

Understanding the refugee definition

Protection Training Manual for European Border and Entry Officials

Session 3

A person is a refugee as soon as he or she fulfils the criteria contained in the 1951 Convention

- Recognition of refugee status is a declaratory act
- Refugee status determination procedures in each country for ASYLUM SEEKERS
- All refugees can be asylum seekers, while only some asylum seekers are refugees.
- EU legislation:
 - Qualification Directive
 - Asylum procedures Directive

The role of border guards

- In general, national legislation **DOES NOT** foresee any refugee status determination role for border guards
- Border guards often have **THE KEY** to access asylum procedures
- Refugees often ignore their right to international protection
- Border guards have a **DUTY** to understand:
 - Who is a refugee
 - The circumstances in which refugees try to access international protection (incl. in smuggling & trafficking networks)

The role of UNHCR

- UNHCR has a **responsibility to SUPERVISE** the application of the 1951 Convention on the Status of Refugees (Art. 35 of 1951 Conv. & Para. 8 of UNHCR Statute)
- UNHCR conducts RSD some times:
 - To ascertain whether a person is a refugee and is therefore entitled to international protection
 - To decide on the **resettlement** of refugees to another country
 - To give governments advice on refugee status of individuals within their territory

The five elements of the refugee definition

- 1. Outside the country of nationality / former habitual residence**
- 2. Well-founded fear**
- 3. Persecution**
- 4. Grounds (race, religion, nationality, membership of a particular social group, or political opinion)**
- 5. Unable or unwilling to seek that country's protection OR TO RETURN there.**

The subjective element: FEAR

- A state of mind
- Fear does not have to be explicitly stated:
 - An expression of unwillingness to return already signals some kind of fear
 - Sometimes objective conditions in country of origin can imply fear: i.e. if there is a clear risk of persecution
 - Applying for asylum also presupposes the existence of fear

The objective element: WELL-FOUNDEDNESS

- The context of the situation in the applicant's country of origin:
COI (country of origin information)
- In light of his / her personal circumstances:
 - Profile
 - Background
 - Experiences
- Credibility assessment
- No need to prove fear "beyond reasonable doubt"

Persecution

- A threat to life or physical freedom as well as to the enjoyment of fundamental rights:
 - Not every situation of discrimination re. Enjoyment of rights is persecution
 - Serious violations of non-derogable rights
 - Cumulative grounds: **combined effect** of discriminatory measures which, if taken separately, would not amount to persecution.

GROUPS of persecution

- **Race**
- **Religion**
- **Nationality**
- **Membership of a particular social group**
- **Political opinion**

GENDER may seriously affect the reasons and the form of persecution

- Since mid-1980's the effect of gender on persecution is broadly acknowledged:
 - **Forms of persecution** (sexual violence and rape of men and women, female genital mutilation, forced marriage, trafficking –such as for forced prostitution, discriminatory laws or practices)
 - **Reasons for presecution** (homosexuals in restrictive communities, women who fail to adhere to specific codes of behaviour, etc)

Some individuals would meet initial criteria but **DO NOT DESERVE** recognition as refugees

- Conditions spelled out in the 1951 Convention:
 “**exclusion clauses**”:
 - Crimes against peace
 - War crimes
 - Crimes against humanity
 - Non political crimes outside country of refuge prior to admission to that country
 - Acts contrary to the purposes and principles of the UN
- To be interpreted **RESTRICTIVELY** & to consider:
 - Individual responsibility
 - Proportionality