Workshop on the reception conditions and human dignity, 18 January 2014, Dublin

**Guidance issued by the CJEU and the ECtHR in the field of reception conditions of asylum-seeker**

**Introductory remarks:**

1) Reception conditions not only have very concrete consequences on the standard of living of asylum-seekers but also on their ability to seek and obtain international protection.

2) After a number of years of implementation of the RCD, it is acknowledged that many shortcomings in reception conditions for asylum-seekers result from Member States’ interpretation and implementation of the RCD, rather than from inadequate standards, although there are shortcomings in the RCD.

3) The intervention of the judge, at national and European level, is essential to recognize important rights for asylum-seekers *inter alia* in the field of reception conditions.

4) Important interactions exist between the case-law of the two European Regional Courts, in particular but not only in the field of reception conditions of asylum-seekers.

**Part I. Main guidance issued by the ECtHR on the reception conditions of asylum-seekers**

- The case of *M.S.S. v. Belgium and Greece* was the first key judgment in which the ECtHR found a violation of Article 3 ECHR on account of poor living conditions of an asylum-seeker in the host country (Greece).

* The ECtHR relied on the RCD to recognize, at the Council of Europe level, the existence of a positive obligation to host asylum-seekers in a dignified way.

* The ECtHR underlined that vulnerability of the asylum-seeker constitutes an aggravating factor when assessing the seriousness of a ill-treatment under Article 3 ECHR.

* The ECtHR assessed whether the conditions were attributable to inaction of the authorities.

- In MSS, the ECtHR also found a violation of Article 3 ECHR by the transferring State (Belgium) for knowingly exposing the applicant to conditions of detention and living conditions contrary to Article 3 ECHR.

* Even if the findings of the ECtHR in the MSS case might be restricted to quite exceptional cases given the cumulative factors which are taken into account, the following aspects are particularly important from a practitioner’s perspective and for litigation purposes:

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- The availability of a wide range of objective sources of information enables the ECtHR to conduct a detailed assessment of living conditions and to assert the expelling State’s knowledge of the reception conditions.

- The reference to EU law, in the present case the RCD, in the reasoning of the ECtHR demonstrates the added-value of including it in a complaint before this Court.

This is also true for ECtHR cases relating to the detention of children. In two important cases (Rahimi v. Greece\(^2\), and Popov v. France\(^3\)), the ECtHR has taken into account the violation of EU asylum law, in particular the RCD, in the finding of a violation of the ECHR and affirmed that reception conditions should take account of the specific needs of children.

II. Main guidance issued by the CJEU on the reception conditions of asylum-seekers

- In particular, 11 months after the MSS case, the CJEU delivered a preliminary ruling in a case where similar legal issues were raised in the context of the Dublin system in the NS and ME case.\(^4\)

* In NS and ME, the CJEU relied explicitly and extensively on the findings of the ECtHR in the case of M.S.S. v. Belgium and Greece, which took into account reports from various organizations (paras. 88-90).

From a practitioner’s perspective, this demonstrates the importance of being informed of the practice in other Member States.

However, the terminology used by the Court in stating that the transferring State “cannot be unaware” of systemic deficiencies in the asylum system of the responsible State remains subject to interpretation.

* Deficiencies in the reception conditions of AS only, do not appear to be sufficient as the CJEU stressed the “systemic deficiencies in the asylum procedure and in the reception conditions of AS” in order to conclude to a real risk for the AS of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the EU Charter”.

Also the reference to “systemic flaws” indicates that the threshold must be high. In addition, the CJEU noted that “the slightest infringements of [...] Reception Conditions [...] Directives would not be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible under the Dublin II Regulation.

- The other CJEU case relating to reception conditions of asylum-seekers, while also issued in the context of the operation of the Dublin system, focuses directly on the interpretation of

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\(^2\) ECtHR, Rahimi v. Greece, Appl. No. 8687/08, Judgment of 5 April 2011.

\(^3\) ECtHR, Popov v. France, Appl. Nos. 39472/07 and 39474/07, Judgment of 19 January 2012.

\(^4\) CJEU, Joined Cases N.S. (C-411/10), and M.E. (C-493/10), Judgment of the Court [Grand Chamber] of 21 December 2011.
the RCD and contains important findings for all EU reception countries. This is the quite recent *Cimade and Gisti case.*

The CJEU had the opportunity to clarify the personal and temporal scope of the RCD, with important concrete consequences for many asylum-seekers.

* The CJEU held that all asylum-seekers had to benefit from the minimum reception conditions laid down in the RCD, including those subject to the procedure for determination of the Member State responsible, from the lodging of their application until their actual transfer to that State, and that the transferring State had to assume the financial burden of granting those minimum reception conditions.

* Moreover, the CJEU clearly stated that asylum-seekers must be allowed to remain in the territory of the Member State where the asylum application is lodged until their actual transfer to the MS responsible.

In its interpretation of the RCD, the CJEU stressed “in particular the requirements of Article 1 of the *Charter*, under which human dignity must be respected and protected”.

**Concluding remarks:**

* The fact that the CJEU relies increasingly on the EU Charter (such as in *NS and ME* and in *Cimade and Gisti*), which contains many rights already guaranteed by the ECHR, suggests that more interactions between the two European judicial systems will be observed in future, *inter alia* in the field of reception conditions. Indeed, the EU Charter contains many fundamental rights which are particularly relevant for the purpose of assessing the adequacy of reception conditions for asylum-seekers.

* Mandatory guidance exists but the slow progress of the compliance by Member States in practice is another concern (e.g. France after *Cimade and Gisti*).

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5 CJEU, *CIMADE and GISTI v. MOI* (C-179/11), Judgment of 27 September 2012.