

## **PART 3: CASE STUDIES**

### **Part 3.1 – Case Study No. 1**

Ruritania is a country whose population is 30 per cent Bulp, an ethnic minority, and the remainder ethnic Ruritarians. There has been a non-international armed conflict in Ruritania since 1995. Government security forces are trying to suppress a rebellion by the Bulpian Liberation Army (BLA), which is protesting at the discriminatory treatment ethnic Bulp endure in Ruritania. The objective is to redraw internal borders to secure autonomy for the region where most of the Bulp reside. During the conflict, Bulp and Ruritarians have been displaced from their homes. In 1996, the Ruritanian President issued executive decrees introducing discriminatory regulations affecting the Bulp.

The fighting is concentrated in the contested region. The BLA guerrilla forces continue to attack ethnic Ruritanian villages and the Ruritanian security forces support death squads operating against ethnic Bulp. There are occasional direct clashes between the BLA and the Ruritanian army when heavy artillery is used.

You are confronted with the following cases, which have to be decided on the basis of the European Convention on Human Rights:

- (a) Mr and Mrs Agg are ethnic Bulp originating from the area where the fighting is taking place. They left Ruritania in 1996 and were granted protection in a Member State of the Council of Europe, which has signed and ratified without reservations the European Convention on Human Rights. Their 12-year-old son, who initially stayed in Ruritania, has just arrived at the airport claiming that he fled the death squads and the generally discriminatory situation prevailing in Ruritania. The immigration officer is of the opinion that he does not qualify for protection and a deportation order has been issued with a view to returning him on the next flight to Ruritania.
- (b) Mrs Yog is an ethnic Ruritanian from a village in the predominantly Bulpian region. She has applied for protection in the above-mentioned Member State, claiming that she fears her village will be shelled by the BLA.
- (c) Mr Zag is an ethnic Bulp who has been detained at an airport of the above-mentioned Member State when it was discovered that he had a forged passport.<sup>1</sup> He claimed to be a journalist in Ruritania, investigating the activities of the government-supported death squads. He fled the country because he was afraid of the reaction of the authorities after the revelations he was about to make. After about three weeks in detention at the airport he was allowed to contact a lawyer.

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<sup>1</sup> Note that legislation in the Member State permits detention at the airport for a maximum period of one week. Within one week, a judge has either to let the person enter the country or to decide on his or her expulsion.

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#### **Part 3.2 – Case Study No. 2**

Mr X. is a national of Ruritania, which is not a Council of Europe Member State. He was a political activist, as well as a journalist who denounced the injustices of the regime in place in Ruritania. After publication of an article severely critical of the government, Mr X. was arrested and accused of being a threat to public order. According to the Ruritanian criminal code, such an offence is tried in exceptional jurisdictions, where the rights of the accused are reduced, and can result in the pronouncement of a death sentence.

Mr X. managed to escape from prison and left the country. He arrived in a Member State of the Council of Europe, party without reservations to the European Convention on Human Rights. After five days in the country during which he was looking for compatriots who could inform him about the procedure, he applied for refugee status, but his asylum application was declared inadmissible because it was presented after the time limit of 24 hours after entry. There were no remedies against such a decision and he was consequently due to be expelled to Ruritania on the basis of a readmission agreement.

Mr X. then moved to another State Party to the European Convention on Human Rights to seek asylum. There his claim was not considered on the grounds that, under the provisions of the Dublin Convention, a multilateral asylum claims allocation mechanism, his claim should be considered in the first country of asylum. He was asked to leave the territory and to return to his first country of asylum.

How would you argue a case based on the provisions of the European Convention on Human Rights, with regard to both the situation in the first and the second country of asylum?

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### **Part 3.3 – Case Study No. 3**

Mr X. left his country of origin in 1981 because of a serious civil conflict, during which people from his ethnic group were targeted. He applied for asylum in a Member State of the Council of Europe, but instead of Convention refugee status he was granted a subsidiary form of protection and a residence permit.

The conflict in his country of origin ended in 1990, but persons belonging to the same ethnic group as Mr X. were still persecuted. Moreover, he learnt that the whole of his family had been killed. As a result, he decided that he would never return there. He got married in 1990 to a national of the country of refuge. They had two children, one in 1992 and the other in 1995.

#### **First scenario:**

In 2001, Mr X. was arrested for a criminal offence and as a result he was sentenced to imprisonment and an expulsion order was also taken out against him. While he behaved well during his time in prison, the authorities still wanted to implement the expulsion order after he had served his sentence. All domestic recourses against the expulsion order failed.

Mr X. is now seeking advice and arguments in order to prevent his expulsion. You will have to consider this situation on the basis of Article 8 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

#### **Second scenario:**

In 2001, Mr X. discovered that his brother's young daughter was still alive and living in an orphanage in the country of origin. She had been traumatised by what happened to the whole family and the doctors believe that living in a family environment would be good for her. Mr X. started a procedure for family reunion, which ultimately failed because the authorities argued that the child was not a member of Mr X.'s nuclear family.

Mr X. is now seeking advice and arguments in order to reverse this decision. You will have to consider this situation on the basis of Article 8 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.