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# THE FLAWED EU ASYLUM SYSTEM - HUMAN RIGHTS TRUMPS POLICY

## Introduction

The European Council's Summit in Tampere brought in important conclusions regarding the joint plans of Member States (MSs) for the asylum issues concerning the European community. The member states vouched for a Common European Asylum System (CEAS) which was presented as the long-term goal of this Summit and the short-term goals were outlined in the form of common standards for fair and efficient asylum procedure. (Craig, 2008, p.235) The European Court of Justice (ECJ) has been pointing out that the CEAS should function on the basis of mutual trust and confidence, but also on the "principle of solidarity and fair sharing of responsibility between the Member States." (Buckley, 2012) However, the case-law from the ECJ and the European Court of Human Rights (ECtHR) has resulted with opposite effects from a fair and efficient asylum procedure, detecting deficiencies in the Greek asylum system and hence

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the CEAS. Even though almost 90% of the asylum requests are directed towards Greece, it is not unimaginable that other MSs might face a similar problem. The asylum issues are at the same time closely related to Copenhagen criteria that each country should fulfil prior to acceding the European Union (EU). Safeguarding human rights in particular for vulnerable groups, such as the asylum seekers and refugees is of significant importance for every acceding country.

**Legal background of the asylum policy in EU**

The Treaty on the Functioning of the European Union (TFEU) is regulating the area of seeking asylum within the community with its Chapter 2, where the crucial provision is represented within article 78. The first paragraph especially sets upon developing…*"a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties."* In addition the second paragraph of this provision is directed towards adopting uniform status of asylum and subsidiary protection, as well as criteria and mechanisms for determining which MS is responsible for considering an application for asylum. It must be taken into consideration that the right to asylum is provisioned within the Charter of Fundamental Rights of the European Union in its article 18 setting that: "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967, relating to the status of refugees and in accordance with the Treaty establishing the European Community."

These primary provisions as mentioned within the text itself are based upon the vital principle within refugee and asylum law, which is the principle of non-refoulment. This means that these documents have taken the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 as a fundamental document and basis for developing further standards and criteria in deciding on the possibility of giving a certain person the benefits of an asylum status. The crucial provision from the Geneva Convention is the article 33 which is setting up the principle of non-refoulment for which some authors claim to have the status of *jus cogens*. Regardless of whether this provision holds the title of peremptory norm, it is a fact that it represents a principle which is mentioned and accepted as a basic standard

of protection in cases involving asylum seekers. All further benefits given to the person seeking asylum are only added upon this basic principle. The principle of non-refoulment states that: "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 judgement of a particularly serious crime, constitutes a danger to the community of that country."

Guided from the Geneva Convention to which all MSs are signatory and further by the TFEU, the Charter on the Fundamental Rights and having in mind the European Convention on Human Rights and Fundamental Freedoms (ECHR), the MSs have regulated this issue in details adopting several other documents: The Council Regulation 343/2003/EC, known as The Dublin II Regulation, replacing the Dublin Convention of 1990; The Council Directive 2003/9/EC on minimum conditions for the reception of asylum seekers in all MSs concerning only applications submitted for protection under the Geneva Convention; The Council Directive 2004/83/EC on minimum standards for qualification and status of third-country nationals as refugees, known as the "Qualification directive". The Qualification Directive is particularly of further interest since the ECJ has delivered two important judgments concerning this directive, which will be further elaborated: The *Elgafaji case*[1] and the *Salahadin Abdulla and Others case*[2]. Another important directive is the Council Directive 2005/85/EC on minimum standards for granting and withdrawing refugee status and finally the Eurodac regulation 407/2002 which is seen as one completing the Dublin II regulation setting up a complementary database system. In fact, the Eurodac Regulation is setting up a computer central database for the purposes of comparing fingerprints of asylum seekers and third country nationals. The reason for establishing this regulation was due to the lack of travel documents of asylum seekers and it is supposed to help establishing the responsible MS for examining the asylum application.

1 "Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie (C-465/07)". European Court of Justice.

2 Aydin Salahadin Abdulla v. Bundesrepublik Deutschland (joined cases C-175, 176, 178 and 179/08)". European Court of Justice

**The Dublin II Regulation**

On 15 June 1990, the MSs of the European Communities signed the Dublin Convention, which was set to regulate the external border issues, such as asylum seekers and immigration. This was seen as a normal course following the establishment of the Schengen Agreement. The Dublin Convention primarily was set to establish which MS is responsible for examining applications for asylum lodged in one of the MSs of the European Communities. The final aim was to avoid multiple applications and to guarantee that each asylum seeker's case is dealt with by a single MS through objective criteria (Articles 5 to 14).

Since the European Commission expressed concern over the general approach taken by this Convention and suggested amendments towards more efficient system of determining the responsible MS regarding the assessment of asylum applications and due to reluctance from the MSs to change the initially envisaged system, only minor modifications were made to the Convention which took upon the form of Regulation, known as the Dublin II Regulation. The hope which MSs bestowed upon the "new and improved" document was interrelated with the Eurodac Regulation, which was setting up a database with fingerprints from the asylum seekers and can easily point towards the MS to which borders the asylum seeker showed up first.

The manner in which this regulation was designed, even on paper, managed to raise discussion over issues such as for instance the treatment that asylum seekers get in different MSs in terms of the real danger of not being treated equally. The crucial issue was whether the minimum criteria and standards set with the Tampere conclusions are respected by all MSs and how real could be the up-keeping of the idea for the Common European Asylum System. Not so long after the creation of the Dublin II Regulation that this document was involved in the center of the dispute in several cases concerning human rights issues. In most of the cases, the main dispute concerns the primary obligation of the MS to return the asylum seeker to the country where he/she firstly entered in the EU. Namely, the asylum seekers appeal the decisions to be transferred back to the country of first entrance mostly claiming potential human rights violations and degrading treatment.[3] The MSs have demonstrated reluctance to examine the actual situation in the country and the general conditions of the asylum seekers. It must be stressed that these MSs have to their avail the possibility to use the

3 Particularly when the asylum seeker needs to be transferred back to Greece, being the country of first entrance

so-called sovereignty clause. The sovereignty clause gives the possibility for derogation from the primary obligation of the asylum application being examined by the country of first entrance, where… "…each MS may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that MS shall become the MS responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility…"[4] The reluctance to use the possibility of this sovereignty clause will be elaborated in the following cases. Apart from the Dublin Regulation, other legal acts were as well involved in cases concerning the rights of the asylum seekers, especially the provisions from the "Qualification Directive".

**Issues stemming from the Dublin II Regulation- The case of MSS v. Belgium and Greece[5]**

The case that echoed the most within the European community and which wounded immensely the European policy on asylum and migration was finalized in January 2011. The case revolves around the effects of the Dublin Regulation and its practical implementation. It practically demonstrates how the different treatments within different EU countries can result with a non-functioning asylum system or at least represent a system with large deficiencies.

The case is concerning an Afghan national, who entered the European Union via Greece. In February 2009 he arrived in Belgium, where he applied for asylum. In accordance with the Dublin Regulation, the Belgian Aliens Office asked the Greek authorities to take responsibility for the asylum application and subsequently ordered the applicant to leave the country for Greece. From his return to Greece he was immediately placed in detention for four days in a building next to the airport, where the conditions of detention were allegedly appalling. When he was released, he was issued with an asylum-seeker's card and notice to report to the police headquarters to register the address where he could be reached with news about his asylum application. Having no means of subsistence, he lived in the street. Later, as he was attempting to leave Greece, he was arrested and placed in detention for a week in the building next to the airport, where he was allegedly beaten by the police. After his release, he continued to live in the street.

4 Art. 3 (2), The Dublin II Regulation

5 "MSS v. Belgium and Greece, Application no.30696/09". European Court of Human Rights.

The applicant claimed the violation of Article 3 of the ECHR, claimed to have suffered from activities amounting to degrading treatment. The Court has taken in consideration that he had suffered poor conditions of detention, brutality and insults at the hands of the police officers in the detention centre, even though such conditions had already been found to amount to degrading treatment, because the victims were asylum-seekers. The UNHCR had visited the centre in May 2010 and found those conditions of detention unacceptable, with no fresh air, no possibility of taking a walk in the open air and no toilets in the cells. The Court reiterates that the confinement of aliens, accompanied by suitable safeguards for the persons concerned, is acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations, in particular under the 1951 Geneva Convention and the ECHR.[6]

The ECtHR found that the feeling of arbitrariness and the feeling of inferiority and anxiety, as well as the profound effect such conditions of detention indubitably had on a person's dignity, constituted degrading treatment. In addition, the applicant's distress had been accentuated by the vulnerability inherent in his situation as an asylum-seeker.

Furthermore it was pointed out that the obligation to provide accommodation and decent material conditions to impoverished asylum seekers has entered into positive law and the Greek authorities were bound to comply with their own legislation, which transposes Community law, namely Directive 2003/9 laying down minimum standards for the reception of asylum seekers in the MSs ("the Reception Directive"). The Court attaches considerable importance to the applicant's status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection[7]. It notes the existence of a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention.

In spite of the obligations incumbent on the Greek authorities under their own legislation and the European Union's Reception Directive, the applicant had lived for months in the most abject poverty, with no food and nowhere to live or to wash. He also lived in constant fear of being attacked and robbed, with no prospect of his situation improving.

Regarding the responsibility of Belgium, representing the authority that decided to transfer the applicant in Greece in accordance with the Dublin Regulation, the UNHCR had warned the Belgian Government about the

6 see "Amuur v. France, European Court of Human Rights

7 see, mutatis mutandis, "Oršuš and Others v. Croatia. European Court of Human Rights.

situation in Greece. The Belgian authorities must have been aware of the deficiencies in the asylum procedure in Greece when the expulsion order against him had been issued, and he should not have been expected to bear the entire burden of proof as regards the risks he faced by being exposed to that procedure. Since Belgium had initially ordered the expulsion solely on the basis of a tacit agreement by the Greek authorities, they should have verified how the Greek authorities applied their asylum legislation in practice. The Court found that the extremely urgent procedure did not meet the requirements of the Court's case-law whereby any complaint that expulsion to another country would expose an individual to treatment prohibited by Article 3 must be closely and rigorously scrutinised, and the competent body must be able to examine the substance of the complaint and afford proper redress.[8]

The applicant claimed as well the violation of Article 13[9] taken in conjunction with article 3 from the ECHR. Namely, the concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled[10]. And as the Court has already stated, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention[11].

The Court pointed out that with his asylum application the applicant produced, in support of his fears concerning Afghanistan, copies of certificates showing that he had worked as an interpreter. It also has access to general information about the current situation in Afghanistan and to the Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan published by the UNHCR and regularly updated. For the Court, this information is prima facie evidence that the situation in Afghanistan has posed and continues to pose a widespread problem of insecurity and that the applicant belongs to a category of persons particularly exposed to reprisals at the hands of the anti-government forces. There had been a violation of

8 Legal Summary, "MSS v. Belgium and Greece, Application no.30696/09". European Court of Human Rights.

9 Right to an effective remedy-Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity (art.13. ECHR)

10 see T.I. v. the United Kingdom and Müslim, §§ 72 to 76). European Court of Human Rights.

11 see "Kudła v. Poland [GC], § 152". European Court of Human Rights.

Article 13 taken in conjunction with Article 3 because of the deficiencies in the Greek authorities' examination of the applicant's asylum application and the risk he faced of being removed directly or indirectly back to his country of origin without any serious examination of the merits of his application.

**Issues stemming from the European Refugee Qualification Directive - The case of Elgafaji**

The case of Meki Elgafaji and Noor Elgafaji, concerns Iraqi nationals who arrived in the Netherlands due to the risks they were facing back in Iraq. Before leaving Iraq Mr. Elgafaji was working there in a British firm providing security to personal transport. His uncle who worked for the same firm was killed by the militia and he also received a threat that he would be killed since he was considered by the militia as collaborator. However, the Dutch authorities refused to grant temporary residence permits to Mr and Mrs Elgafaji on the grounds that they had not proved the circumstances on which they were relying and, therefore, had not established the real risk of serious and individual threat to which they claimed to be exposed in their country of origin. This measure falls within the scope of Directive 2004/83, the objective of which is, on the one hand, to ensure that all MSs apply common criteria for the identification of persons genuinely in need of international protection, and on the other hand, to ensure that a minimum level of benefits is available for these persons in all MSs. This Directive in particular establishes the minimum standards for "subsidiary protection", which is designed to be complementary and additional to the refugee protection enshrined in the Geneva Convention.[12] Since this decision was appealed, the court submitted the case in form of a question for preliminary ruling procedure, in order for the ECJ to give its opinion on the interpretation of this Directive.

The disputed provision of the "Qualification directive" was Article 15 (c) in reference to the protection it was providing when compared to the Article 3[13] of the ECHR. Article 15 (c) enlists serious harm in the form of "…serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict". Article 3 from the ECHR together with the developed case-law is providing that a person shall not be returned/extradited/transferred back to a country where he/she might be subjected to torture or inhuman or degrading treatment. The first important conclusion pointed out in this preliminary

12 Summary of the Judgment, EU Commission legal service, "Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie (C-465/07)". European Court of Justice.

13 Prohibition of torture and inhuman and degrading treatment

ruling of the ECJ is the fact that the human rights protections provided in both provisions are interdependent reminding that European law is grounded on the fundamental principles laid in the ECHR and its case-law. Although they are interdependent, still the article 15 (c) must be carried out independently. The second dilemma was revolving around the evidence which should substantiate the threat or the risk to the person's life. The ECJ noted that even though the scope of material protection provided from Article 15 (c) is wider, the personal nexus demanded from this provision is much stricter than the criteria set out from the ECHR case law. Finally, the most innovative part of this judgment is represented by outlining the width of the scope of protection where the personal risk could be evidenced by proof of the degree of indiscriminate violence, which has such a high level that the mere presence of an individual in such circumstances would represent a risk of serious harm. Even though this interpretation should be used only in exceptional situations, still it amounts to the possibility for protection within Article 15 (c). (Azarov, 2009) The only doubt remains in the national application of the rule vis-à-vis the interference with CEAS.

**Aftermath**

The aftermath of the previously elaborated judgments and especially the case of MSS arrived in the form of the judgment in the joined cases N.S. v Secretary of State for the Home Department[14] and M.E. and Others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform[15]. The effects of the ECtHR decision in the MSS case were firstly seen in the opinion of the Advocate General Trstenjak, as she elaborated that: "…a MS in which an asylum application has been lodged is obliged to exercise its right to examine that asylum application under Article 3(2) of Regulation No 343/2003 where the transfer to the MS primarily responsible under Article 3(1) in conjunction with the provisions contained in Chapter III of Regulation No 343/2003 would expose the asylum seeker to a serious risk of violation of his fundamental rights as enshrined in the Charter of Fundamental Rights."[16] The Advocate General boldly stated that the provisions laying down the human rights guaranteed within the many legal acts (directives, regulations), do not provide for the sufficient protection and obligation for the transferring MS to exercise the right to assume

14 "N.S. v Secretary of State for the Home Department C-411/10". European Court of Justice.

15 "M.E. and Others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform C-493/10". European Court of Justice.

16 Opinion of the Advocate General Trstenjak, para 178 (2). European Court of Justice.

responsibility for the examination itself under Article 3(2) of Regulation No 343/2003. (Buyse, 2011)

The case of N.S concerns an Afghan national, who came to the United Kingdom after travelling through Greece, where he was arrested in 2008. He was released by the Greek authorities four days later and ordered to leave Greece within 30 days. Mr N.S. did not make an asylum application. According to him, when he tried to leave Greece he was arrested by the police and expelled to Turkey, where he was detained in appalling conditions for two months. He states that he escaped from his place of detention in Turkey and travelled to the United Kingdom, where he arrived in January 2009 and lodged an asylum application. In July, Mr N.S. was informed that he would be transferred to Greece in August, under the 'Dublin II' RegulAtion. In the legal proceedings challenging that decision he alleged that there was a risk that his fundamental rights would be infringed were he to be sent back to Greece. The national court points out that asylum procedures in Greece have serious shortcomings, the proportion of asylum applications which are granted is extremely low, judicial remedies are inadequate and very difficult to access and the conditions for reception of asylum seekers also inadequate. The case of M.E and Others, which was joined with the case of N.S, concerns five persons, all unconnected with each other, originating from Afghanistan, Iran and Algeria. Each of them travelled via Greece where they were arrested for illegal entry without applying for asylum. They then travelled to Ireland, where they claimed asylum. They also resisted their return to Greece and claim that the procedures and conditions for asylum seekers there are inadequate.

Consequently the courts from both countries asked the ECJ whether the authorities of a MS which should transfer the applicants to Greece (the MS responsible for the examination of the asylum application under the Regulation) must first check if that State actually observes fundamental rights. And in case the Court finds that the State does not observe fundamental rights, whether those authorities are bound to assume responsibility for examining the application themselves.

In the conclusions within the judgment, the ECJ stated that the slightest infringement of the norms governing the right to asylum cannot be sufficient to prevent the transfer of an asylum seeker to the MS primarily responsible, since that would deprive States' obligations in the CEAS of their substance and endanger the objective of quickly designating the responsible MS. However, the Court holds that **EU law does not support a conclusive presumption that the MS indicated by the Regulation as responsible necessarily observes the fundamental rights of the EU. The MSs, includ-**

**ing the national courts, may not transfer an asylum seeker to the MS indicated as responsible where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers amount to substantial grounds for believing that the asylum seeker would risk being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.** The Court considers that the MSs have a number of sufficient instruments at their disposal enabling them to assess compliance with fundamental rights within the MS responsible to examine the asylum application.

The Court adds that the MS which should transfer the applicant to the MS responsible under the Regulation and which finds it is impossible to do so, must examine the other criteria set out in the Regulation, in order to establish whether one of the following criteria enables another MS to be identified as responsible for the examination of the asylum application. And if necessary, it must itself examine the application.[17]

**Conclusion(s)**

Regarding the conclusions and outcomes from the elaboration of the previous cases and the involved legal acts from the European law governing asylum must be pointed out that the CEAS was conceived in a context making it possible to assume that all the participating States observe fundamental rights and that the Member States can have confidence in each other in that regard. It is precisely because of that principle of mutual confidence that the European Union legislature adopted the 'Dublin II' Regulation, the main objective of which is to speed up the handling of asylum claims in the interests both of asylum seekers and the participating Member States. However, the different conditions governing the asylum procedures and the circumstances in which asylum seekers were residing in different MSs made this primary idea difficult to be realized.

The system provisioned to prevent "asylum-shopping" in terms of submitting asylum applications to several countries consecutively or at the same time was failing in terms of the approach that many MSs were taking. They were almost automatically practicing the discretion given to them by the Dublin II Regulation. Most of them were reluctant at the beginning to reach to the "sovereignty" clause and to make sure that none of the asylum seekers is being shifted to a country with circumstances that might amount

17 Opinion of the Court of Justice of the European Union

to inhuman, degrading treatment or even torture. The emergence of cases such as the Elgafaji case and the MSS case had a significant effect firstly on the approach of the international human rights bodies and especially the ECJ, as well as the national courts. The effect that the previous cases had on the ECJ was demonstrated through the case of NS, where a more human rights based approach can be seen in the Advocate General's opinion, as well as in the Court's judgment.

Another indicator that states are starting to use the possibilities given to them under the sovereignty clause are the UNHCR reports and analysis presenting data such as the fact that highest level courts in Austria, France, Hungary, Italy and Romania have ruled against proposed Dublin transfers to Greece. Grounds for such rulings include where such transfer would constitute or result in a violation of Article 3 or 8 of the European Convention on Human Rights (ECHR), where it would result in serious and irreparable Harm. Additional grounds are those where asylum legislation and practice does not offer sufficient safeguards to ensure that persons in need of protection have access to a fair and efficient asylum procedure. Furthermore the inadequate reception conditions have been taken in account as constituting inhuman treatment and where access to healthcare is lacking. National courts look as well into the procedural guarantees under the Dublin Regulation and if they were respected and especially if the procedural guarantees of the right to asylum were violated. Spanish practice and jurisprudence have focussed on not transferring persons with specific vulnerabilities. However there are still countries that stubbornly hold the ground of transferring asylum seekers back to Greece on the account of presumption that Greece upholds its international obligations and that the European Commission should address potential shortcomings in implementing the EU law. In the meantime, a growing number of transfers to Greece have been postponed, whether as a result of government policy or through interim measures before the European Court of Human Rights.

Finally, it should be stressed that each country, whether it is a member of the European Union or accession country, holds the responsibility in respecting its international obligations. Starting from the Geneva Convention on the Status of Refugees and continuing with other regional legal documents. The fact that the EU has envisaged a system that should provide for a more efficient handling with the asylum applications does not mean that the basic documents covering this area should be circumvented. Member States have enough substantial grounds in order to make sure that each person, receives a fair and equal treatment and humane reception conditions, regardless of his/her status.

**Abstract**

EU Member States vouched for a Common European Asylum System (CEAS) as their long-term goal from the Summit in Tampere. The short term goal was the common standards for fair and efficient asylum procedure. The different conditions governing the asylum procedures and the treatment of asylum seekers, especially in Greece made this primary idea difficult to be realized. This was demonstrated through the cases of MSS v. Belgium and Greece, the case of Eljafaji, the case of NS v. Secretary of State for the Home Department, etc. It was concluded by the European Court of Justice and the European Court of Human Rights that countries must take into account the conditions in which they are returning the asylum seekers. They must check if the asylum seekers will have effective legal remedies available and treatment that does not qualify as torture, inhumane or degrading treatment.

**Резиме**

Земјите-членки на ЕУ го воведоа Заедничкиот Европски Систем за Азил (Common European Asylum System-CEAS) како нивна долгорочна цел на Самитот во Тампере. Краткорочна цел беа општите стандарди за фер и ефикасна постапка за азил. Различните услови во кои се регулираат постапките за азил и третманот на азилантите, особено во Грција, придонесоа за потешкотии во однос на реализирањето на оваа идеја. Ова беше демонстрирано преку случајот на МСС против Белгија и Грција (MSS v. Belgium and Greece), случајот на Елгафаџи, случајот на Н.С. против Државниот секретар за внатрешни работи (NS v. Secretary of State for the Home Department), итн. Европскиот суд на правдата и Европскиот суд за човекови права донесоа заклучок дека земјите мора да ги земат предвид условите во кои тие ги депортираат азилантите. Тие мора да проверат дали лицата кои бараат азил ќе имаат достапни правни лекови и третман кој не се квалификува како тортура, нечовечно или понижувачко постапување.

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