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Gender-Based Violence as a Basis for Acquiring Refugee Status – Serbia and EU Standards

The text identifies the discriminated position of women as asylum seekers in the context of international law, which for decades stereotypically recognizes as a typical, male asylum seeker who comes from the area of current armed conflicts. This leads to difficulties in recognizing women who are in danger due to structural, gender-based violence.

It is analysed how women victims of structural violence fit into the provisions of international public law when they have to prove that they were threatened with serious human rights violations or serious physical injuries in their country of origin. The criteria of the mandated authorities for deciding on an asylum request are whether the asylum seeker's story is consistent and credible, whether there is evidence to support the asylum seeker's claims, as well as what is the real situation of the existence of structural gender-based violence in the asylum seeker's country of origin, whether there are records of systemic unsanctioned violations of women's human rights, as well as their "justification" by culture and tradition.

It is concluded that the international legal framework contains gender-based violence that can seriously endanger the life and bodily integrity of women, but many countries do not recognize it in their practices of granting asylum. That is why the European Union set standards in directives of 2011. and 2013. aiming that gender-based violence, including rape, sexual violence, domestic violence, female genital mutilation and forced marriage, can be recognized as forms of relevant illegal persecution. Although the Law on Asylum and Temporary Protection of Serbia (2018) also includes sexual and gender-based violence as acts of persecution, in practice women's right to refugee status and refuge in Serbia is rarely realized on that basis.

Key words: women asylum seekers, gender based violence, structural violence, cultural and traditional "justification", EU standars on gendr based violence, Law on Asylum and Temporary Protection of Serbia

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Rodno zasnovano nasilje kao osnov za sticanje izbegličkog statusa – Srbija i standardi EU

U tekstu se identifikuje diskriminisani položaj žena kao tražiteljki azila u kontekstu međunarodnog prava, koje decenijama stereotipno prepoznaje kao tipičnog tražioca azila muškarca, koji dolazi sa područja aktuelnih oružanih sukoba. To dovodi do poteškoća u prepoznavanju žena koje su u opasnosti zbog strukturnog rodno zasnovanog nasilja.

Analizira se kako se žene žrtve strukturnog nasilja uklapaju u odredbe međunarodnog javnog prava kada moraju da dokažu da im je u zemlji porekla pretilo ozbiljno kršenje ljudskih prava ili teške telesne povrede. Kriterijumi nadležnih organa za odlučivanje o zahtevu za azil su da li je priča tražiteljki azila konzistentna i verodostojna, da li postoje dokazi koji potkrepljuju tvrdnje tražiteljki azila, kao i kakva je stvarna situacija postojanja strukturnih rodno zasnovanih nasilja u zemlji porekla tražiteljki azila, da li postoje evidencije o sistemskim kršenjima ženskih ljudskih prava, kao i njihovo „opravdanje“ kulturom i tradicijom.

Zaključuje se da međunarodni pravni okvir sadrži rodno zasnovano nasilje koje može ozbiljno da ugrozi život i telesni integritet žena, ali ga mnoge zemlje ne prepoznaju u svojim praksama odobravanja azila. Zbog toga je Evropska unija postavila standarde u direktivama iz 2011. i 2013. godine sa ciljem da se rodno zasnovano nasilje, uključujući silovanje, seksualno nasilje, nasilje u porodici, sakaćenje ženskih genitalija i prisilni brak mogu prepoznati kao oblici pravno relevantnog progona. Iako Zakon o azilu i privremenoj zaštiti Srbije (2018) takođe uključuje seksualno i rodno zasnovano nasilje kao akte progona, u praksi se pravo žena na izbeglički status i utočište u Srbiji retko ostvaruje po tom osnovu.

Ključne reči: žene tražiteljke azila, rodno zasnovano nasilje, strukturno nasilje, kulturno i tradicionalno „opravdanje“, standardi EU o rodno zasnovanom nasilju, Zakon o azilu i privremenoj zaštiti Srbije

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