



The Women of Al-Hol: Deservingness and the Politics of Vulnerability and Security

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ABSTRACT

This article analyses the relationship between security- and vulnerability-based reasoning in the interpretation of extraterritorial human rights obligations, taking the repatriation of adult Finnish women from the al-Hol Camp as an example. It discusses the function of vulnerabilization and securitization as qualification tools within human rights law to manage access to rights protection establishing a theoretical framework of deservingness. Fundamentally, the article argues that states often approach the human rights of those who have put themselves and others at risk differently from the human rights of those who are recognized as vulnerable. The women in al-Hol have often been the objects of othering and stereotyping, and the question of their vulnerability has largely escaped attention. Through the example of these women, the article illustrates how deserving and undeserving identities are constructed in societal discussions and in international human rights law.

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In 2019, media in Finland started to report about Finnish women and children living in the utmost of demanding circumstances in the al-Hol refugee camp. The al-Hol camp is the biggest among 12 camps in North-East Syria (REACH 2023) housing over 40,000 people, of whom over 90% are women or children (MSF 2024) – many foreign family members of suspected Islamic State (IS) fighters (MSF 2022). Many of the Finnish women interned in al-Hol had purportedly been spouses to IS fighters and had before internment lived in IS-controlled territories. The media reporting led to a heated public debate on Finland's obligations to help its citizens, including repatriating them from the camp. Significantly, the arguments differed depending on whether the discussion concerned helping the children or the adults. Vulnerability of the young children was often emphasized and linked with moral obligation to help the 'innocent'. It has been also argued that the Finnish Constitution combined with international human rights treaties, such as the 1989 Convention on the Rights of the Child, establish particular obligations towards children (e.g. Laurila 2020; Mustasaari 2019; 2020). In the case of the women, security threats have often been posed as a central concern owing to their possible involvement in or support for terrorism (Mustasaari 2021). It was often pointed out that the women had travelled voluntarily to volatile areas, and should themselves as adults bear the responsibility for their dire situation. The question as to what extent the women in the camp were in a vulnerable position was largely a non-issue despite the very challenging living conditions there. The repatriation of the women was therefore only really considered in situations where they were mothers of interned children and the best interest of the children called for the repatriation of whole families (cf. Ulkoministeriö 2021; UM/2019/203). Similar political and legal debates on what to do with a country's own nationals in the al-Hol camp have taken place in many other countries as well, including France, Germany, Sweden and the UK. Some of these cases have resulted in legal proceedings before international human rights bodies, such as the Committee on the Rights of the Child (CRC) and the European Court of Human Rights (ECtHR).

The aim of this article is to establish, on the basis of key research on vulnerabilization (e.g. Heikkilä & Mustaniemi-Laakso 2023; Peroni & Timmer 2013) and securitization (e.g. Balzacq 2011; Bigo & Tsoukala 2008; Buzan, Wæver & de Wilde 1998; Huysmans 2006), a theoretical framework of deservingness. In addition, the goal is to apply this framework to analyse state and human rights monitoring bodies' approaches to the scope of extraterritorial human rights obligations (ETOs) towards a country's own nationals in the camps in Northern Syria. International human rights law demands that states 'act with due diligence and take positive steps and effective measures to protect individuals in vulnerable situations [...], located outside of their territory where they are at risk of serious human rights violations or abuses' (OHCHR 2021). We, however, argue that security- and vulnerability-based reasoning applied together can affect how these human rights obligations are ultimately construed. We use the repatriation of adult women holding Finnish citizenship from the al-Hol camp as an illustrative example, as there already exists some academic research on the public approaches to the Finnish al-Hol internees, and Finland is also one of the countries from which relevant human rights case law originates (CRC 2022). As of August 2023, Finland has repatriated 35 persons from the al-Hol Camp, of which 26 are children and 9 are adults (Ulkoministeriö 2021; Westerlund 2023).

The first novelty of the article lies in the application of the framework of deservingness to understand the circumstances in which the human rights obligations are applied

extraterritorially. Under current international law, '[w]hile all individuals everywhere are considered to have the same rights based on international law, the obligation-holders (normally states) do not have the same obligations with regard to individuals everywhere' (Skogly 2010: 71). We argue that the deservingness framework serves as a tool limiting the states' obligations when the scope of ETOs remains undetermined. Another original aspect of our study is the analysis of attempts to limit the universal applicability of human rights towards a country's own citizens. Academic literature has so far primarily studied such limitations in connection to migration, addressed mainly through the lens of othering (see Gozdecka & Kmak 2018). By focusing on the women in al-Hol, the spotlight is thus on 'bad citizens' (Kmak 2020; Kochenov 2019) who arguably have put themselves and their children at risk, and who are therefore viewed as a significant security risk to society (Mantu 2015).

We first analyse key earlier research on vulnerabilization and securitization to construct a theoretical framework of deservingness emphasizing the particularizing potential of these processes in relation to human rights. Next, we study how the framework of deservingness has affected the political and legal choices made in relation to the Finnish citizens in al-Hol. Finally, we analyse key pronouncements by human rights bodies in connection to ETOs, including reports by two UN Special Rapporteurs, three communications by the CRC and one judgment by the ECtHR. Methodologically, the article draws from discourse analysis, as a central aim is to disclose existing narratives and hence to reveal how certain identities are created in relation to the women and children at al-Hol. At the same time, the article contains elements of dogmatic research (by elaborating on what the law is at the moment) and critical legal research (by challenging the on-the-surface objectivity of law and arguing that the functioning of human rights law is affected by extra-judicial factors, such as deservingness).

THE FRAMEWORK OF DESERVINGNESS

A central principle of human rights law is that of universal application where human rights belong to everyone (see, e.g., article 2 of the International Covenant on Civil and Political Rights and article 1 of the European Convention on Human Rights). At the same time, human rights law has for a long time also included various systems of *special protection*. An example of such a regime is the 1989 Convention on the Rights of the Child and the 2006 Convention on the Rights of Persons with Disabilities. Mégret (2008: 495) has referred to these special conventions as examples of a 'pluralization of human rights', which he defines as 'the phenomenon whereby human rights, as law and ideology, has increasingly recognized the needs of specific groups or categories within humanity as worthy of a specific human rights protection'. This pluralization is often justified with the argument that, without special protection, some people are unable to fully enjoy their universal human rights. A similar logic is also visible in the growing vulnerability-related case law from human rights treaty monitoring bodies that has identified special vulnerabilities and has spelled out various positive obligations towards 'the vulnerable' (for case law examples, see, e.g., Heikkilä & Mustaniemi-Laakso 2020; Heri 2021; Nifosi-Sutton 2017; Peroni & Timmer 2013). In this article, the concept of 'vulnerabilization' is used to refer to various processes through which certain groups or individuals are defined as needing special human rights protection in the form of, for example, enhanced positive obligations for states.

While special protection can be important to ensure that everybody can fully enjoy their human rights, the shift of focus from general ('universal') human rights

protection to special protection does not come without drawbacks (Engström, Heikkilä & Mustaniemi-Laakso 2022). These include the risk that those defined as vulnerable become the objects of stereotyping and paternalism (for further discussion, see Clough 2017: 474; Peroni & Timmer 2013) as well as the risk of selectivity of protection (Nieminen 2019). Significantly, vulnerabilization as a process always includes the *identification* of those who have the right to special protection, which means that, while some get special protection, others are left without it.

The vulnerabilization of human rights law has resulted in the emergence of certain ‘vulnerable identities’, such as children, persons with disabilities and refugees, whose special vulnerability is readily identified and recognized. Similarly, in the context of migration control, women, children and elderly persons are more readily conceptualized as vulnerable, whereas young, healthy, adult men *a priori* are viewed as not vulnerable (for the discussion, see, for instance, Kmak 2015; Turner 2021). More generally, the ‘ideal vulnerable persons’ seem to be ‘weak’, ‘carry out respectable projects’ and cannot be blamed for the situation in which they find themselves (cf. Christie 1986 on ideal victims). Importantly, ideal vulnerable persons are generally not merely ‘assigned victim [or vulnerable] status but are also seen to *deserve it*’ (Walklate 2011: 183; emphasis added). Through this framework, states can include and at the same time exclude different groups and therefore limit the numbers of those to whom they provide protection, upholding simultaneously their own image as states respecting human rights obligations or, for instance, refugee law (Dauvergne 2016: 45–46). Tazzioli (2019) has referred to this as ‘governance through vulnerability’. This thinking has, for instance, dominated the Finnish responses to the so-called refugee crisis in 2015 with clear discursive differentiation between access to protection of those defined as vulnerable (women and children) and those considered a security threat (single young men; Mykkänen 2015). Importantly, however, protection and assistance of the vulnerable is not always adopted with the aim to end vulnerability but to prevent – what Sözer (2020: 2173) shows in their work on Syrian refugees in Turkey – negative coping mechanisms of asylum seekers, including begging, crime and prostitution. Thus, ‘protection’ due to vulnerability can serve as a mechanism deployed to prevent undesirable, dangerous or criminal behaviour, bringing it very close to the securitization paradigm.

Securitization as a concept refers to processes through which threats and dangers are produced, on the basis of which groups or populations then are managed (see, e.g., Balzacq 2011; Bigo & Tsoukala 2008; Buzan, Wæver & de Wilde 1998; Huysmans 2006). A central feature of securitization in this regard is that it operates ‘transversally’; that is, it transfers legitimacy to exceptional measures adopted with the purpose of fighting certain threats (Guild & Bigo 2018) and as such makes them societally acceptable. From a human rights perspective, the problem with securitization is that it can lead to the introduction of exceptional measures either within or outside law (Kremer 2013) followed by their further normalization (see, for instance, Farzamfar 2021) or encompass more mundane everyday practices that escape any scrutiny whatsoever (Huysmans 2014). In addition, in the same way that the vulnerabilization process has a tendency to generate vulnerable identities, the securitization process is connected to the creation of ‘dangerous identities’ that may or may not be based on real dangers and threats (see, for instance, Bigo 2002).

These problems of securitization have been extensively discussed, for instance, in relation to the poor (e.g. Wacquant 2009), and more recently in relation to migration management and terrorism, often linking the latter with the former (e.g. Bigo 2002;

Guild 2006; Guild 2009; Farzamfar 2021; Kovner, Zehavi & Golan 2021; van der Baaren et al. 2022). The ‘wars’ against irregular migration and terrorism encompassed, for instance, the adoption of special laws granting authorities extensive powers such as intrusive surveillance technologies and/or unusually broad criminalization policies that in other contexts would be seen as violations of human rights (see, e.g., Farzamfar 2021; van der Woude, Barker & van der Leun 2017). As a phenomenon, securitization is hence connected to the limitation of rights in the name of security, often acquiring role of a ‘super right’, superior to all other rights (Lemke 2016: 51) and justifying a race to the bottom in the context of rights protection (Benedek 2016). As a consequence, individuals who pose, or are portrayed to pose, a security threat cannot expect anything but *de minimis* protection through the legal system and often, in case of unwanted foreigners, no protection at all.

To sum up, we can see that, whereas vulnerabilization within the human rights law context often results in the enhanced protection of some, processes of securitization often function in the opposite direction, and they are employed to exclude some from protection. In reality, the two processes can, however, be interlinked. Vulnerability reasoning can first be used to exclude some individuals from protection, after which security reasoning is used to amplify the exclusion. Together, the two processes create a framework of deservingness that we argue can affect the scope of the protection given.

CHILDREN AND WOMEN AS RESPECTIVELY VULNERABLE AND DANGEROUS

Before we move on to discuss the societal and legal approaches to internees at al-Hol, some words should be said about what kind of identities children and women often are given. Children are often regarded as the classic example of a vulnerable individual in need of special protection, as they ‘are highly dependent on others to satisfy their basic needs’ (Bagattini 2019: 211), and as such, vulnerabilization is common in relation to them. It is, however, also possible to identify situations where children are seen through a security lens. Kovner, Zehavi and Golan (2021) have pointed this out regarding unaccompanied asylum-seeking youth in Greece, where some children have been seen as dangerous beings (e.g. child soldiers) or as potentially dangerous (deviant youth). Such perspectives on children are often connected to attempts to control and contain them (ibid.). In relation to the unaccompanied asylum-seeking youth in Greece, Kovner, Zehavi and Golan (2021: 1758) argue that the underlying framework for dealing with the children changes ‘from a child’s rights framework to a security and migration control framework’ to allow certain types of measures. This being said, the default approach to children is that they are vulnerable and have the right to special protection.

In relation to women, the legal approach is more ambivalent. In certain situations, the special protection needs of women are emphasized, and they are viewed as vulnerable. There is, for example, treaty law establishing special protection, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011). Likewise, in international humanitarian law, treaties contain provisions only applicable to women (for further discussion, see, e.g., Krill 1985; Gardam & Jarvis 2001). However, it has been held in European human rights case law that women do not by default fall into the category of vulnerable

persons (ECtHR, *Valiulienė v. Lithuania* 2013, para. 69). This pronouncement, in fact, seems to capture the approach of international law to women quite well, as special protection for women often seems to require more than mere womanhood. In international law, women are often only granted special protection in situations when they occupy certain societal roles, such as being mothers or pregnant persons, or being victims of sexual- or gender-related crimes (see, e.g., Gardam & Jarvis 2001: 95–97, regarding international humanitarian law). Alternatively, a finding of vulnerability may require a particular societal situation, such as being a ‘women in south-east Turkey’ (ECtHR, *Opuz v. Turkey* 2009: 160). Special protection for women therefore seems to presuppose gendered ‘weakness’ and victimhood. Interestingly, the legal approach to women is generally very different in situations where women do not occupy traditional gender roles, but rather transgress them. For example, research indicates that, in criminal law, women guilty of a serious violent crime are viewed as an abnormality and that they often become treated as either ‘mad’ or ‘bad’ by the legal system (Berrington & Honkatukia 2002; Gentry & Sjöberg 2015). The adopted narrative may have legal implications so that, while ‘mad women’ may be treated with leniency, ‘bad’ or evil women should expect harsher treatment than the former ones (Wilczynski 1997). Women who break with societal norms can hence be securitized and forced to bear the consequences of this. As will be considered further below, this finding is particularly significant when trying to make sense of how the women in al-Hol have been approached.

DOMINANT NARRATIVES ON THOSE INTERNED AT AL-HOL

It seems clear that the focus of the human rights community in relation to children in al-Hol has generally been on the special rights of children and the connected enhanced positive duties of states in relation to them. In Finland, the Ministry of Foreign Affairs (2021) has also emphasized the special constitutional rights of children. In December 2019, the Finnish Government proclaimed regarding its citizens at al-Hol that ‘The government’s starting point is to help children’ (UM/2019/203, authors’ translation from Finnish). However, Mustasaari (2021: 1049) observes how certain children have been moved from the category of an ‘abused, vulnerable refugee girl’ to the category of a ‘transgressive, non-Finnish subject.’ In the same way, many older boys and girls were hence seen as security threats or as ‘walking time-bombs’ (ibid.:1051; see also Lönnroth-Olin et al. 2023). Despite this ambivalent approach, the children at al-Hol have been primarily viewed through a vulnerability lens.

In comparison, the women at al-Hol have as ‘women connected to terrorism’ almost exclusively been approached through the lens of securitization, and a central concern has been their dangerousness to Finland if repatriated. To what extent these fears are well grounded lies beyond this desk study, but it is undisputed that some women in the camps have directly participated in IS atrocities and in other ways supported IS activities (e.g. Sanchez 2022). At the same time, it has been submitted that the role of many women within IS was ‘limited to maintaining a household’ (Herbach & Phillips 2021). It appears that all the women who have returned to Finland now live ‘normal lives’, and none of them are suspected of terrorist crimes by the Finnish National Bureau of Investigation (e.g. Halonen 2022; Lehto 2023). They are nevertheless considered a security threat by the Finnish Security and Intelligence Service (SUPO; Lehtinen 2024).

The central thing to note is therefore that securitization in public debates largely appears to be guided by risk perceptions, rather than clearly established facts about individual cases (Mustasaari 2021: 1056). To be sure, not everything about these cases is known to the public. SUPO has made threat assessments regarding all returnees, but the outcomes of these assessments are confidential (Halonen 2022). In this light, it is striking that these women are portrayed in the Finnish national discussion as ‘an extremely grave security concern and utterly unworthy of state protection’ (Mustasaari 2021: 1053) and that there are no attempts to view them from alternative perspectives, most notably from a vulnerability perspective, despite claims that some of the women in the camps appear to be victims of trafficking (Foa 2021). In addition, the dire circumstances facing the women in the camp have resulted in significant situational vulnerability, something that has also not changed the attitudes towards the women. Instead, the perceptions of women in al-Hol seem to centre around a couple of interlinked notions that, in addition to potential dangerousness, include Islamophobia, neo-Orientalism, racialization and othering as well as lack of agency and bad motherhood (Jiwani 2021; Lönnroth-Olin et al. 2023; Martini 2018). Even though the identities of women are not well known, the general discourse differs somewhat depending on whether the women are Muslim of a foreign background or ethnically Finnish converts. As Martini (2018: 459) writes, Muslim women of a foreign background ‘abandoning’ Western society and joining a Jihadist organization are seen as incomprehensible, and their behaviour is often interpreted as a betrayal. From such a perspective, the Western values are understood in a neo-Orientalist way as superior and desired by all, and it is presumed that these women enjoyed a better status in the West. At the same time, the act of joining a Jihadist organization disrupts the construction of the Muslim woman as passive victim who needs to be saved from Muslim/Arab men and from Islam: ‘[N]ot only do these women do not want to be saved, but they turn against their saviors – i.e. Western men, Western “civilisation” and values.’ (ibid.: 461), and as a result their behaviour is confusing and paradoxical (Knight 2020; see also Lönnroth-Olin et al. 2023). In contrast, ethnically Finnish women joining IS become racialized through their association with jihadism and as a result are similarly portrayed as opting out of or not belonging to the West and therefore undeserving of protection (Mustasaari 2021: 1048). In her analysis of the Finnish media narrative, Mustasaari shows how the belonging of these individuals to the Finnish ‘us’ has been contested, through the focus on two mutually constitutive figures – that of a convert and that of a jihadist. ‘Using the figure of the convert in the narrative of the non-belonging of the women served to construct a clear border between the ethnically Finnish Muslim women and “genuinely” Finnish people’. In addition, the conversion to Islam has not been considered in this narrative as change of religious views but rather, as Mustasaari (2021: 1048) writes, an abandonment of Finnishness and opting out of the society.

Passivity and lack of agency has been visible in the discourses that portray the women from al-Hol as dependent on or influenced by men as well as through the label of irrationality, which also corresponds to the image of the Muslim wife in Western imagery (Lönnroth-Olin et al. 2023: 12). For instance, in the public debate, the women have often been referred to as ‘ISIS brides’, whereas the males often have been referred to simply as ‘foreign fighters’ (Azeez 2019; Jackson 2021). Lack of agency is also visible through what Lönnroth-Olin et al. (2023: 11) call a repertoire of irrationality. Women are being presented as ‘susceptible to manipulation either due to their culture or a troubled past’ and as persons who, as a result of such

manipulation in combination with their naivety, have given up Finnish values and became subordinated to men (ibid.).

Finally, the argument of bad motherhood also visible in Finnish discussions is particularly interesting owing to the connection between motherhood and vulnerability. Vulnerabilization of women is often linked to their particular status as mothers, pregnant persons or victims of trafficking or sexual violence. At the same time, it seems to be difficult for legal systems to cope neutrally with women who transgress expected gender roles. This is visible, for instance, in how women in al-Hol are addressed in connection to the children in the camps, that is, in their roles as mothers. By travelling to the camps with children or giving birth to children in such circumstances many of the women have clearly acted against prevailing ideas about how good mothers should behave. In this connection it is worth noting that, of the Finnish mothers in the camp, at least two women have been suspected of human trafficking in the form of taking children to demeaning circumstances, but at least one of these cases has been discontinued owing to lack of evidence (Reinboth & Teittinen 2021; Sillanpää 2023). In what follows we take this discussion further by considering how the above established framework of deservingness is connected to how ETOs have been viewed in connection to the camps in Northern Syria.

THE SCOPE OF ETOs IN RELATION TO AL-HOL

There is a widespread consensus among human rights monitoring bodies that the situation in the al-Hol camp violates and threatens many human rights. For example, in July 2023, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pointed out that '[i]ndefinite mass detention without legal process violates international law and should be immediately ceased'. The CRC (2022: para. 11.7), for its part, has held that the circumstances in the camp threaten the right to life and constitute an actual violation of the prohibition against inhuman or degrading treatment. The disputed question is therefore who has the obligation to protect the inhabitants in the camps. As the territorial state in this case has proven to be unable to do so (as have the Autonomous Administration of North and East Syria), do the home states of the foreign citizens have an obligation to repatriate their citizens or in any other ways help them to avoid further human rights violations? In other words, do the home states of internees have ETOs in relation to the internees. In domestic law, the question can also be whether the state has an obligation to provide different types of consular services.

On the level of states, the answer seems to depend on the age and the status of the person (e.g. being a mother or being an orphan), which is in line with what we have argued above about deservingness of protection. For instance, France or Belgium have in principle been unwilling to repatriate adults but often focused on repatriating children under certain conditions, for instance, only very young children or when their parents renounced their parental rights (Sallon & Ayad 2022; Van Poecke & Wauters 2021: 4–6). For instance, Belgian courts have generally held that the state does not have an ETO owing to its lack of territorial control over the camps or the people living in them, and no obligation to provide consular services to the women who travelled there voluntarily. In relation to the children, however, the courts in some cases identified a subjective right to consular services based on the 'duty of care' (Van Poecke & Wauters 2021: 22). Likewise, Finland has explicitly held that it considers

there to be no obligation to help adults who voluntarily travelled to the area, whereas children should be helped (UM/2019/203).

The question of ETOs in relation to the camps in North-East Syria has also been considered by international human rights monitoring bodies as general comments or responses to individual complaints, including one from Finland. In general, these bodies have taken a more nuanced approach to the women at al-Hol compared with states, and can be said to partly challenge the dominant narrative on how the women in al-Hol should be treated. However, human rights law still grants states a broad leeway of action, in particular, in cases where no special protection instrument or obligation is present and where the question is about ETOs.

UN SPECIAL RAPORTEURS

In a common position paper (2020), the Special Rapporteur on the promotion and protection of human rights while countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions argue that ‘States, in their view, have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law’ (para. 3). The special rapporteurs seem to find *control over rights* as the central factor for jurisdiction (paras. 12 and 36), and argue that a ‘State’s responsibility to protect may thus be invoked extra-territorially in circumstances where that particular State has the capacity to protect the right to life against an immediate or foreseeable threat to life’ (para. 15). This approach to extraterritorial competence has been referred to as the functional or ‘control of rights’ approach. Significantly, while the rapporteurs emphasize the obligations that states have towards children, they also foresee a duty to extraterritorially protect the women and men trapped in the camps (para. 17). In relation to consular services, the rapporteurs emphasize that ‘to the extent that a State is conducting consular activities – or failing to do so – in respect of individuals in the camps in the northern Syrian Arab Republic those individuals may fall under the jurisdiction of the State in relation to the rights affected by the State’s conduct’ (para. 26).

In 2021, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism also considered the situation of adolescents or juveniles who are detained in the camps, emphasizing their status as victims entitled to protection *as such* (p. 4). In particular, boys brought to Syria or Iraq ‘did not or could not provide meaningful consent to being brought to the territory or were born to an individual from Syria or a foreign national considered or suspected of affiliation with ISIS’ (p. 5). The Special Rapporteur is especially critical towards the ‘ill-grounded presumptions that all male children, including those over the age of 10 in the Syrian conflict zone are to be presumed violent extremists or terrorists’ (p. 6). Regarding the transition to adulthood, the Special Rapporteur significantly points out that ‘[t]he “status” of such individuals remains that of presumed victim until evidence of specific acts constituting serious crimes under domestic or international law are adduced’ (p. 8).

COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)

Some of the repatriation cases at the domestic level have reached the international oversight bodies. One of these is a decision by the CRC in November 2020 regarding

communications No. 79/2019 and No. 109/2019. In this decision, the applicants were grandparents to children held at the Roj, Ain Issa and al-Hol camps, who claimed that the refusal of France to protect or repatriate the children resulted in many different types of human rights violations (paras. 1.1, 2.11 and 3.1). Regarding the contested question of jurisdiction the CRC observed that: ‘the State party, as the State of the children’s nationality, [had] [...] the capability and the power to protect the rights of the children in question by taking action to repatriate them or provide other consular responses’ (para. 9.7), concluding that the State Party did exercise jurisdiction over the children (para. 10). As such, the CRC essentially followed the ‘new’ approach to ETOs suggested by the UN special rapporteurs, that is, the functional or ‘control of rights’ approach (for more, see [Duffy, 2021](#)). In September 2022, the CRC adopted a similar view against Finland, where the CRC emphasized Finland’s capability and power to protect the rights of the Finnish children at al-Hol (para. 10.9) combining in an interesting way human rights with the question of an obligation to provide consular protection to citizens. According to Milanovic (2020), these decisions aim to avoid arbitrariness but lack any determination of the threshold criterion for protection while at the same time emphasizing nationality as a ‘but for’ condition for protection. Similarly, Aguezzan (2021: 55) warns of the ‘risk [...] that the reasoning of the Committee and the Rapporteurs would lead to an increased emphasis on nationality as a condition for the application of human rights.’

EUROPEAN COURT OF HUMAN RIGHTS (ECtHR)

A pertinent question for this article is whether the approach adopted by the CRC in connection to a special protection instrument for children more generally applies to all individuals in a vulnerable position. From this perspective, it is of great interest that the ECtHR in September 2022 pronounced on the question of whether the home countries in general have jurisdiction in relation to their citizens at al-Hol and other related camps. The ECtHR also considered whether a general right to repatriation can be based on the European Convention on Human Rights. In the case *H.F. and Others v. France* (2022), the Grand Chamber of the ECtHR was asked to pronounce on whether France’s refusal to repatriate the applicants’ children and grandchildren held in al-Hol and Roj camps constituted a violation of, *inter alia*, Article 3 (prohibition of inhuman and degrading treatment), and/or Article 3(2) of Protocol No. 4 (prohibition of depriving the right to enter the territory of the state of which one is a national). This was the first case in which the ECtHR was asked to decide upon the existence of a jurisdictional link between a state and its nationals in relation to the complaint under article 3(2) of the Protocol no. 4. Despite the lack of effective control of France over the territory in question and lack of any authority or control over the persons in the camps, the Court nevertheless found that such a jurisdictional link existed (para. 216). The Court held that the link was neither based on citizenship in itself nor the ongoing domestic criminal cases or France’s operational capacity to repatriate (para. 212), but rather it can emerge in cross-border situations under ‘certain circumstances relating to the situation of individuals who wish to enter the State of which they are nationals’ based on Article 3(2) of Protocol No. 4 (para. 212). These included, among others, a real and immediate threat to lives and physical well-being of the applicants’ children and grandchildren on account of the living conditions and safety concerns in the camps, as well as impossibility to return to France without the assistance of the French authorities (para. 213). In relation to substantive rights, the Court held that the Protocol does not establish ‘a general right to repatriation’ (paras. 259–260),

but that certain positive obligations vis-à-vis nationals exist, in order to ensure that their right to enter national territory is practical and effective' (para. 260). The Court, however, found that such positive obligations 'must be interpreted narrowly' and that such obligations arise 'only in exceptional circumstances, for example where extraterritorial factors directly threaten the life and physical well-being of a child in a situation of extreme vulnerability' (para. 261). A central question to consider was also 'whether the decision-making process followed by the [...] authorities was surrounded by appropriate safeguards against arbitrariness' (para. 263). In the topical case, the Grand Chamber found both such exceptional circumstances (para. 271) and lack of safeguards against arbitrariness (para. 283). As such, the Court found a violation of Article 3(2) of Protocol No. 4 (para. 284).

The ECtHR judgment in *H.F. and Others* shows how human rights actors are struggling to combine the universal ethos of human rights with traditional understanding of jurisdiction based on state sovereignty and territoriality. In this case, the ECtHR departed from the functional approach adopted by the UN Rapporteurs and the CRC by excluding the capacity to uphold human rights as a basis for jurisdiction (Minervini 2022; Pijenburg 2022). As noted by Judges Pavli and Schembri Orland in their joint concurring opinion, the decision is rather 'result-oriented – by way of preventing an "opening of the floodgates" that would impose on States an excessive burden for facilitating repatriations of nationals in various situations of distress abroad'. At the same time, the Court does not enumerate any concrete positive obligations that would require the state to take reasonable steps to facilitate the return, but puts attention primarily on a mere standard of arbitrariness. It seems therefore that the Court has opened a possibility for the states to determine who *deserves* protection in what circumstances. As the Judges Pavli and Schembri Orland say, mere duty to prevent arbitrariness – allowing, in other words, for some form of *non-arbitrary exile* – sits poorly with the nearly absolute ban on the modern exile of nationals (para. 3). To be sure, unlike the French Government (which did not provide any reasons for refusal to act in case of women) the ECtHR itself seems to be against treating the women *en groupe* and against banishment of nationals. The Court for instance acknowledges that some women were trafficked to and in the camps (para. 233) and emphasizes after the UN Security Council Resolution 2396 (2017) that women associated with foreign terrorist fighters 'may have served in many different roles', including being victims of terrorism (para. 113). Despite the nuancing of the role of women, in *H.F. and Others* they still emerge as 'bad citizens'. This is visible, for instance, in the discussion by the Court of the conditions that trigger France's obligations based on the article 3(2) of Protocol No. 4. In paragraphs 165–270 the Court enumerates six conditions, including a risk to the life and physical well-being of the applicants' family members, in particular their grandchildren and calls of the international institutions such as UN, Council of Europe and the EU to repatriate their citizens. When it comes to women in the camps, the Court focuses primarily on the need for criminal proceedings. Whereas no prospects of an international tribunal or other international body exists to deal with the female detainees in the camp, such criminal proceedings have been established by France. When it comes to children, the Court argues that repatriation could be justified by the 'children's best interests, together with their particular vulnerability and specific needs' (para. 276 and 269), yet again juxtaposing the position of women against that of children. Combined with the departure from the functional approach to rights protection such (even if more nuanced) distinction puts an emphasis on the vulnerabilization and securitization as a basis of deservingness for human rights protection of certain groups of persons.

Human rights should apply equally to all human beings, but in reality, states have a certain leeway of action that allows them to be more generous towards those whom they perceive to deserve protection and more restrictive towards those whom they feel are not worthy of it. Full realization of rights often requires that the individuals in question are seen as *deserving* and that there is someone who *wants to grant protection*. A central argument made in this article is that in relation to the women at al-Hol, there are strong narratives of undeservingness affecting how states see their human rights obligations in particular ETOs.

The recognition that states have ETOs is not new to human rights law, but the approach to them by human rights monitoring bodies in relation to the camps in Northern Syria still represents interesting new legal developments connecting ETOs to factors such as nationality, capability and power to protect rights. While the CRC addressing the situation of children on the basis of a special protection instrument went further regarding ETOs, the ECtHR considering the question in a general human rights setting opted for allowing more state discretion. This is in line with the human rights jurisprudence on vulnerability, often identifying more extensive state obligations in relation to 'the vulnerable'. All in all, however, it must be submitted that the exact scope of ETOs in relation to citizens trapped in dire human rights situations abroad remains unsettled, especially regarding adults who voluntarily have put themselves in danger. This uncertainty allows states to interpret their human right obligations in a way where the political will – or goodwill – of states becomes decisive. This dependence on goodwill can be criticized from the perspective that human rights should apply equally to all human beings and constitutional rights a priori equally to all citizens.

According to our core argument, when the emphasis is put on vulnerability, there is a greater likelihood that rights are recognized, while securitization often is connected to attempts to try to minimize protection. This argument is supported by states' extensive practice in relation to the camps in Northern Syria, where a clear line is often made between the innocent children that should be helped and the bad adult citizens who should not count on repatriation or other consular services. This political line has continued in many countries despite the calls by, for example, the UN Special Rapporteurs to repatriate all citizens if possible. Despite very strong urges to repatriate at least the children, some states refuse to do even that. In March 2024, the Swedish Government, for example, announced that it will not repatriate any citizens (including children) from the camp, strongly emphasizing the danger posed by radicalized adults and the fact that the adults had travelled to the camps voluntarily (Hufvudstadsbladet 2024). This decision was harshly criticized by, amongst others, Save the Children (2024). In Finland, the policy of primarily repatriating the children continues, but Finland has, in May 2024, also repatriated an adult man who was taken to Syria as a child (Ulkoministeriö 2024).

In conclusion, we wish to make a pledge for greater attentiveness towards how processes such as vulnerabilization and securitization affect interpretations of human rights obligations, and for the need to stay true to the idea of universal rights that de facto belong to everyone. The distribution of human rights should not be based on ideas of deservingness – who is good and who is bad – but rather on real protection needs. What distorts the universal protection of human rights in this regard is that the identifications of vulnerability, threats, etc., sometimes are selective. The women in

al-Hol have often been the objects of othering and stereotyping, and the question of their possible vulnerability has largely escaped attention. In practice, therefore, ideas of deservingness of protection have attained a crucial role in how states interpret their human rights obligation in relation to them.

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Mikaela Heikkilä has no competing interests to declare. Magdalena Kmak had served at the board of the Nordic Migration Research Organization during years 2019–2022.

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