

# EU asylum instruments (CEAS)

- Dublin Regulation
  - Asylum Procedures Directive
  - Reception Conditions Directive
  - Qualification Directive (international protection ≠ refugee status)
  - ++++++++
- \* Regulation ≠ Directive

CEAS

<https://www.youtube.com/watch?v=XKxiEVYFo64>

# Dublin Regulation (III)

Criteria determining the Member State responsible for examining an asylum application

1. Presence of family members (arts. 9-11)
2. Valid residence permit or of a visa (art. 12)
3. Frontier irregularly crossed/stayed (art. 13)
4. State in which the need to have a visa is waived (art. 14)
5. International transit area of an airport where the asylum application was lodged (art. 15)
6. Minors (art.8)
7. Dependent persons (art. 16)

## 2 Derogations

1. Sovereignty clause (art. 17.1 )
2. Humanitarian clause (art.17.2)

# Dublin Regulation

## Human rights issues

- Serious delays in the examination of asylum claims.
- Excessive use of detention to enforce transfers of asylum seekers.
- Separation of families.
- Denial of an effective opportunity to appeal against transfers.
- Limited use of the sovereignty clause to alleviate these and other problems.

European Court of Human Rights, *M.S.S. v Belgium & Greece* (2011) → Violation of Articles 3 (Prohibition of torture and inhuman or degrading treatment or punishment) and 13 of the Convention (Right to an effective remedy).

Court of Justice of the European Union, *NS & ME* (2011) → Member States have an obligation not to transfer asylum seekers to Member States where they would face inhuman or degrading treatment in violation of Article 4 of the Charter (Prohibition of torture and inhuman or degrading treatment or punishment).

# Asylum Procedures Directive 2013/32

- [https://www.youtube.com/watch?v=E1E\\_tiagn8Q](https://www.youtube.com/watch?v=E1E_tiagn8Q)
- Inadequate asylum procedures may prevent persons from presenting all the facts of their application and deprive persons fleeing persecution, war or torture of the protection they deserve. The Directive aims to harmonize procedural guarantees given during the asylum procedure and to uphold the quality of asylum decision-making in the Member States. The Directive confirms certain basic procedural guarantees such as the right to a personal interview, the right to receive information and to communicate with UNHCR, the right to a lawyer, and the right to appeal.
- However, some provisions in the Directive have the potential to lead to breaches of international refugee law, including to the refoulement of persons in need of international protection, e. g. safe countries, special procedures :
  1. *Accelerated procedures*
  2. *Applications presenting grounds for refusal of examination* (withdrawn applications, inadmissibility, manifestly unfounded applications, subsequent applications)
  3. *Border procedures*

# 1<sup>st</sup> Asylum Procedures Directive 2005/85

The Council adopted standards which were lower than those proposed by the Commission and supported by the European Parliament. As a result, disparities in asylum procedures across the EU remain and the chance of being granted international protection varies depending on the Member State in which an asylum application is lodged. Exceptions and derogations are such that, in practice, minimum safeguards do not necessarily apply to all asylum-seekers in the EU.

# Minimum Standards for Reception Directive 2013/33

The purpose of the Directive is to set minimum standards for the reception of asylum seekers including housing, health care and the right to work during the asylum procedure. Today, asylum seekers have very different reception conditions across Europe. In some countries their basic needs are not met and asylum seekers face significant obstacles to access employment, education and health care.

## 1st Reception Directive 2003/9

During the consultations, the European Parliament had proposed several amendments to improve the specific situation of children and to facilitate the access for asylum seekers to the labour market. However, at the end of the process, the Council adopted standards which were lower than those proposed by the Commission and supported by the European Parliament. As a result, some of the Directive's standards remain subject to diverging and, in some cases, restrictive interpretation by Member States

## ECtHR, *M.S.S. v. Belgium and Greece*, 21.01.2011

- An Afghan national escaped a murder attempt by the Taliban in reprisal for his having worked as an interpreter for the air force troops stationed in Kabul early in 2008 and, travelling via Iran and Turkey, entered the EU through Greece.
- In February 2009, he arrived in Belgium, where he applied for asylum. The Belgian authorities asked the Greek authorities to take charge of the asylum application according to the Dublin Regulation.
- In May 2009, Belgium ordered the applicant to leave the country for Greece. The applicant lodged an appeal, arguing that he ran the risk of detention in Greece in appalling conditions, that there were deficiencies in the asylum system in Greece and that he feared ultimately being sent back to Afghanistan without any examination of the reasons why he had fled that country.



- The applicant was transferred to Greece on 15 June 2009. On arriving at Athens airport, he was immediately placed in detention in a small space with 20 other detainees. Access to the toilets was restricted, detainees were not allowed out into the open air, were given very little to eat and had to sleep on dirty mattresses or on the bare floor. Following his release and issuance of an asylum seeker's card on 18 June 2009, he lived in the street, with no means of subsistence.
- Having subsequently attempted to leave Greece with a false identity card, the applicant was arrested and again placed in the detention facility next to the airport for one week, where he alleges he was beaten by the police.
- After his release, he continued to live in the street, occasionally receiving aid from local residents and the church. On renewal of his asylum seeker's card in December 2009, steps were taken to find him accommodation, but according to his submissions no housing was ever offered to him.

## The Court's decision

- Violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) by Greece both because of the applicant's detention conditions and because of his living conditions in Greece;
- Violation of Article 13 (right to an effective remedy) taken together with Article 3 by Greece because of the deficiencies in the asylum procedure followed in the applicant's case;
- Violation of Article 3 by Belgium both because of having exposed the applicant to risks linked to the deficiencies in the asylum procedure in Greece and because of having exposed him to detention and living conditions in Greece that were in breach of Article 3;
- Violation of Article 13 taken together with Article 3 by Belgium because of the lack of an effective remedy against the applicant's expulsion order.

## Concurring opinion of Judge Rozakis:

*“Almost 88 % of the immigrants entering the European Union today cross the Greek borders. In these circumstances it is clear that European Union immigration policy - including Dublin II - does not reflect the present realities, or do justice to the disproportionate burden that falls to the Greek immigration authorities. There is clearly an urgent need for a comprehensive reconsideration of the existing European legal regime, which should duly take into account the particular needs and constraints of Greece in this delicate domain of human rights protection.”*

→ Impact of the decision on EU Asylum Policy ?

- [https://youtu.be/TSGr9\\_wIVo0](https://youtu.be/TSGr9_wIVo0)

# Discussion

What is the most important problem of the CEAS?

What is the challenge for EU asylum policy?

# Case studies

# Who is a refugee according to the Geneva Convention?

Outside the country of origin (or habitual residence)	✓
Well-founded fear	✓
Persecution	✓
1951 Convention grounds	✓
(* State and non-State actors)	

## Case study 1

Bilal (22) is from Alphastan and belongs to a religious minority. In his village, the members of the minority had always been able to perform their rites without any problems. Last year, an armed conflict broke out in Alphastan. Armed forces of neighbouring country Betastan invaded Alphastan and have since been fighting to try and establish a regime which recognizes only one religion. This religion is the same as Bilal's religious minority. One of the consequences of the armed conflict is that the security forces of Alphastan, have begun to randomly arrest and detain members of Bilal's religious minority. There are reports that some of those detained were subjected to torture or killed. Fearing for his life, Bilal left his village and crossed the border into Greece. Upon arrival, he applied for asylum. Does Bilal fulfil the criteria of the 1951 Convention in order to be recognized as a refugee?



1. Outside the country of origin (or habitual residence) ?
2. Well-founded fear ?
3. Persecution ?
4. 1951 Convention grounds ?

## Case study 2

Bilal (22) is from Alphastan and belongs to a religious minority. In his village, the members of the minority have always been able to perform their rites without any problems. Some months ago, a political opposition group started an armed insurrection. This group is not linked with any religious group. Soon, the group received support from the armed forces of neighbouring country Betastan, and intensive fighting broke out in different parts of Alphastan. Bilal's village, which is close to a strategically important mountain pass, was particularly affected by shelling from both sides. Fearing for his life, Bilal left the village and crossed the border into Greece. Upon arrival, he applied for asylum. Does Bilal fulfil the criteria of the 1951 Convention in order to be recognized as a refugee?

1. Outside the country of origin (or habitual residence) ?
2. Well-founded fear ?
3. Persecution ?
4. 1951 Convention grounds ?

## Subsidiary protection - Qualification Directive

The protection given to a non-EU national or a stateless person who does not qualify as a refugee, but in respect of whom substantial grounds have been shown to believe 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 and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

Serious harm consists of:

- 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.