

InHere Staff training week

Definitions and Legal Information

“From the 1951 Geneva Convention to the
Common European Asylum System
(CEAS)”

Daniela Di Rado

Italian Refugee Council- Onlus

Sapienza University

Rome, 16 April 2018



Who is an asylum seeker?

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).

Application for international protection

‘Application for international protection’ or ‘application’ means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection outside the scope of Directive 2011/95/EU*, that can be applied for separately.

* Qualification Directive

Applicant

- “applicant” means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.

What is the “final decision”?

- ‘final decision’ means a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of the Qualification Directive and which is no longer subject to any appeal procedure or review of the decision.

Dublin Regulation

The Dublin III Regulation (EU) n. 604/2013 of 26 June 2013 establishing the criteria and mechanism for determining the Member State responsible for examining an application for international protection lodged in one of the MS by a third-country national or a stateless person

- Avoiding the «*refugee in orbit*» phenomenon
- Avoiding the «*asylum-shopping*»
- In practice it is a defensive mechanism for the MS... not in favour of asylum seekers.

Dublin Regulation

The duration of the asylum procedure (and consequently of the final decision) depends also on the necessary time to define the MS responsible for the examination of the asylum claim.

note: the determination of the MS responsible can take over 1 year 😞

Applicant in need of special procedural guarantees

“... means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances;”

- Art. 24 (3) of the Procedure Directive “Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.”

Vulnerable categories

Vulnerable categories are applicants in need of special procedural guarantees

Directive 33/2013/EU (Reception Directive) laying down standards for the reception of applicants for international protection:

Art 21 - “Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive”.

Special procedural guarantees in practice

Helene, from Congo, was raped and tortured in her country of origin because of her belonging to the opposition party.

She was assisted during the asylum procedure by the CIR legal department and by the psychologist, considering the extreme violence suffered.

During the asylum procedure, CIR legal department supported Helene in the collection of the personal story to present to the competent authority for the proper assessment of her claim. In the meanwhile the psychologist drafted a certification attesting Helene's extreme vulnerability. Both the professionals supported Helene during the personal interview and her case was subjected to the so called *priority* procedure.

Who takes the decision regarding the international protection?

On the basis of the Procedure Directive 32/2013

- ‘determining authority’ means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;

Note: In Italy the first instance authority is an administrative body, namely Territorial Commission for the recognition of the international protection.

Basic procedural steps

- Registration of the asylum application;
- Competent authorities to receive the application → (mainly) Police Headquarters and/or Border police;
- Pending the procedure the applicants are (generally) provided with a residence permit;
- Applicants shall have to hand over documents in their possession relevant to the examination of the application, such as their passports (*bear in mind that applicants/refugees have not the protection of their countries*)

Basic procedural steps

- Determining interview before the competent authorities (applications are examined and decisions are taken individually, objectively and impartially..)
- On the basis of art. 4 of the Qualification Directive «The elements (...) consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection”.

Decision

On the basis of the Qualification Directive:

- Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee (..);
- Member States shall grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection (..);

Member States can deny any form of international protection →
MS are obliged to respect the “no-refoulement” principle

Appeal

- Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the negative decision issued by the determining authorities.
- Pending the procedure, the applicants are (generally) provided by a residence permit and are still considered as asylum seekers

Other forms of protection

When refugee status or subsidiary protection status are not recognised, EU MS - on the basis of their National legislation - may provide the applicant with a different form of protection.

This protection can vary in each MS in terms of criteria to meet, the duration of the related residence permit, deriving rights etc.

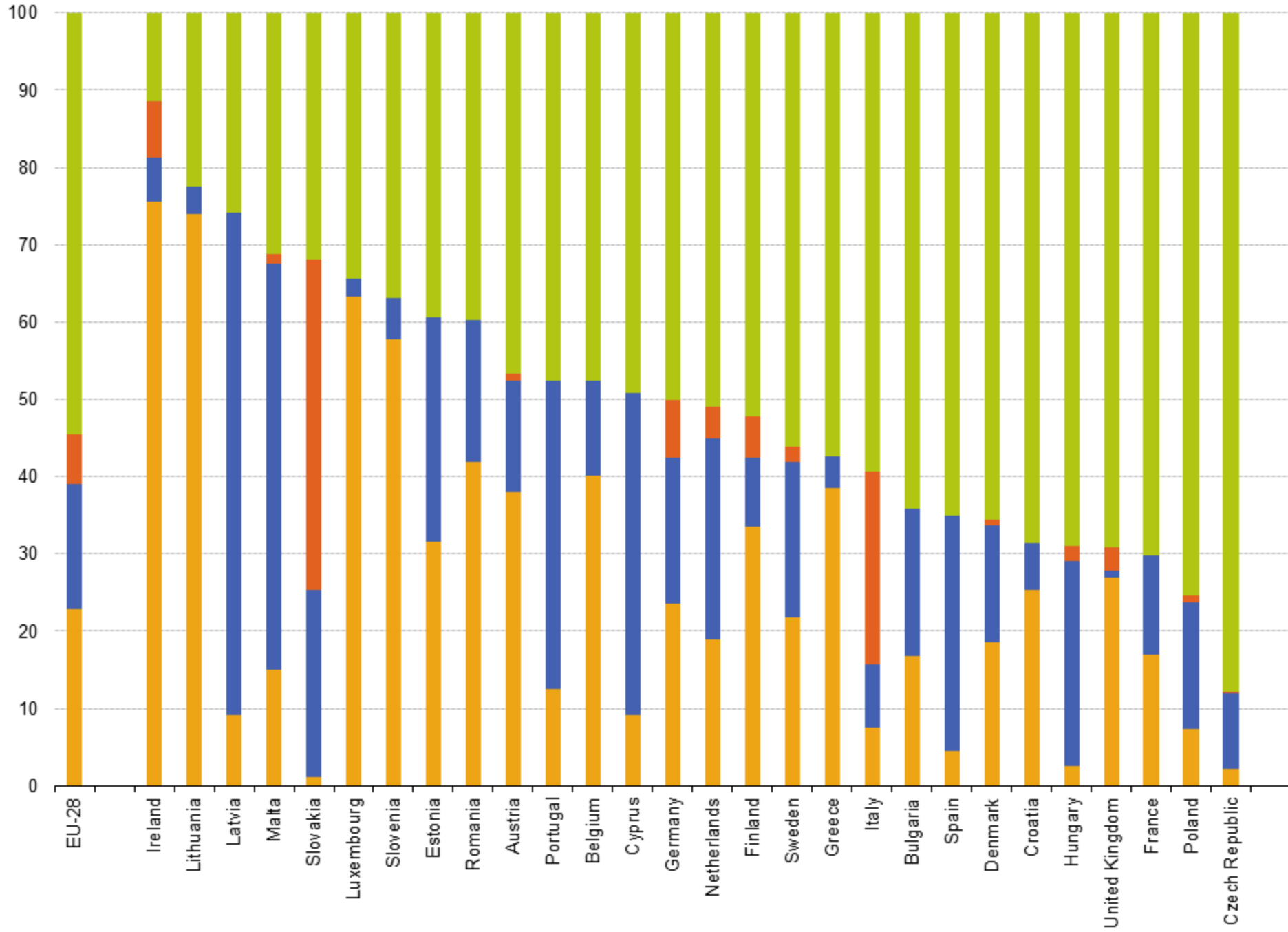
However, some EU MS do not apply this form of protection at all.

Statistics

- Next slide: distribution of first instance decisions on (non-EU) asylum applications, 2017

(%) with a focus on the humanitarian protection

Source: Eurostat



Other forms of protection

In Italy, on the basis of the indications received by the determining authorities, the Police Headquarters can issue an humanitarian residence permit based on:

- Health problems;
- Temporary impossibility to return to the country of origin;
- Temporary family needs;
- Good integration paths;

The residence permit is valid 2 years and allow the applicant to:

Work, attend school and University *, training courses, benefit from the sanitary assistance.

** Basically there is no a ban to attend classes, but the beneficiaries may not produce the requested documents (e.g. diploma)*

Rights granted to asylum seekers

Rights of asylum seekers on the basis the EU legislations:

The above mentioned rights are mainly connected to the asylum procedure due to the fact that asylum seekers are in the process of the assessment of their asylum claim. Among the rights listed in the Procedure Directive:

- right to remain in the MS pending the examination of the application (in practice it means the issuing of a residence permit...)



Rights granted to asylum seekers

- Right to be duly informed during all the procedure;



Rights granted to asylum seekers

- Right to have an interpreter during the personal interview;
- Right to lodge an appeal and to have free legal assistance during the appeal procedure.



Rights granted to asylum seekers

Rights of asylum seekers on the basis of the Reception Directive EU 33/2013:

- Right to accommodation during all the procedure;
- Right to family unit;
- Right to education of minors;
- Right to employment no later than 9 months from the date when the application was lodged (..);
- Right to vocational training;
- Right to health care.

Rights granted to asylum seekers

With a focus on education → the case of adult asylum seekers

The provision set out on the Reception Directive doesn't specifically mention adult asylum seekers nor establishes legal barriers to asylum seekers' access to the MS' education system (i.e. access to the Universities).

However, problems may arise with reference to the documents requested by the Universities in order to register or to conclude the study cycle.

On this matter, in Italy there were Universities that expressly grant asylum applicants' access to the classes on the basis of programmes set apart for.

Statistics in the EU 2015-2016-2017

	Asylum applications
2015	over 1.300,00
2016	Nearly 1.300,00
2017	706,913
Source: EASO	

Statistics in Italy

Asylum applications presented in Italy:

- 2015: 83.970
- 2016: 123.600
- 2017: 130.119
- 2018: 10.615*

* 1/01/2018-16/02/2018

Statistics – outcomes 2016-2017 (ITALY)

- Outcomes 2016: 5% refugees on the basis of the 1951 Geneva Convention; 14% subsidiary protection, 21% humanitarian protection, 60% negative decisions.
- Outcomes 2017: 8% refugees on the basis of the 1951 Geneva Convention; 8% subsidiary protection, 25% humanitarian protection, 58% negative decisions.

Statistics - 2017

The majority of refugees are hosted in Extra EU Countries.

In 28 EU MS live nearly 2.119,688 refugees* (half 2017)

* Source: UNHCR

Final considerations

Refugees and asylum seekers have specific needs with respect to migrants, who can be protected by the authorities of their countries of origin;

Countries of asylum have a precise responsibility to protect refugees and asylum seekers and to facilitate their integration paths.

Final considerations

The integration process is a complex and step-by-step mechanism encompassing different sectors in the society: economic, legal, social and cultural.

First of all the integration starts on the one hand with the access to the procedure and, on the other hand, with a proper and fair recognition of the protection.

Then, the other sectors come about with: accommodation, education, employment, access to family reunification, citizenship etc.

Final considerations

Integration is to be considered one of the possible durable solution for refugees.

Having this in mind all the Institutions, Entities, stakeholders have an important role to play putting into practice the rights granted by the International, European and National law.

QUESTIONS?

Thank you very much for your attention
and participation!!!

www.cir-onlus.org

dirado@cir-onlus.org

