

EU ASYLUM LAW I.

Qualification, procedure

Presentation of Boldizsár Nagy at the EIPA Training
Introduction to EU Asylum and Migration Law

EIPA, Luxembourg, 17 May 2018

Global figures, end of 2016

65.6

MILLION
FORCIBLY
DISPLACED
WORLDWIDE

as a result of persecution,
conflict, violence, or
human rights violations

- 22.5 million people who were refugees at end-2016
 - 17.2 million under UNHCR's mandate
 - 5.3 million Palestinian refugees registered by UNRWA
- 40.3 million internally displaced people*
- 2.8 million asylum-seekers

**51% of the
refugees are
minors**

More than half (55 per cent) of all refugees worldwide came from just three countries:

Syrian Arab Republic

(5.5 million)

Afghanistan

(2.5 million)

South Sudan

(1.4 million)

552,200 refugees returned home
in 2016

189,300 refugees were admitted
to resettlement

Source: UNHCR: Global Trends. Forced displacement in 2016. Geneva, 2017, various pages

<http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html> (20180514)

Syria! May, 2018

5,645,914

Registered Syrian refugees (abroad)
As of 10 May 2018

970,316 between Apr 2011 and Jul 2017

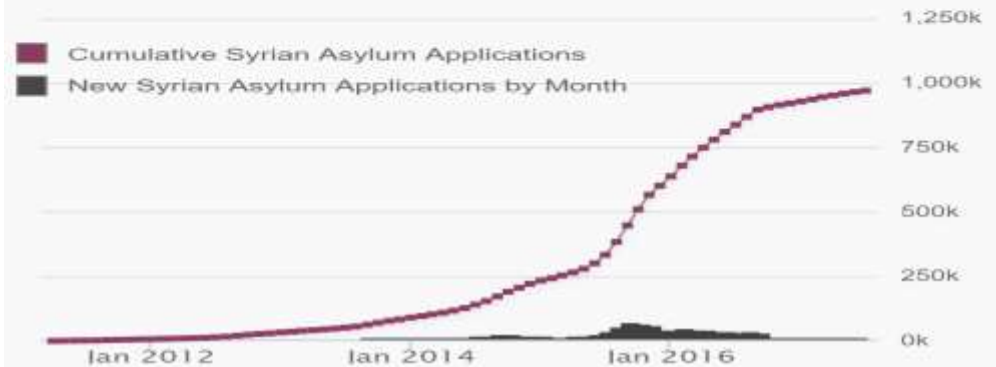
137,798 in 2014 only

Note - Data for 37 European countries which provide monthly information to UNHCR. To the extent possible, the figures reflect first time asylum applications, but some of the statistics are likely to include repeated applications (same or different country).

Top Countries



Evolution of Asylum Applications



Egypt: 128,507

Iraq: 248,382

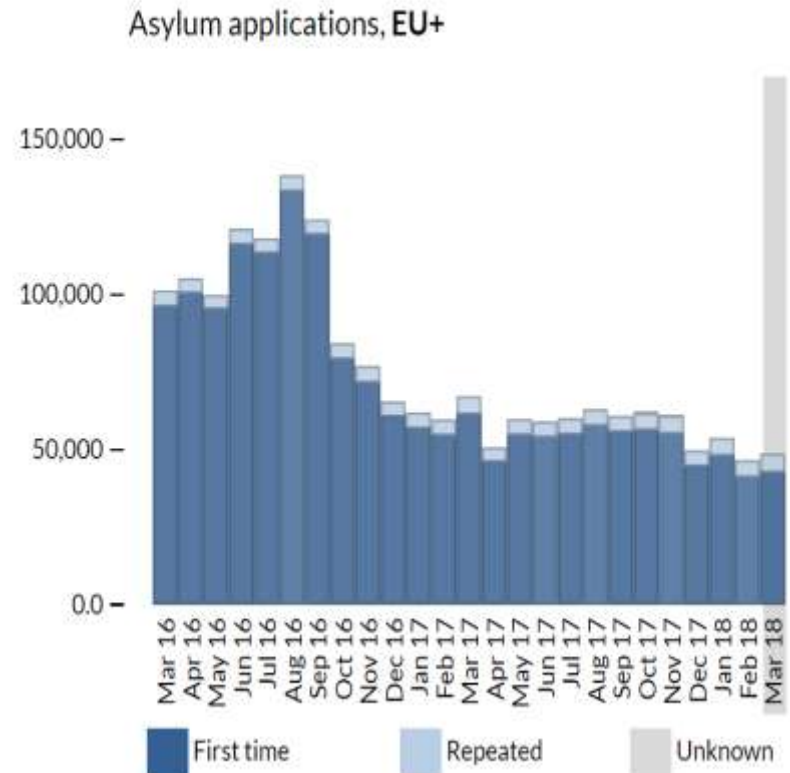
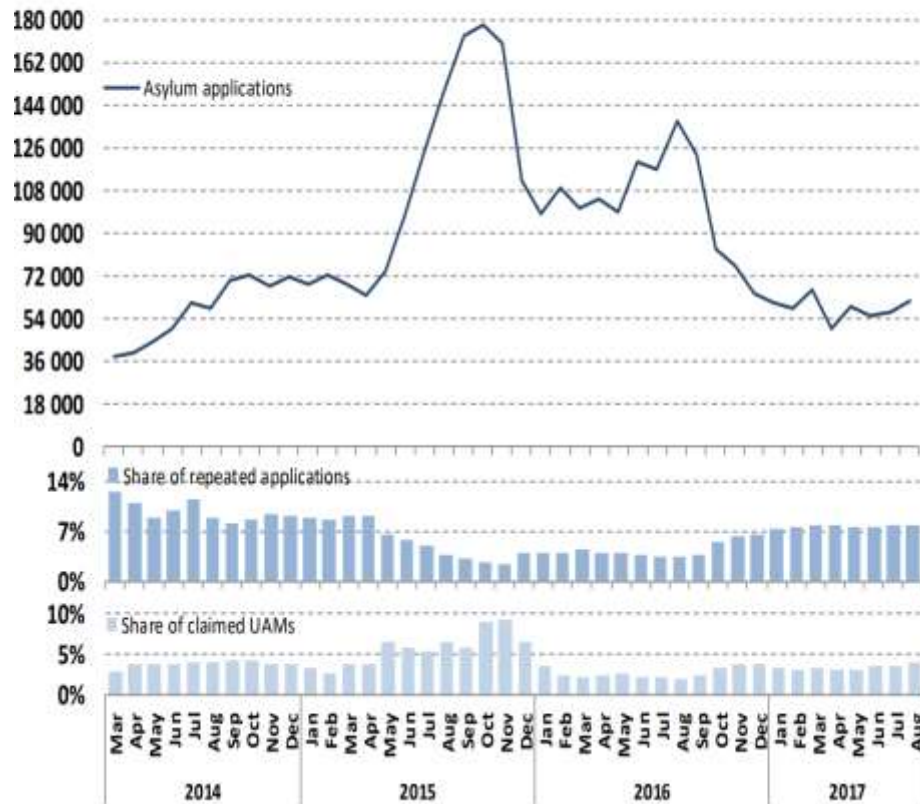
Jordan: 661,859

Lebanon: 986,942

Turkey: 3,586,679

Individual applications in the EU+

Number of applications for international protection in the EU+¹



Source: EASO, Latest Asylum Trends, 2017, August, p. 1. and 2018 March
<https://www.easo.europa.eu/latest-asylum-trends> (20180514)

Countries of origin 2016-2017 in the EU

	Q4 2016			Q1 2017			Q2 2017			Q3 2017			Q4 2017			Q4 2017	Change in %		Last 12 months
	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.		between Q3 2017 and Q4 2017	between Q4 2016 and Q4 2017	
Non-EU	78 160	70 285	58 945	57 485	54 945	51 445	46 170	53 710	52 960	55 445	57 875	55 755	55 905	54 750	43 405	154 065	-9	-26	649 855
Syria - (SY)	13 535	11 695	9 550	8 610	8 615	9 345	6 700	8 570	7 815	9 570	10 680	9 055	8 590	8 520	6 310	23 420	-20	-33	102 385
Iraq - (IQ)	6 355	5 045	4 110	3 730	3 900	3 935	2 810	3 665	3 340	3 560	4 675	4 995	5 035	4 445	3 435	12 915	-2	-17	47 525
Afghanistan - (AF)	10 055	7 020	4 985	4 795	3 910	4 860	3 145	3 595	3 345	3 200	3 780	3 250	3 300	3 610	2 835	9 745	-5	-56	43 625
Nigeria - (NG)	5 045	5 310	4 045	4 120	3 835	3 755	2 820	3 345	3 750	3 775	3 210	2 990	2 925	2 735	1 825	7 485	-25	-48	39 090
Pakistan - (PK)	2 985	3 145	2 575	2 445	2 515	3 020	2 245	2 555	2 485	2 385	2 495	2 490	2 670	2 360	1 900	6 930	-6	-20	29 570
Turkey - (TR)	1 270	1 260	1 070	1 025	960	1 010	865	955	895	1 095	1 525	1 670	1 830	1 815	980	4 625	8	28	14 630
Albania - (AL)	2 310	2 510	2 175	1 835	1 555	2 190	2 030	2 005	1 950	2 045	2 185	1 700	1 540	1 620	1 415	4 575	-23	-35	22 075
Eritrea - (ER)	3 375	3 410	2 750	2 315	2 255	1 985	1 755	1 765	2 435	2 320	2 370	2 810	1 680	1 295	1 365	4 340	-42	-54	24 355
Iran - (IR)	2 660	1 945	1 665	1 665	1 340	1 545	1 590	1 430	1 290	1 305	1 335	1 525	1 550	1 485	1 200	4 235	2	-33	17 260
Bangladesh - (BD)	1 665	1 860	1 420	1 385	1 495	1 870	1 635	1 930	1 960	1 650	1 625	1 560	1 630	1 390	1 150	4 170	-14	-16	19 280
Venezuela - (VE)	600	810	585	880	985	1 045	830	915	950	775	850	1 090	1 330	1 370	930	3 625	34	81	11 945
Georgia - (GE)	710	615	535	605	610	730	620	775	745	745	730	760	1 010	1 210	1 390	3 610	62	94	9 925
Guinea - (GN)	1 565	1 520	1 425	1 650	1 630	2 070	1 410	1 575	1 625	1 600	1 385	1 285	1 285	1 185	1 010	3 480	-18	-23	17 705
Somalia - (SO)	1 800	1 385	1 160	1 165	1 095	1 150	955	1 080	995	1 105	1 140	1 005	1 020	1 145	845	3 010	-8	-31	12 710
Russia - (RU)	1 445	1 200	1 200	1 105	1 055	1 185	985	940	1 020	1 150	1 220	1 075	1 005	980	850	2 835	-18	-26	12 570
Ivory Coast - (CI)	1 240	1 090	1 020	1 160	1 355	1 600	945	1 370	1 305	1 315	1 135	1 040	1 095	935	745	2 775	-21	-17	13 995
Algeria - (DZ)	1 150	1 145	1 005	870	805	830	635	655	585	655	765	770	795	955	910	2 665	22	-19	9 235
Mali - (ML)	990	860	745	900	950	1 055	705	865	900	1 015	850	795	895	845	515	2 250	-15	-13	10 290
Gambia - (GM)	1 145	1 485	1 260	1 295	1 365	1 570	1 105	1 115	1 065	980	885	875	830	845	575	2 250	-18	-42	12 505
Sudan - (SD)	1 170	840	1 340	660	695	805	785	775	660	805	940	815	1 020	630	585	2 240	-13	-33	9 185
Ukraine - (UA)	820	885	700	740	805	815	635	805	860	770	600	710	820	810	575	2 205	6	-8	8 945
Morocco - (MA)	985	910	780	640	655	660	610	660	510	680	765	650	650	735	585	1 965	-6	-27	7 790
Senegal - (SN)	910	970	890	1 025	1 020	1 190	775	975	1 020	885	725	740	745	590	515	1 850	-21	-33	10 200
Armenia - (AM)	985	680	510	865	600	620	405	390	370	560	580	680	525	660	540	1 725	-5	-24	6 790
CD - (CD)	495	445	420	495	650	790	505	545	645	470	425	485	485	485	650	1 620	17	19	6 630
Serbia - (RS)	545	665	570	455	435	590	435	350	325	380	290	290	480	545	480	1 505	57	-15	5 055
Unknown - (UNK)	730	730	630	440	430	590	415	470	450	515	500	550	495	575	410	1 480	-5	-29	5 845
Cameroon - (CM)	500	475	430	440	435	465	380	535	545	645	535	480	560	490	395	1 445	-13	2	5 910
China - (CN)	570	410	335	360	405	345	270	360	370	395	420	420	470	460	495	1 420	15	8	4 760
Haiti - (HT)	85	100	250	600	485	420	305	415	555	495	500	450	540	590	265	1 395	-3	219	5 615
Other (non-EU)	10 460	9 860	8 705	9 210	8 095	9 400	6 865	8 335	8 190	8 585	8 745	8 745	9 105	9 430	7 740	26 280	1	-9	102 455

Source: Eurostat Asylum Quarterly Reports , 19 March 2018

[/index.php/Asylum_quarterly_report](#) (20180514)

DEFINITIONS

„Convention refugee”

„Political refugee”

Beneficiary of subsidiary protection

Victims of civil war or threatened with inhuman or degrading treatment or punishment or death penalty

Beneficiary of temporary protection

„Mass influx” from conflict, endemic violence or systemic violations of human rights

Details later

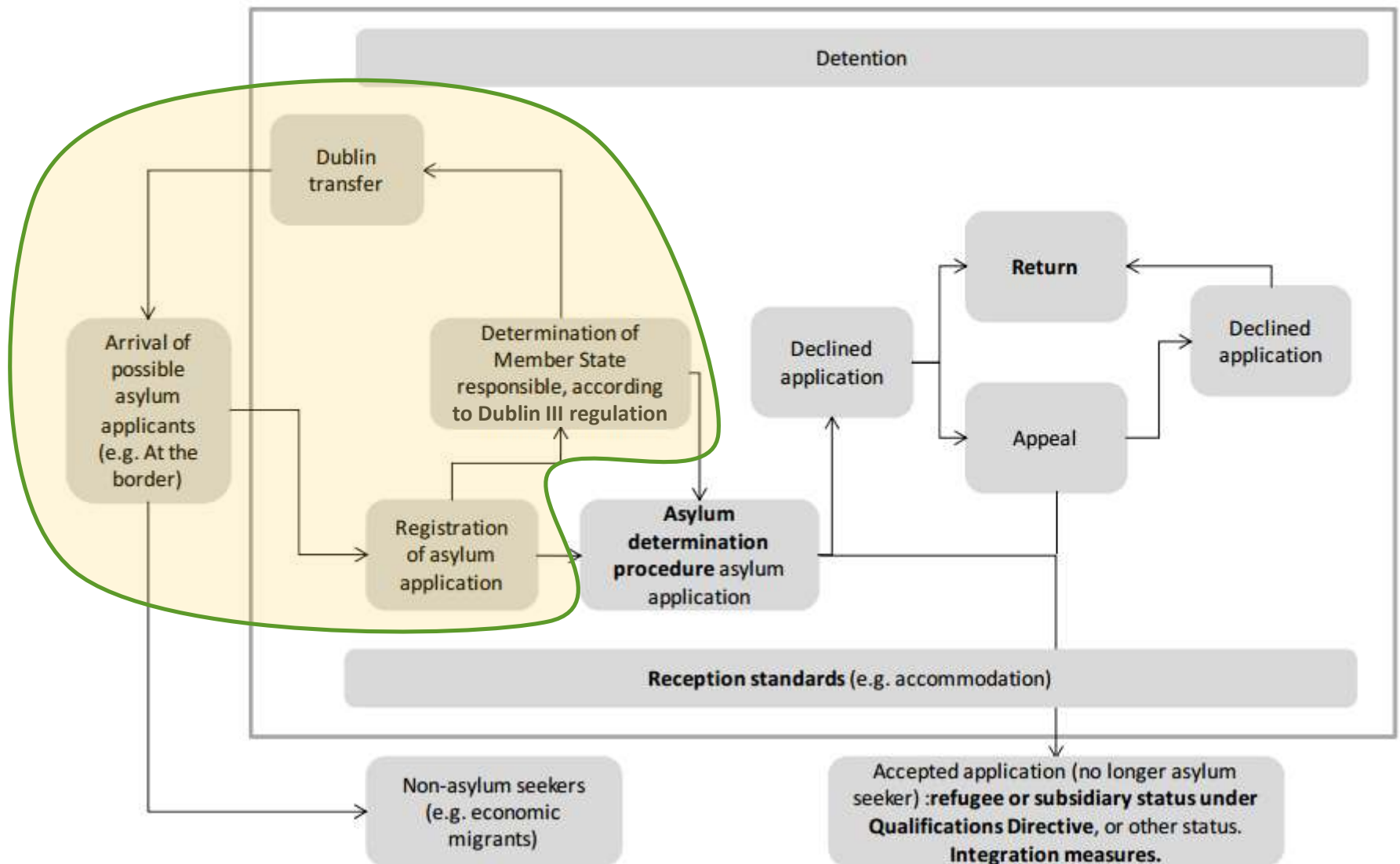
Asylum acquis

Adopted and proposed measures

1. Regulation on **Eurodac** (2000) recast: **2013**. Pproposal for regulation **2016** (recast 2)
2. Directive on **temporary protection** (2001)
3. **Reception conditions** directive (2003) recast: **2013** Pproposal for directive (recast 2): **2016**
4. **Dublin II** Regulation and its implementing rules (2003) recast: **2013** Proposal for regulation (recast 2): **2016**
5. Qualification (**Refugee definition**) directive (2004) recast: **2011**. Proposal for regulation: **2016**
6. **Asylum procedures** directive (2005) recast: **2013**. Proposal for regulation: **2016**
7. Establishment of an **European Asylum Support Office** (2010) Proposal for regulation on **European Asylum Agency: 2016**
8. Decision on the new **Asylum Migration and Integration Fund** – **2014**
9. Solidarity measures, 2015: **resettlement and relocation (See also 2016 Dublin proposal)**

The asylum process model as in 2018

Figure 1: Overview of the asylum process



Source: (European Parliament:) What system of burden-sharing between Member States for the reception of asylum seekers? A study written by Dr Christina Boswell, Dr Eiko Thielemann and Richard Williams, PE 419.620,, p-34

QUALIFICATION DIRECTIVE, 2011 DECEMBER

A few salient features

DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 December 2011

on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
(recast)

Qualification directive

Purpose

- Guaranteeing (a minimum) of protection
- Closing the protection gap concerning persons not threatened with Geneva Convention type persecution
- Prevention of asylum shopping and abuse of the asylum system

Scope of application

25 Member states of the EU. The **UK** and **Ireland** **opted out** (Denmark is not bound)

UK and Ireland participated **in the earlier (2004) version** and are bound by it

Minimum standards

According to Art 3. states may introduce or retain more favourable standards. The directive represents the (bare) minimum

Qualification directive

Major innovative features of the two QDs compared to earlier state practice and doctrine

- **Introduction of „subsidiary protection”** and identification of rights accompanying it.
- **Non-state actors may qualify as persecutors** in a Geneva Convention sense
- **Internal flight alternative** is an exclusion ground.
- The concept of (effective) **protection is defined**
- **Gender sensitive** and detailed interpretation of the five GC grounds

Qualification directive (cont'd)

2 § Definitions:

Application = seeking refugee **or** subsidiary protection status

Refugee = GC definition applied to third country nationals

„‘refugee’ means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country ...”

+ to whom exclusion grounds do not apply

Person eligible for subsidiary protection

See next slide

Qualification directive (cont'd)

Art 2 (f)

„‘person eligible for **subsidiary protection**’ means a **third country national** or a stateless person who **does not qualify as a refugee** but in respect of whom **substantial grounds** have been shown **for believing** that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, **would face a real risk of suffering serious harm** as defined in Article 15, and to whom [exclusion grounds] do not apply, and is **unable, or**, owing to such risk, **unwilling to avail** himself or herself **of the protection** of that country”

Qualification directive (cont'd)

Serious harm (Art. 15)

Serious harm consists of:

(a) **death penalty** or execution;

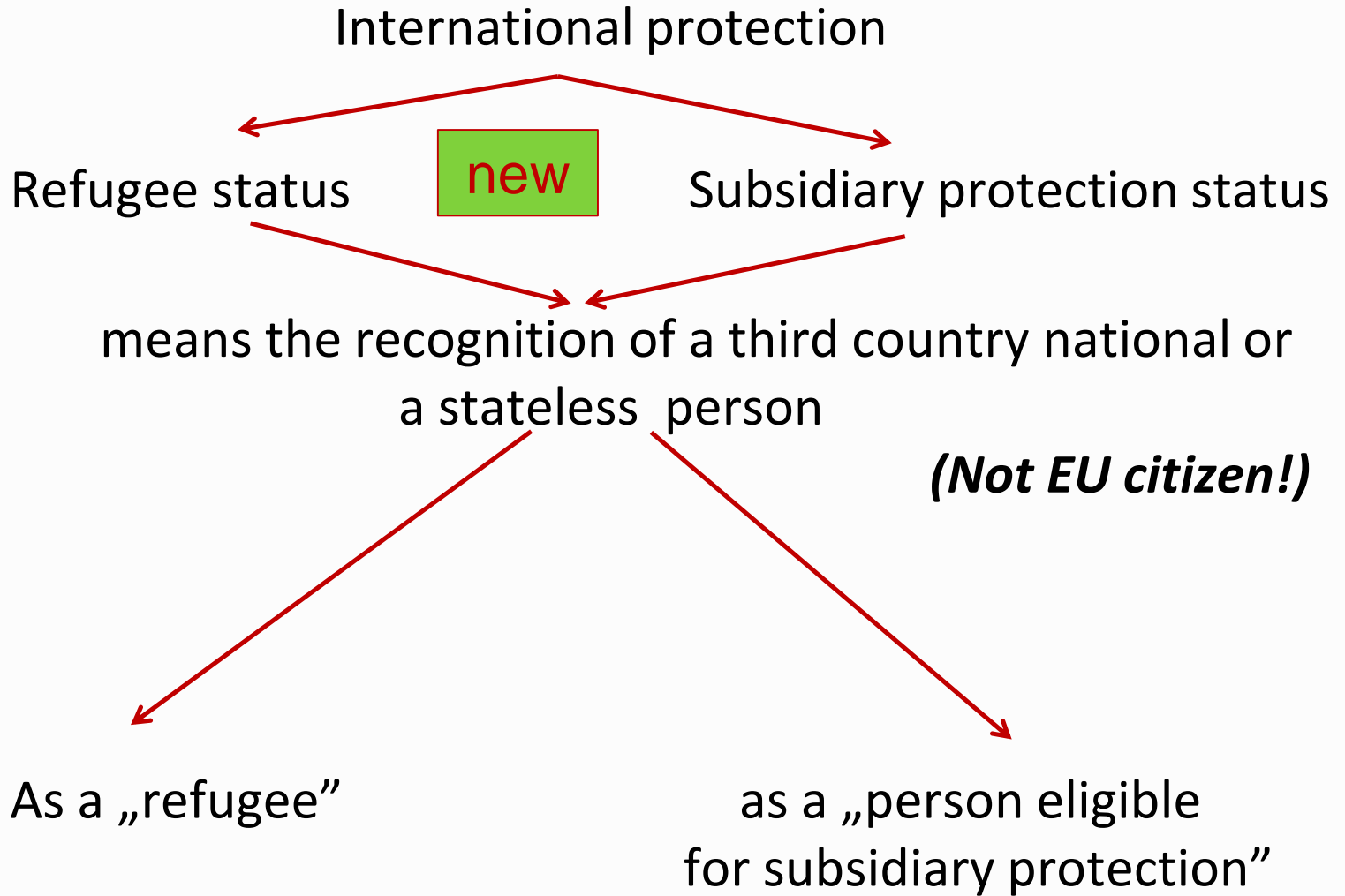
or

(b) **torture** or inhuman or degrading treatment or punishment of an applicant in the country of origin;

or

(c) **serious and individual threat** to a civilian's life or person **by reason of indiscriminate violence** in situations of international or internal armed conflict.

Conceptual scheme



Qualification directive

Well founded fear

Assessment of applications for international protection (Chapter II) =
objective theory

- **burden of proof: shared** between applicant and assessing state;
- **assessment: individual**, based on the statement of the applicant + his documents
- country of origin: **law and reality** should be assessed
- opening for subjectivisation (4§ (3. (c)) (Taking into account the „**individual position and personal circumstances**” of the applicant ...to assess whether the acts to which (s)he could be exposed amount to persecution)
- **Past persecution /serious harm** = serious indication of well-founded fear unless „good reasons to consider” that they „will not be repeated”.

Credibility issues - see next slide

Qualification directive

Well-founded fear (cont'd)

Credibility /benefit of doubt

„where aspects of the applicant’s statements are not supported by... evidence” these need no confirmation if:

- applicant made **genuine effort** to substantiate
- **submitted all** available evidence and **explained the lack** of others
- the statement is **coherent and plausible** and does not contradict available information
- the applicant has **applied „at the earliest possible time” unless** good reason for not having done so
- „the **general credibility** of the applicant has been established” (4§ 5. (e))

Qualification directive Persecution

Acts of persecution

- (a) [„must be”] sufficiently **serious**
- by their nature or repetition -
- as to constitute a **severe violation of basic human rights**,
- in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- or
- (b) be an **accumulation** of various measures,
- including violations of human rights –
- which is **sufficiently severe as to affect an individual in a similar manner** as mentioned in (a).

Acts: violence (physical, mental, sexual), discriminatory measures and punishment, prosecution for denial of military service in a conflict entailing crimes or acts justifying exclusion, gender specific or child-specific acts

Nexus (for reasons of) need not be with persecution. It **may be with absence of protection**.

Qualification directive grounds of persecution

The five grounds for persecution

Immaterial whether applicant possesses the characteristic or only the persecutor attributes to her/him.

1. **Race:** includes colour, descent, or membership of a particular ethnic group;
2. **Religion:** theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public
3. **Nationality:** citizenship or lack thereof + membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

Qualification directive grounds of persecution

4. Political opinion

opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not reflected in acts of the applicant.

The actor (the government) would learn about it and not tolerate it

5. Particular social group:

members of that group share an **innate characteristic, or a common background that cannot be changed**, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it,

and **F. v (Hungary) 28 Jan 2018 C-473/16**
No personal psychological testing

that group has a distinct identity in the relevant country, because it is **perceived as being different** by the surrounding society;

See: X, Y and Z v Minister voor Immigratie en Asiel CJEU,
C-199/12, C-200/12, C-201/12, Judgment of 7 November 2013

Homosexuality need not be hidden, even if minor punishment not excluded

QUALIFICATION DIRECTIVE PERSECUTION (CONT'D)

Persecutor / serious harm doer

the State;
parties or organisations
controlling the State
or a substantial part
of the territory of the
State;
non-State actors, if the
state or other agents
are **unable** or
unwilling to provide
protection

Protector

the State; or

parties or organisation, **including international organisations**,
controlling the State or a substantial
part of the territory of the State.

Protection means at least that

- an effective legal system for the detection, prosecution and punishment of persecution or serious harm is operated
- the applicant has access to such protection.

Protection **must be effective and non-temporary** and can only be provided by the above mentioned actors if they are **willing and able to enforce the rule of law**.

Internal relocation alternative (8§)

- Optional! (MS „may” determine)
- In a **part of the country** of origin
 - there is **no well-founded fear** of being persecuted / **no real risk** of suffering serious harm
 - The applicant **has** (actual) **access** to protection
 - the applicant can **„safely and legally” travel** there **and gain admittance** and **„reasonably be expected to stay** in that part of the country”
- „Have regard” to – general circumstances + personal circumstances of the applicant
- Authorities must have up-to-date info

Qualification directive

Cessation

Cessation

Usual GC grounds (re-availment of protection, re-acquiring nationality, acquiring new nationality, re-establishment in country of origin, circumstances justifying ref. status cease to exist)



The change of circumstances must be of such a **significant and non-temporary nature** that the refugee's fear of persecution can no longer be regarded as well-founded.

Exception to ceased circumstances if „a refugee who is able to invoke **compelling reasons arising out of previous persecution for refusing to avail** himself of the protection of the country of nationality”

Qualification directive

Exclusion

GC grounds:

- crime against **peace, war** crime, crime against **humanity**
 - a serious non-political crime outside the country of refuge **prior to the issuing of residence permit** based on refugee status; **particularly cruel actions** - even if committed with political objective - may be classified as serious non-political crimes;
 - Acts contrary to the **purposes and principles of the UN**
-
- protection by other UN organ (**UNRWA**)
 - enjoying **rights equivalent** to those of nationals

Exclusion ≠ return: Human rights based non refoulement may apply!

See: CJEU - *Moustafa Lounani v Belgium* C-573/14 Judgment of 31 January 2017
Acts contrary to the purposes and principles are not limited to terrorist acts proper, they are broader, e.g. **recruiting terrorists or forging documents for them justify exclusion**

See: CJEU - C-57/09 and C-101/09 *Bundesrepublik Deutschland v B and D* – Grand Chamber judgment of 9 November 2010
No automatic exclusion for membership in terrorist organisation
But: no proportionality test, no need to present danger to Germany

Qualification directive Procedure, including revocation of refugee status

MS **must** „grant” (i.e.: recognise) refugee status to those who qualify! (13 §)

MS **must** „revoke, end or refuse to renew” refugee status if **cessation grounds** apply or „he or she **should have been or is excluded** from being a refugee” (14 § 3. (a)) or his or her **misrepresentation or omission of facts**, including the use of false documents, were decisive for the granting of refugee status.

MS **may** „revoke, end or refuse to renew” status **when GC exceptions to non-refoulement** (33§ (2)) apply, i.e. national security or danger to the community

Burden of proof:

cessation: MS „demonstrate” on an **individual basis**

Exclusion: „establish”

Qualification directive

Subsidiary protection

See **definition (2§ and 15§)** above

(death penalty, execution; torture, inhuman, degrading treatment, punishment; serious indiv. threat to life or person by reason of indiscriminate violence in armed conflict)

Applies to anyone, not only to those who are threatened with the harm for the five grounds

Should **not be used to replace** Geneva Convention refugee status

Individual threat in generalized violence?

See Elgafaji judgment, Case C-465/07, judgment of 17 February 2009

What about non armed conflict situations?

Important cases: „*Elgafaji*”, CJEU, „*AH and QD v SSHD*” Court of Appeal, UK, „*Abdulla and others*”, CJEU, „*Diakite*”, CJEU

The Elgafaji case – C-465/07 ECJ – Judgment, 17 February 2009

The case

Case C-465/07, Reference for a preliminary ruling from the Raad van State (Netherlands), in the proceedings *Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie*.

Importance

Clarifying what **individual threat under indiscriminate violence means**

Facts

Mr Elgafaji, is a Shiite Muslim his wife is Sunni. He had **worked** from August 2004 until September 2006 **for a British firm** providing security for personnel transport between the airport and the 'green' zone. **His uncle**, employed by the same firm, had been **killed by a terrorist act of the militia**.

Claimants' reasons for believing that there was a serious and individual threat

- The killing of the uncle
- A short time later, a letter threatening 'death to collaborators' fixed to the door of their residence

The Elgafaji case - Judgment, 17 February 2009

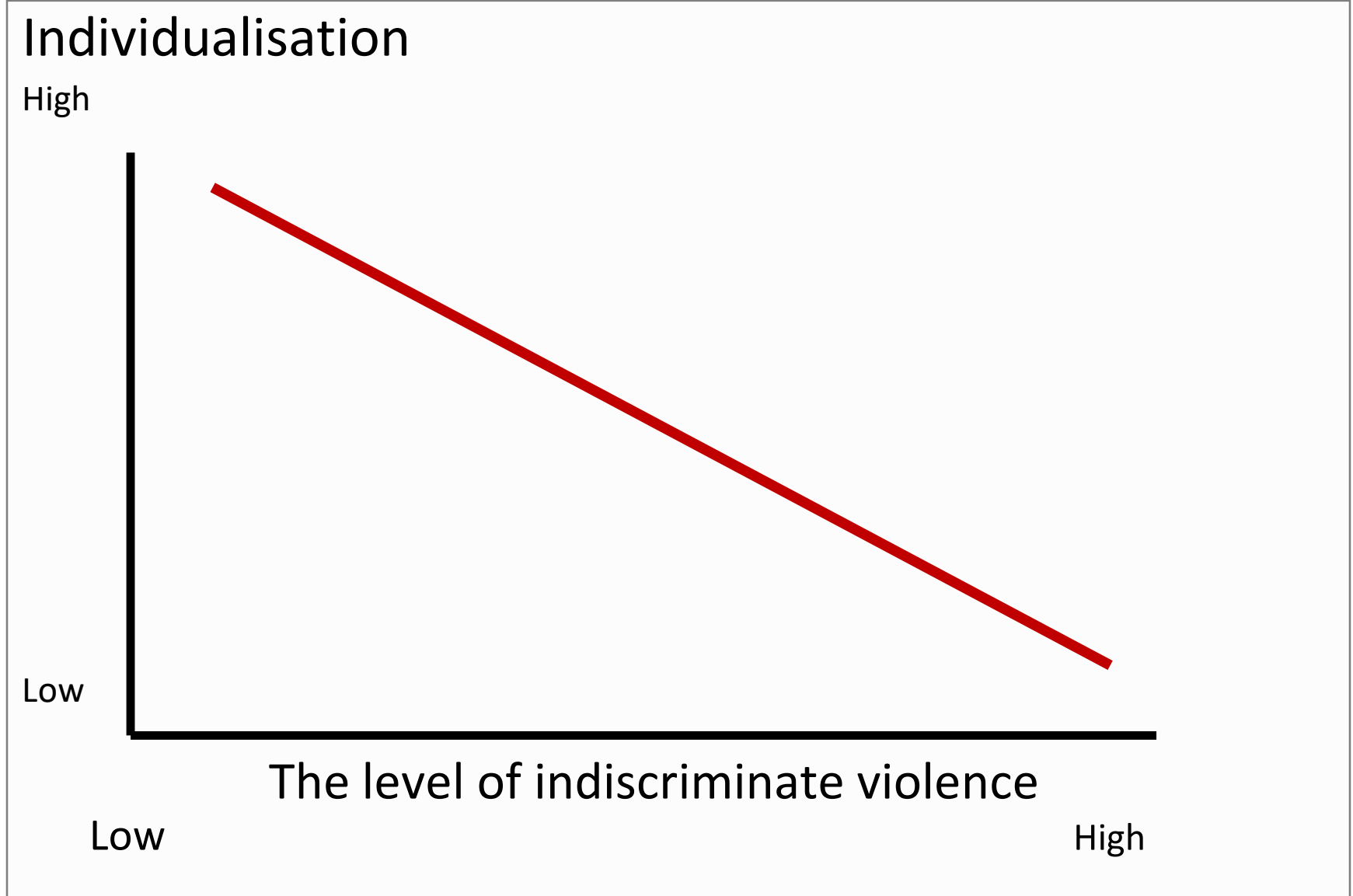
Individual threat under indiscriminate violence: it does **not refer to specific acts** of violence, but to the **threat** of the applicant's life and person.

That threat is **triggered by violence**, which is indiscriminate (34. §)

Indiscriminate: it extends to the person „**irrespective of her/his personal circumstances**” (34 §)

„...[T]he word '**individual**' must be understood as covering harm to civilians **irrespective of their identity**, where the **degree of indiscriminate violence** characterising the armed conflict taking place ... reaches **such a high level** that substantial grounds are shown for believing that **a civilian**, returned to ..., would, **solely on account of his presence on the territory ...**, face a real risk of being subject to the serious threat referred in Article 15(c) of the Directive” (115 §)

The measure of individualisation and the level of violence Elgafaji, para 39.



CJEU C-285/12, *Diakite*, [30 Jan. 2014]

On the notion of internal armed conflict: key question **is it the same as in international humanitarian law** the notion of armed conflict not of an international character?

Answer: no. It has an independent meaning derived from the directive's context.

„ On a proper construction of Art. 15(c) and the content of the protection granted, it must be acknowledged that **an internal armed conflict exists**, for the purposes of applying that provision, **if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other.**

It is not necessary for that conflict to be categorised as **'armed conflict not of an international character'** under international humanitarian law; **nor is it necessary** to carry out, in addition to **an appraisal of the level of violence** present in the territory concerned, a separate assessment of **the intensity of the armed confrontations**, the level of **organisation** of the armed forces involved **or the duration** of the conflict.”

Qualification directive: substantive rights

Without prejudice to GC

Same rights to refugees and beneficiaries of subsid. prot - **unless otherwise** indicated!

Specific attention to **vulnerable groups** + best interest of the child

In „manufactured cases” (refugee and subs. prot.) MS „**may reduce the benefits**”

21 § **confirms non-refoulement** both for asylum seekers and recognized refugees

Qualification directive: substantive rights

MS shall ensure family unity (23 §)

(definition – see there, unity and benefits according to national law)

national security or public order: grounds for refusal, reduction or withdrawal of benefits from fam. members

MS may extend to other close relatives, who lived together and were dependent on the beneficiary of ref or subsid prot status before his/her departure

Residence permits: min 3 years for refugees 1 year for subsid. prot.

Travel document: refugees: as in GC, subsid. prot: „document” which enables travel outside MS territory

Qualification directive: substantive rights

Employment, self employment, vocational (further) training:

Refugees: subject to rules applicable to the profession

Subsidiary protection beneficiaries: the same

Education: Minors: full access; adults: as third country nationals.

-MS must facilitate (by grants and loans) access to
employment related education and training

-Access to procedures for **recognition of qualifications** of those,
who do not have documents to prove it

Freedom of movement and residence within country: full

See: CJEU – *Alo and Osso v Germany* C-443/14 and C-444/14
Judgment of 1 March 2016 Freedom of movement of
subsidiary protected may not be limited for financial reasons,
but may be limited for purposes of integration

Qualification directive: substantive rights

Social welfare and health care:

national treatment, but for subsid. prot. beneficiaries MS may limit to core benefits

Accommodation:

As legally resident third country nationals

Allowing „national practice of dispersal”

Freedom of movement: As legally resident third country nationals

Integration: MS must create integration programmes. Access may be dependent on pre-conditions

Repatriation: MS **may** provide assistance to voluntary return.

Unaccompanied minors 31 § details the protection of their special interests

Entry into force: **10 January 2012**

Transformation: by **21 December 2013.**

PROCEDURES DIRECTIVE

DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL

of 26 June 2013

on **common procedures** for granting and withdrawing international
protection (recast)

(OJ L 180/60 of 29. 6. 2013)

Replacing

Council Directive 2005/85/EC of 1 December 2005 on **minimum standards on
procedures** in Member States for granting and withdrawing refugee status

(OJ L 326/13 of 13.12.2005)

Procedures directive, 2013

Cathryn Costello: the dual vision behind the norms. Some are based on the image of **the abusive asylum** seeker and others on **the vulnerable a.s.**

Purpose: common procedures on recognizing and withdrawing refugee status and subsidiary protection

Scope:

„**all applications** for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States” (not on high seas or extraterritorially but within jurisdiction!)

More favourable provisions: MS may maintain or introduce „insofar” as are compatible with this directive (5 §)

Procedures directive, 2013

Selected Guarantees

- **Access** to procedure - each adult has the right. Registration within 3 days
- **Right to stay** - until first instance decision (exception: subsequent application and European Arrest Warrant + int'l criminal courts)
- **Counselling in detention and border zones** Organisations and persons „providing counselling and advice” must have access (Hungarian Helsinki Committee ground-breaking)
- **Sequence** of examination: refugee - if not – subsidiary protection
- Procedural requirements: **appropriate examination**:
 - = individual, objective, impartial,
 - = up to date country of origin and transit info
 - = personnel knowledgeable about asylum law
 - = personnel is entitled to seek expert advice (medical, cultural, gender, child-related)
 - = appeal authorities also informed about country of origin and transit
- **Decision: in writing**, justification if negative (!)

Procedures directive, 2013 guarantees

- **Information** on procedure and consequences (in a language the applicants „„understand or are reasonably supposed to understand” (§12 (1) a)
- Access to **UNHCR** or an agency working on its behalf
- **Unaccompanied minors:**
 - must have representative before interview –not just legal but overall („guardian”)
 - interviewer and decision maker has specialized knowledge
 - MS may check age with medical examination
- **Applicants in need of special procedural guarantees**
 - To be identified within reasonable time
 - To be provided with adequate support

Procedures directive, 2013

Selected Guarantees

- **Interview:** Compulsory, with exceptions
Preferably same sex interviewer
Requirements:
 - Substantive interview to be made by the **competent authority**
 - „Steps” to ensure **comprehensive account**
 - **Interviewer „sufficiently competent”**, (to take account of applicant’s **cultural origin** and vulnerability **gender, sexual orientation, gender identity**)
- **Legal representation:**
 - Applicant must have **access to lawyer** (at her cost)
Lawyers access to closed areas may be curtailed
but not rendered impossible
 - States shall permit the **presence of lawyer** at the interview
- **Free** legal assistance/representation: after negative decision, with limits

Normal „examination” procedure

Deadline: **6** months

Extension: 9 more months if

Complex case

Large number of applicants

Applicant's fault

Further extension with **3** months in „duly justified circumstances” (§ 31 (3))

If uncertain situation in country of origin: further postponement of the decision possible

Absolute time limit: **21** months

Exceptional procedures/applications



Accelerated procedures

- no relevant issue raised
- safe country of origin
- misled the authorities by presenting false information or documents with respect to his/her identity
- in bad faith destroyed or disposed of an identity or travel document that would have helped establish identity
- the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict verified COI info

Inadmissible applications

- Dublin III applies
- Refugee status in another MS
- Non MS = first country of asylum (already recognized there as refugee)
- „Normal” safe third country applies
- Dependent repeating parents rejected application

CJEU judgment in case C-175/11 H.I.D. v Ireland, 31 January 2013
Directing all Nigerian cases into accelerated procedure not prohibited

Exceptional procedures/applications

Accelerated procedures

- **subsequent** application that is not inadmissible = new elements arouse or presented
- merely in order to **delay or frustrate removal**
- **entered** or prolonged his/her stay **unlawfully** and, without good reason, has either **not presented himself/herself** and/or **did not file an application for asylum as soon as possible**
- applicant may, for serious reasons, be considered a danger to the **national security or the public order**
- refuses to have his/her **fingerprints** taken

Inadmissible applications

Identical **subsequent application**

European safe third country (optional)

C-69/10 *Diouf v Ministre du Travail, de l'Emploi et de l'Immigration* (Luxembourg) decided: 28 July 2011.
No separate appeal against a decision to examine in accelerated procedure, 15 days for appeal are enough, one level court review constitutes effective remedy

Border procedures

(keeping persons in transit zones or at entry points)

Guarantees apply !

Limited to

- decision on **admissibility of the applications,**
- to **accelerated procedures**

Maximum: **4 weeks** – then: entry to the country

If **large numbers** arrive: border procedures (no entry) even if accommodated „at locations in **proximity of the border** or transit zone” (§ 43 (3))

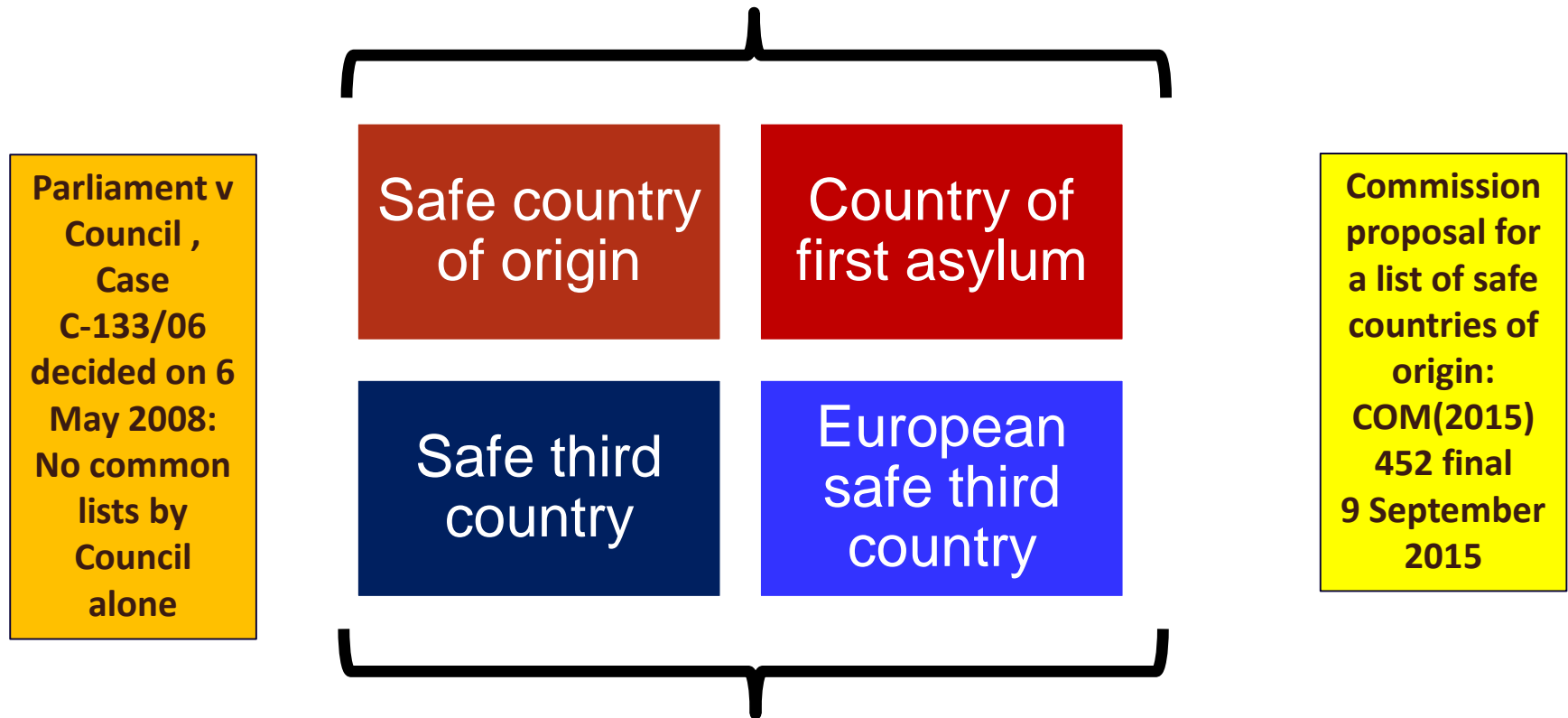
Systemic detention at the Hungarian border since March 2017 ≠ border procedure

Procedures directive, 2013

key terms

Presumption: person **not in need of protection**, because

- not threatened or:
- protected elsewhere



Presumption: **another state should determine** if the person needs protection

No judgment on the presence of threat of persecution or harm

Safe country of origin

It can be shown that there is **generally and consistently no persecution** and no torture or inhuman or degrading treatment or punishment; and no threat by reason of indiscriminate violence in situations of international or internal armed conflict

This is proved by **the legal situation**, the **application of the law** within a democratic system and the **general political circumstances**.

Account shall be taken of the extent to which **protection** is provided **against persecution or mistreatment** through:

- the relevant **laws and their application**;
- **observance** of the **European Convention of Human Rights** and/or the International Covenant for Civil and Political Rights and/or the Convention against torture,
- respect of the **non-refoulement** principle
- provision for a system of **effective remedies**

First country of asylum

First country of asylum (§ 35) the a.s. has been **recognised** in that country as a refugee and he/she can **still avail** himself/herself of that protection,

or

he/she enjoys **otherwise sufficient protection** in that country, including benefiting from the principle of non-refoulement,

provided

that he/she **will be re-admitted** to that country.

Applicant may challenge FCA

Are Jordan, Lebanon and Turkey first countries of asylum?

Safe third country

„Normal” **safe third country** (defined nationally) (§ 27)

- **life and liberty are not threatened** on account of 5 Geneva Convention grounds; and **no risk of serious harm**
- the principle of **non-refoulement** is respected; and
- the prohibition on removal in breach of the right to freedom from **torture and cruel, inhuman or degrading treatment** as laid down in international law is respected; and
- the **possibility exists to request refugee status** and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

Safe third cont'd

Minimum requirements concerning national rules on determining that a state is safe for a particular applicant:

meaningful link between applicant and s.t.c.

investigation if a particular country is **safe for the particular a.s.**(or national designation of s.t.c.)

a right of the asylum seeker **to challenge the safety**

If application **inadmissible** because of s.t.c. :

- inform asylum seeker accordingly,
- **provide asylum seeker with document informing the s.t.c.** that the application has not been examined in substance

European safe third country

Conditions

A **Non-EU member European** country

- „has ratified and observes the provisions of the **Geneva Convention** without any geographical limitations;
- it has in place **an asylum procedure prescribed by law**; and
- it has ratified the **European Convention for the Protection of Human Rights and Fundamental Freedoms** and **observes its provisions**, including the standards relating to effective remedies.”

Consequence

No examination of the application or **no full** examination + **no right to stay** during appeal

Applicant has **right to challenge**

If returned there: **info that no examination „in substance”** took place

Procedures directive, 2013

Withdrawal of status

MS **must act** if indications to „reconsider the validity” of the status.

Procedure:

- inform refugee in writing,
- **opportunity to contradict** (interview or in writing)
- obtain pertinent info of country of origin
- legal assistance and UNHCR access as in examination
- **reasoned decision** in writing

MS may order by law that the refugee status „lapses” when the refugee re-avails herself of the protection or (re)acquires (new) nationality

Procedures directive, 2013

See H.I.D on
the concept
of „court or
tribunal”

Appeals (Effective remedy)

To: court or tribunal

Against: negative determination, inadmissibility decision, denial of reopening after abandonment, „supersafe” STC decision, subsequent application, border procedure – entry denial, withdrawal of status. - appeal against **denial of reopening a procedure** in case of implicit withdrawal, **against recognising as eligible for subsid. prot.** to be recognised as a refugee

Examination ex nunc of **facts and law** (Not merely review of legality)

Procedures directive, 2013

Suspensive effect of appeal

Default: a right to stay „pending the outcome of the remedy” (if appeal submitted on time and Dublin III not applicable)

Suspensive effect may be **denied if:**

Unfounded (= denied protection) in cases of **accelerated** procedure (except for delayed application= §31/8/h);

Inadmissible: protection in another MS; first country of asylum; subsequent application after preliminary examination;

Implicitly withdrawn application if reopening denied;

European safe third country

In border procedure suspensive effect may only be denied if there was at least a week to challenge removal and review is on fact and law

Deadlines for application: MS may set but „the time limits shall not render such exercise impossible or excessively difficult.” (§ 43/4)

Directive on procedures

Transposition

Adoption: 26 June 2013

Entry into force: 20 July 2013

Transposition: 20 July 2015, except for **deadlines** of procedure –
for **them 20 July 2018**

Applications lodged after 20 July 2015 and withdrawals started thereafter must be assessed according to the new rules

Proposal for **replacement by a regulation**:

COM(2016) 467 final , **13 July 2016**

THANKS!

BOLDIZSÁR NAGY

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