



Training Seminar for Lawyers on EU Law relating to Asylum and Immigration (TRALIM)

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**“OVERVIEW OF THE RIGHTS OF IMMIGRANTS AND ASYLUM
SEEKERS IN THE EU”**

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**UN REFUGEE CONVENTION 1951 (art.79 TFEU)
EU CHARTER OF FUNDAMENTAL RIGHTS**

CEAS:

- **Qualification Directive 95/11**
 - **Procedures 32/13**
- **Reception conditions 33/13**

ECHR

NATIONAL LAW AND PROVISIONS

EU CHARTER OF FUNDAMENTAL RIGHTS

- proclaimed in 2000, entry into force since Lisbon Treaty in 2009
- Primary law
- Relation with ECHR



ASYLUM

- Article 18: Right to asylum
- Article 19: Principle of non-refoulement

1.- ACCESS TO THE TERRITORY

Main rule: each M-S has a sovereign right to determine who is entitled to enter

Limitations: Art.1 UN Refugee Convention and Art.33 PP Non-Refoulement

Art.78 TFEU: Refugee Convention must be respected by the CEAS

EU asylum acquis only applies from the moment an individual has arrived at border, including territorial waters and transit zones.

No access to territory = no access to asylum procedure

Extension of the scope made by the ECtHR on high seas:

→ Hirsi Jamaa & others vs Italy

→ Medvedyev & others vs France

Context of FRONTEX OPERATIONS: Regulation 656/2014

Art.4 PP non refoulement

SCHENGEN BORDER CODES: also PP of NON REFOULEMENT

Any operation carried out by Frontex or a MS in the implementation of the Schengen Code attracts the protection of the Charter, in particular:

- Art. 18 – right to asylum
- Art. 19 – non refoulement and prohibition of collective expulsion:
 - Conka vs Belgium
 - Hirsi Jamaa vs Italy
- Art. 19.2 /Art. 4 – non refoulement and prohibition of torture

+ **RIGHT TO A GOOD ADMINISTRATION** → C-277/11 M.M. vs Ireland

2.- ACCESS TO ASYLUM PROCEDURE

1) PROCEDURE DIRECTIVE 32/13:

- Art. 6.1. MS shall ensure that other authorities such as police, border guards, immigration authorities and personal of detention facilities have the relevant information and training to inform applicants WHERE and HOW their application could be lodged.
- Dublin III: criteria for determining the MS responsible for processing the asylum application
- PP of EFFECTIVENESS
- RIGHT TO A GOOD ADMINISTRATION (prompt access):
- joint cases N.S. & M.E. (CC-411/10 – CC-493/10)
- PUID (C-4/11) and M.S.S. v. Belgium and Greece (ECtHR)

3.- THE RIGHT TO REMAIN ON THE TERRITORY OF A MS

- A) DURING THE EXAMINATION OF THE ASYLUM CLAIM
- B) DURING THE TIME NECESSARY TO LODGE AN APPLICATION
- C) DURING THE APPEAL PHASE

→ **ABSOLUT PROHIBITION OF REFOULEMENT – ART.4 CH**

→ Also applies during examination of a Dublin transfer

Fundamental rights in application:

- Right to an effective remedy (Art. 47 CH)
- PP of effectiveness
- Case Mohamed v. Austria (2013) ECtHR
- Remedies against expulsion orders should have an “**automatic suspensive effect**”

4.- RIGHT TO:

**Legal assistance
Legal representation
Legal aid**

→ Procedures Directive 32/13 and Draft/proposition of the Directive 2016

→ PP of effectiveness and the right to be heard

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THANK YOU!!!