



Asylum and International Protection in the European Union: An Overview

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1. The right to asylum (universal level)

- **The right to seek and to enjoy asylum is expressly recognized in the 1948 Universal Declaration of Human Rights (Article 14.1):** “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.
- **The right to asylum is a consequence of the recognition of refugee status** according to the 1951 Geneva Convention which recognizes refugee status to anyone owing to **well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion**, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
- the prohibition of expulsion or return of refugees toward a territory where his life or freedom would be threatened on account **of his race, religion, nationality, membership of a particular social group or political opinion**, unless serious grounds of public order and national security exist (articles 32-33)
- The **1984 UN Convention against Torture extends this duty also in the case of torture** (Article 3.1) “No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

The right to asylum (European level)

- The **European Convention on Human Rights does not contain any specific provision in respect of refugees**
- Nevertheless, the European Court of Human Rights has interpreted extensively articles 2 (**right to life**), 3 (**prohibition of torture**) and 6 (**right to fair trial**) of the Convention. The Court stated the prohibition of return of a person to a country where there is a **real risk** of being subjected to torture or inhuman or degrading treatment and punishment, or where exists the death penalty, or where the trial could be stained by the use of torture
- **Article 4 of Protocol No. 4 – Prohibition of collective expulsion of aliens**
(https://www.echr.coe.int/Documents/Guide_Art_4_Protocol_4_EN_G.pdf)

2. The EU provisions

Treaty of Lisbon

Article 67, par. 2, TFEU

“frame a **common policy on asylum**, immigration and external border control, **based on solidarity between Member States**, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals”.

Article 80 TFEU

The policies of the Union set out in this Chapter and their implementation shall be governed by the **principle of solidarity and fair sharing of responsibility**, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

Article 78 TFEU

1. The Union shall develop a **common policy on asylum, subsidiary protection and temporary protection** with a view to offering **appropriate status to any third-country national requiring international protection** and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt **measures for a common European asylum system (CEAS)**.

- The Treaty of Lisbon produced:
 - the transition **from minimum standards to a common system comprising a uniform status and uniform procedures (with the adoption of Regulations);**
 - **the binding effects of the EU Charter of Fundamental Rights (art. 6 TFEU) which contains two provisions:**
 1. art. 18 dedicated expressly to **the right to asylum** guaranteed with due respect to the 1951 Geneva Convention and the 1967 Protocol;
 2. art. 19, on “**protection in the event of removal, expulsion and extradition where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment**”.

3. The Common European Asylum System (CEAS) and application measures

According to article 78 TFEU, par. 2, **CEAS comprises:**

(a) a **uniform status of asylum for nationals of third countries**, valid throughout the Union;

(b) a uniform status of **subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;**

(c) a common system of **temporary protection** for displaced persons in the event of a massive inflow;

(d) **common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;**

(e) **criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;**

(f) **standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;**

(g) **partnership and cooperation with third countries** for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an **emergency situation** characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament

Thus, the measures of article 78, par. 2 comprises:

- lett. a) and b), **the status of beneficiary of subsidiary protection** according to the **Directive 2011/95/EU (Qualification Directive)**

Pursuant to art. 2 lett. 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 (**the death penalty or execution; or torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict**), and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

- lett. c), a **temporary protection** for displaced persons in the event of a massive inflow according to the Council **Directive 2001/55/EC of 20 July 2001** on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

- let. d), **common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status** according to the **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 (**Procedures Directive**)

- lett. f) **standards concerning the conditions for the reception of applicants for asylum or subsidiary protection** according to **Directive 2013/33/EU** of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (**Reception Conditions Directive**)

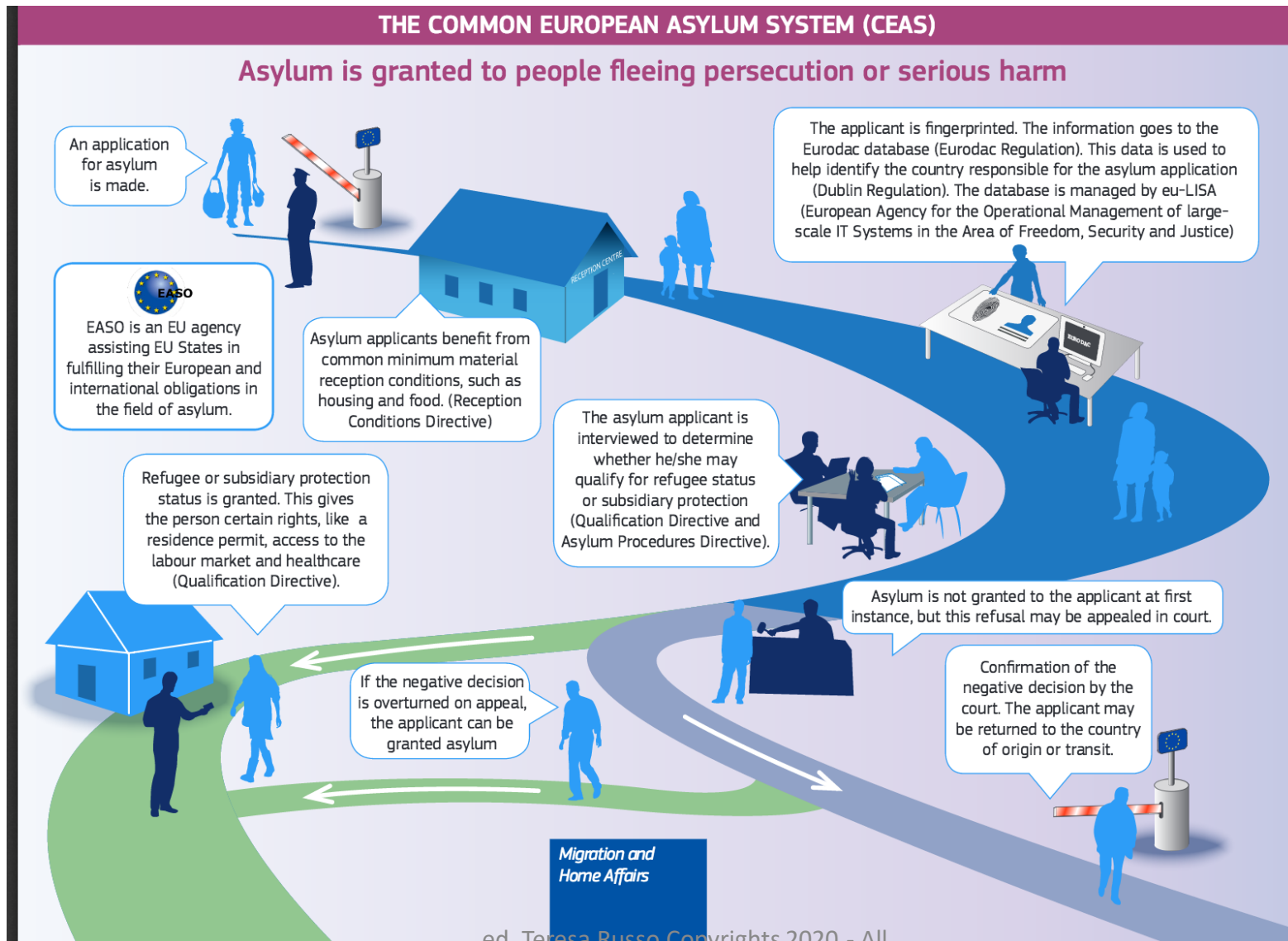
4. Which is the State responsible for the examination of the asylum application?

- Measures of article 78, par. 2, TFEU includes also **criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection (lett. e)**
- At the beginning these criteria were the subject of the better known **Dublin Convention** that is an international agreement concluded in order to harmonize national asylum policies, as foreseen by the Strasbourg European Council of December 1989
- The Dublin Convention was replaced **by Council Regulation No 343/2003 (Dublin II Regulation)**. Then, the **Regulation (EU) No 604/2013 (Dublin III Regulation)** replaces the Dublin II Regulation

- **Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (EASO)**

- **Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (EU asylum fingerprint database).**

5. Give a look at the current CEAS



6. Conclusions

- the **CEAS has not been fully implemented in many Member States**
- This provided an **incentive for asylum seekers to apply for asylum in the Member States where it is most likely to be granted**
- On 6 April 2016, the Commission presented a communication entitled ***“Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe”*** (COM/2016/0197 final)
- On 4 May 2016, the Commission adopted **the first package of proposals for CEAS reform**
- On 13 July 2016, the Commission put forward **the second package of proposals for CEAS reform**