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**MIGRANTS  
MATTER**

ENHANCING LEGAL PROTECTION OF  
MIGRANTS RIGHTS IN KAZAKHSTAN



**LPRC**  
LEGAL POLICY  
RESEARCH CENTRE



**icj**

International  
Commission  
of Jurists

# CASEBOOK

Almaty 2020

This publication is prepared for online Seminar  
"On International Human Rights Mechanisms  
for the Legal Protection of Migrants, Refugees and Asylum-Seekers"  
28-29 August 2020

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## Project in social media



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# Case study session

## When?

Within the framework of the seminar there will be 2 Case study sessions on August 29. The first from 11:00 to 13:30 and the second from 15:45 to 17:00

During the first 15-20 minutes experts will explain the task and you will have the opportunity to ask them questions about the task and cases. Simultaneous translation will be provided here.

## How to get into a group?

15-30 minutes after the start of the general session, the ZOOM system will automatically transfer you to one of three groups. This may take 1-2 minutes. Groups are formed by the organizer according to the list. It is very **IMPORTANT** to write your first and last name correctly when entering the conference so that you get into your group without hesitation

## How to work in groups?

In groups there is no simultaneous interpretation function, but there will be consecutive interpretation. If you have a question, you need to raise your hand and ask the translator to translate your question to the expert.

# Case study session

if you have any problems during sessions please text Ayazhan Oiratova's WhatsApp +77013529315



## The case of “Abdalrahim”

Abdalrahim, a citizen of Solonia, has fled his wartorn country dominated by lawlessness and warlords. Travelling through the desert with the aid of smugglers, he arrives at the shores of the Maradian Sea together with his brother Akim.

They both give their last money to a smuggler that puts them into a dingy, their destination being Desaria, where they hope to start a new life. The smuggler, however, gives to the boat an insufficient amount of fuel that leaves the dingy stranded in the middle of the Maradian Sea. After days of drifting away, the dingy capsizes. In the capsize, Abdalrahim's brother, Akim, drowns. Abdalrahim is among the persons rescued by the navy of Desaria. He is brought at the shores of the country and subject to an order of expulsion. However, since the authorities do not have his identity papers nor travel documents for the expulsion, he is ordered to be subject to administrative detention.

In the detention centre, Abdalrahim meets a NGO lawyer, group 1, to whom he tells his situation. He claims to have asked for asylum immediately as arrived but that the authorities did not listened to him as he was considered to come from a safe country. He contested his expulsion order on ground that he would be exposed to the war in his country, but the appeal was not suspensive of the expulsion execution and took sixty days to get to judgment. Meanwhile his detention was validated by a judge within 48 hours. He contested that his expulsion order was invalid as he should get asylum and was under threat of being exposed to indiscriminate violence, but the honorary judge validated the order without checking his claim.



# The case of “Abdalrahim”

He presented an appeal to the Supreme Court on matters of law, the only available, but it is known that it is not suspensive of the execution measure and takes long time. Meanwhile, his challenge to the expulsion order was also rejected as unfounded, since indiscriminate violence under national law did not qualify as asylum ground. He presented appeal to the Supreme Court but again that was still to be admitted and there is a high rate of dismissals. Furthermore, the appeal is not suspensive of the expulsion.

He has now an order to leave the territory within fifteen days, after his eighteen months of detention, and comes to you to challenge the expulsion, his detention and remedy and to suspend his transfer.

The State of Desaria is a Contracting Party of the International Covenant on Civil and Political Rights, the Geneva Refugee Convention, the UN Convention against Torture, CEDAW, CERD, CRC, among others

## Questions

In light of the facts and relevant law and procedure highlighted above:

1

Identify the articles of the international human rights treaties which could have been breached (for the applicant) or that were not breached (for the State)

2

Prepare a strategy on the best use of international human rights mechanisms to bring forth your client's interests

Prepare an outline of the main legal and factual arguments regarding the complaint and to present these arguments to the plenary.



# The Case of Bilal Al Fasul

Bilal Al Fasul is a national of the State of Denial. The State of Denial is an extremely poor country and its rich natural resources are exploited by multinational companies. Most of them have their headquarters in the Angelic Union, which is composed by 28 independent States all parties to the European Convention on Human Rights.

Bilal decides that he does not want to live anymore in a poor State and to seek its fortune in the Angelic Union. He aims to work and live in the rich countries of Orphelia, Cupidus and Baccus, member of the Union. He is hopeful to get a job as he speaks perfectly English, due to the colonial past of the State of Denial. He therefore undertakes a long journey through the desert where many of his companions die. He arrives at the shores of the State of Confusion. While he tries to pass irregularly the border of the State of Esperanza, he is arrested by that State's border guards and put in detention on 8 April 2011, after having been presented with a document containing both a Return Decision and a Removal Order in view of his presence in Esperanza as a prohibited immigrant in terms of Article 16 of the Immigration Act. The Return Decision informed the applicant of the possibility to apply for a period of voluntary departure. The lower half of the same document contained a Removal Order based on the rejection of the applicant's request for a period of voluntary departure. He was further informed, through the joint Return Decision and Removal Order, of his right to appeal against the Decision and Order before the Immigration Appeals Board ("the IAB") within three working days. No further information was provided on the appeals procedure, including the availability of legal assistance; the latter assertion was denied by the Government.



МИГРАНТЫ  
ИМЕЮТ  
ЗНАЧЕНИЕ

УСИЛЕНИЕ ПРАВОВОЙ ЗАЩИТЫ  
ПРАВ МИГРАНТОВ В КАЗАХСТАНЕ

# The Case of Bilal Al Fasul

The detention facility where he was held was within a military compound and hosted 300 people while it had a capacity of 150. There were only four plastic toilets and three plastic showers for all the detainees. There was no heating or air conditioning, or any ventilation apart from the barred windows. Several international NGOs and the European Committee for the Prevention of Torture had found that this centre, during periods of considerable arrivals of migrants, displayed degrading conditions of detention.

On 14 April 2011, while in detention, Bilal asks for asylum in the hope to be released. On 31 December 2011, the applicant's asylum application was rejected by the Office of the Refugee Commissioner, who considered that the claim as presented failed to meet the criteria for recognition of refugee status. On 24 January 2012, Bilal appealed to the Refugee Appeals Board. On 2 April 2012 the Refugee Appeals Board rejected Bilal's appeal, thereby definitively closing the asylum procedure almost twelve months after his arrival in Esperanza.

In the meantime, pending the above asylum proceedings, Bilal lodged an application with the IAB on 28 June 2011 in order to challenge the legality of his detention in terms of the Immigration Act. In his application the applicant argued that the decision to detain him, as well as his ongoing detention, were contrary to the law, as he was presented with the Return Decision and Removal Order at the same time and no assessment had been made as to the possibility of exploring "other sufficient and less coercive measures".

Furthermore, in deciding to detain him, the responsible authorities had decided a priori and without an individual assessment of his situation that he presented

# The Case of Bilal Al Fasul

a risk of absconding and that he was avoiding or hindering the return or removal procedure. Moreover, the decision was taken without the applicant having had an opportunity to make a request for voluntary departure. Bilal further argued that his ongoing detention was also contrary to the law because once he had presented his asylum application in April 2011, return procedures could not be commenced or continued in his regard under Regulation 12 of the Procedural Standards in Examining Applications for Refugee Status Regulations (Legal Notice 243 of 2008, hereinafter “LN 243”).

On 5 July 2012, more than a year after the applicant’s challenge, the IAB rejected his application. The applicant was released from detention centre on 21 March 2013, following 546 days of detention in an immigration context. On an unspecified date (around January 2013), in an effort to make arrangements for the deportation of the applicant, the authorities interviewed him in the presence of a representative from the Consulate of the State of Denial. The latter, by a communication of 11 February 2012, informed the Esperanzian authorities that the applicant did not hail from the State of Denial and that they could therefore not provide further assistance.

## Questions

In light of the facts and relevant law and procedure highlighted above:

- 1 Identify the articles of the international human rights treaties which could have been breached (for the applicant) or that were not breached (for the State)
- 2 Prepare a strategy on the best use of international human rights mechanisms to bring forth your client’s interests

Prepare an outline of the main legal and factual arguments regarding the complaint and to present these arguments to the plenary





# Case of Robert Hermes

Robert Hermes, a national of the Republic of Pirandellia, arrived at the airport of Xenios Zeus in Karenina, the capital of the Kingdom of Zarathustra, a constitutional monarchic State, on 5 May 2013. As soon as he arrived to the passport control, the border guards tells him that his passport is no longer valid and refuse him enter into the country. He immediately tells the border guard that he wants to ask for asylum as he is persecuted for political reasons. The border guards refuses to let him in the country.

Stranded in the international area of the airport he tries to survive with the few money that he has. One day later, an asylum lawyer contacts him and asks him to clarify his request for asylum. Hermes tells that he was a soldier in the Republic of Pirandellia that is fighting under an “international” coalition, but without UN mandate, in the State of Faldonia, where it had ousted the ruling dictator. Assigned to the intelligence office, he had come to know of a lot evidence on grave breaches of humanitarian law and international human rights law, even amounting to war crimes. Sickened by the Pirandellia’s propaganda of the delivers of democracy and human rights, he had decided to share this information with the whistleblower’s organization FreeTheNews. Before the issue came public, after advise of FreeTheNews and knowing that he would risk to be prosecuted and sentenced to the death penalty for “aiding the enemy”, subject to prolonged solitary confinement at the very least, he decided to leave the country with the first flight, that to Zarathustra’s capital Karenina. The news of the revelations broke out during his 12hours flight under a Karimka flight company.

# Case of Robert Hermes

Recognizing that the situation is serious and that there may be grounds to apply for asylum, the asylum lawyer requests the immigration office to let him into the country to apply for asylum. The immigration office had however received clear instructions not to let him in. Through the immigration office, Hermes, via his lawyer, applies for asylum on grounds of persecution for political opinion and of risk to be ill-treated, to undergo a flagrantly unfair trial and to be subject to the death penalty if removed to Pirandellonia or to any other country where there would be a risk to be sent back to his country.

During the preliminary procedures, Hermes is stranded in the airport, as the immigration authorities do not allow him in. He has to use the general sanitary services and needs to use the only room available in the cleaning services to sleep, as he cannot afford the international area small hotel. The asylum lawyer passes him the equivalent of 25 Euros per day to eat.

After two months in these conditions, finally on 6 July 2013, the first instance administrative court admits his asylum request, previously rejected by the Asylum Office, and order the Immigration Office to let him into the country. Relieved to have been let in and have international protection status, Hermes is still outraged at having been let stranded in the international zone of the airport like in the movie “The Terminal”. You, his asylum lawyer, decide to challenge this form of detention. However, you know very clearly that it is established national jurisprudence that the international zone of the airport is out of the jurisdiction of the country and that the case would be dismissed.

# Case of Robert Hermes

## Questions

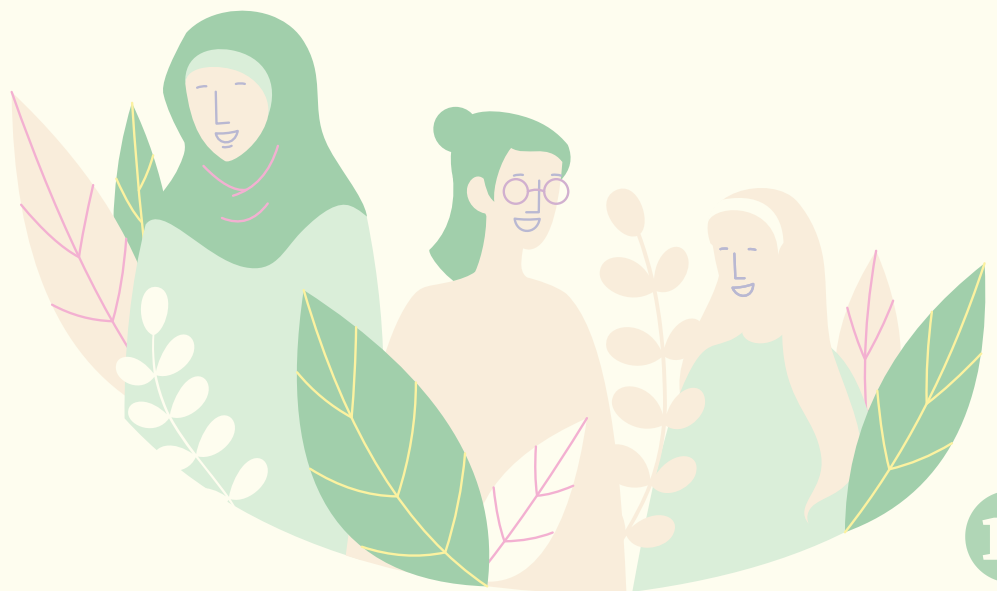
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# Economical, social, cultural rights, cases of children and women



# Case

## “Rights to All Children”

You are a lawyer working for the NGO, Rights to All Children (RAC) in the State of Nasdrovia. Part of your work consists in assisting the NGO with their work with unaccompanied minors coming to ask for asylum in the country.

During your work, you continuously notice that many minors who do not qualify for asylum according to the country's laws are left without accommodation, to the streets and in the hands, often, of criminal organizations or labour exploitation in the agricultural and construction sectors. They often do not have enough to eat and, if they find a shelter, they leave in decadent and abandoned farms in the countryside in dreadful health conditions. Research in your organization and in other partner organizations, including trade unions, has statistically demonstrated that this is a general phenomenon touching upon children who do not qualify for asylum.

They are officially undocumented migrants, but no procedure has been activated by the authorities to send them back to their country for lack of resources and/or will.

You then decide that this situation is unacceptable and that you want to take action. Your thought is to bring legal action to raise the awareness of the situation nationally and internationally. You bring the case to the national Ombudsperson attention. The Ombudsperson replies in a public report that the State of Nasdrovia is doing everything it can to build appropriate accommodations under the National Plan of Children Rescue, but that resources are insufficient due to the poor State of the Country. You know from official reports that the Government has destined 0.2% of its budget to this effort, decreasing it in the last two years of 0.1% each year, while 25% is destined to defence expenses.

# Case

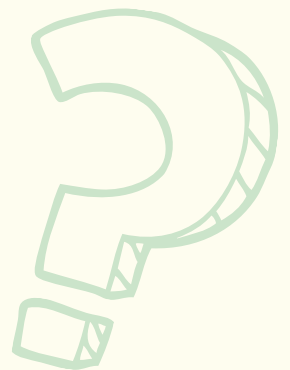
## “Rights to All Children”

Nasdrovia is party to the International Covenant on Civil and Political Rights and its First Optional Protocol, to the International Covenant on Economic, Social and Cultural Rights, to the UN Convention on the Rights of the Child and its Third Protocol, CEDAW and CERD. Remember that bringing a litigation case is not the only option, but you can also try to make use of other means of international influence or reporting.

## Questions

In light of the facts and relevant law and procedure highlighted above:

- 1 Which strategy do you choose to bring on the case internationally if you can?
- 2 What would be the added value to choose one mechanism instead of the other both on a procedural point of view and on a substantive one?



# Case of Europa

Europa is a 16 years old girl national of the State of Tolstoia. The day of her 16th birthday she decides to flee her family to seek the life of stars and movies in the richest Republic of Ares. Her hopes had been raised by a group of new acquaintances in Tolstoia that promised her success and to transport her to Ares for free.

Once arrived in the capital of Ares, Inferum, Europa is hosted in a house where there are a lot of girls like her from many countries. She is handed over by her own acquaintances on 3 November 2010 to another group of people she does not know. Only one of them speaks her language and she learns she is her “referent”. She soon discovers that her room is very expensive and that she cannot leave the house without permission. The “referent” tells her that to pay the room she has to have sexual intercourses with men coming night and day, who pay for her “performance”. 25% is the commission of the house. Most of the rest of the gain goes for the renting of the room. The “referent” also tells Europa that, if she escapes or tries to contact any authorities her family will be in serious danger as her “acquaintances” back in Tolstoia know who they are.

After two years in the “house”, Europa gains the courage to escape. Now 18 years old, she runs to the nearest police office at night. When she denounces the situation, the two police officers in service exchange a look and start laughing. They then escort her back to the house, where she is punished and beaten and put back to work, once healed.

One year after, on 5 July 2013, desperate, she profits of a “day of leave” to take the train and go to the second biggest city, Ludum. Not trusting the police, she goes directly to an anti-human trafficking NGO she found on the Internet. That is where she meets you.

# Case of Europa

You take her story and immediately contact a lawyer of trust and alert the authorities, who put her under protection. Investigations are started into the brothels activities and the police officers behaviour. However, Europa does not want to wait for the result of long investigations, as are known to be in Ares. What is your strategy?

After one year, the investigations are closed for lack of evidence that Europa had ever been in the brothel as none admits to know her and she has never been registered there (brothels are generally legal but regulated). No evidence is found on the policemen. You try to challenge the findings in domestic courts but to no avail.

## Questions

In light of the facts and relevant law and procedure highlighted above:

1

Which strategy do you choose to bring on the case internationally if you can?

2

What would be the added value to choose one mechanism instead of the other both on a procedural point of view and on a substantive one?



# Case “Helping Sisyphus”

Five years ago, the Parliament of Ephestos passed new amendments to the Aliens Act which exclude all unlawful migrants from accessing healthcare facilities and services and any social assistance in relation to food and housing (Articles 5 and 17 of Law no. 213/07). Furthermore, Article 20 of Law 213/07 explicitly states that labour law provisions are not applicable to unlawful migrants, as, since they are not legally working in the country, they cannot be considered workers. Finally, Article 34 of Law 213/07 has effectively deprived unlawful migrants of access to labour courts through a modification to the Labour Code, by requiring that any foreigner exhibit a residence permit when bringing a case. All these provisions do not apply to minors, regardless of their immigration status, and to asylum seekers and stateless persons, considered by the Law as vulnerable groups.

Ephestos is also a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and all the other UN human rights treaty, having also accepted the mechanisms of individual petition in all of them.

You are a lawyer working for the anti-forced labour NGO, Helping Sisyphus. In your day to day work, you witness the fact that an increasing number of adult undocumented migrants, including failed asylum seekers, work on miserable conditions in the agricultural and construction sector, without contract and fixed pay. They are paid daily in accordance to how the “caporal”, the person unofficially in charge of the works, estimates they have worked. They work on average 12 hours a day, resting only on Sunday. The safety conditions of their work environment are lacking to say the least. Trade unions have produced four yearly statistical reports documenting the violations of undocumented migrants’ labour rights but to no avail.

# Case “Helping Sisyphus”

Furthermore, due to the restrictions of social assistance and to the extreme low level of their “salaries”, a group of undocumented working migrants you are in contact with are forced to live in a hold factory abandoned for 20 years far in the countryside, which used to produce asbestos products. They are entitled only to emergency healthcare.

## Questions

In light of the facts and relevant law and procedure highlighted above:

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