

CASE OF HUMAN RIGHTS ADVOCATES AND INHABITANTS OF THE EUROPEAN UNION V. EU POLITICIANS, ITS SECURITY FORCES AND FRONTEX

INDICTMENT REGARDING THEIR VIOLATIONS TO THE 1951 REFUGEE CONVENTION

PROCEDURE

We hereby denounce the numerous violations of the 1951 Refugee Convention, also known as the Geneva Convention as the project to enlarge "Fortress Europe" continues, endangering the lives and wellbeing of thousands of refugees and asylum seekers. While we hereby acknowledge that this convention does not foresee "immigrants" in the greater scope, we claim that basic human rights should be cared for and extended to all human mobility.

The indictment procedure followed a thorough reading of the 1951 Refugee Convention and evaluated the plausible violations of Articles 3, 16 para 2, 21, 22, 23, 31, 33 and 34, by the charged and then submitted them to admissibility. The charges were deemed admissible and the charged, guilty on all violations. This hearing took place in the eyes of the public on July 28th 2021 after 70 years of the 1951 Geneva Convention was published.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The 1951 Refugee Convention

The 1951 Geneva convention relating to the status of refugees became effective in 1954 and was supplemented by a protocol adopted in 1967, which lifted the geographical and temporal restrictions of the original convention. It was initially limited to the protection of refugees in Europe after the Second World War, i.e. before 1951. The Geneva Convention defines the term refugee and regulates the international protection of those who fall into this category. It is thus a fundamental document of international law for the protection of people on the move. Today,

149 states have signed and ratified the Convention and the Additional Protocol, or one of the two, making it a legally binding treaty that must be adhered to by said states.

Article 1 states that:

"[...]For the purposes of the present Convention, the term 'refugee' shall apply to any person who [...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

This defines and binds EU Member States to provide protection.

B. The latest developments of "Fortress Europe"

The European Union goes to great lengths to secure its borders. Violence and Human rights abuses have become the new normal. Externalisation agreements, laying down that a third country has to take in the migrants who try to reach Europe, have been agreed on several times, often with known Human Rights abusing states, such as Libya. Where this is not sufficient in keeping the migrants away, the police forces of the Member States, and Frontex itself, are willing to violate international law on a daily basis: We are seeing an increase in pushbacks (on the sea and land), refolement and forced deportations. If the people are nonetheless successful and arrive in Europe, they are put in camps, where they have no access to basic human rights. Human dignity seems to have no place in this racist system.

C. The violated articles of the 1951 Geneva Convention relating to the Status of Refugees (“the Geneva Convention”)

All of the Member States of the European Union have ratified the Geneva Convention. It defines the situations in which a State must grant refugee status to persons who apply for it, and the rights and responsibilities of those persons. This Convention provides:

ARTICLE 3 (Non-discrimination)

"The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin"

This provision has been violated through the increasing racial profiling that security forces use to detain and illegally return several asylum seekers to unsafe situations, also taking advantage of the expiration of refugees' permits of stay (see Article 33 on non-refoulement). Furthermore, the increasing islamophobia endorsed by even the top EU Court (which recently ruled that companies may ban Muslim employees from wearing a hijab under certain conditions) is a disgrace for a region that presents to the rest of the world as the most peaceful and respectful to human rights.

ARTICLE 16 (Access to courts)

"Para 2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from cautio judicatum solvi. (...)"

Access to Courts is a fundamental part of the rule of law which is laid down in EU law in theory. Despite this, asylum applicants are still facing many obstacles when trying to obtain legal aid in the EU in practice.

As reported by the European Council on Refugees and Exiles (ECRE) and the European Legal Network on Asylum (ELENA) [2], in many EU member states such as Cyprus,

Germany, Greece, Hungary and Malta, asylum applicants generally do not have access to legal aid at first instance in practice. In others, legal aid is insufficient or is limited to legal advice, thus not usually covering representation at the asylum interview. The failure to provide fair and equal access to Courts is thus of systemic nature and thereby violating effective judicial protection and the rule of law. The following list of examples serves as an illustration and is by no means exhaustive. In Hungary, asylum applicants are often unable to receive legal advice from NGOs, let alone accessing legal aid at first instance, given the lack of information and increasing hostility towards NGOs that help immigrants. Slovakia provides legal aid in reception centres for asylum seekers, but not in the detention centres. Once again, NGOs are stepping in where the state fails to uphold its duty: NGOs are providing legal assistance to as many applicants as possible. In Finland, the right to legal aid was restricted in September 2016 and no longer covers lawyers' participation in interviews, except when extraordinary reasons apply or if the applicant is an unaccompanied minor. These problematic obstacles deeply affect the outcome of the asylum applications or subsequent needed legal paperwork for those granted with any type of protection. It leaves them in a legal limbo and often in a life-threatening situation.

ARTICLE 21 (Right to Housing)

"As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

When migrants do reach Fortress Europe, they are locked away in camps and detention centres, where they have to stay until their applications for asylum have been decided. These facilities fall short of any minimum standard of human rights protection and respect

for human dignity. Despite the cold in eastern Europe in winter and the storms in Greece, people in camps have to stay in unheated tents. The tents, which are shared among many, come with no privacy for the people. Moreover, they are at a high risk of burning easily, thereby creating a life-threatening situation for the people, as could be seen in the fire of Moria in September 2020. The unsanitary environment also leads to bed bugs, lice, scabies and other preventable issues for the people.

As the Office of the High Commissioner For Human Rights has put it: "Adequate housing should not be seen as a commodity. "Rather it should be seen as the right to live somewhere in security, peace and dignity." These tents, envisaged as a short-term placement of people can end up being their "homes" for years.

ARTICLE 22 (Right to Public Education)

1. *"The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education."*
2. *"The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships."*

Access to basic education and recognition of higher education is an integral part of the successful integration in a new surrounding. Despite this, it has been reported that children have not been allowed to leave the Greek camps to attend school. The pandemic has worsened the unacceptable situation even further. Education in camps is often self-organized and not supported by the state in any meaningful way.

Additionally, in other Member States such as Austria, access to education for asylum seekers older than 15 may become difficult, however, as schooling is not compulsory after the age of 15 for asylum seekers. Moreover, children who did not attend the mandatory school years in Austria have difficulties in continuing their education. For those unaccompanied children, who have not successfully finished the last mandatory school year, special courses are available free of charge. For children accompanied by their family, this possibility is often not available for free.

A similar and more difficult situation is found in Spain, where unaccompanied children are being criminalised and the focus of institutional and politically racist practices where they are often left out from medium to higher education and in the streets, where they are socially marginalised, and the Spanish Judicial system avails extreme-right propaganda that rules that unaccompanied asylum seeker children are dangerous.

ARTICLE 26 (Right to freedom of movement within the territory)

"Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances."

The bureaucratic practices in most Member States constrain refugees from the freedom of residing everywhere within their territories, as the number of documents required from the regions and municipalities prevents them from successfully choosing a place to live. This practice becomes aggravated in the case of Belgium, where immigrants overall, are segregated by their housing policies, marginalising them.

ARTICLE 31 (Right not to be punished for illegal entry)

1. *“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”*
2. *“The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.”*

People should not be punished for seeking a life in peace and dignity. Under the protocols for seeking asylum, most Member States only allow an application once the asylum seeker is in the territory. The paradox is that, while European governments increasingly fortify their borders, through externalisation agreements, and build more and more bureaucratic barriers to apply for international protection from other parts of the world, the only channels left are those who are considered "illegal". This also increases the danger of asylum seekers' journeys. Furthermore, European states punish asylum seekers with horrible circumstances in the camps and detention centres.

ARTICLE 33 (Prohibition of expulsion or “refoulement”)

1. *“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race,*

religion, nationality, membership of a particular social group or political opinion.”

2. *“The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”*

Member States return people on the move before they enter EU territory. This method, which is commonly known as "pushbacks" is increasingly being used in the Mediterranean and Aegean seas. By the help of externalisation agreements, EU Member States employ the support of Libyan, Moroccan and Turkish regimes in these practices. As numerous reports from different organisations have shown, the Member States are thereby complicit in pushing back countless asylum seekers to life-threatening situations.

As the Court has laid down in *Hirsi Jamaa and Others v Italy*, the right not to be refouled contains the right to be informed about the possibility to apply for asylum, which is constantly being broken. Clearly, this is not an acceptable way to circumvent the obligation of a state to allow for the chance to apply for asylum.

ARTICLE 34 (Naturalisation)

“The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”

Several Member States have posed administrative and bureaucratic barriers that prevent refugees from exercising their naturalisation rights in due time.

II. The people's assessment

Admissibility

70 Years ago the Refugee Convention has been drafted and since then signed by over two-thirds of the states worldwide. Among them are all EU Member States. A union that is founded on the rule of law and equality of the people. As the European States are bound by the Geneva Convention they need to ensure refugees' and asylum seekers' well-being, therefore, this indictment proceeds.

FOR THESE REASONS, THE PEOPLE

1. *Decides that* the charges presented are admissible and that those indicted in this document are found guilty of violating articles 3, 16 para 2, 21, 22, 23, 31, 33 and 34 of the 1951 Refugee Convention, also known as the Geneva Convention.
2. *Holds unanimously* to make each of the charged in this indictment to be held accountable for all the aforementioned violations.
3. *Holds unanimously* that refugees are, by definition, not protected by their governments. That is why the international community steps in to keep the individuals safe and protected. Is **this** safe or protected?! You can do better. We can do better.