

Week 2: Regional Complementary Protection Standards: Europe

Part A - European Human Rights Law (ECHR)

In this seminar we look at how the adoption of regional human rights instruments complement and strengthen the provisions of the 1951 Refugee Convention. The focus of analysis is European human rights law and, in particular, the role of the 1950 European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR).

Refugee status is governed by the 1951 Refugee Convention. It is granted by a foreign state to a person who has a well-founded fear of persecution in his or her country of origin on the basis of race, religion, nationality, membership of a particular social group or political opinion.

Questions arise as to the nature and level of protection of asylum-seekers, namely migrants who seek refuge and, more generally, international protection and what type of limitations can be imposed on states that turn someone away from their borders. In Europe the role of human rights guarantor (including the rights of asylum seekers) is performed by the ECHR through the jurisprudence of the ECtHR.

Particular attention is given to the principle of *non-refoulement* and the safeguards and remedies available under the ECHR. In particular, the focus will be on Articles 2 (*Right to Life*) and Article 3 (*Prohibition of torture*) selected case-law. In this context, due attention will also be given to the *right to a healthy environment* and the Parliamentary Assembly of the Council of Europe (PACE) proposed draft of a new protocol to the ECHR on the right to a safe, clean, healthy and sustainable environment.

Students will be encouraged to engage critically with the reading material, particularly when considering the methodology of the ECtHR in striking a balance between the rights of asylum-seekers and states' concerns for national security within the overarching question of "who is a climate migrant" and what fundamental rights can be conferred on this category of migrants still awaiting legal recognition.

Seminar Topics and Advance Preparation

In advance of the seminar, please read the following articles:

- ❖ On the right to asylum within the Convention framework

H Lambert, 'The European Convention on Human Rights and the Protection of Refugees: Limits and Opportunities' (2005) 24 *Refugee Survey Quarterly* 2: 39, available [here](#)

J Ristik, 'The Right to Asylum and the Principle of Non-Refoulement Under the European Convention on Human Rights' (2017) 13 *European Scientific Journal* 108, DOI: <https://doi.org/10.19044/esj.2017.v13n28p108>

❖ On the right to a healthy environment

H Balfour-Lynn and S Willman, 'The right to a healthy environment: the case for a new Protocol to the European Convention on Human Rights', King's College London, Working Paper Series, September 2022, available [here](#)

❖ To familiarise yourselves with the ECHR system, including the ECtHR, see:

- Read Articles 2 and 3 ECHR, click the link below:

[European Convention on Human Rights](#)

- Read ECtHR decision [MSS v Belgium and Greece](#)
- Read ECtHR decision [Tarakhel v Switzerland](#)

Be prepared to answer and discuss the following questions:

- The ECHR does not contain any explicit reference to the right to asylum. In what way has the ECtHR afforded protection to asylum seekers? In particular, how has the European Court interpreted key Articles of the European Convention, such as Article 3 ECHR in relation to the principle of *non-refoulement*? Give examples by reference to decisions of the European Court.
- What is the contribution or "added value" of the ECHR in comparison with the 1951 Refugee Convention in relation to the legal status of 'climate migrant'?
- What would a new Protocol on the right to a healthy environment signify for climate migrants?

Part B – The European Union and the Common European Asylum System (CEAS)

The seminar will focus and critically appraise the EU Common European Asylum System (CEAS) also in the light of relevant international refugee law. We are going to look at the way and the extent to which the CEAS constitutes a further development of the EU Internal Market and, more specifically a “natural” extension of the free movement of persons. This - as we shall see- is one of the reasons why to date the CEAS has only partially been able to achieve its goals. Applying an Internal Market logic to asylum (and to a lesser extent immigration) brings with it an inevitable clash between a migration management approach (which is *per se* disconcerting given that it is applied to people who, in the case of asylum, are inherently in a position of vulnerability) and a human rights approach.

Asylum is an EU fundamental right and granting it is an international obligation. In this context, we shall be looking at selected EU asylum legislative instruments, such as the EU Asylum Qualifications Directive (Directive 2011/95/EU) and the EU Reception Conditions Directive (Directive 2013/33/EU) and key judgments of the of the Court of Justice of the EU (CJEU), focusing on dignified living standards, and more broadly, the right to human dignity.

Specifically, we are going to consider the human rights dimension of EU asylum law and how the co-existence of conflicting principles such as mutual recognition and solidarity hinders the effective implementation of EU asylum measures. As in the case of the ECHR, the analysis is going to be undertaken within the overarching question of “who is a climate migrant” and what fundamental rights can be conferred on this category of migrants still awaiting legal recognition.

Seminar Topics and Advance Preparation

In advance of the seminar, please read the following articles:

- ❖ On the EU Asylum Qualifications Directive

Hugo Storey, EU Refugee Qualification Directive: a Brave New World? *International Journal of Refugee Law*, Volume 20, Issue 1, March 2008, Pages 1–49, <https://doi.org/10.1093/ijrl/een012>

Available [here](#)

- ❖ On the Reception Conditions Directive and dignified living standards/right to human dignity

S Velluti, (2023) 'Questioning legal personhood: A critique of the legal and jurisprudential underpinnings of EU immigration and asylum law' *European Law Open*, 1-32. <https://doi:10.1017/elo.2023.35> [pp. 15-17 and 23-26 ONLY] Open access

- ❖ To familiarize yourselves with the CEAS, click [here](#)

Essential reading

- ❖ EU Charter

Article 1 of the EU Charter of Fundamental Rights – right to human dignity

Article 4 of the EU Charter of Fundamental Rights – prohibition of torture

Article 18 of the EU Charter of Fundamental Rights – right to asylum

Text available [here](#)

- ❖ EU Asylum Qualifications Directive

Article 2 EU Asylum Qualifications Directive - Definitions

Chapter II-V – Assessment of Applications for International Protection, Qualification for Being a Refugee, Refugee Status, Qualification on Subsidiary Protection

Text available [here](#)

- ❖ EU Reception Conditions Directive

Article 2 EU Reception Conditions Directive – Definitions

Articles 17-19 EU Reception Conditions Directive - on material reception conditions and healthcare

Chapter III – Reduction and withdrawal of material reception conditions

Chapter IV – Provisions for Vulnerable persons

Text available [here](#)

- Read CJEU decision [Saciri \(Case C-79/13\)](#)
- Read CJEU decision [Jawo Case C-163/17\)](#)

Specifically on the prohibition of torture:

- Read CJEU decision [NS and ME \(Joined Cases C-411/10 and C-493/10\)](#)