



# Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

**Noemí Alarcón Velasco**

**The EU Charter of Fundamental Rights provisions in  
relation to asylum and immigration**

**Madrid, 30 May 2023**



Co-funded the European Union

**The EU Charter of Fundamental Rights, provisions in  
relation  
to asylum and immigration**

## LEGAL NATURE

- LEGAL DOCUMENT
- Has a constitutional character
- protects rights of everyone in the Union
- primary law

## EU LAW (type)

- Primary law: EU TREATIES + CHARTER + GENERAL PP OF EU LAW
- Secondary law: Decisions + Regulations + Directives..
- National law: Constitutions + Laws + Administrative decisions..

## 2 SOURCES OF HUMAN RIGHTS IN THE UNION

- 1) the (unwritten) general principles of law;
- 2) the Charter.

➔ 2 Both constitute **EU PRIMARY LAW**

“**General principles of Union law**” to refer to the unwritten court-made general principles inherent in the rule of law that can be invoked before courts as grounds for legal review.

This source of law includes:

- the principle of legal certainty
- the principle of legitimate expectations
- and the principle of proportionality.

## EU CHARTER

- Human rights: political, social and economic rights → common EU values
- 50 entitlements + 4 general provisions
- Modern and Living instrument that can be adapted to circumstances.
- Add protection at the level of the EU.

**All EU legislation and all national law implementing EU law have to be in compliance with EU charter.**

### 2 characteristics:

- SUPREMACY, the charter overrules national law
- DIRECT EFFECT, it can be directly invoked at national level and even sometimes between private parties.

## CONTENTS: 7 CHAPTERS

1. **dignity:** protecting life and integrity, contains prohibition of trafficking in human beings (novelty); Article 2: right to life; Article 4: prohibition of torture and ill treatment;
2. **freedoms:** classical civil rights (+ new feature such as the asylum right);
3. **equality:** gives protection to specific groups (e.g. provision of discrimination; provisions on children's rights, rights on elderly person or disability);
4. **solidarity:** social economical rights (modern and new);
5. **citizens' rights:** participation in the administrative, and political system of the EU (just have these rights in the EU charter not in another human rights catalogue)
6. **justice:**
  - Article 4 – fairness before courts and any kind of legal proceedings and transnational level HR.
  - Article 47 - Right to an effective remedy and to a fair trial- add value: it's not only for civil and criminal proceedings but also for any sort of procedure including administrative, such as asylum.

## CONTENTS – 4 GENERAL PROVISIONS

### 7.1. Scope

- **for the EU:** the charter always applies
- **MS:** only applies when implementing EU law

→ **What does it mean?** According to the CJ case law: when Member States are acting applying EU law (for example EU secondary law)

**7.2. Limitation of charter rights:** not for absolute rights (right to life, prohibition of torture..), must be provided by law, in respect of the essence of the right and in line with the principle of proportionality.

## CONTENTS – 4 GENERAL PROVISIONS

**7.3: interpretation of the meaning and scope of the charter provisions** there is a relation with the ECHR:

**Article 52** establishes the meaning at scope of those rights should be the same as those laid down by the ECHR. EU law could provide a more extensive protection.

Concrete example in asylum and migration:

Article 6 ECHR doesn't apply for this area of law. I remind you the scope of Article 6- **the right to a fair trial**- the access to a court and right to defence, this right only applies for civil and criminal proceedings in the ECHR. In case of a violation related with procedures, access to procedure, access to legal assistance or legal aid, the right to an effective remedy, etc.. if you are under the scope of the ECHR you have to apply article 13 in conjunction with another right of the ECHR (ART 3 or ART 4 protocol 4...), but you cannot invoke Article 6.



## CONTENTS

### concrete example in asylum and migration:

With the charter, the scope of application is extended, as you can use article 47 *per se*, for any kind of proceeding, including asylum and immigration proceedings, you don't need to use it in conjunction with any other right of the charter.

Union law may provide for more extensive protection: the right to asylum enshrined into article 18 is recognised in the charter but it's not enshrined in the ECHR. You have an extensive ECtHR case law but it is not a right explicitly included in the convention.

Relation with the ECHR: see *Al Chodor*

## Possible conflict with national FRs

### ARTICLE 52. 4

Constitutional traditions common to the Member States: those **rights shall be interpreted in harmony with those traditions.**

- National courts can apply the Charter
- Effect of the Charter within national law does not depend on the constitutional law of MS
- National courts are obliged to interpret national measures in conformity with the Charter
- National measures can be reviewed in the light of the Charter
- Where the Charter provisions are sufficiently precise and unconditional, they can have a direct effect → **This implies that national norms conflicting with the Charter are rendered inapplicable.**

- The direct effect allows individuals to invoke the Charter in proceedings before national courts. **The direct effect of the Charter can also lead to the creation of rights that are not available in national law.**

Ex: **duty to provide suspensive effect:** the **Abdida case** concerned Belgian asylum law and is an example of Article 47 of the Charter (right to an effective remedy and to a fair trial).

**Check if the Charter applies to your asylum case** (under provision 51), article 18 applies? Is it an implementation of secondary EU Law into national law in your case? (CEAS Directives, Dublin III, Return Directive, etc). When national authorities or administration are implementing the CEAS directives this fall into article 18, so if there is a violation of any rights contained in those instruments, the charter applies.

## **2 kinds of legal pathways:**

- claim the right before national court → preliminary ruling → CJEU
- European Commission → infringement procedure → CJEU

## Relevant cases:

M.M. case

Laub case (Right to a good administration)

Joined cases of N.S. and M.E

MA and others

**THANKS!**



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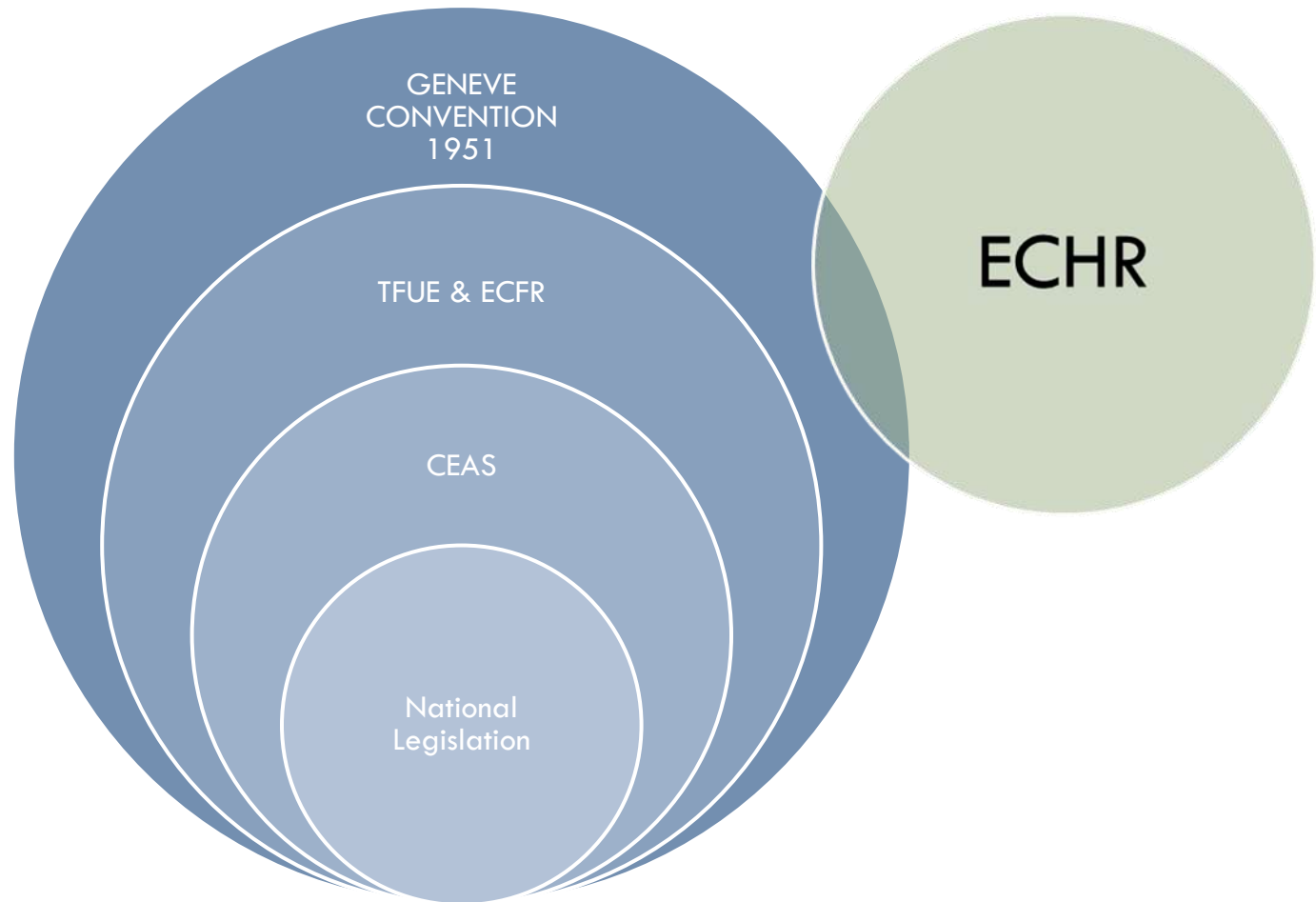
**Elena Muñoz**

**The European Union legal system regulating asylum  
and immigration: instruments and case law**

**Madrid, 30 May 2023**



Co-funded the European Union





# TREATY ON THE FUNCTIONING OF THE EU



- Article 67-77: common standards for controls at its external borders, and an integrated system for managing them
- Article 79: a common immigration policy
  - ▣ Regular migration and Long Term residence status
  - ▣ Integration
  - ▣ Illegal migration
  - ▣ Trafficking in human beings
  - ▣ Readmission agreements



# Secondary EU Law

- See Border Regulation 656/2014
- Schengen Acquis (Border Code, Visa Code, Information System...)
- EU Blue Card Directive 2021/1883/UE
- Single permit Directive 2011/98/UE
- Seasonal Worker Directive 2014/36/UE
- Researchers/Students Directive 2016/801
- Long Term Residence Directive 2003/109
- Return Directive 2008/115
- Trafficking Directive 2011/36
- Residence Permit for Trafficking victims Directive 2014/81

# TREATY ON THE FUNCTIONING OF THE EU



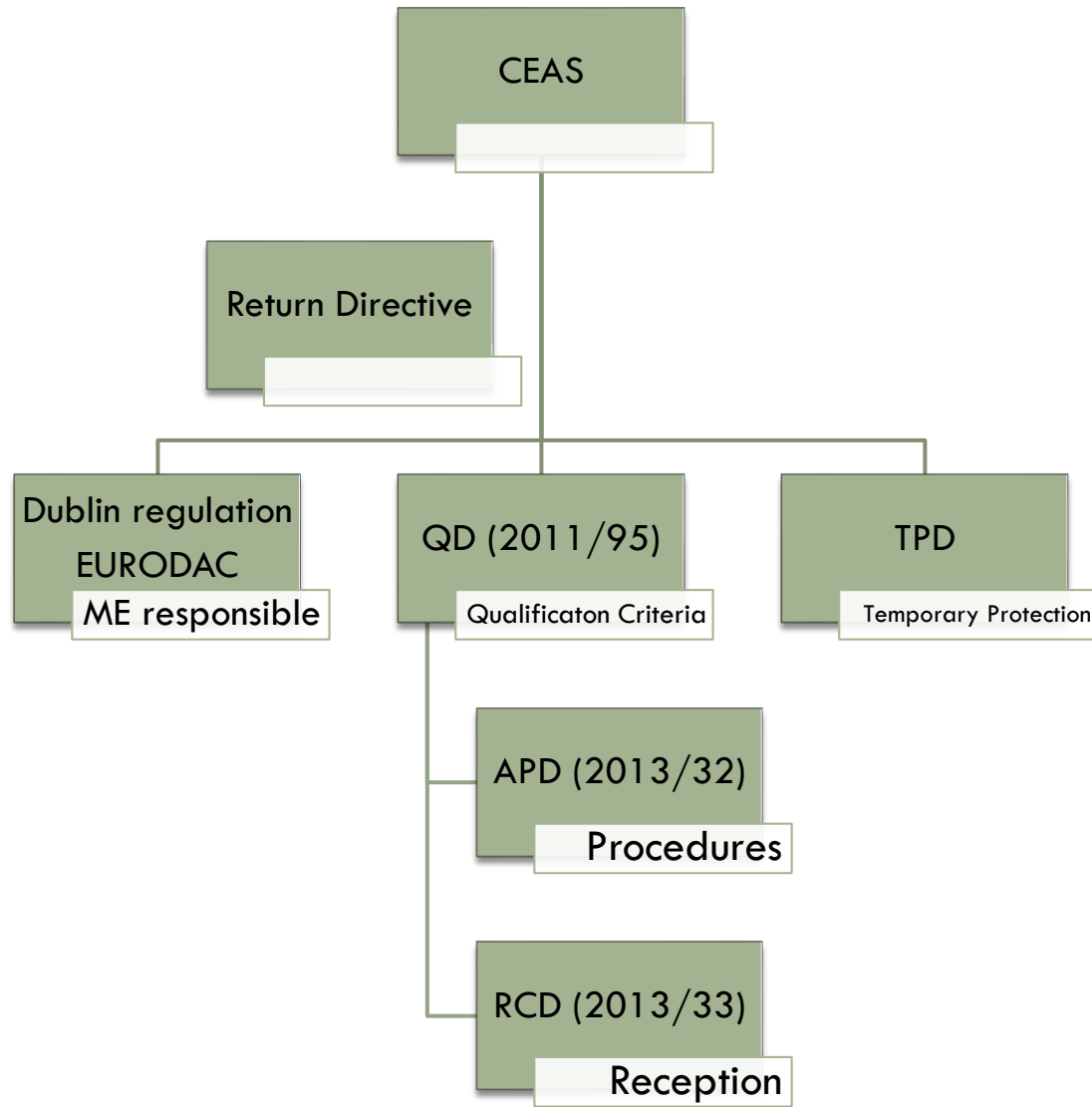
- Article 78: A common policy on asylum, subsidiary protection and temporary protection
  - ▣ uniform status of asylum and subsidiary protection
  - ▣ common system of temporary protection
  - ▣ common procedures
  - ▣ criteria and mechanisms for determining which MS is responsible for considering an application
  - ▣ Common standards on reception conditions

# Secondary EU Law:



- ❑ Tampere programme 1999
- ❑ CEAS I 2003-2004
- ❑ CEAS II 2011-2013
  - ❑ Dublin Regulation 604/2013
  - ❑ Qualification Directive 2011/95/UE
  - ❑ Procedures Directive 2013/32/UE
  - ❑ Reception Directive 2013/33/UE
- ❑ Towards a CEAS III: Proposal 2016. Amendments 2020

# COMMON EUROPEAN ASYLUM SYSTEM (CEAS)



**CEA(R)**

Comisión Española  
de **Ayuda al Refugiado**

Training of Lawyers on EU  
Law relating to Asylum  
and Immigration 3



#TRALIM3

# Access to territory

# General rule

- Each MS has a sovereign right to determine who is entitled to enter
  - ▣ Common rules for short-term visa: Schengen Visa Code

CJEU, C-638/16 X. and X. v. Belgium: refused visa to third-country nationals with intention to seek international protection

- ▣ Border control: Schengen Border Code

# Limitations

- Human Rights and International obligation (Return Directive, art. 4 Schengen Border Code, art. 4 See Border Regulation)
  - ▣ Non Refoulement (*ius cogens*)
  - ▣ UN Refugee Convention.
  - ▣ ECFR
  - ▣ ECHR





# Qualification

- 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)

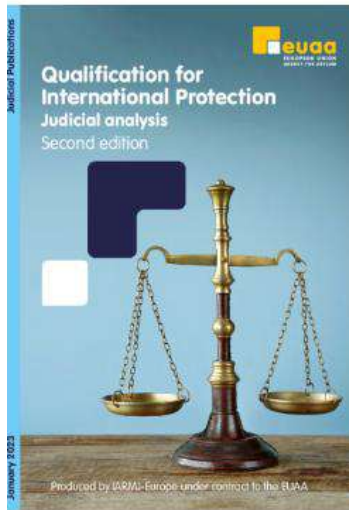


- Common grounds on granting and withdrawing international protection
  - Geneva Convention definition. Particular social group might include LGBTI, gender related aspects.

CJUE C-199/12 C-200/12 C-201/12 XYZ vs. Netherlands: do not expect exercise reserve in the expression of LGBTI identity in order to avoid persecution
  - Subsidiary Protection

CJUE C-901/19 CF & DN vs Germany: fixed, quantitative criteria (number of casualties) is not compatible with QD
- Revocation, end and refusal to renew
- Rights and integration measures for beneficiaries of international protection

# Case law



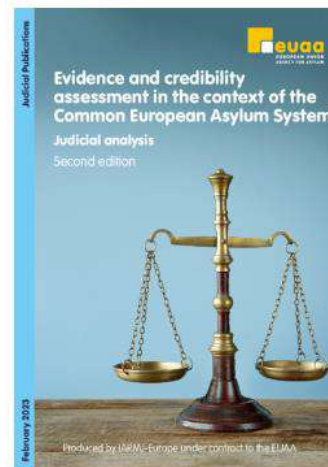
## Judicial Analysis on Qualification for international Protection - second edition

16 January  
2023

Directive 2011/95/EU

This judicial analysis is primarily intended for use by members of courts and tribunals of EU Member States whose work concerns hearing appeals or conducting reviews of decisions on applications for international protection.

[Download](#)



## Judicial analysis on evidence and credibility in the context of the Common European Asylum System

17 February  
2023

This judicial analysis provides an overview of the EU legal framework and jurisprudence that pertains to evidence and credibility assessment.

[Download](#)



# Member State responsible

Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 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 (recast)



# Criteria

- Hierarchical order of criteria (art. 8-15)
  - family considerations
  - recent possession of visa or residence permit in a MS
  - **to first entrance to UE**
- Exception:
  - Human rights clause (art. 3.2)
  - Dependent clause (art. 16)
  - Discretionary clause (art. 17.1)
  - Humanitarian clause (art. 17.2)

# Procedure

- Personal interview
- Take charge procedure and Take back procedure between MS with time limits.

CJUE C-670/16 – Mengesteab vs Germany: The 3 month period for making a ‘take charge’ request starts to run before a ‘formal’ application for asylum is lodged, if a written document confirming the request for international protection has been received by the competent authority

- Notification and effective remedies
- Transfer: asap-6 months since acceptance

CJEU C-66/21 O.T.E. vs Netherlands: Dublin transfers of victims of human trafficking may not be implemented during the reflection period, although a Dublin transfer decision may be adopted and preparatory measures may be undertaken during the reflection period

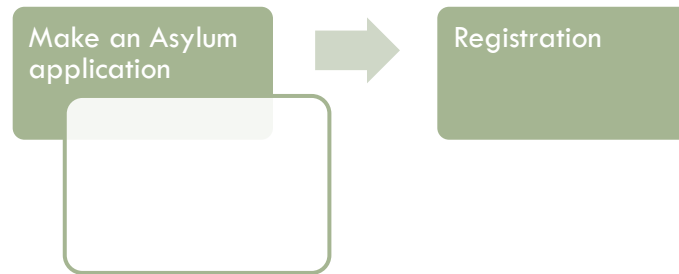


# Asylum Procedures

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)

# Access to Asylum procedures

## □ Art. 6 APD



CJUE 36/20 VL vs Spain: other authorities which are likely to receive applications but not competent for registration include judicial authorities

- Art. 8 APD Indications that a persons present at the border may wish to make an application  
Member States must provide them with information



# Asylum procedures

- Ordinary procedure: 6 months – 21 months (art. 31 APD)
  - [inadmissible applications: “may”] (art. 33 APD)
    - International protection in another MS
    - safe country concepts: First country of asylum and Safe third country
  - Subsequent applications without new elements
- [Accelerated procedure: “may”] (art. 31. 8 APD)
- [Border procedure: “may”] reasonable time-4 weeks (art. 43 APD)

CJUE C-821/19 Commission vs. Hungary: transiting through a third country cannot alone be a valid reason to consider that the applicant could reasonably return to that country

# Vulnerable people

- Persons in need of special procedural guarantees (art. 24 APD)
  - Adequate support
  - Not accelerated or border procedures if there is not adequate supporte
- Special reception needs (art. 21-25 RCD)
- Unaccompanied minors (art. 25 APD and 24 RCD)

# Examination

- Personal interview (art.14-18 APD)
- Individual, impartial and objective (art. 4 QD and 10 APD)
- Taking into account COI
- Decision in writing with reasons in fact and in law (art. 11 APD)

CJEU, C-564/21, *BU v Germany*: the right of the applicant to access a copy of the administrative file. Communication 'in writing' does not require signature



# Rights as Asylum seeker

- Information (art. 12.1 a) APD and 5 RCD)
  - Border and Detention facilities: Information and legal counselling (art 8 APD)
- Interpreter (art. 12.1 b) APD)
- Legal advice
  - opportunity to contact UNHCR or legal advice at any stage (art. 12.1 c) and 22 APD)
  - [Free legal assistance in first instance; “may”] (art. 20.2 APD)
  - Free legal assistance in appeals (art. 20 APD)
    - Exception: Non tangible prospect of success

- Remain in the MS pending the examination of the application (art. 9 APD), time limit of the appeal and till its resolution (art. 46 APD) with some exception
- Documentation (art. 6 RCD)
- Freedom of movements within MS responsible (art. 7 RCD)
- Detention if risk of absconding, return procedures, border, national security or public order (art. 8 RCD)
- Reception: housing, food, clothing, health care, education for minors and access to employment within a maximum period of 9 months



# Effective remedy (art. 46)

## □ Reasonable time limits

CJUE C- 69/10 Diouf vs France: 15 days in a accelerated procedure

## □ Suspensive effect with exception (46.6):

- Inadmissibility decision
- Manifestly unfounded
- Accelerated procedures
- Subsequent applications
- European safe Third country
- Border procedures with lawyer, interpreter and > 1 week to prepare the appeal



# Temporary Protection

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



- Activation: Council, on a proposal from the Commission, decides that there is a mass influx (define groups of displaced people)
- Rights:
  - ▣ residence permit and free movement in EU (90 days within 180 days period)
  - ▣ Acces to employment
  - ▣ access to suitable accommodation, social welfare, medical care, education
  - ▣ Family Reunification
  - ▣ Guarantee to access to the asylum procedure



# PROTECCIÓN TEMPORAL



Se da respuesta a grandes  
afluencias de personas  
(aprobada en 2001, aunque se ha activado por primera  
vez tras la invasión rusa de Ucrania, en febrero de 2022)

Protección inmediata a  
las personas desplazadas  
forzosamente

Apoyo a Estados  
miembros en  
sistemas de asilo

- Nacionales ucranianos \*
- Personas refugiadas y familiares en Ucrania \*\*
- Nacionales de 3<sup>os</sup> países con residencia legal en Ucrania \*\*\*



En los CREADE  
(Centros de Recepción,  
Atención y Derivación)



En comisarías  
habilitadas



Se resuelve  
en 24h

Duración



CUÁNDO  
SE  
APLICA

QUIÉN  
PUEDE  
SOLITARLA

DÓNDE  
SE  
PIDE

DERECHOS

- ✓ Permiso de residencia y trabajo
- ✓ Atención sanitaria
- ✓ Acceso a la educación y formación profesional
- ✓ Ayuda social y alojamiento adecuado

# PROTECCIÓN INTERNACIONAL



En casos de persecución  
por los motivos incluidos en  
la Convención de Ginebra de  
1951 y en la Ley de Asilo  
española de 2009.



Personas que estando fuera de su país por temor de ser perseguidas por motivos de raza, religión, nacionalidad, opiniones políticas, pertenencia a un grupo social, de género u orientación sexual no pueden o no quieren acogerse a la protección de su país.



En comisarías



En embajadas



En fronteras  
españolas




En los CIE o centros  
penitenciarios

Estatuto de Refugiado



Protección subsidiaria



- ✓ Estancia en España durante el procedimiento
- ✓ Libertad de movimiento por todo el país
- ✓ Permiso de trabajo  tras 6 meses de la solicitud
- ✓ Atención sanitaria
- ✓ Acceso al sistema de acogida de solicitantes de protección internacional \*

**Thank you!!**

**Elena Muñoz**  
**Legal Coordinator CEAR**  
**Madrid, 30<sup>th</sup> May 2023**



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# Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

**Fran Morenilla Belizón**

**Legal assistance to immigrants and asylum seekers**

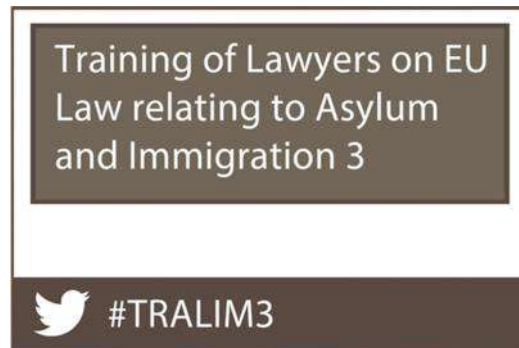
**Madrid, 30 May 2023**



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# Legal assistance to migrants and asylum seekers.

A practical and thoughtful approach to our intervention.



# 1. LEGAL ASSISTANCE IN SEA ARRIVALS.

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and Immigration 3


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## Free legal assistance system for people who enter Spain irregularly by sea:

- Fundamental right provided for the Spanish Constitution (article 24.2), as well as in Organic Law 4/2000, on the rights and freedoms of migrants in Spain and their social integration (article 22.2).
- Also applicable all the rights provided for detainees in article 17 of the Spanish Constitution, as well as those provided for the Criminal Procedure Law.
  - Maximum period of detention: 72 h.
  - Rights information.
  - Legal assistance.
- Legal assistance is mandatory in this scope.
- Legal assistance derives from the **RETURN** file for irregular entry, as well as from the situation of **DETENTION** itself.
- Legal assistance is carried out in person in the ports, in Temporary Attention Centers for Migrants (CATE), which are extensions of the National Police Stations in the ports (modules with jails).
- Difficult and sometimes hostile context for the practice of legal assistance.
- Coexistence of legal assistance tasks with tasks carried out by the National Police, FRONTEX, Red Cross, UNHCR, Save the Children, etc.
- In case of a proposal for placement in the Center for the Internment of Migrants (CIE), legal assistance also implies assistance before the Court that must agree or not the placement to execute the return decision.

# 1. LEGAL ASSISTANCE IN SEA ARRIVALS.

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## Legal assistance in relation to situations of vulnerability that prevent a return decision:

- Age assessments of unaccompanied minors.
- Removal of accompanied minors in a situation of qualified risk.
- International protection.
- Pregnant women.
- People with serious illnesses.
- Persons in a situation of human trafficking.
- Protected witnesses who collaborate with the police authorities to identify the skipper.

Complex tools are not required to detect these situations, but it is necessary to make a great effort to achieve decent conditions for legal assistance, without which this fundamental right would be violated:

- Spaces enabled for this purpose ("*safe*" spaces).
- Individual assistance.
- Confidentiality.
- Proper interpretation.

# 1. LEGAL ASSISTANCE IN SEA ARRIVALS.

## The role of FRONTEX in relation to legal assistance.

- Joint operations in Spain: **INDALO** (Western Mediterranean) and **MINERVA** (Canary Islands).
- Functions of FRONTEX: difficult to specify because, formally, it has many authorities, but what is perceived as a lawyer in the port is:
  - They have a preferential role in the entire intervention.
  - They collaborate with the national authority in the identification and fingerprinting of migrants.
  - They have teams deployed in the port that conduct interviews with certain profiles.
  - They collaborate, regarding cross border crime, with the national authority in some way that we do not know about because there is no trace of any kind.
- The detention situation and the intervention of FRONTEX.
  - Legal assistance is guaranteed for the return decision, but it is denied for the interviews that FRONTEX holds with our clients who are detained there.
  - There is a hypothesis that FRONTEX transfers part of the content of these interviews to the national authority as a way of collaborating in the detection of potential collaborators of the authorities and for the identification of the skipper.
- The question is not the abolition of FRONTEX or not, but the defense of the right to legal assistance for people who are detained in the CATEs for an administrative offense:
  - To ensure that no coercion occurs and to verify the way they get the consent to interview the migrants.
  - To make sure that there really is an assessment of the vulnerability situation.
  - To avoid self-incrimination.
  - To facilitate obtaining residence permits as a result of the collaboration.

# 1. LEGAL ASSISTANCE IN SEA ARRIVALS.

## Legal assistance before judicial bodies and other options:

- Object:
  - Concurrence of vulnerability situations that avoid the return decision.
  - Violation of fundamental rights, through special and preferential procedures.
  - Formal issues (competence, procedure, etc.).
- Added complications:
  - Migrant identification.
  - Power of attorney.
  - Contact maintenance.
  - Evidences.
- Other forms of legal assistance:
  - National and European Ombudsmen.
  - UN committees.
  - ECHR (Rule 39).



# 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

## Reflection on the model of legal assistance in asylum procedures.

From the point of view of the practice of legal assistance in asylum procedures, we see situations where very different types of legal assistance prevail on the territory of the EU:

- Situations in which the file is initiated without any type of legal assistance.
- Prevalence (almost monopoly) of legal assistance by NGOs.
- Systematization of free legal assistance with public defenders.
- Private lawyers.
- There are even contexts in which the implementation of the free legal aid system has been financed by NGOs from other countries.

Free legal aid, NGOs and private lawyers should be able to coexist. However, in my opinion, free specialized legal aid should be promoted as a public service, provided by trained and independent lawyers.

It is the lack of legal assistance that should make us reflect.

**MANDATORY LEGAL ASSISTANCE:** For cases of asylum requests made at border posts or in Migrant Internment Centers (CIE).

**Should legal assistance be mandatory for any type of asylum application?**

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

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### Access to the asylum procedure.

#### **Article 6.1 Directive 2013/32/UE: FORMULATION – REGISTRATION – PRESENTATION.**

- Formulation: act of expressing, in any way and before any authority, the desire to obtain international protection. Any person who has expressed their intention to request international protection is considered an applicant, with all the rights and obligations associated with such status.
- Registration: Once the application for international protection has been formulated, the competent authorities must register it within a certain period —at most three business days after if the formulation has been made before an authority responsible for registering it, or not after six business days in if the application has been made to other authorities, such as the police, border guard, immigration authorities or detention center staff. In exceptional circumstances, when the formulation of numerous simultaneous requests makes it very difficult in practice to meet the deadline, this can be extended to ten business days.
- Presentation: moment in which the applicant provides information or documents to complete the file created when registering the application. The submission of an application initiates the start of the examination in the first instance. Member States may lay down rules on how and when the submission will take place.

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

### Access to the asylum procedure.

#### Case law of the CJEU on Article 6 Directive 2013/32/UE:

- CJUE C-36/20, of 26/06/2020:
  - The third-country national acquires the status of an applicant for international protection, within the meaning of Article 2, letter c) of Directive 2013/32, at the time he/she "*formulates*" the application.
  - The act of "*formulating*" an application for international protection does not require any administrative formality.
  - The status of applicant for international protection cannot be made conditional on either registration or presentation of the application.
  - One of the objectives pursued by Directive 2013/32 is to guarantee effective access, that is, access as easy as possible, to the procedure for granting international protection.
- CJUE C-808/18, of 17/12/2020:
  - The formulation of the application for international protection constitutes the moment in which the period to register it begins.

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

### Legal assistance against the obstruction of access to the asylum procedure:

- Unilateral formulation registered before the competent authority of the intention to apply for international protection.
  - Acquisition of the status of applicant for international protection, in accordance with articles 2.c) and 6.1 Directive 2013/32/UE.
  - Protection against any return decision, by application of the non-refoulement rule.
  - Provisional stay authorized under article 9 Directive 2013/32/UE.
- Strategic litigation:
  - Article 6.1 Directive 2013/32/UE.
  - Competence issues.
  - Precautionary measures (registration and presentation of the application, documentation and reception conditions).
- Complaints before the EU Commission for the lack of application of the provisions of article 6 Directive 2013/32/UE.

# 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

## Comprehensive legal assistance in asylum procedures (preparing the interview).

- General information on international protection, procedure and development of the interview with the authorities.
- Prior review of the file: nationality, identification documentation, medical, psychological or social reports, etc.
- Interview preparation:
  - Active listening.
  - Determination and correction of personal data.
  - Order and chronology of the journey and the story.
  - Detailed determination of relevant facts.
  - Vulnerability analysis (minors, unaccompanied minors, people with disabilities, elderly, pregnant women, single-parent families with minors, people who have suffered torture, rape or other serious forms of psychological, physical or sexual violence and victims of human trafficking) and special procedural guarantees required.
  - Review and preparation of COI.
  - Review and preparation of documentary evidences.
  - Protection needs and definition of strategies.
- Drafting the tool for legal assistance during the interview.
- Legal assistance during the interview:
  - Evaluation of the space and conditions for the interview.
  - Confirmation of the suitable translation and contextualization.
  - Implementation of the legal assistance tool for the interview.
  - Review of the transcript of the interview and the documentary evidences provided.

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

### Legal assistance for monitoring and support of international protection applications (after the interview).

- Follow-up on renewal procedures.
  - Address changes.
  - Options for obtaining residence permits different than international protection.
- Support of international protection applications:
  - Expansion and/or clarification of the statement.
  - New documentary contribution.
  - Referrals to specialized public entities or services (mental health, female genital mutilation, credibility and impact of torture, etc.)
  - Specific support reports.
  - Intermediation with the administration in charge of studying the application for international protection.
- Other issues that require legal advice: homologation of titles, scholarships, driving licenses, opening of bank accounts, etc.

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

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### Legal assistance in case of granting of international protection:

- Family reunification.
- Acquisition of Spanish nationality.

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

### Legal assistance in case of rejection of the application for international protection.

- Viability or instrumentalization of administrative appealing against the rejection.
- Ways to get legal assistance to raise judicial appeals:
  - Request for free legal assistance.
  - NGO legal services.
  - Private legal assistance.
- Some important issues to consider in legal proceedings, in spite of the substance of the case:
  - General information about the procedure and estimated delay.
  - Contact with the client.
  - Precautionary measures.
  - Current situation of the country of origin.



## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

### Legal assistance for maintaining the status of applicant for international protection.

- **Directive 2013/32/UE (procedures):**
  - Article 2.c): "*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.
  - Article 46.5: Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.
- **Directive 2013/33/UE (reception):**
  - Article 15.3: Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

### Legal assistance for maintaining the status of applicant for international protection.

- **CJUE C-181/16, of 19/06/2018:**
  - The protection inherent in the right to effective judicial protection and the principle of non-refoulement must be guaranteed by recognizing the applicant for international protection the right to an effective suspensive remedy of full rights before, at least, one judicial instance (articles 18, 19.2, and 47 EU Charter of Fundamental Rights).
  - AUTHORIZED STAY / IRREGULAR STATUS: unless you have been granted a residence authorization or permit as referred to in Article 6(4) of Directive 2008/115 (return), the third-country national will be in an irregular situation, within the meaning of Directive 2008/115 (return), from the moment the responsible authority rejects your application for international protection in the first instance, regardless of whether you are authorized to remain in the territory pending the outcome of the appeal against said refusal.
  - Pending the outcome of the appeal against the decision to deny their application for international protection in the first instance adopted by the determining authority, the applicant must be able to benefit, in principle, from the rights derived from Directive 2003/9 (reception).
  - It follows from Article 2, letter c) of Directive 2003/9 (reception) that the affected party retains his status as an applicant for international protection, within the meaning of said Directive, until a final decision is taken on his application.

## 2. LEGAL ASSISTANCE IN ASYLUM PROCEDURES.

Training of Lawyers on EU  
Law relating to Asylum  
and Immigration 3

 #TRALIM3

### Legal assistance in relation to DUBLIN.

- Family reunification.
- Refusals motivated by EURODAC/DUBLIN without transfer procedure.
  - Deadlines that determine jurisdiction over the international protection case.
- Heterogeneous and deficient implementation of DUBLIN Regulation.

Thank you for the attention  
and keep working!

Training of Lawyers on EU  
Law relating to Asylum  
and Immigration 3



#TRALIM3



# Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

**Ane Azcunaga**

**The Council of Europe legal system regulating  
asylum and immigration: instruments and case law**

**Madrid, 30 May 2023**



Co-funded the European Union

# Overview

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Context of judicial interventions by UNHCR

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The role of ECHR in the field of asylum

---

The execution of ECHR judgements and supervision procedure

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UNHCR's interventions in Europe outstrip those of any other region

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In recent years, the need for UNHCR's judicial interventions has increased considerably.

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UNHCR's interventions have contributed to important jurisprudential developments that have strengthened the interpretation and application of international refugee and human rights law in Europe and beyond

## Why can UNHCR intervene in court matters related to asylum law?

Mandate to provide international protection and, together with governments, find durable solutions for the situation of refugees

Supervisory role by UNHCR



# What is the purpose of a judicial intervention by UNHCR?



address legal issues of particular relevance to the protection of refugees



provide objective information on the treatment or status of a particular risk group in a given country



ensuring that international standards are interpreted and applied correctly and consistently

# UNHCR Interventions before the European Court of Human Rights



## UNHCR Interventions before the European Court of Human Rights | UNHCR

- Submission by the Office of the United Nations High Commissioner for Refugees in the case of H.Q. v. Hungary (Application no. 46084/21) before the European Court of Human Rights, 17 March 2023
- Submission by the Office of the United Nations High Commissioner for Refugees in the case of M.I. v. Switzerland (Appl. No. 56390/21) before the European Court of Human Rights, October 2022
- Submission by the Office of the United Nations High Commissioner for Refugees in the case of S.A.A. and Others v. Greece (No. 22146/21) before the European Court of Human Rights, July 2022
- Submission by the Office of the United Nations High Commissioner for Refugees in the case of R.A. and Others v. Poland (Appl. No. 42120/21) before the European Court of Human Rights, February 2022
- Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdi Ali Mahamud v. the Netherlands (Appl. no. 64534/19) before the European Court of Human Rights
- Submission by the Office of the United Nations High Commissioner for Refugees in the case of N.E. and Others v. Greece (Appl. no. 8716/20) before the European Court of Human Rights

# Priorities of UNHCR judicial interventions

Access to  
territory and  
ensuring legal  
pathways

Fair and efficient  
procedures and  
effective  
remedies

Protection of  
vulnerable  
groups

Statelessness

Securing local  
integration

# The principle of non refoulement at the ECHR



Linked to art. 2 and 3 of ECHR



The level of severity for determining whether treatment is considered prohibited under Art. 3 varies depending on the specific circumstances of the applicants  
F.G. v. Sweden, GC, 2016, Tarakhel v. Switzerland, GC, 2014



Recent decisions considering that failure of the authorities to sufficiently investigate death or harm at the border implies the breach of art. 2 and/or 3  
Alhoways vs Hungary, 2023, Safi and others vs Greece, 2022

# Risk assessment

- a minimum level of severity
- shared obligation between the applicant and the authorities
  - for the applicant to adduce evidence capable of proving that there are substantial grounds of real risk
  - for the Government to dispel any doubts about the allegations and to verify the general circumstances in the country of destination: positive obligation to conduct an ex officio analysis
- the benefit of doubt

(F.G. v. Sweden, GC, 2016, M.S.S. v. Belgium and Greece, 2011)

# Protection of vulnerable asylum seekers

Decisions regarding gender related applications, sexual orientation, children and persons with mental health needs

- **Children:** specific needs related to their age, their lack of independence and their status as asylum seekers. (Rahimi v. Greece, Khan v. France, 2019, Darboe and Camara vs Italy, 2022)
- **LGBTIQ+:** Sexual orientation is a fundamental part of a person's identity and no one should be forced to hide it to avoid persecution (B and C v. Switzerland, 2020)

# Reception conditions

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Article 3 of the Convention requires that receiving States provide accommodation and decent material conditions to these asylum-seekers who are impoverished and wholly dependent on State support (M.S.S. v. Belgium and Greece, 2011)

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There may be State responsibility when a person who depends totally on the support of the State is in a situation of serious precariousness incompatible with human dignity.

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Increased migratory flows do not exempt the State from its obligations

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Increased Rule 39 Interim measures regarding homelessness of asylum seekers (Msallem and 147 Others v. Belgium, 2022, Camara v. Belgium, 2022)

# Detention

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the measure can only be justified on two grounds: to prevent unauthorised entry onto the national territory or for the purpose of expulsion

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detention must be carried out in good faith

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(R.M. and others vs Polonia, 2023)



# Implementation of ECtHR judgments

- § Binding force of ECtHR judgments (Art. 46 ECHR)
  
- § States have legal obligation to take
  - individual measures (ceasing breach, providing reparation)
  
  - general measures ( ensuring non-repetition)

# Committee of Ministers watchdog of the execution process

- Entrusted with the supervision (Art. 46 ECHR)
- Composed of representatives of 46 member states
- Meets 4 times a year in special DH-Meetings to discuss pending cases
- Assisted by the Department for the Execution of ECtHR Judgments

# Who is part of the process ?

Defendant state (Action Plan, Action Report)



Injured party



Also NGOs, NHRIs & IOs (cf. Rule 9 )



Opportunity for UNHCR and its partner NGOs to make communications

# The execution of A.C. and Others v. Spain



Currently under supervision  
by the Committee of  
Ministers, classified as  
**enhanced procedure**



Questions & Observations

According to the judgement,  
no remedy with an automatic  
suspensive effect in the  
Spanish legal framework




Communications under Rule  
9 by CEAR and UNHCR



Recent Supreme Court  
decision interpreting EU law  
on effective remedy

# Questions & Observations

 ACNUR. Avenida General Perón, 32. Madrid - 28020

 Teléfono: 91 556 35 03 / Fax: 91 417 53 45

 Mail: [spama@unhcr.org](mailto:spama@unhcr.org)

 **[www.acnur.es](http://www.acnur.es)**

 Facebook: ACNUR España-UNHCR Spain (<http://www.facebook.com/acnur.es>)

 Twitter: [@ACNURSpain](https://twitter.com/ACNURSpain)



# Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

**Adam Smuga**

**Legal framework on asylum and immigration in  
Poland**

**Madrid, 30 May 2023**



Co-funded the European Union

# AGENDA

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## MOST RECENT IMMIGRATION CHALLENGES IN POLAND: CASE STUDY

### A) BELARUS–EU BORDER CRISIS

- Legal challenges and criticism related to non-compliance with asylum rules
- Basic information about asylum system rules in Poland

### B) RUSSIAN AGGRESSION AGAINST UKRAINE

- Ukrainian Special Bill and other forms of protection
- Eligibility for protection
- Scope of coverage
- Challenges and next steps



# 01 MOST RECENT IMMIGRATION CHALLENGES IN POLAND

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## »»» BELARUS–EU BORDER CRISIS

- The humanitarian crisis on the border with Belarus began in **August 2021**.
- The immigrants, primarily from Iraqi Kurdistan, were encouraged by the Belarusian authorities to try to **enter the EU** via Polish, Lithuanian and Latvian border.
- It is estimated that over **40 people have lost their lives** trying to illegally cross the border between Belarus and Poland.

## »»» RUSSIAN AGGRESSION AGAINST UKRAINE

- **24 February 2022:** Russian invasion on Ukraine
- **24-28 February 2022:** 355 thousand Ukrainian nationals enter Poland
- **1 March – 31 March 2022:** further 2 million Ukrainian nationals enter Poland
- **Total border traffic** on PL-UKR between February 2022 and February 2023: 10.137 million in, 8.232 million out\*
- **Ukrainian population in Poland** in May 2023: approx. 2.5 million\*

\*Source: Polish Border Guard



# 02 BELARUS–EU BORDER CRISIS

## CHALLENGES

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- The actions of the Polish Border Guards in connection with the crisis at the border **were criticized as potentially violating the principles** resulting from Polish legislation and international conventions.
- In particular, the use of the so-called **push-backs** was criticized as violating the **non-refoulement principle**.
- In October 2021, an amendment to the Polish act on foreigners was adopted, which **limited the right to submit asylum applications** by immigrants coming from Belarus. This was assessed as a potential violation of the Geneva Convention.
- In line with amended legal provisions, a person detained "immediately" after illegally crossing the external border of the European Union shall be "obliged to leave the territory of Poland".
- Another provision introduced the possibility that the Head of the Office for Foreigners may **disregard an application for international protection** if it was submitted by a foreigner detained immediately after crossing the external border of the European Union, unless he came directly from the territory where he is at risk of being persecuted.

# 03 BELARUS–EU BORDER CRISIS

## BASIC RULES FOR ASYLUM SYSTEM

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### **Refugee status:**

- Eligibility: a well-founded fear of persecution in the country of origin,
- Reasons: race, religion, nationality, political opinion or membership of a particular social group,
- Being unable or unwilling to avail of the protection of that country.

### **Complementary protection:**

the foreigner does not meet the conditions for granting the refugee status, but returning to the country of origin can expose to:

- the death penalty,
- torture, inhuman or degrading treatment or punishment,
- threat to life or health,
- violence against the civilian population during an armed conflict.

Other national forms of protection: humanitarian stay, tolerated stay and asylum.

# 03 BELARUS–EU BORDER CRISIS

## BASIC RULES FOR ASYLUM SYSTEM

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- The application for international protection may be **submitted at the border, at the seat of the office for foreigners or at a guarded centre for foreigners.**
- Applications are examined by the Office for Foreigners (1st instance) and by the Council for Foreigners (2nd instance).
- **Leaving Poland during the procedure is not possible** - the passport is deposited, and the foreigner should use the temporary certificate as proof of his identity.
- **Performing work for the first 6 months** of procedure is not possible. Only after that period, if the procedure is still not finalized, the applicant may perform work.
- In certain cases, a foreigner may be placed in a **guarded centre for foreigners** for the duration of the procedure.
- During the procedure, the foreigner is provided with **financial resources and social support** for living.
- There is a number of **legal rights of a foreigner** applying for international protection (such as access to a legal representative, interpreter, etc.), which in practice may not always be correctly followed by public authorities.

# 04 WAR IN UKRAINE

## IMMIGRATION LEGAL RESPONSE IN POLAND

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1

Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland (hereinafter „**Temporary Protection Act**”) – narrow scope

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Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (hereinafter: „**Council Implementing Decision**”)

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2

3

Act of 12 March 2022 on Assistance to Citizens of Ukraine in Connection with Armed Conflict in this Country’s Territory (in force retroactively as of 24 February 2022; hereinafter „**Ukrainian special bill**”)

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# 05 UKRAINIAN SPECIAL BILL

## ELIGIBILITY CONDITIONS

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The Ukrainian Special Bill introduced specific rules for legalizing the stay of people who:

- (1) Were Ukrainian citizens;
- (2) Came to the territory of the Republic of Poland;
- (3) From the territory of Ukraine;
- (4) in connection with hostilities conducted in the territory of that state.

Whenever the Act refers to a Ukrainian citizen, it also means **a spouse of a citizen of Ukraine** who does not have Ukrainian citizenship, provided that he/she came to the territory of the Republic of Poland from the territory of Ukraine in connection with hostilities conducted in the territory of that state and is not a Polish citizen or a citizen of a Member State of the European Union other than the Republic of Poland.

# 05 UKRAINIAN SPECIAL BILL

## ELIGIBILITY CONDITIONS

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### Detailed eligibility conditions for protection:

- A citizen of Ukraine has to arrive legally on the territory of the Republic of Poland in the period from February 24, 2022 and declare the intention to stay on the territory of Poland.
- In such case, the stay is considered legal for the period of 18 months from February 24, 2022 [so, until 23 August 2023 – currently this period was extended until 4 March 2024]
- Stay of a child born in the territory of Poland from a mother, who is a person covered by the Ukrainian Special Bill, during the period of coverage is also considered legal.
- If a Ukrainian citizen left Ukraine in the period from February 24, 2022, and then arrived legally in the territory of the Republic of Poland declares his intention to stay on the territory of the Republic of Poland, his stay on this territory is considered legal for the period of 18 months from February 24, 2022 [currently this period was extended until 4 March 2024]
- To the members of the immediate family of a citizen of Ukraine the provisions of the Act shall apply accordingly.

# 06 UKRAINIAN SPECIAL BILL

## NEGATIVE ELIGIBILITY CONDITIONS

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The Ukrainian Special Bill provisions **does not** apply to the citizens of Ukraine:

1) having:

- a) permanent residence permit,
- b) residence permit for a long-term resident of the European Union,
- c) temporary residence permit,
- d) refugee status,
- e) subsidiary protection,

(...)

2) who:

- a) have submitted applications for international protection in the Republic of Poland or on behalf of whom such applications have been submitted.
- b) benefit from temporary protection in an EU Member State other than the Republic of Poland, granted due to military operations conducted in the territory of Ukraine.

# 07 UKRAINIAN SPECIAL BILL

## PRECEDENCE OVER THE TEMPORARY PROTECTION ACT

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A citizen of Ukraine covered by the Ukrainian Special Bill **shall be deemed to be a person enjoying temporary protection in the Republic of Poland** within the meaning of (...) the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland.

(...)

Temporary protection enjoyed by a citizen of Ukraine referred to in Sec. 1, **shall not be governed** by the provisions of Chapter 3, Section III of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (...).



# 08 UKRAINIAN SPECIAL BILL

## REGISTRATION PROCEDURE

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- Automatic acquisition of beneficiary status in the case where entry to Poland takes place by person who is meeting the criteria specified in Ukrainian Special Bill.
  - Registration takes place when crossing the border by registering a foreigner in the system run by the Border Guard.
  - declaratory registration required within 30 days (in case if automatic registration was not done when entering the country).
  - Another obligation: obtaining a PESEL number, type UKR.
1. *A citizen of Ukraine whose stay on the territory of the Republic of Poland is considered legal pursuant to Art. 2 Sec. 1, shall be assigned a PESEL number on the basis of an application submitted to any executive body of the municipality in the territory of the Republic of Poland (...).*
  2. *A Ukrainian citizen shall submit the application referred to in Sec. 1 in person at the seat of the executive body of the commune within 30 days from the date of arrival on the territory of the Republic of Poland.*

# 09

## UKRAINIAN SPECIAL BILL BENEFITS FOR PEOPLE UNDER PROTECTION

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- Full **access to labour market** (applies to all citizens of Ukraine);  
*Legality of employment is granted automatically, Employer must submit online notification to local Labour Office within 14 days from starting work.*
- Full right to undertake **business activity**;  
*Opening a sole proprietorship subject to registration on same terms as Polish citizens*
- Free of charge **accommodation, food, and basic amenities** for the first 120 days after entry, and at reduced charge afterwards;  
*From March 1st, 2023 Ukrainians living in collective accommodation centres paid for by the government, who have already been staying in Poland for at least 120 days have to cover half of the costs of their accommodation and food (not more than 40 PLN ~ 8 EUR per day).*  
*From May 1st, 2023, Ukrainians who have already been staying in Poland for at least 180 days from the date of the first entry, need to cover 75% the costs of their accommodation and food (not more than 60 PLN ~ 12 EUR per day)*

# 09 UKRAINIAN SPECIAL BILL

## BENEFITS FOR PEOPLE UNDER PROTECTION

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- Legal entitlement to **social benefits** (e.g. child birth benefit, child benefit, social aid, unemployment benefit);
- Legal entitlement to public **health care** (with some exceptions);
- **Free of charge education** for children aged 6 to 18 (compulsory);
- Other benefits introduced by national and local authorities (like free public transport, free legal aid, free psychological aid, etc.);

# 09 UKRAINIAN SPECIAL BILL

## BENEFITS FOR PEOPLE UNDER PROTECTION

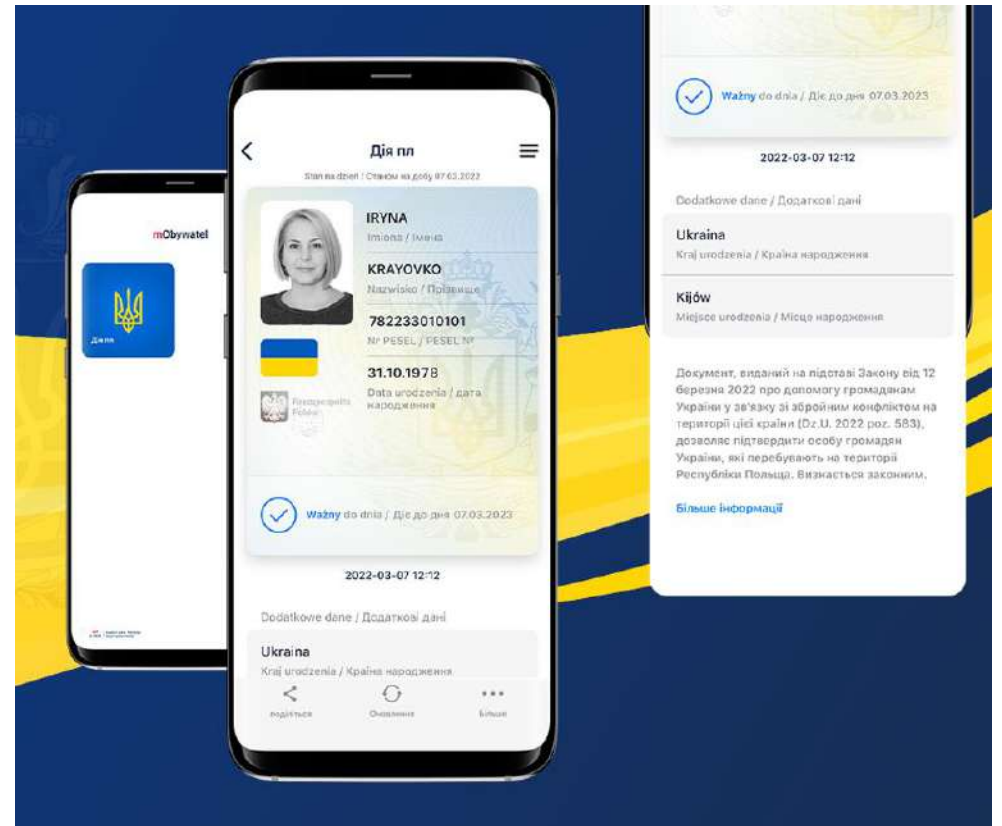
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### **Cash benefit for providing accommodation and food to citizens of Ukraine**

- Each entity, in particular a natural person running a household, which will provide, at its own expense, accommodation and meals to the citizens of Ukraine protected under Ukrainian Special Bill may be granted upon request a cash benefit from the public authorities.
- The benefit may not be paid for longer than for 120 days from the date of arrival of a citizen of Ukraine on the territory of the of Poland.
- The benefit payment period may be extended in justified cases.
- The amount of the benefit is 40 PLN per person per day (around 8 EUR).

# 10 UKRAINIAN SPECIAL BILL DIIA.PL – ELECTRONIC TRAVEL DOCUMENT

- Diia.pl is an electronic identity document for people covered by the Ukrainian Special Bill
- Document can be held by a citizen of Ukraine or another foreigner (whose stay on the territory of the Republic of Poland is considered legal under the Ukrainian Special Bill)
- It serves as a residence document and can be used (together with a valid travel document), to cross the external border of the EU. It also allows to move within the Schengen area for 90 days in any 180-day period.
- The holder is then entitled to cross the border multiple times without the need to obtain a visa.



# 11

## SITUATION OF UKRAINIANS IN POLAND CHALLENGES AND NEXT STEPS

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- Extension of the period of authorized legal stay in Poland of people covered by Ukrainian Special Bill until March 4, 2024.
- Enabling, from 1 April 2023, the submission of applications for a temporary residence permit in Poland to persons covered by the Ukrainian Special Bill who started working in Poland or undertook to run their own business.

Further challenges:

- Acquiring temporary protection in new EU Member State after relocation.
- In accordance with the internal interpretative interpretation used by Polish authorities, Ukrainian Special Bill should apply to those who can demonstrate a “functional relationship” between arriving to Poland and fleeing Ukraine and therefore those that resided in other state should not benefit from the said law.

# THANK YOU

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tias




## ADAM SMUGA

MANAGING PARTNER, ATTORNEY AT LAW  
**TIAS LEGAL**

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### CONTACT

 +48 664 969 628

 office@tias.pl  
adam.smuga@tias.pl

 [www.tias.pl](http://www.tias.pl)



# Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

**Julia Hull**

**Legal framework on asylum and immigration in  
Ireland**

**Madrid, 30 May 2023**



Co-funded the European Union



# Legal Framework on Asylum and Immigration in Ireland

## Main Legislative Provisions:

International Protection Act 2015

European Union Dublin System (Regulations) 2018

European Communities (Reception Conditions ) Regulations  
2018

Immigration Acts 2003, 2004 and 2009

Illegal Immigrants (Trafficking Act) 2000

Criminal Law (Human Trafficking Act 2008

Human Trafficking (Amendment )Act 2013

Irish Nationality and Citizenship Act 1956

# Legal Framework on Asylum and Immigration in Ireland

Relevant Government Departments:

Department of Justice- Immigration Service Delivery

International Protection Office

International Protection Appeals Tribunal

Ministerial Decisions Unit (Department of Justice )

Garda National Immigration Bureau

# Legal Framework on Asylum and Immigration in Ireland

## International Protection Act 2015

- Single Procedure - (Refugee status/Subsidiary Protection/Recommendation on Permission to Remain)
- Application –s 13(1)
- Inadmissibility /Dublin Regulation – Appeal s21
- Questionnaire -s 15(5)
- Personal Interview- s35(1)
- Decision -s39
- Appeal -s41
- Permission to Remain Application - s49 /Refoulement –s50
- Deportation Order – s51
- Subsequent Applications – s22
- Revocation –s52

# Legal Framework on Asylum and Immigration in Ireland

Training of Lawyers on EU  
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Specific cases

Unaccompanied minors / age disputed minors section 14 IPA 2015

Safe Countries of Origin

Vulnerability assessments section 8(1) IPA 2015

Medico –Legal Reports

Medical Assessments

Victims of Human Trafficking

# Legal Framework on Asylum and Immigration in Ireland

- Inadmissibility decisions –S 21 ECJ Case Law / ECHR
- Dublin Regulation – humanitarian submissions Article 17(1) of the Dublin III Regulation
- Dublin Regulation appeal

**S.I. No. 62/2018 - European Union (Dublin System) Regulations 2018**  
REGULATION (EU) No 604/2013

# Legal Framework on Asylum and Immigration in Ireland

## Obligations on Applicant's

### S 15(5)

An application for international protection shall be made in the prescribed form and shall include—

- (a) all details of the grounds for the application, and
- (b) all information that would, in the event that *section 49, 50, 56 or 57* were to apply (PTR, Refoulement, Family Reunification) to the applicant, be relevant to the decision of the Minister under the section concerned.

### S 27

(1) It shall be the duty of an applicant—

- (a) to submit as soon as reasonably practicable all the information needed to substantiate his or her application,
- (b) to co-operate in the examination of his or her application and in the determination of his or her appeal in relation to that application, if any, and
- (c) to comply with all of the other obligations under *Parts 3 to 6* of an applicant in relation to his or her application.

(2) The information referred to in *subsection (1)* consists of statements by the applicant, and all documentation at his or her disposal, regarding the elements, referred to in *section 28(3)*, of his or her application

# Legal Framework on Asylum and Immigration in Ireland

## **Failure by applicant to cooperate s38**

- (1) Not attending for an interview – 3 working days to provide an explanation
- (2) Left the state/ not notified of a change of address /not complied with any conditions relating to residence – 10 working days to provide an explanation

Subsequent Applications for IP – permission from the Minister plus appeal (s22)

# Legal Framework on Asylum and Immigration in Ireland

## Decision from IPO

Decision – refugee status/subsidiary protection s39

Recommendation – Permission to Remain s49(4)

Negative decision re refugee status /subsidiary protection

- Lodge appeal to IPAT within relevant time limit





# Legal Framework on Asylum and Immigration in Ireland

## Appeals

- Substantive Appeals – 15 working days
- Other appeals– 10 working days
- Notice of Appeal –
  - Legal Submissions
  - addressing credibility issues
  - Country of Origin Information
  - Witnesses
  - Redacted decisions
- Late appeals
- Signing the form
- Remote hearings
- Oral Hearings/ Hearing on paper only

# Legal Framework on Asylum and Immigration in Ireland

## Positive decisions

- Refugee /Subsidiary Protection Declaration – s47
- Refugee Status / Subsidiary Protection
  - Stamp 4 visa 3 years
  - Family reunification
- Application for Citizenship –
  - Refugee status backdated to date of application – 3 years residency
  - Subsidiary Protection – 5 years
- Applications on behalf of children – unaccompanied minors

# Legal Framework on Asylum and Immigration in Ireland

- Negative decisions –
- Update the PTR (5 working days) (Art 8 ECHR /Refoulement issues)
- Deportation Orders – change in circs
- Delays in system

# Legal Framework on Asylum and Immigration in Ireland

- Negative decisions –
- PTR Review -refoulement issues s 50
- Deportation Orders

# Legal Framework on Asylum and Immigration in Ireland

- Other types of permission

Parent of an EU Citizen Child (Zambrano)

Partner /Spouse of EU Citizen (freedom of movement)

Permission granted under regularisation scheme and PTR application under s 49

Applications for Citizenship (Naturalisation, Descent, Irish Associations, Birth)

# Legal Framework on Asylum and Immigration in Ireland

- Judicial Review – Asylum list in the High Court –

Hct Practice direction HC81

# Legal Framework on Asylum and Immigration in Ireland

Numbers seeking International Protection

2018 – 2020 10,030

2021 -2649

2022- 13651

2023 (to 30 April) 3,628

2020 – Catherine Day Report /White Paper to end Direct Provision

2021 Regularisation of Long Term Undocumented Migrants Scheme

2022/2023 Temporary Protection Directive – Ukraine

Accommodation