26565/05, Judgment of 27 May 2008. (including The Joint Dissenting Opinion of Judges Tulkens, Bonello and Spielmann)

Recommended Additional Readings and Materials


2. Babar Ahmad and Others v. the United Kingdom, ECtHR Applications No. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, Judgment of 10 April 2012. This case is relevant for the issue of diplomatic assurance. I will refer to it during the lecture in class.


Questions for facilitating the discussion in class [feel free to raise any other relevant question]

1. The objective of this lecture is to see how the European Convention on Human Rights (ECHR) can be utilized for the purpose of protecting individuals who might not qualify as refugees, but who still upon return face a risk of serious harm. We will focus on the issues of
- diplomatic assurances (see Saadi v. Italy and Babar Ahmad and Others v. the United Kingdom),
- socio-economic deprivation (see N. v The United Kingdom, MSS v. Belgium and Greece, Sufi and Elmi v. The United Kingdom and Paposhvili v. Belgium) and
- indiscriminate violence (see Sufi and Elmi v. The United Kingdom).

2. Saadi, a national of Tunisia, living in Italy, was sentenced in absentia by a Tunisian Military Court to 20 years imprisonment for membership in a terrorist organization. Italy sought to deport him since he was considered a threat to public order and national security. While reading Saadi v Italy, pay attention to the arguments submitted by the third party intervener: the United Kingdom (para. 117 - 123) and how the ECtHR addressed these arguments (para. 138 - 142) in order to finally conclude that Article 3’s protection from refoulement is absolute. The absolute nature of the protection means that the conduct of the applicant, however undesirable or dangerous, cannot be taken into account when there is real risk that he will be subjected to treatment contrary to Article 3 upon return.

3. After reading Saadi v Italy, how would you assess the ECtHR’s position on diplomatic assurances (para. 147 - 148)? Does the Court reject them as irrelevant? The ECtHR’s jurisprudence since Saadi v Italy suggests that the most important factor in the assessment of what weight assurances should be given is the human rights record of the receiving state. Besides the human rights record of the receiving state as the primary consideration, some significance is accorded also to the identity of the provider of the assurances, the existence of an effective system of torture prevention in the receiving state, the possibility of post transfer monitoring, the content and consistency of the assurances, the history of whether the state has actually followed its promises.

4. N. v The United Kingdom was a case about a woman, a Ugandan national, who was HIV positive; she claimed that she would not have access to medical treatment if she were to be returned to Uganda, which would give rise to a violation of Article 3 of the ECHR. In N. v The United Kingdom, the ECtHR determined that in cases in which the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-State bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country, a high threshold for the triggering of Article 3’s non-refoulement obligation has to be maintained (para.43). Thus, only in exceptional cases, socio-economic deprivation in the country of origin will qualify an individual for protection under Article 3. Why do the dissenting judges in N. v The United Kingdom find this approach for problematic? Why should it matter which is the source of the future harm (the state; non-state actors; or the lack of basic facilities that would prevent the individual at risk from being reduced to living in circumstances that could be construed as inhuman or degrading treatment) as long as the harm reaches the threshold of inhuman or degrading?
4. The case of *Sufi and Elmi v The United Kingdom* is about two Somalis, who UK wanted to deport back to Somalia. This case will be relevant for our discussion in two aspects. The first aspect relates to the issue of indiscriminate violence (para. 241 - 250). Does an individual have to prove that he/she will be individually targeted in order to be protected from deportation under Article 3? Under what circumstances, the general violence in the country of origin will be of sufficient intensity to pose risk to anybody sent back there?

5. The second aspect in which *Sufi and Elmi v The United Kingdom* is relevant for our discussion relates to how Article 3 bars deportation to a receiving country where the social and economic conditions are so poor that could be defined as inhuman or degrading. The applicants argued *inter alia* that the humanitarian conditions (e.g. overcrowdedness, insecurity, lack of hygiene) in refugee and IDP camps in Somalia are so dire that they amount to treatment reaching the threshold of Article 3. The ECtHR agreed with the applicants. However, it might be problematic how the Court justified its conclusion. The ECtHR tried to distinguish the facts in *Sufi and Elmi v The United Kingdom* from the situation in *N v The United Kingdom* (see para.282 and 283 from *Sufi and Elmi v The United Kingdom*). What is the basis for that distinction? The ECtHR suggests that when there is a risk of harm due to dire humanitarian conditions, for example drought, caused by natural phenomenon and the state is not capable to cope with the problem, then some exceptional circumstances related to the individual will be required so that Article’3 protection is afforded. When, however, the humanitarian conditions are caused by state actions or actions by non-state parties involved in an armed conflict, then individual exceptional circumstances will not be required. The problem is that, ultimately, the level of deprivation and harm might be the same; and the nature and the level of the harm do not really depend on who and for what reason causes the harm. Do you agree? Do you see any other problems with the above distinction?

5. *Paposhvili v. Belgium* is a relatively recent Grand Chamber judgment where the Court has the chance to revisit *N v The United Kingdom*. In what way has the Court departed in *Paposhvili* from the standards in *N v The United Kingdom*?

➢ **The Common European Asylum System: A Critical Overview**
(lecture) Eleni Karageorgiou ([Eleni.Karageorgiou@jur.lu.se](mailto:Eleni.Karageorgiou@jur.lu.se))
2 May 2018

*The lectures on the CEAS and the Dublin System as well as the procedural safeguards seminar and the discussion on the EU response to the 2015/2016 ‘refugee crisis’ provide an overview of the European Union’s involvement in refugee law. The purpose of these sessions is to acquaint the students with the EU legislative framework on asylum, to examine its link with international human rights standards in light of recent case law and to reflect critically upon the way it affects the content and scope of contemporary refugee protection.*
Background material for all sessions:

EU Documents
- All CEAS instruments can be accessed at https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en
In particular, the EU Directives (recasts) on asylum are available at:
For definitions of basic terms related to the EU asylum context, you could look at the Asylum and Migration Glossary 3.0, available at: https://ec.europa.eu/migrant-integration/librarydoc/asylum-and-migration-glossary-30 may be of help.

Main literature:

Warm-up reading
In order to warm up for the sessions and get a critical insight in the CEAS mechanisms and the ways they have been responding to the increasing refugee demands in Europe during the past year, please go through a short piece by den Heijer, Rijpma & Spijkerboer, available at: http://thomasspijkerboer.eu/thomas-blogs/the-systemic-failure-of-the-common-european-asylum-system-as-exemplified-by-the-eu-turkey-deal/

Specific instructions for the lecture on the The Common European Asylum System: A critical overview
The lecture consists of two parts. The first part offers an account of the evolution of the CEAS and highlights its strengths and weaknesses under the light of recent developments in the European context. The second part looks critically at the European Courts’ role in shaping asylum in Europe with focus on the Qualification Directive (Directives 2004/83/EC and 2011/95/EU) and questions on persecution, subsidiary protection and exclusion.
In light of the warm-up reading, students are expected to read the suggested chapters by Velluti’s book and reflect upon the way that sovereignty plays out in the EU asylum system and impacts on refugee protection. Students are also
expected to skim through the suggested cases of the Court of Justice of the EU (CJEU) and be prepared to discuss the following questions: What constitutes an act of persecution on the ground of membership to a particular social group? Is there a need to show individual threat in cases of indiscriminate violence for the purposes of subsidiary protection? What are the requirements for applying the cessation and exclusion clauses?

**Cases in focus**

CJEU, C-199/12, C-200/12 and C-201/12, Minister voor Immigratie en Asiel v. X, Y and Z v. Minister voor Immigratie en Asiel.

CJEU, C-465/07, Elgafaji v. Staatssecretaris Van Justitie.

CJEU, C-573/15 Commissaire général aux réfugiés et aux apatrides v. Mostafa Lounani.

**Suggested reading**

Velluti, S., Chapter 2, The Road to the Common European Asylum System: From Amsterdam to Lisbon and Beyond pp. 5-38 and Chapter 3, Recasting of Asylum Legislation: Nolumus leges mutari! pp. 50-76.

➢ **Evidentiary Assessment in Asylum Cases**

(lecture) Prof. Gregor Noll

4 May 2018


Please devote particular attention to the explanation on the burden of proof (para 196) and the benefit of the doubt (paras. 203-204). What do the terms “burden of proof”, “standard of proof” and “benefit of the doubt” mean?

Continue by reading article 4 of the EU Qualification Directive (QD):


Can you make sense of article 4.5? As a decision-taker, how do I know whether “the personal credibility of the applicant is established”. As an applicant, how do I establish my personal credibility?

Continue by reading the following excerpts from two ECHR cases: N v Finland (2005); §§ 152-157


Can the reasoning of the ECtHR in N v Finland be reconciled with the rule
expressed in article 4.5 QD? And what does the majority in RC tell us about the burden of proof in cases where torture is at stake?

Can applicants for asylum really live up to evidentiary demands put to them in the asylum procedure? Browse the following piece for a perspective on unaccompanied minors:


So unaccompanied minors will have problems in being consistent. The same goes for courts. Here is a quite famous study on the disparities in decision-taking on asylum applications between different U.S. Courts. Don’t lose yourself in details – it is enough to *browse* the study and to focus on its conclusions: Jaya Ramji-Nogales, Andrew Schoenholtz and Philip Schrag, ‘Refugee Roulette: Disparities in Asylum Adjudication’


Is there something wrong with the U.S. system? Do you think that the Swedish courts do better? If so, why?

To wind up, let us go back to the law and *read* this piece by James Sweeney:


A long reading list? Well, I would argue that the weight of the matter justifies it. I have additional readings in store – let me know if you are interested in something particular.

➢ **The Dublin System**

(lecture) Eleni Karageorgiou (Eleni.Karageorgiou@jur.lu.se)

7 May 2018

The lecture seeks to engage students into a discussion about the European system determining the state responsible to examine an asylum application, namely the Dublin mechanism. In light of the warm-up reading, a critical analysis of the Dublin rules should consider the following overarching question: What are the assumptions on which the Dublin system is grounded upon and how do they affect refugee protection within the EU and externally? The students are expected to *read* the excerpt from Velluti’s book, *familiarize* themselves with the Regulations 343/2003 and 604/2013, *glance through* the cases in focus and *consider* the following questions: What is the rationale behind Dublin? Which are the determining criteria set out in Dublin Regulations? What should a state assess before transferring an individual to the state responsible to
examine his/her application pursuant to Dublin rules? What qualifies as an ‘irregular entry’ for the purposes of the Dublin system?

**Legal instruments in focus**


**Cases in focus**


CJEU, C-546/16 *Khadija Jafari, Zainab Jafari v Bundesamt für Fremdenwesen und Asyl* (paras: 59-100)

**Suggested reading**

**Note!**
The European Court’s of Human Rights judgments are available at hudoc.echr.coe.int/ and the decisions by the Court of Justice of the European Union can be accessed at [https://curia.europa.eu/jcms/jcms/j_6/en/](https://curia.europa.eu/jcms/jcms/j_6/en/) using the case number (i.e. C-245/11).

- **Children as Asylum Seekers**
(lecture) Matthew Scott
9 May 2018

**Overview**

The focus of this lecture is on the experience and legal position of children on the move. The particular vulnerability of children, starting from risks arising in the country of origin and moving through the transit phase and into risks that children can be exposed to in a host country receives particular focus in the lecture, and informs the subsequent discussion of the special legal position of children...
established under the 1989 Convention on the Rights of the Child. The centrality of the best interests of the child in all aspects of the displacement cycle is introduced, and the challenging proposition that the best interests of the child shall be ‘a primary consideration’ is taken up, with particular discussion of the distinction between unaccompanied children and children who move with their families.

**Reading**

1. Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). Available at: [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

2. UNHCR Guidelines on International Protection No 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees. Available at [http://www.refworld.org/docid/4b2f4f6d2.html](http://www.refworld.org/docid/4b2f4f6d2.html)


➢ **Procedural Safeguards**

(seminar) Eleni Karageorgiou (Eleni.Karageorgiou@jur.lu.se)  
9 May 2018

Through a synthesis of European and international law, in light of the recent jurisprudence of the Court of Justice of the EU and the European Court of Human Rights, the seminar seeks to explore issues related to the procedural safeguards afforded to persons seeking international protection in the EU and the corresponding obligations of states. For the purpose of the seminar, the students will be divided into groups. Each group will be assigned a case. Each group is expected to identify the core questions/issues raised in every case and present them orally in a structured and coherent way. The students are encouraged to take a critical stance towards the Courts’ reasoning by comparing it to earlier and/or more recent judgments on the same subject matter and by drawing upon any dissenting or concurring opinions. In their oral presentations, students must also briefly introduce the relevant facts of the case and the legal provisions in question.

OBS! For further instructions see separate document.
LGBT Claims
(lecture) Matthew Scott
14 May 2018
Overview

The 1951 Convention relating to the Status of Refugees establishes an entitlement to refugee status for persons who can establish a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. It does not follow from the ‘ordinary meaning’ of the text that people who fear being persecuted because of their sexual or gender identity are entitled to international protection. Indeed, it was only through a purposive interpretation of the ‘membership of a particular social group’ category that such claims became tenable. The lecture will provide a brief overview of how the law developed in this connection, before focusing on substantive issues relating to contemporary challenges faced by individuals fearing being persecuted because they are or are believed to be gay, bisexual, lesbian, transsexual or intersex.

Reading
1. UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees http://www.unhcr.org/509136ca9.pdf

Climate Change-Related Displacement
(lecture) Matthew Scott
14 May 2018
Overview

Disasters displace on average 26 million people each year. Although most are displaced for short periods of time and do not cross an international border, the experience of cross-border disaster related displacement is a reality that international law is only beginning to address. Early calls for the legal recognition of climate refugees fell flat when international lawyers highlighted key challenges any claimant would face establishing a well-founded fear of being persecuted by a changing climate. The apparent ‘protection gap’ that the experience of cross-border disaster related displacement revealed, and the threat of ever increasing numbers of displaced persons as climate change brings more frequent and intense
extreme weather events and processes spurred efforts to develop guiding principles for the treatment of such people. The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change reflects the consensus of 109 states on how to begin to address this phenomenon. However, as a state led initiative, contentious points relating to international protection obligations are not addressed. The potential contribution of the Refugee Convention and complementary protection instruments receives only limited attention in an Agenda focusing on regional and bilateral mechanisms. Has the cornerstone of the international protection framework been dislodged in the rising tide?

Reading
2. Jane McAdam, Climate Change, Forced Migration and International Law (Oxford University Press, 2012), Chapter 2 – the Relevance of International Refugee Law (available in LUB Search)

 Refugees Status Determination
(seminar) Dr Vladislava Stoyanova
15 May 2018

See the group division on the course website.

For the purpose of the seminar, the class will be divided into groups. Applicants 1, Respondents 1 and Judges 1 will address Elina’s case and, more specifically, whether she is eligible for refugee status.

Applicants 2, Respondents 2 and Judges 2 will address Soleimani case and, more specifically, whether he is eligible for refugee status.

The Applicants will argue that Elina/Solemani is a refugee. The Respondents will represent the host state’s authorities and will argue that Elina/Solemani is not a refugee. The judges will listen to the arguments submitted by the Applicants and the Respondents. The judges will ask questions after the two parties submit their arguments. Each group will have about 12 min to present their arguments and then about 10 min will be left for questions by the judges and rebuttals.
Hopefully, at the end there will be some time left for me to briefly systematize important legal principles of relevance to the cases.

The Judges should be prepared so that they know what relevant questions to ask. The Judges should identify any problematic and weak points in the cases, and try to ask for clarifications on these points. For these purposes, the Judges should not only be very familiar with the facts of the case, but they should also know the relevant legal principles.

The members of each group have to divide their research and presentation responsibilities so that each member takes an equal burden. For the purpose of constructing good arguments, you have to conduct research on the country of origin (Albania). I suggest that a very good source for this purpose is [www.ecoi.net](http://www.ecoi.net) (European Country of Origin Information Network).

Background materials for your arguments will be:
- the 1951 Convention relating to the Status of Refugees;
- UNHCR Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention
- (for Elina’s case) UNHCR Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked
- The EU Qualification Directive. The EU Qualification Directive is a useful source since it can guide you as to the meaning of, for example, membership in a particular social group and persecution.
- J Hathaway and M Foster’s book *The Law of Refugee Status* (see the reading instructions for the lecture on the 1951 Refugee Convention)

The above indicated sources will suffice for the purpose of the seminar. But still, I would recommend that you use [The Refugee Law Reader](http://www.refugeelawreader.org/). Its English version has a section on “International Framework for Refugee Protection” and subsection “The 1951 Geneva Convention”.

Each group should identify the core questions/issues in each case and present those issues in a structured and coherent way. Before the facts of each case, you will find suggested formulation of issues to which you have to respond.

In your presentation, you could briefly present the relevant facts from the case and relevant country of origin information. You should identify the relevant legal
principles to each issue and how these principles are applicable to the particular facts of the case.

Groups will not be required to submit arguments in written format. To facilitate your oral presentation, you can write down your arguments. However, at the time of the presentation, you should try not to read, but simply consult your notes.

Elina’s case – Applicants 1, Respondents 1 and Judges 1

Suggested issues and structure on Elina’s case
1. Who are the actors/agents of persecution and what type of harm could the different actors cause? Is the harm feared by Elina upon return of such a severe nature as to amount to persecution?
2. Is Albania willing and able to offer protection against Elina’s former traffickers?
3. In case Elina is rejected by her family/community, is Albania able and willing to offer protection?
4. Does Elina belong to a “particular social group” within the meaning of the 1951 Geneva Convention?
5. Is Elina going to be persecuted for reasons of her membership in a particular social group? Is the lack of protection linked to the Convention ground?

Refugee Status Determination: Facts of Case (the case of Elina; country of origin: Albania)

[1] This is an appeal against a refusal of refugee status. The applicant, Elina, is a young woman from Albania. Her claim for asylum is based on the fact that she is a victim of human trafficking. She has a small child.

[2] Elina was born on 1 August 1988 in a small village in Northern Albania. At the age of 18 she started working in a small café where she met A.. She could barely earn some money to support herself; she had to also take care of her mother and younger sister since her father was an alcoholic subjecting his wife to constant verbal and physical abuse. A. told Elina that she could make much better money if she were to come with him to Tirana. Elina considered the offer, but had hesitations since she was not really sure about the nature of the job. She had heard about girls who went to Tirana where they had to work as prostitutes. In addition, bearing in mind the cultural and social norms, she was cautious as to whether she could just leave with a man she was not married to. A. asked Elina to marry him. Her father agreed to the match and they married. However, life was becoming more and more difficult and A. continued to insist that they should go to Tirana where they could make better money.
[3] A. asked and was granted Elina’s father permission to take her to Tirana. Once in Tirana, life was not much better; Elina could barely make some money as a waitress in a café. A. told her that there are many young girls who make good money working as prostitutes; if she were to agree, they can make some savings and go back to Elina’s village where they can make their own business. Eventually, Elina agreed; she was introduced to A.’s friend N. and was taken to a flat where they were other girls present. For about a month, she worked as a prostitute in Tirana; she had to submit 40 per cent of her earnings to N. N. and A. become more and more abusive to her and demanded more work from her. One day Elina decided that she cannot continue like that. She informed N. and A. about her decision to quit. N. and A. became furious and told her that they would harm her family and recruit her little sister if she did not comply with their orders.

[4] A week later, Elina realized that she was pregnant; she was afraid to tell N. and A. about her pregnancy and she continued working.

[5] In July 2006, A. and N. told her that they were going to travel with her to the United Kingdom where she could make much better money. Elina did not resist or showed any disagreement. She simply followed. A., N. and the applicant travelled on a lorry. A. left them when they had to change lorries. She was given hamburgers, biscuits, sweets and water on the way. The lorry contained empty boxes which they sat on. It was uncomfortable. Elina had no idea which countries they went through on their way. When they arrived in the UK, N. cut a hole in the canvas of the lorry and they got out. He told the applicant to stay nearby as he went to make a telephone call in a public booth. While talking over the phone, N. got angry and agitated. Elina took the opportunity to walk away and then run off. She found a building with two rubbish containers and hid behind them for a night. The next day she went to a park and heard an Albanian woman talking. Elina approached her. The woman, called Anita, felt sorry for her, took her home and subsequently put her in touch with support organization, which help her find a lawyer. Elina asked Anita to come to court with her but she was afraid to do so as she was afraid of what the traffickers might do to her after hearing Elina’s story.


[7] Elina has not tried to contact her family. She is afraid to do so. She fears returning to Albania, as her family will feel disgraced as she has worked as a prostitute and they will not let her keep the baby. She will be ostracized. In Albania, the only support a woman has is her family or her husband. If she were allowed to remain in the family home, she would be separated from her daughter and would be kept out of sight of others in the village until such time as her father could arrange a marriage for her. The only men willing to marry her are likely to be old or disabled; men whom she would not ever herself wish to marry.
[8] She also feared that A. and/or N. will look for her. The police will not protect her and she has no money to bribe them. She does not believe she will be safe anywhere in Albania since A. and especially his friend N. have connections everywhere. She has escaped from them and they will look after her.

[9] The organization which supports Elina and her baby asked a psychiatrist to make an assessment of her state. The psychiatrist Dr. Hollid concluded that the applicant has difficulty with sleeping; she feels powerless which is typical for women who were controlled in prostitution. Dr. Hollid described her disassociation and detachment as a means of psychological survival. The doctor reported that she is suicidal; the only thing which stops her committing suicide is the love for her daughter. The psychiatrist also reported that her precarious and uncertain status in the UK and the prospect of being send to Albania caused her severe disturbances which precluded any healing process.

[10] The administrative body responsible for assessing Elina application for asylum in the UK concluded that she is not a refugee within the meaning of Article 1A of the 1951 Refugee Convention. It was established that the applicant was consistent in her evidence. She has repeated the same account at the interview, in her statements to third parties and there are no inconsistencies. However, the account of her escape from N. in the UK caused concern. She took her chance when she saw that N. was distracted on the telephone. However, he appeared not to have noticed her disappearance, nor did he give chase. It did not seem very plausible that N. would simply let her walk away. The administrative body concluded that Elina was not a victim of human trafficking. Although, her prostitution was controlled in the sense that she had to give 40 per cent of her profits, she agreed to travel to UK in order to make better money. There was no evidence that N. and A. were part of an organized criminal group which had connections throughout Albania; thus, it was not likely that they would try to find her. There are many other girls in Albania who would agree to share 40 per cent of their profits working as prostitutes, so they would not try to find her specifically. As to her family, the administrative body emphasized that her father blessed her wedding. The administrative body also concluded that former victims of human trafficking do not constitute a particular social group within the meaning of the Refugee Convention. Although, the society in Albania is very conservative, Albania does make efforts to assist victims of trafficking. On 7 of Feb 2007, Albania ratified the Council of Europe Convention on Action against Trafficking in Human Beings.

[11] Elina wants to appeal the negative decision of the administrative body.

**Suggested issues and structure on Case One (the case of Soleimani)**

1. Does the fact that Soleimani lied in the beginning affect the credibility of his claim related to his protection need based on his homosexuality?
2. Does the harm feared by Soleimani amount to persecution?
3. Is Soleimani facing a serious harm upon return bearing in mind that he has not been subjected to ill-treatment by the authorities?
4. Who are the actors/agents of persecution?
5. Is there a risk that the authorities will fail to protect him in case of harm caused by private parties? Is there a failure of state protection?
6. Does Soleimani belong to a “particular social group” within the meaning of the 1951 Geneva Convention?
7. Is Soleimani going to be persecuted for reasons of his membership in a particular social group?

**Soleimani’s case – Applicants 2, Respondents 2 and Judges 2**

**Refugee Status Determination: Facts of Case One (the case of Soleimani; country of origin: Iran)**

[1] This is an appeal against the decision of a refugee status officer given on 7 August 2003 declining the grant of refugee status to the appellant, a twenty-five-year-old citizen of the Islamic Republic of Iran. The name of the appellant is Soleimani.

[2] The facts are unusual in that two days before the appeal hearing the Authority received from the appellant notice that he wished to add a wholly new ground to his refugee claim, namely that if he returned to Iran he would be at risk of being persecuted for reason of his sexual orientation. At the same time he continued to advance the original ground of his refugee claim which was that he is wanted by the Iranian authorities because of his alleged intentional killing of a member of the Sepah (Revolutionary Guards) in a motor vehicle accident. In addition, he did not wish to perform military service.

[3] During the hearing of the appeal, the appellant admitted that the claim relating to the motor vehicle accident was false and that the true basis of his application was his sexual orientation.

**The appellant’s case**

[5] As indicated above, the appellant’s case underwent substantial transformation a few days before the appeal hearing and it was on the basis of the new claim that the Authority decided that it was appropriate to recognize the appellant as a refugee. In the circumstances, the claim as originally advanced by the appellant (but from which he later resiled) will be given in outline only.

**The original claim**

[6] In its original form Soleimani’s claim was that although born in [A], his parents separated when he was one-year-old and he and his mother moved to [B] where his maternal grandparents lived. In 1996, when the Soleimani was seventeen years of age, he and his mother moved back to [A]. After leaving school in 1998 he
worked first in a motorcycle spare part shop and then in a sport-clothing shop. In October or November 2001 he began working as a taxi driver.

[7] In approximately January 2002 he was involved in a motor vehicle collision. The other vehicle was an unmarked Sepah car. The two passengers in the Sepah vehicle survived but the driver was killed. The appellant was arrested at the scene and accused of being part of an anti-regime group and of having planned to kill the Sepah driver. During repeated interrogation the appellant was tortured. After two months (ie in February or March 2002) he was taken to a court in [A] where, after a brief appearance, he was returned to detention. Two months later he was taken back to court and again returned to detention. However, as the appellant and his escort were leaving the courthouse on this occasion they were attacked by relatives of the deceased. In the confusion the appellant escaped and with his mother returned to [B] to stay with his grandparents. In May or June 2002 and again in July or August 2002 the home occupied by the appellant and his mother in [A] was searched by the authorities.

[8] With the assistance of a contact, his mother was able to obtain a genuine Iranian passport even though he had not completed his military service. In December 2002 the appellant left Iran, arriving in Thailand. With the assistance of a helper he travelled through various countries in South East Asia and after obtaining a false German passport, arrived at Auckland International Airport on 15 March 2003. At the airport he sought refugee status on the basis of the alleged motor vehicle accident and the subsequent alleged detention and escape. He later produced two court notices requiring his appearance in [A] on 4 May 2002 and 3 September 2002 respectively.

[9] The appellant was interviewed by a refugee status officer on 4 April 2003. In a decision published on 9 May 2003 the officer declined the refugee claim on credibility grounds, cataloguing a number of inconsistencies and implausibilities in the appellant’s account. The appellant appealed.

[10] In a new statement filed two days before the appeal hearing the appellant maintained that he had been involved in the fatal motor vehicle accident. He also produced a letter from his mother reporting that she was under surveillance by Sepah’s Ettela’at, that her house had been searched and that she herself had been detained for a few days and interrogated. After her release she had been threatened with death by the family of the deceased. A further document was produced purporting to show that the mother had been dismissed from employment because of the dispute with the deceased’s family.

The sexual orientation claim
[11] In his new claim, Soleimani says that in his early teens he became aware of his homosexuality and from intermediate school had had emotional and sexual relationships with other boys. His classmates soon discovered that he was a
homosexual and he was made the object of derision. This brought the appellant to the attention of the school authorities and he was handed to the Monkerat (moral police). He was detained for one day and asked a number of questions about his sexual orientation and sexual activities. He was warned that he could be punished with one hundred lashes if he followed the same activities. He was also told that he could face even more serious punishment, including death. The appellant’s mother was summoned and told about her son’s activities.

[12] After this incident, Soleimani left intermediate school because he could not cope with the taunting of the other children and because he had come to hate the atmosphere there. In 1993, when fourteen years of age, he began working in a motorbike workshop. After few days he formed a sexual relationship with his employer. The relationship continued for the next two years.

[13] In 1996 the appellant and his mother returned to [A] and at seventeen years of age he enrolled at a secondary school. In the first year he formed a deep emotional attachment with one of his classmates. One day in 1998 the elder brother of this classmate discovered the two performing a sexual act at the classmate’s home. A few hours later the classmate’s mother (and elder brother) arrived at the appellant’s home shouting abuse and accusing the appellant of having seduced her younger son. The appellant did not attend school for several days. Soon after resuming school, he was given a severe beating by the elder brother and one other person when they accosted him on his way home. A week later the appellant was summoned to the office of the principal and told that he had been expelled.

[14] For a long time the appellant was emotionally distraught and did not leave home.

[15] In 1999 Soleimani began working at a clothes shop. He had often visited the shop on his way to school and had become friendly with the two proprietors who were brothers. His employment at the shop lasted for three years. During this time he formed relationships with both brothers. His sexual activities with them were described as occasional. During this period the appellant also had casual sexual relations with other men he would meet through his employers, other acquaintances or at a public park. He said that all his relationships were conducted furtively, the overriding imperative being to conceal everything from the parents of the other men, from his own mother and from the public at large. He received little or no support from his mother, describing her as being constantly unhappy about his sexual orientation and as wanting him to leave Iran because she was tired of him. On two or three occasions the appellant attempted suicide because of his deep unhappiness at being unable to live a normal life which he defined as being able to form relationships with other men and to love and be loved. He described his situation in the following terms:
Because of the situation in Iran and because of the Iranian beliefs and traditions I always saw myself in a cage where I was not allowed to have my life in the way that I wanted. I always was in fear of being reported and arrested again. I had to be myself and live in a way towards my feelings, but I was not able to. Many times I decided to commit suicide and release myself from the type of life that I had in there. I even did not dare to talk about my sexual feelings let alone to carry them on.

[16] Addressing the point that subsequent to his expulsion from school in 1998 he had not been detained, arrested or otherwise ill-treated because of his homosexuality, the appellant spoke of the effect on him of the potential punishment of a hundred lashes and execution. He said that if he returned to Iran he could not hide his sexual orientation. He explained that for him homosexuality was not a matter only of sex, but of having loving relationships of the kind enjoyed by men and women. He considered that life would be meaningless without the ability to express feeling and desire.

[17] He explained his earlier failure to advance his sexual orientation claim on two grounds. First, he did not know that a refugee claim could be based on sexual orientation and second, he felt too embarrassed to talk about sexual matters (particularly given that at the first instance hearing the refugee status officer and interpreter were both female) and did not know whether he would be treated fairly should he express his sexual feelings. However, after instructing his new solicitor (who speaks Farsi) following the first instance decline and after an attempted suicide in June 2003, he realized the necessity to disclose his homosexuality.

The motor vehicle accident revisited
[18] At the appeal hearing, Soleimani initially maintained that he had been involved in a fatal motor vehicle accident and that he had been falsely accused of assassinating a Sepah officer. However, required by the Authority to face glaring inconsistencies in his various accounts, not to mention improbabilities of substantial proportion, he admitted that there had been no motor vehicle accident and that the court documents and letter of dismissal relating to his mother were false documents which he had obtained to give credibility to his account. He said that the true reason for leaving Iran was his homosexuality. He felt “totally harassed” to the extent that he could no longer continue living in that country.

Military service
[19] Insofar as the appellant rested his case on his unwillingness to perform compulsory military service, little meaningful detail emerged at the appeal hearing as to these grounds of his claim.
**Taking a Case to the ECtHR**

(seminar) Dr Vladislava Stoyanova  
16 May 2018

The class will be divided into two groups (1 and 2; see the group division on the website). Applicants 1 and 2 will argue on behalf of the individuals before the ECtHR, Respondents 1 and 2 will argue on behalf of the states which wants to deport the individuals and Judges 1 and 2 will be simply the judges 😊. The role of the judges will be the same as during the seminar on Refugee Status Determination. The judges will have to be familiar with the relevant ECtHR case law in order to ask relevant questions.

As to the oral presentation, the group of the Applicants will have about 12 min to present their arguments. Then, the Respondents will have about 12 min to present their arguments. The time left will be for questions by the judges and rebuttals. It is up to you how you will divide the tasks within each group. In the beginning of your work within the group you should divide the tasks so that the roles are clear. You should assist each other in preparing and implementing the presentation, both with regard to substance and form. See to that the distribution of burdens is equitable across the group.

In the presentation, you should clearly relate to ECtHR’s case law. You should be able to cite names of cases, know their basic facts and extract the most important legal principles flowing from the cases. Feel free to use any other material you deem suitable: academic writings, recommendations, resolutions etc.

Both cases, case A and case B, are based on real cases recently decided by the ECtHR. I have edited the real cases for the purposes of the moot court. I chose these particular cases because they establish important principles regarding the application of Article 3 in an extraterritorial context. At the end of the class, we will discuss the actual ECtHR’s judgments and the issues raised therein.

**Suggested issues and structure on Case A (the case of Aman)**

[feel free to use any other structure, to frame the relevant issue in a different way, to raise any other issues from the case, or to focus on only some of the below suggested issues]

1. Brief description of the *Soering* principle.
2. The credibility of the applicant.
3. Is the level of violence in Redland of such intensity that any removal to it would breach Article 3 (See N.A. v. The United Kingdom, Application No.25904/07, Judgment of 17 July 2008, para.115; Sufi and Elmi v. The United Kingdom, Application No. 8319/07 and 11449/07, Judgment of 28 June 2011, para.218 and 248)?
4. Does Aman’s medical condition meet the standard of “exceptional circumstances” (see para.49 – 54 of D v The United Kingdom, ECHR, Judgment of 21 April 1997; see also para.40 of Bensaid v. the United Kingdom, ECHR, Application No. 44599/98, Judgment of 6 February 2011; see also para.43 of N v. the United Kingdom, Application No. 26565/05, Judgment of 27 May 2008 and the most recent one of Paposhvili v Belgium)? Here you might want to consult with this article Vladislava Stoyanova, ‘How Exceptional Must “Very Exceptional” Be? Non-Refoulement, Socio-Economic Deprivation and Paposhvili v Belgium’ 29(4) International Journal of Refugee Law (2017) 580-616.

5. In N v. the United Kingdom, the ECHR ruled that in medical cases the “exceptional circumstances” standard has to be maintained because “in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-State bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country.” Is it possible to argue that Aman’s medical condition is not naturally occurring illness?

6. Which is the more appropriate test to be applied to Aman’s case: the test in N v. the United Kingdom or the test in M.S.S. v. Belgium and Greece? Can Article 3’s protection be engaged because Aman is going to face upon return to Redland a situation of serious deprivation incompatible with human dignity (See M.S.S. v. Belgium and Greece, Application No. 30696/09, Judgment 21 January 2011, para. 253-367; Sufi and Elmi v. The United Kingdom, Application No. 8319/07 and 11449/07, Judgment of 28 June 2011, para.282-283)?

Facts of Case A (the case of Aman; country of origin: Redland)

[1] Aman was born in 1979. He is from the southern part of Redland, a country which has been a scene of an armed conflict for decades. He arrived in Sweden on 30 August 2010 and claimed asylum on 1 September 2010. He claimed that he would be arrested and killed by the Redland’s authorities because he was a military commander of an insurrection group (called Islami) which was fighting against the government. He also claimed that Islami had forced him to become a suicide bomber. Finally, he claimed that he had been seriously injured during the course of a rocket launch in Redland and had been left disabled. His right leg was amputated and he had a false limb. His left leg and his hands were also injured.

[2] The national authorities rejected Aman’s application for asylum due to inconsistencies. He could not demonstrate that he was an Islami’s commander. It was established that upon return he would not constitute an interest for the Redland’s authorities. He had remained in hospital for two months after the rocket attack, and then he had returned to his village where he lived for months. During this period he did not have any problems with the Redland’s authorities. The Swedish authorities also emphasized that there were medical facilities in Redland and therefore he could receive hospital care. In addition, Aman had family members, two sisters, who could support him in Redland. Finally, it was
recognized that Redland was a scene of constant violence between different factions. However, the level of indiscriminate violence was not of such an intensity that would prevent Sweden from sending him back. The fact that he was a disabled person did not make him more susceptible to indiscriminate violence.

[3] After exhausting all levels of appeal at national level, Aman applied to the European Court of Human Rights. He alleges before the ECtHR that if returned to Redland, he would face a real risk of ill-treatment contrary to Article 3 of the ECHR. The President of the ECtHR decided to apply Rule 39 of the Rules of the Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court that the applicant should not be expelled to Redland pending the Court’s decision.

[4] In his application to the ECtHR, Aman asserted that, first, disabled persons were at particular risk of violence in the armed conflict in Redland, both because they would be unable to remove themselves from dangerous situations swiftly and because they would be at greater risk of homelessness and thus more prone to being affected by the indiscriminate violence which occurs on the streets of Redland. Second, the applicant argued that whilst the difficulties faced by persons with disabilities in Redland may not engage Article 3 if they had family support available to them, a person, like the applicant, without close family connections would suffer the full consequences of the discrimination against persons with disabilities. He argued that, there was a real risk he would be left seriously disadvantaged and in conditions analogous to those set out in M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 263, 21 January 2011. He argued that he was a member of a particularly underprivileged and vulnerable population group in need of special protection.

[5] The UNHCR Eligibilities Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Redland set out that

The intensification and spread of the armed conflict in Redland took a heavy toll on the civilian population in 2009 and continued to worsen through the first half of 2010. At least 5,978 civilians were reported killed and injured in 2009, the highest number of civilian casualties recorded in one year since the fall of the Taliban in 2001. 3,268 casualties were recorded during the first six months of 2010, representing a 31 percent increase over the same period in 2009. Compared to previous years and contrary to seasonal trends, a significant increase in the number of security incidents has been observed during the first half of 2010. This increase is in part attributable to an increase in military operations in the southern region since February 2010 and to significant activities of armed anti-Government groups in the south-eastern and eastern regions. It is reported that armed anti-Government groups remain responsible for the largest proportion of civilian casualties, whether due to targeted or indiscriminate attacks.
The continued instability in Reland has resulted in the shrinking of the humanitarian space, limiting the presence and activities of humanitarian workers and NGOs. Conflict-related human rights violations are on the rise, including in areas previously considered relatively stable. The escalation of the conflict between the central government and other armed groups, has contributed to limiting the access to health care and education, particularly in the southern and south-eastern regions of the country. A broad spectrum of civilians, including community elders, humanitarian personnel, doctors, teachers and construction workers has been targeted by armed anti-Government groups...”

In relation to internal relocation, the Guidelines stated that:

The traditional extended family and community structures of Redland society continue to constitute the main protection and coping mechanism, particularly in rural areas where infrastructure is not as developed. People in Redland rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence.

[6] The Redland Human Rights Commission reported that

Persons with disabilities are among the most vulnerable segments of population and the government has taken no measures to enable their full participation in society and to ensure their access to social and educational services. Due to the lack of public awareness about the concept of disability, persons with disabilities are often perceived as a family and societal burden and are humiliated and discriminated against. The Redland Constitution has emphasised the equality of all people and has outlawed all forms of discrimination among citizens. The Constitution further requires the government of Redland to take the necessary measures to ensure rehabilitation, training, and active social participation of persons with disabilities and provide them with medical and financial assistance.

The decades of war in Redland had unfavourable effects and one of these is the rise in the number of persons with disabilities. The conflict not only physically incapacitated people, but it also had negative implications for the psyche of the public.

... There is no precise assessment of the number and situation of persons with disabilities in Redland and different authorities have presented different statistical data on the number of persons with disabilities. Handicap International estimates that there are 800,000 persons with severe disabilities, however, according to the national disability survey in Redland, out of 25 million people, 747,500 to 867,100 people have severe disabilities, 17% of which are persons with war disability and
6.8% are victims of mines and other unexploded ordinance. On an average basis, for every five families, there is a person with a disability.

... Approximately 70% of persons with disabilities aged over 15 are jobless. Disability has had a direct and strong correlation with the rising trend of unemployment.

[7] The Government of Redland has approved a five-year National Action Plan on Disability. In the plan, it is observed that

Services are not equitably spread across all areas of the country and many people with disabilities lack appropriate care or must travel long distances to access it. 70 percent of people with a disability aged over 15 are unemployed; 53 percent of males and 97 percent of females. In comparison, 25 percent of men and 94 percent of women without disability are unemployed.

**Suggested issues and structure on Case B (the case of Omar)**

[feel free to use any other structure, to frame the relevant issue in a different way, to raise any other issues from the case, or to focus on only some of the below suggested issues]

1. Brief description of the Soering principle.
2. How is the principle of the absolute nature of the prohibition on *refoulement* under Article 3 of the ECHR applicable in Omar’s case (para. 79 and 80 of *Chabal v The United Kingdom*, ECtHR Judgment of 25 October 1996 and para. 138-142 of *Saadi v Italy*, ECtHR [GC] Application No. 37201/06, Judgment of 28 February 2008)?
3. What factors does the ECtHR consider when assessing diplomatic assurances (see para. 147 and 148 of *Saadi v Italy*, ECtHR [GC] Application No. 37201/06, Judgment of 28 February 2008; see para. 51 of *Baysakov and Others v Ukraine*, ECtHR, Application No. 54131/08, Judgment of 18 May 2010; see para. 55 of *Klein v Russia*, ECtHR Application No. 24268/08, Judgment of 4 October 2010; see para. 104 – 107 of *Babar Ahmad and Other v The United Kingdom Admissibility*, ECtHR Application No. 24027/07, 11949 and 36742/08, Admissibility Decision of 6 July 2010).
3. How are the factors which the ECtHR considers when assessing diplomatic assurances relevant to the case of Omar?
4. If the applicant were to be deported to Blackland, would the assurances contained in the Memorandum of Understanding, when taken with the Terms of Reference for the Center for Protection of Human Rights, be sufficient to remove any real risk that he would be tortured or ill-treated in violation of Article 3?
5. How would you assess the monitoring mechanism as described in the Memorandum of Understanding and the Terms of Reference for the Center of Protection of Human Rights?
Facts of Case B (the case of Omar; country of origin: Blackland)

[1] The applicant, Mr Omar, a national of Blackland, was born in 1961. He arrived in the Netherlands in 1991. He made a successful application for asylum on the basis that he had been tortured by the authorities in Blackland. The applicant was recognized as a refugee in 1994 and granted leave to remain.

Trial in absentia in Blackland

[2] In 2000, the applicant was convicted *in absentia* in Blackland of conspiracy to commit acts of terrorism. In particular, he was convicted of organizing bomb explosions in Israel as a result of which people were killed. Omar was sentenced to life imprisonment at the conclusion of the trial in Blackland. Omar claims that the main evidence against him was provided by the co-defendant and most probably the co-defendant was subjected to torture for the purpose of extraction of evidence.

The Memorandum of Understanding between the Netherlands and Blackland

[3] For many years Blackland was in a situation of diplomatic isolation by the international community due to the rule of its oppressive regime. Since 2000, however, Blackland became a strong ally in the fight against international terrorism which resulted in restoration of diplomatic ties with the Western States, including the Netherlands.

[4] In 2000, the Netherlands extradited a suspect terrorist to Blackland. Prior to the extradition, Netherlands sought and received diplomatic assurances that that person would not be subjected to ill treatment. Dutch representatives even visited him in detention and sent information to the Dutch government that the person had not been mistreated. However, in 2002, non-government organisations revealed that that same person was, indeed, tortured and that he never told the Dutch representatives about the treatment he had been subjected to. This was a huge blow for the Dutch government since it demonstrated that the assurances given were not actually followed.

[5] As a direct result from this failure, in April 2004 a Memorandum of Understanding was signed between the Netherlands and Blackland. The Memorandum was ratified by the Parliament in Blackland. The King of Blackland who has been in power for decades and who controls the police and security forces, made an official statement that Blackland will abide by the terms of the Memorandum. The Memorandum set out a series of assurances of compliance with international human rights standards, which would be adhered to when someone is returned from the Netherlands to Blackland.

[6] The Memorandum makes provision for any person returned under it to contact and have prompt and regular visits from a representative of an independent monitoring body nominated jointly by the authorities in Blackland and the Dutch
authorities. The Memorandum is applicable to “any person accepted by the receiving state (Blackland) for admission to its territory following a written request by the sending state (the Netherlands)”. Such a request may be made in respect of any citizen of the receiving state who is no longer entitled to remain in the sending state. The Memorandum further states that, to enable a decision to be made on whether or not to return a person, the receiving state: “will inform the sending state of any penalties outstanding against the subject of a request, and of any outstanding convictions or criminal charges pending against him and the penalties which could be imposed”. Requests may include requests for further specific assurances by the receiving state if appropriate in an individual case.

[7] The Memorandum states that it is understood that the authorities of each state will comply with their human rights obligations under international law regarding a person returned under the Memorandum. When someone has been accepted under the terms of the Memorandum, the conditions set out in paragraphs 1-5 of the Memorandum will apply, together with any further specific assurances provided by the receiving state. Paragraphs 1 to 5 provide as follows:

1. If arrested, detained or imprisoned following his return, a returned person will be treated in a humane and proper manner, in accordance with internationally accepted standards.

2. A returned person who is arrested or detained will be brought as soon as possible before a judge or other officer, including military prosecutor, authorised by law to exercise judicial power in order that the lawfulness of his detention may be decided.

3. A returned person who is arrested or detained will be informed promptly by the authorities of the receiving state of the reasons for his arrest or detention, and of any charge against him.

4. Except where the returned person is arrested, detained or imprisoned, the receiving state will not impede, limit, restrict or otherwise prevent access by a returned person to the consular posts of the sending state during normal working hours. However, the receiving state is not obliged to facilitate such access.

The Memorandum states that either government may withdraw from the Memorandum by giving 4 months notice.

The Terms of Reference with the Center for Protection of Human Rights in Blackland

[8] The Centre for Protection of Human Rights in Blackland signed a monitoring agreement with the Netherlands and was designed as the monitoring body in accordance with the Memorandum of Understanding. The Center is relatively new organization with little experience in monitoring torture. The Center had some
concerns as to its capacity in terms of expertise and financial resources to act as a monitoring body under the Memorandum. However, the Netherlands made a commitment that it will provide financially support to the Center. Blackland also made a commitment to offer its support to the Center when needed.

[9] The terms of reference for the Centre provide that it must be operationally and financially independent of the receiving State and must be able to produce frank and honest reports. The terms of reference also state that it must have capacity for the task, with experts (“Monitors”) trained in detecting physical and psychological signs of torture and ill-treatment and access to other independent experts as necessary. A Monitor should accompany every person returned under the Memorandum (“returned person”) throughout their journey from the sending State to the receiving State, and should go with them to their home or, if taken to another place, to that place.

[10] It should have the contact details of any returned person and their next of kin and should be accessible to any returned person or next of kin who wishes to contact it. It should report to the sending State on any concerns raised about the person’s treatment or if the person disappears. For the first year after the person returns, a Monitor should contact him or her, either by telephone or in person, on a weekly basis.

In respect of detention, the terms of reference provide inter alia that:

1. Visits to detainees

   (a) When the Monitoring Body becomes aware that a returned person has been taken into detention, a Monitor or Monitors should visit that person promptly.

   (b) Thereafter, Monitors should visit all detainees frequently and possibly without notice; Monitors should consider requesting more frequent visits where appropriate, particularly in the early stages of detention.

   (c) Monitors should conduct interviews with detainees in private.

   (d) Monitoring visits should be conducted by experts trained to detect physical and psychological signs of torture and ill-treatment. The visiting Monitor or Monitors should ascertain whether the detainee is being provided with adequate accommodation, nourishment, and medical treatment, and is being treated in a humane and proper manner, in accordance with internationally accepted standards.

   (e) When interviewing a detainee, a Monitor should both encourage frank discussion and observe the detainee’s condition.

   (f) Monitors should arrange for medical examinations to take place promptly at any time if they have any concerns over a detainee’s physical or mental welfare.
(g) The Monitoring Body should obtain as much information as possible about the detainee’s circumstances of detention and treatment, including by inspection of detention facilities, and should arrange to be informed promptly if the detainee is moved from one place of detention to another.

2. The Monitoring Body should provide regular frank reports to the sending State (the Netherlands) and should contact the sending State immediately if its observations warrant/

Application to the ECtHR

[11] Omar challenged the deportation order before the Dutch courts to the last available instance. However, of no avail. The domestic courts were convinced by the arguments submitted by the government that Omar would not be subjected to treatment contrary to Article 3 of the ECtHR once returned to Blackland since the Memorandum of Understanding offers sufficient guarantees to that effect. Omar applied to the ECtHR.

[12] Relying on his previous asylum claim, Omar argued that he is well known to the Blackland authorities and he continues to be of interest for them. If returned, he would also face retrial for the offences for which he had been convicted in absentia. He would thus face lengthy pre-trial detention and, if convicted, would face life sentence. All these factors meant he was at real risk of torture, either pre-trial or after conviction, to obtain a confession from him or to obtain information for other reasons.

Human Rights situation in Blackland

[13] UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment has reported that there are serious concerns as to the right of detainees to prompt access to a lawyer and to the absence of sufficient legal safeguards against torture in Blackland. In 2005, the UN Special Rapporteurs on torture was denied access to detention facilities in Blackland. Amnesty International reports on consistent and widespread torture inflicted on detainees and suspects in Blackland.

➢ **Visit to the Migration Court**
16 May 2018
14.00 – 16.00 Please be on time and take ID and passports. **Karolin Silfver Bäckman** will wait for you at the Court.
This lecture will address one of the most dramatic developments in international migration: trafficking and smuggling of human beings. The two are often confused. Although they have much in common, trafficking and smuggling are different. During the lecture we will explain the difference. We will discuss the important legal developments in the last 15 years revolving especially around the issue of trafficking both as a crime and as a serious human rights violation.

Readings

https://www1.umn.edu/humanrts/instree/trafficking.html

https://www1.umn.edu/humanrts/instree/smuggling.html

https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp

4. Rantsev v. Cyprus and Russia, ECtHR Application No. 25965/04, Judgment of 7 January 2010

5. Chowdury and Others v. Greece, ECtHR Application No. 21884/15, Judgment of 30 March 2017

Suggested Readings:

Questions for facilitating the discussion in class [feel free to raise any other relevant question]

1. As it is generally explained, the definition of human trafficking in the Palermo Protocol has three elements: the act (recruitment, transportation, transfer, harboring or receipt of persons), the means (by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person), the purpose (for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs). Since all of you come from different countries, please check how ‘human trafficking’ is defined in the Criminal Codes or other respective laws of your own countries. Are there diversions from the Palermo Protocol’s definition? How could you explain these diversions? Has the national legislator tried to define in more concrete terms the ambiguous meaning of the Palermo definition’s elements?

2. Human smuggling is defined “as procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state”. As opposed to smuggling, the purpose of human trafficking is exploitation. We will discuss the difference between human smuggling and human trafficking. Think about the following issues: bearing in mind the complexity of the migration process, involving different facilitators, and the broad social-economic conditions which prompt people to migrate, how is it possible to determine whether a person has been deceived or coerced?

3. After reading Rantsev v. Cyprus and Russia, do you see any problematic points with the ECtHR’s legal analysis? Is shutting down a legal migration channel (the artiste visa regime in Cyprus) the right response to the abuses suffered by the migrant women who come to work as “dancers”? Is stricter migration control an appropriate measure against human trafficking?
4. Having read *Chowdury and Others v. Greece*, could you reflect how the Court relies on the undocumented status of the migrants to frame its argumentation?

➢ **The Law and Politics of Border Control**

(lecture) Dr Amin Parsa  
23 May 2018

**Required Readings:**

– Natasha King, *No Borders: The politics of immigration control and resistance*, (Zed Books 2016), **Chapter I, pages 24–50** (THIS CHAPTER has been distributed to the students on the first lecture).


**Suggested Further Readings:**

– Bridget Anderson et.al, "'We are All Foreigners' : No Borders as a practical political project’, in Peter Nyers and Kim Rygjel (eds.) *Citizenship, Migrant Activism and the Politics of Movement*, (Routledge 2012), available via Lovisa and the Faculty of Social Sciences Library.

➢ **The EU-Turkey Statement, the Relocation Mechanism and the Question of Solidarity**

(lecture) 24 May 2018 Eleni Karageorgiou (Eleni.Karageorgiou@jur.lu.se)

As a response to the 2015/2016 “refugee crisis”, the EU has adopted a range of asylum and immigration measures in order to ensure “an efficient response to the increased arrivals of refugees and migrants in the EU” and “a high degree of solidarity between the Member States”. This session offers a critical insight in the two main arrangements adopted to address the ‘crisis’, assessing their compatibility with international law standards and reflecting on the role of the Court of Justice of the EU. To warm up for the session, please go through a short MPI piece, available at:

For the purposes of our discussion in class, please consider the main legal issues raised in the following cases:


Please **read** the cases and **be prepared to discuss them** (in groups) **in class**.  
Instruments in focus:
- **EU-Turkey statement, 18 March 2016**
- **Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, p. 80).**

Questions to guide our in-class discussions:
In light of what we have seen so far what are the main flaws in the architecture of the existing EU legal framework regulating asylum? To what extent do the emergency measures in question, namely the EU-Turkey statement and the Relocation mechanism address these flaws? Are they in line with the 1951 Refugee Convention and the international human rights law standards? To what extent do the measures in question help resolve the ‘crisis’?

- **Publication of the Take Home exam**

25 May 2018  12.00