



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

## **Launch of the ECtHR/FRA Handbook on European Law relating to Asylum, Borders and Immigration**

11 June 2013

European Court of Human Rights

### **I. Introduction**

1. Ladies and gentlemen, I would like to thank the European Court of Human Rights (ECtHR) and the European Union (EU) Fundamental Rights Agency for inviting UNHCR to the launch of the Handbook on European law relating to asylum, borders and immigration, in order to discuss the value of the Handbook as a tool for the work of International and EU specialised bodies.
2. As you know, UNHCR's mandate is not just limited to leading and coordinating international action to protect refugees and resolve their problems worldwide. Indeed, UNHCR's statute also provides UNHCR with a supervisory role to ensure the full and effective implementation of refugee conventions<sup>1</sup>.
3. The notion of supervision of international refugee law instruments also covers court interventions and submissions on the interpretation of the 1951 Convention Relating to the Status of Refugees.
4. The regional standards and case law developed in the field of asylum, borders and immigration at the EU and Council of Europe (CoE) levels affect the extent to which and the way the 1951 Convention is applied by European States. Accordingly, UNHCR's interest in this Handbook is critical and I would like to outline **why** and **how** it constitutes an invaluable tool for the refugee protection in Europe.

### **II. The Handbook as a Tool for UNHCR**

5. The international community, including UNHCR, is currently addressing a proliferation of refugee crises at the same time: Mali, South Sudan, Syria, Democratic Republic of Congo, Libya, Yemen and the Horn of Africa which are all ongoing since 2011. In addition millions of people remain in displacement from Somalia, Afghanistan, Eritrea, Iraq and Myanmar.

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<sup>1</sup> Paragraph 8(a) of its Statute and the Preamble of the 1951 Convention confer responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees, whereas Article 35(1) of the 1951 Convention obliges States Parties to cooperate with UNHCR in the exercise of its functions.

6. The EU plays a key role in the international responses, not only as a major donor, but also by keeping borders open to those seeking asylum and ensuring a fair and just assessment of protection needs.
7. The Common European Asylum System (CEAS) places Member States in a unique position to respond consistently and fairly to the needs of those men, women and children seeking protection in the Union. However, while many of the elements of a CEAS are now in place, and while we all agree that there were great achievements in this respect, a more harmonized approach is still lacking, and remaining gaps in law and practice pose risks to those in need of protection.
8. In this context, the Handbook that you are launching today provide key actors with a better understanding of the international protection regime, its relationship with Human Rights Law and the scope of key principles such as *non-refoulement*. The availability of this Handbook to practitioners, Refugee Status Determination officers, border guards, immigration officers and other actors involved in refugee protection shall consequently indirectly contribute to the harmonisation of the interpretation of the 1951 Refugee Convention and the EU asylum acquis.
9. This is important for the purpose of answering complex legal questions and litigation, but also for the purpose of spreading a common understanding of key refugee law principles such as non-refoulement among the personnel working on the front line with asylum-seekers (immigration and police officers, border guards).
10. The Handbook's comprehensive treatment of the law with respect to asylum, border management and immigration will consequently have an impact on the lives of approximately 60,000 asylum-seekers and 650,000 refugees in Europe<sup>2</sup>.
11. Moreover, the Handbook refers to judgments of great importance to UNHCR, taken from ECtHR and CJEU case law.

### **III. The Work of UNHCR: International Protection**

12. With respect to protection, UNHCR recognises that safeguarding the rights and well-being of refugees implies that we are aware of their needs, capacities, constraints and resources in order to undertake targeted actions.

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<sup>2</sup> UN High Commissioner for Refugees, UNHCR Global Trends 2011: A Year of Crises, 18 June 2012, available at: <http://www.refworld.org/docid/4fdccbe2.html>

13. From the legislative standpoint, gaps between national asylum legislations and the effective implementation of protection have been reflected in the jurisprudence of the ECtHR.
14. As a matter of fact, ineffective protection in one country not only violates the legitimate interests of refugees but this is also detrimental to the interests of other States Parties to the Convention because disregard for international refugee law might engender secondary movements of refugees.
15. Today in Europe, despite the CEAS, despite the European human rights instruments and the 1951 Refugee Convention, the situation of asylum-seekers and refugees remains worrying and far from being satisfactory: detention upon arrival in closed or unknown detention centers, push backs to countries at risk, no access to fair and efficient asylum procedures and safeguards, discrimination, racist attacks, or no access to education, health care, or a decent housing, labour exploitation, disregard of interim measures indicated by the ECtHR resulting in refoulement, are just some of the main challenges refugees are confronted with.
16. This cannot only be the consequence of the current economic downturn, even if this endless economic crisis impacts the protection of persons of concern to UNHCR. The most direct consequence is budget cuts affecting integration or human rights programmes or reception conditions.
17. We also need to remember that Article 18 of the EU Charter of Fundamental Rights is about the right to asylum and not immigration, and that providing international protection is different from migration management. However, both issues are linked in the context of mixed migratory movements. Several European States are regularly revisiting their asylum policies in the light of their own economic or domestic concerns, taking a predominating migration control approach rather than an human rights based approach. This approach is sometimes leading to an increasingly restrictive interpretation of the 1951 Refugee Convention which will also most likely result in the decline of the number of refugees duly recognized by European States and is also leading to a total disregard of the rights of migrants, who also have rights.
18. In this respect, the Handbook recalls that European States remain bound by all treaties to which they are party and that Article 18 of the EU Charter explicitly incorporates the principles and standards of the 1951 Refugee Convention and its 1967 Protocol, and the main protection mechanisms for refugees and asylum-seekers.

#### IV. The added value of the Handbook

19. Firstly, it is a very important tool to **consolidate the awareness and knowledge** of the relevant standards among all stakeholders in this field, including UNHCR staff members across Europe and beyond. UNHCR works closely with national authorities, legal practitioners, and NGOs within Council of Europe Member States to strengthen the understanding of relevant European standards and case law in the field of asylum and immigration.
20. This is done notably through training activities. UNHCR observed that the provision of adequate training is key to ensure a better implementation of the relevant standards. Interestingly, the Handbook does not only provide an overview of the law that is applicable to asylum, border management and immigration under European Union (EU) law and the European Convention on Human Rights (ECHR), but it also take a comparative perspective to better understand how the different legal systems interact, namely where they converge and differ. In this regard, the Handbook constitutes a **valuable training tool**.
21. Secondly, the Handbook also provides useful comparison between EU law and ECHR, which will inform asylum lawyers on how to operate and **litigate** under the two systems. It is therefore also likely to contribute to improve the quality of the litigation at the domestic level and more particularly, the extent to which legal practitioners and accordingly the judiciary, relies upon European Courts' case law.
22. Thirdly, The Handbook is likely to prove useful in the context of **UNHCR's Judicial Engagement**.
23. In recent years, UNHCR has put an emphasis on international protection from a legal standpoint within its broader protection strategy. Through its litigation strategy, UNHCR has undertaken or supported a significantly increased number of strategic judicial interventions, often at the request of courts or interested parties to obtain our views on particular legal issues,
24. In addition to its *amicus curiae* interventions, UNHCR engages with courts and judges in various ways, including through its support to the International Association of Refugee Law Judges ("IARLJ"), and collaborates with lawyers on issues of concern to UNHCR and refugee law.
25. UNHCR also intervened as *amicus curiae* in several cases before the Court of Justice of the European Union, and 16 cases before the ECtHR. UNHCR has also intervened in numerous cases in national proceedings.

26. International protection by way of judicial engagement has become an increased focus for UNHCR. In this regard, the Handbook will prove to be a useful resource in the preparation of and approach to legal interventions.

## **V. The Handbook and the protection of refugees**

27. I will now outline some protection challenges faced by refugees and which are addressed by this Handbook.

28. I will start with detention, because detention practices in countries around Europe are still problematic, in particular because alternatives to detention are too often not explored. This important issue is discussed in Chapter 6 of the Handbook, quoting *Rahimi v Greece* and two cases where UNHCR intervened as a Third Party: *Abdolkhani & Karimia v Turkey*; and *Said & Al Tayyar v Hungary*.

29. Gender-based violence, discussed in Chapter 9 of the Handbook, continues to be one of the most serious threats to safety and security, particularly for refugee women and girls. To address the issue of sexual and gender-based violence, the CoE has adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence, with specific reference to the protection of refugee women.

30. Access to territory and asylum, discussed in Chapter 1 of the Handbook, continues to be a significant problem in the context of mixed migration movements, including irregular secondary movements. Migration policies and practices do not always take sufficient account of the needs of asylum-seekers and refugees moving within larger groups. (See *Hirsi & others v Italy*)

31. We all remember the issue of deaths of asylum-seekers and other migrants at sea which have reached dramatic proportions last year, triggering an investigation by the Parliamentary Assembly of the Council of Europe.

32. Most notably, the Handbook dedicates Chapter 3 to substantive issues concerning asylum determination and barriers to removal. The Chapter specifically and extensively discusses topics central to the work of UNHCR, such as, inter alia, the right to asylum and the principle of non-refoulement, the nature of the risk under EU law and under ECHR, and the assessment of risk.

33. Chapter 2 of the Handbook addresses human trafficking, another important issue to UNHCR which remains problematic and needs to be further explored. (*Rantsev v Cyprus*)
34. With regard to social and economic rights of asylum-seekers and refugees, the main problem is that they are too often perceived as powerless, and as objects of charity, rather than as individuals with dignity who have suffered immense adversity and great loss of their families and livelihoods. Supporting refugees to access their rights to healthcare, employment and secure livelihoods is an important aspect of UNHCR's local integration strategy. Chapter 8 of the Handbook addresses the economic and social rights of asylum seekers and refugees, making specific reference to the European Social Charter. The reference to this treaty in the Handbook is well received by UNHCR, which submitted observations to the European Committee of Social Rights in the case of *DCI v Belgium*.
35. Another crucial issue involves the enjoyment of family life by refugees, which is discussed in Chapter 5 of the Handbook and shall be the theme of World Refugee Day next week. Refugee flight often results in family dispersal and thus efforts must be made to restore family unity in the country of refuge.
36. The protection of particularly vulnerable persons, discussed in Chapter 9 of the Handbook continues to be a point of concern for UNHCR. Older refugees, disabled persons, unaccompanied children, or refugee girls are often marginalised in refugee communities and face particular challenges, such as under-age marriages, trafficking, lack of means of subsistence, labour and sexual exploitation, lack of or interrupted education, unemployment. (See *Rahimi v Greece, MSS v Belgium & Greece*).

## **VI. Conclusion**

37. Ladies and gentlemen, many of these issues of concern to UNHCR keep happening and worsening in Europe. At the same time, thanks to the development of these instruments and trainings, more persons in need of international protection are aware of their rights and more practitioners are aware of how to use the law to protect the rights of these persons.
38. Asylum-related cases will keep coming before the European Courts. Therefore, with the HELP programme of the Council of Europe, the newly published handbook for legal practitioners of the CoE on the "Protection of Migrants under the ECHR and the ESC", the European Asylum Training Curriculum, the UNHCR study on the Credibility assessment in EU Member States, funded by the ERF, the forthcoming UNHCR Manual on the European

Regional Courts, and the today ECtHR/FRA Handbook on European law relating to asylum, borders and immigration, we are all better equipped with complementary and comprehensive arsenal of resources to enhance the protection of refugees in Europe and contribute to the further harmonization of CoE Member States practices, within the EU but also beyond.

Thank you

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