

# Asylum law

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# Overview of presentation

1. International protection
2. Refugee Status
  1. Definition of a refugee
  2. Rights of refugees
3. Other forms of complementary protection
4. Dublin system
5. Reception Conditions
6. Asylum procedure
7. Case study

# International Protection

- **International protection: European Union:**
- Has the form of refugee status OR subsidiary protection - some persons are excluded from international protection
- **Council of Europe: (not the same as EU!)  
outside the international protection framework**
- Protects foreigners against expulsion/extradition etc. – Article 3 ECHR (prohibition of torture – In case there is real risk of torture or ill-treatment – there is absolute protection against such return) – no one is excluded (even terrorists!)

# 1. REFUGEE STATUS

# Why people flee their country

- Wars
- Persecution
- Natural disasters
- Environmental crises
- Poverty
- To find better work
  
- These reasons do not overlap with whom we consider as REFUGEES!

# How international refugee law emerged

- Late 19th-20th century: masses of people were deprived of their citizenship collectively, by laws. They lost the protection of their country of origin *de iure (by laws)*; e. g. USSR, Armenians in Turkey
- 1930s – citizens of some countries (Germany, Austria) deprived of the benefits provided by their citizenship. They lost the protection of their state *de facto* (e. g. Jews in Austria, Germany...) – they were covered by a number of refugee agreements (covering individual nationality cases)

# After WW2...

- Refugee Status Convention (1951) started being discussed:
  - It covered the refugees under the preceding conventions
  - The concept of a refugee was based in events in Europe (or elsewhere) (**geographical limitation**) before 1951 (**temporal limitation**) (Article 1.A.1)
- 1967 Protocol to the Convention erased „in events in Europe / or elsewhere“ an „before 1951“ for most countries – only very few countries retain it.
- E.g. Turkey retains geographical limitation (refugees only from Europe)

# Current protection under Geneva Convention

- people without „de facto“ protection of their country
- reasons of persecution: more focus on **civil and political** rather than economic and social rights



# Definition of a refugee

## INDIVIDUAL ASSESSMENT!

- Outside his country
- Well-founded fear of persecution
- Owing to reasons of race, nationality, religion, political opinion and membership of a particular social group
- Is unable or, owing to such fear, unwilling to avail himself of the protection of that country
- Deserves protection (no: crime against humanity, war crime, genocide; serious non-political crime outside country of asylum; act contrary to principles of UN)
- In need of protection (so-called cessation (i.e. until protection ceases to be necessary))

# Case one

- Ahmed is running away from war with his wife and children. His house was bombed, he lost place to live, hospitals in his town have ceased to function and there is no future in his country. He hopes to find better place to live. Violence is so spread in the streets that he or his family could be targetted anytime. There is no really safe place in his country.
- Do you think Ahmed is a refugee under Refugee Convention?

## Case two

- June is a lesbian. In her country same-sex relations are punishable by law, if detected she could end up in prison. Her father does not know and has already found husband for her, which was the reason she decided to leave the country.
- Do you think June is a refugee under Refugee Convention?

# Case three

- Alfred is a journalist who was critical of the government. In his country freedom of speech is being suppressed by the government, many activists and journalists end up imprisoned. Therefore he has found a place in his country, hidden from the rest of the world close to borders, where he is awaiting the elections which could change the situation. Meanwhile he is also organizing for a falsified passport to leave the country.
- Do you think Alfred is a refugee under Refugee Convention?

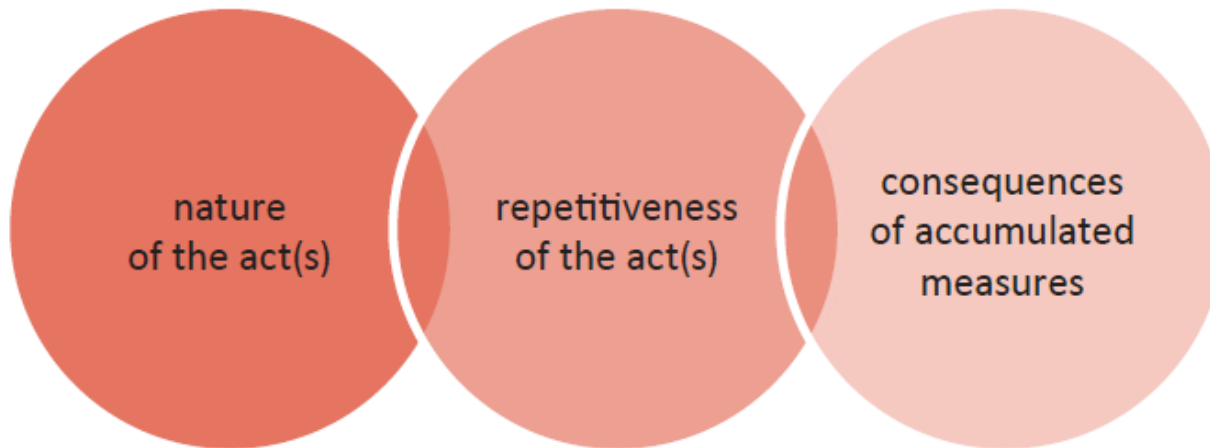
# Forward-looking

„The Convention looks to the future. What has happened in the past does not determine whether a person is a refugee.... In determining whether that person has a well-founded fear that he or she **will be persecuted if returned to the country of nationality**, the past is a guide – a very important guide – as to what may happen. But that is all.“

S152(2003) v. MIMA, 2004 HCA 18

(Australian Court)

# Persecution



„As we have held, that none of the threats against the petitioner **have yet been carried out** does **not render his fear unreasonable...** what matters is whether the group making the threat has the will and ability to carry it out.“

Marcos v. Attorney General, 2005 US App Lexis 10698  
(US court)

# Protection

## Protection in the country of origin

### Actors of protection

state

parties or organisations,  
including international  
organisations, controlling  
the state or a substantial  
part of the territory of  
the state

### ... have to be

willing



able

### ... to provide protection which is

effective



non-  
temporary



accessible

# Protection

If there is a **sufficiency of protection** available to them **in that state**, then there should be no obligation on another state to afford a surrogate protection. (...)

There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actings contrary to the purposes which the Convention requires to have protected. More importantly there must be an ability and a readiness to operate that machinery. But precisely where the line is drawn beyond that generality is necessarily a matter of the circumstances of each particular case.

Horvath v. SSHD, UK House of Lords, 6 July 2000, [2000] UKHL 37

Now: Article 9 Qualifications Directive



# Internal Protection

In order to determine that internal protection is available in a **particular part** of the applicant's country of origin, three cumulative criteria have to be met.

This part of the country is **safe** for the applicant.

The applicant has **access** to this part of the country.

The applicant can **reasonably be expected to settle** there.

# Reasons

- In order to be a refugee

- Persecution or
- Lack of protection

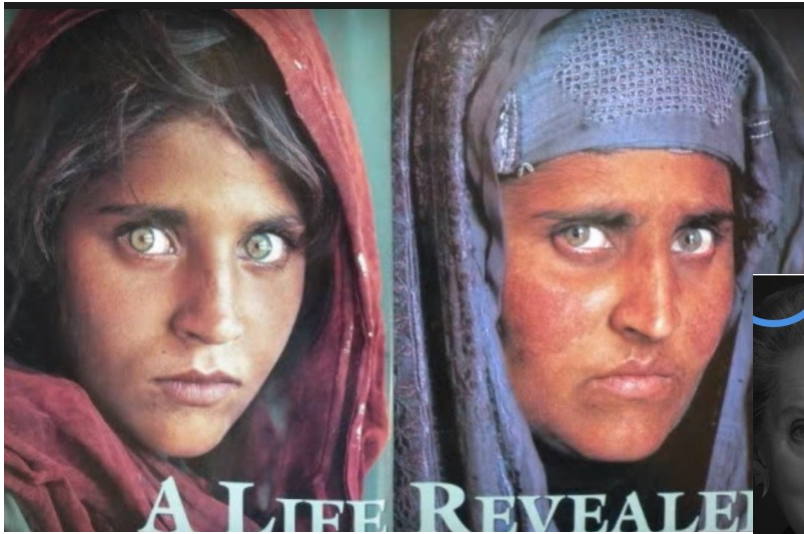
Has to be connected with one of the reasons:

- Political opinion
- Race
- Nationality
- Religion
- Membership to a particular social group  
(it can be either real or „attributed“)

# Sum-up

- Outside his country
- Well-founded fear of persecution
- Owing to reasons of race, nationality, religion, political opinion and membership of a particular social group
- Is unable or, owing to such fear, unwilling to avail himself of the protection of that country
- Deserves and still is in need of such protection (does not deserve: e.g. crimes against humanity, war crimes, serious non-political crimes etc.)

**ALL CRITERIA HAVE TO BE MET!**



Madeleine Albright,  
first woman  
Secretary of State,  
is a great American.  
**And a refugee.**

Rescue.org 

A black and white portrait of Madeleine Albright is shown on the left side of the text block. The text is in a yellow and white font.

# Current protection under Geneva Convention: rights of a refugee

**Admission without punishment** (No prosecution for illegal entry)

- coming directly from territory where their life or freedom is under threat
- they access the authorities without undue delay and
- good cause for their illegal entry or presence

(see Article 31 Geneva Convention)

**Non-refoulement** (No return to a country where freedom/life at danger)

- Whatever form of return
- Also „chain refoulement“
- Exceptions to non-refoulement: danger for society
- Not limited to asylum-seekers! (every refugee, not only those who applied for a refugee status)

(Article 33 Geneva Convention)

# Current protection under Geneva Convention: rights of a refugee

## **Other rights**

- some to the same extent as other foreigners (e. g. acquisition of property)
- some to the extent as nationals (protection of industrial property...)

# Current protection under Geneva Convention

not covered by refugee definition

- People fleeing for environmental reasons
- People fleeing from war (see above – if „reasons“ are not fulfilled at the same time)
- Internally displaced persons

# 2. SUBSIDIARY PROTECTION



# Complementary Forms of Protection

- Some people are technically not refugees but with a valid need of protection
- Article 3 Convention against Torture, Article 7 International Covenant on Civil and Political Rights (ICCPR)
- Article 3 European Convention on Human Rights (ECHR): non-refoulement: **real risk of torture, inhuman or degrading treatment or punishment** - absolute protection
- Codified forms of complementary protection, e. g.:
  - temporary protection (temporarily restricted for a group of persons, not individually assessed)
  - **‘subsidiary protection’ in the EU**
  - ‘withholding of removal’ and CAT-based protection in the US; ‘persons in need of protection’ in Canada; Cartagena Protocol (extending refugee status)

# Subsidiary protection

- Real risk of serious harm:
  - Imposing or executing death sentence
  - Torture, inhuman or degrading treatment or punishment
  - Serious threat of life or dignity in situations of indiscriminate violence – in international / internal armed conflict (see case one, slide 10)
- Exclusion clauses (i. e. also this protection has to be deserved)

# 3. PROHIBITION TO RETURN (ARTICLE 3 ECHR)

# Outside EU law but applicable in Council of Europe

- Prohibition to expel a person to a country where he or she would face torture, inhuman or degrading treatment or punishment (Article 3 ECHR) or death penalty (Article 2 ECHR)
- Absolute protection – applies even to people who do not deserve international protection
- Not necessarily residence permit, but tolerated status

# 4. THE EU ASYLUM LAW (INLCUDING DUBLIN)

# Fortress Europe

- EU countries = safe countries of origin (EU nationals cannot lodge asylum applications in EU) and safe third countries
- The Dublin system: Principle of solidarity and fair-sharing (also financially)

# Asylum law in the EU

- Originally an economic community, asylum and migration matters (3rd pillar)
- 1999 Amsterdam Treaty: asylum policy moved to 1st pillar
  - goal : Common European Asylum System (CEAS)
  - full and inclusive interpretation of the 1951 Refugee Convention

# EU law today: Common European Asylum System

- Common criteria for refugee status and subsidiary protection and rights of refugees and people with subsidiary protection **BUT not a uniform status yet**
- Common standards for asylum procedures **BUT not centralized asylum authorities**
- Common standards for reception conditions **BUT many exceptions** – hence, many divergences
- Common standards for **temporary protection** **BUT** so far not used on EU level



# How the Dublin System Works

- EU countries - safe third countries
- Mutual trust of the EU countries
- prevention from asylum forum-shopping and refugee-in-orbit
- the country where the asylum-seeker has close **family ties OR** the country “**responsible**” for the **entry** of the foreigner - responsible to decide asylum claim
- Exceptions: humanitarian considerations; systemic deficiencies
- 2008-2014: more than 2,5 million of applications in EU; 4%: Dublin cases; 34% of transfers took place, mostly country of first application



# How the Dublin System Works



# Asylum Procedures

- Application
- Interview
- Country of origin information
- Right to legal aid and information
- Decision
- Right to effective remedy
- Some specific decisions:
  - Third safe countries
  - Safe countries of origin
  - Subsequent applications

# The asylum procedure

An asylum applicant is **interviewed by a case worker** trained in EU law, with the help of an interpreter, to determine whether he/she may qualify for refugee status or subsidiary protection.  
(Qualification Directive and Asylum Procedures Directive)



# The asylum procedure

**Asylum is not granted** to the applicant at “first instance”, but this refusal may be appealed in court.

**Confirmation of the negative “first instance” decision** by the court, following which the applicant may be returned to his/her country of origin or transit.

**Refugee or subsidiary protection status is granted**, which gives the person certain rights, such as access to a residence permit, the labour market and healthcare. (Qualification Directive)

**Overturing of the negative “first instance” decision** by the court.



# Failed asylum-seekers

- Return Directive
- Detention possible under EU law for the purpose of their return
- Exceptions: Article 3 cases (torture, inhuman or degrading treatment); however, possibility to obtain a residence permit very limited

# Reception conditions

## Minimum standards

- Right to remain in the country after application for international protection
- Material reception conditions: Housing, food OR financial allowance
- Health care
- Detention of asylum-seekers: specific grounds (identity; risk of absconding and necessary for application, to decide on the right to enter, to prepare return, national security / public order, under Dublin Regulation) and proportionality tested; maximum time-limit

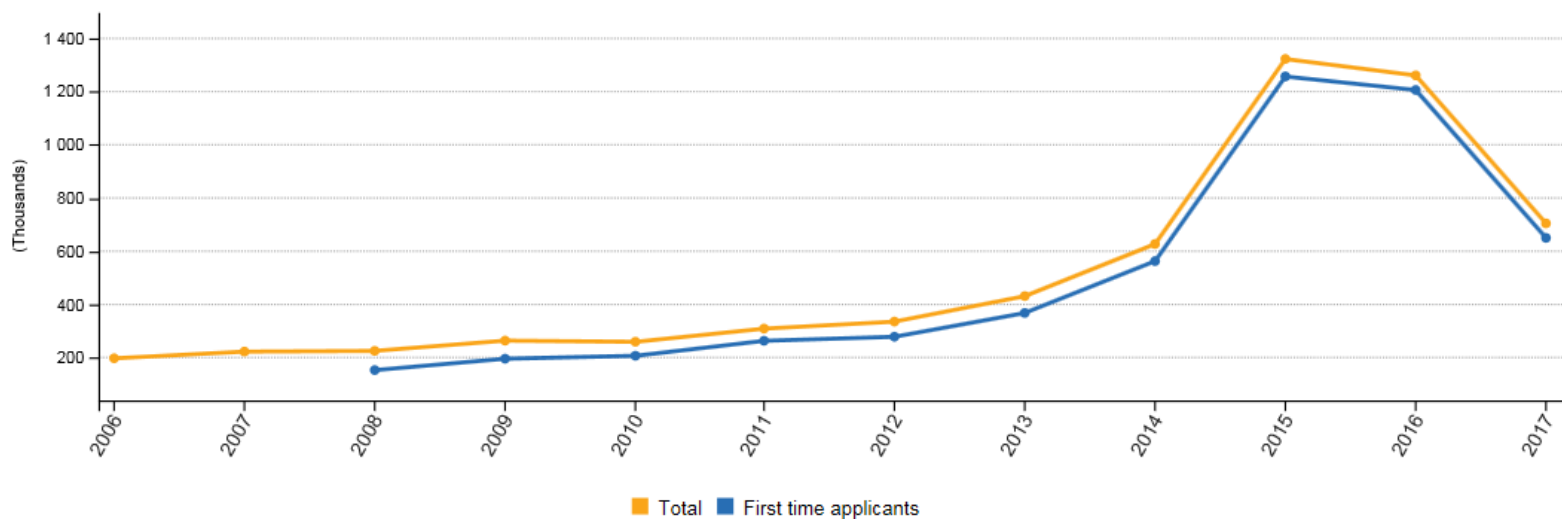
# Your statistics:

Country	No. Of applic./Year	Success rate	Countries of origin
Japan	19,629/ 2017 7,586/ 2015	1%	Philippines, Vietnam, Sri Lanka, Indonesia, Nepal
Sri Lanka	436/ 2017		Pakistan, Afghanistan, Yemen, Syria
Serbia	5,702/ 2017 (2,200 children!)		Afghanistan, Pakistan, Iran, Iraq Syria
Portugal	1,750	36%	DRC, Angola, Gambia, Senegal, China, Guinea, Sierra Leone
Finland	4,548/ 2018 5,059/ 2017 (a lot of subseq. appls.) 32,000/ 2015	43%	Iraq, Russia, Somalia
France	122,743/ 2018 85,244/ 2016		Sudan, Syria, Kosovo, 41% from Africa



# 2017: 650,000 persons applied (46% of them granted intern. Protection)

Asylum applications (non-EU) in the EU-28 Member States, 2006–2017

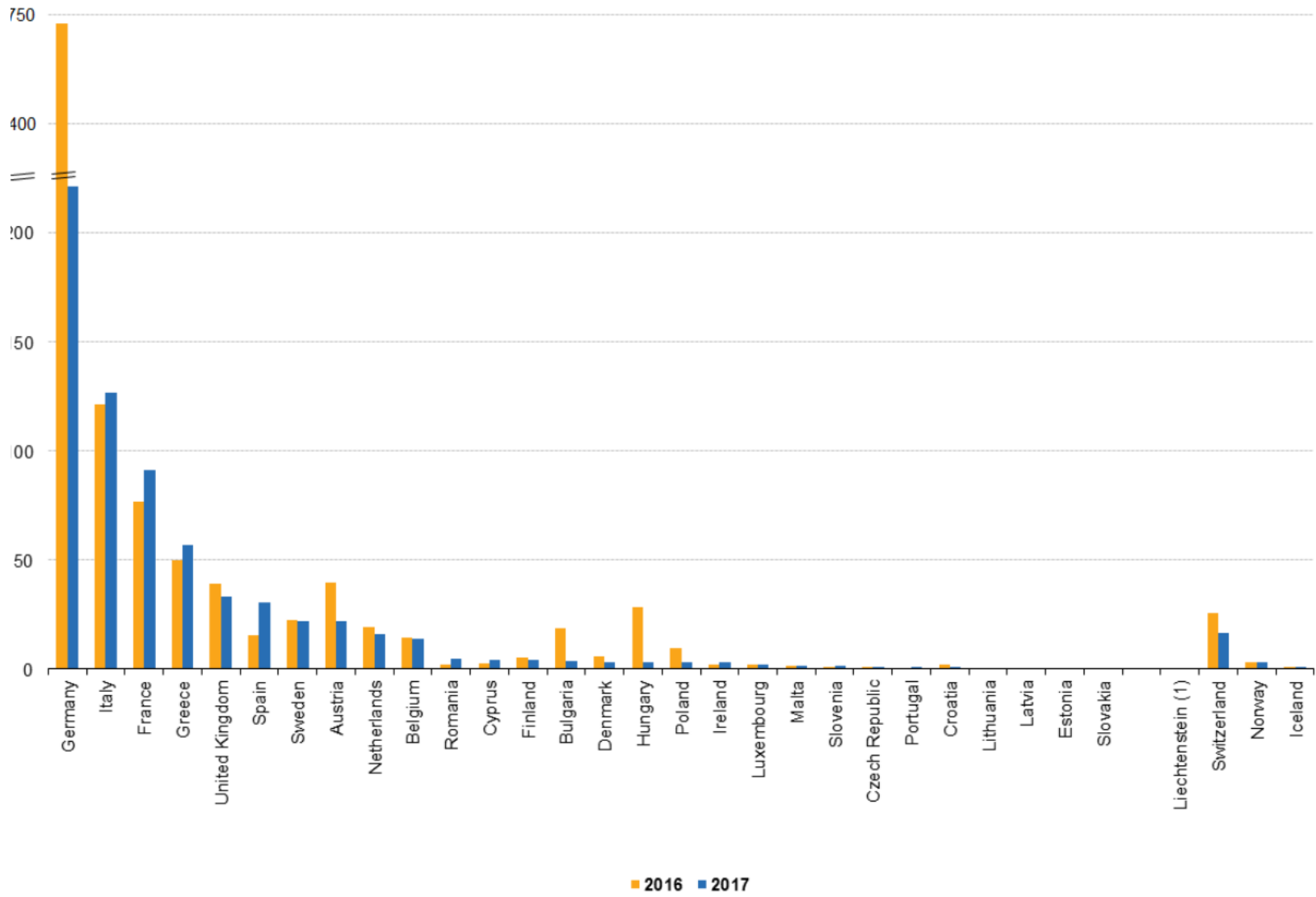


Total: 2006 and 2007: EU-27 and extra-EU-27.

First-time applicants: 2006 and 2007: not available

Rise of applications for international protection: EU (28) – and drop in 2017 – **650 000**:

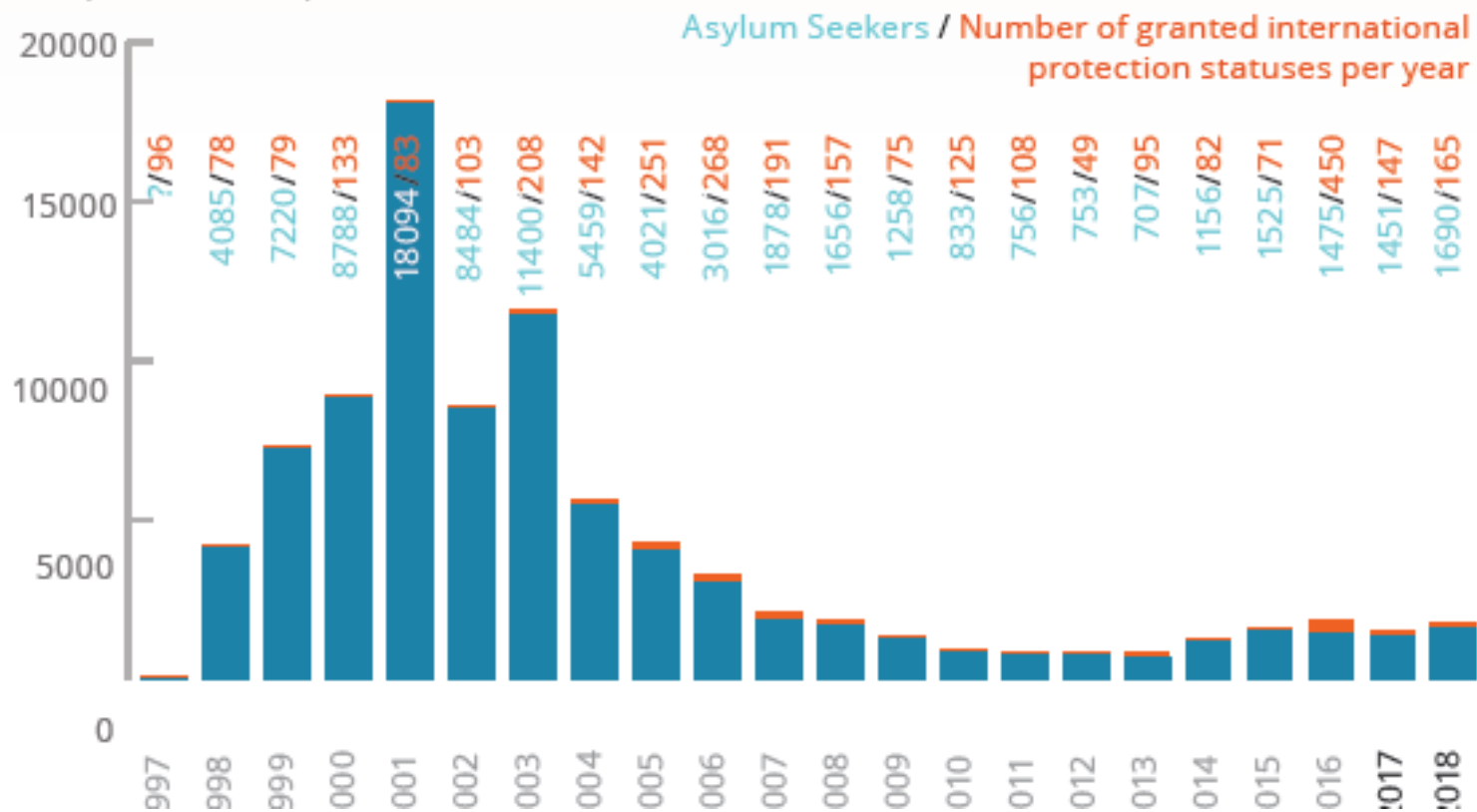
• 2014	2015	2016
• <b>626 960</b>	<b>1 322 825</b>	<b>1 259 955</b>
• Germany:	476 510	745 155
• Hungary:	177 135	29 430
• Greece:	13 205	51 110
• Italy:	83 540	122 960
• Czech Rep:	1 515	1 475



# Number of applications (Czech Rep)

## DEVELOPMENT OF NUMBER OF ASYLUM SEEKERS AND BIPS IN CZECHIA

ČSÚ, OAMP MV ČR, Eurostat



# Number of applications (Hungary)

## DEVELOPMENT OF NUMBER OF ASYLUM SEEKERS AND BIPS IN HUNGARY

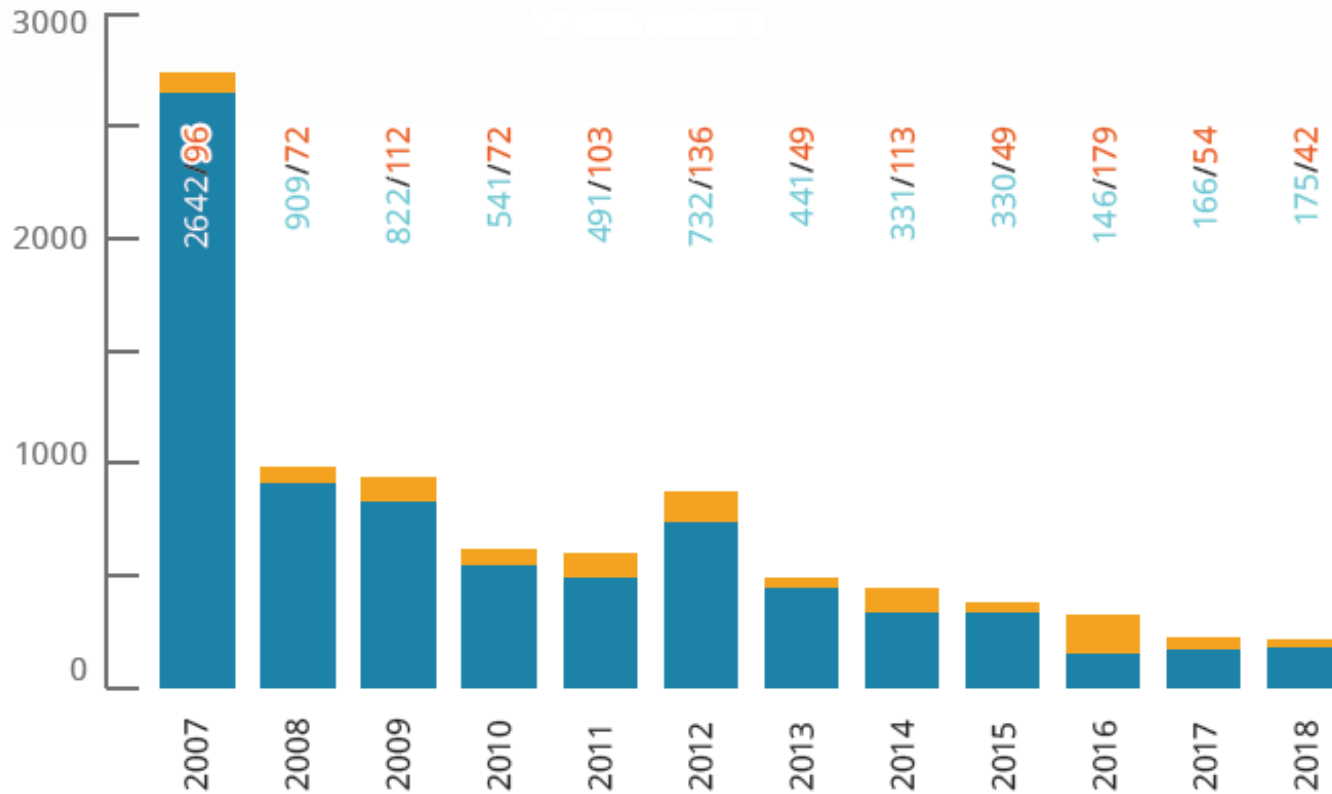
KSH - 2018



# Number of applications (Slovakia)

## DEVELOPMENT OF NUMBER OF ASYLUM SEEKERS AND BIPS IN SLOVAKIA

IV SR 2018, Eurostat

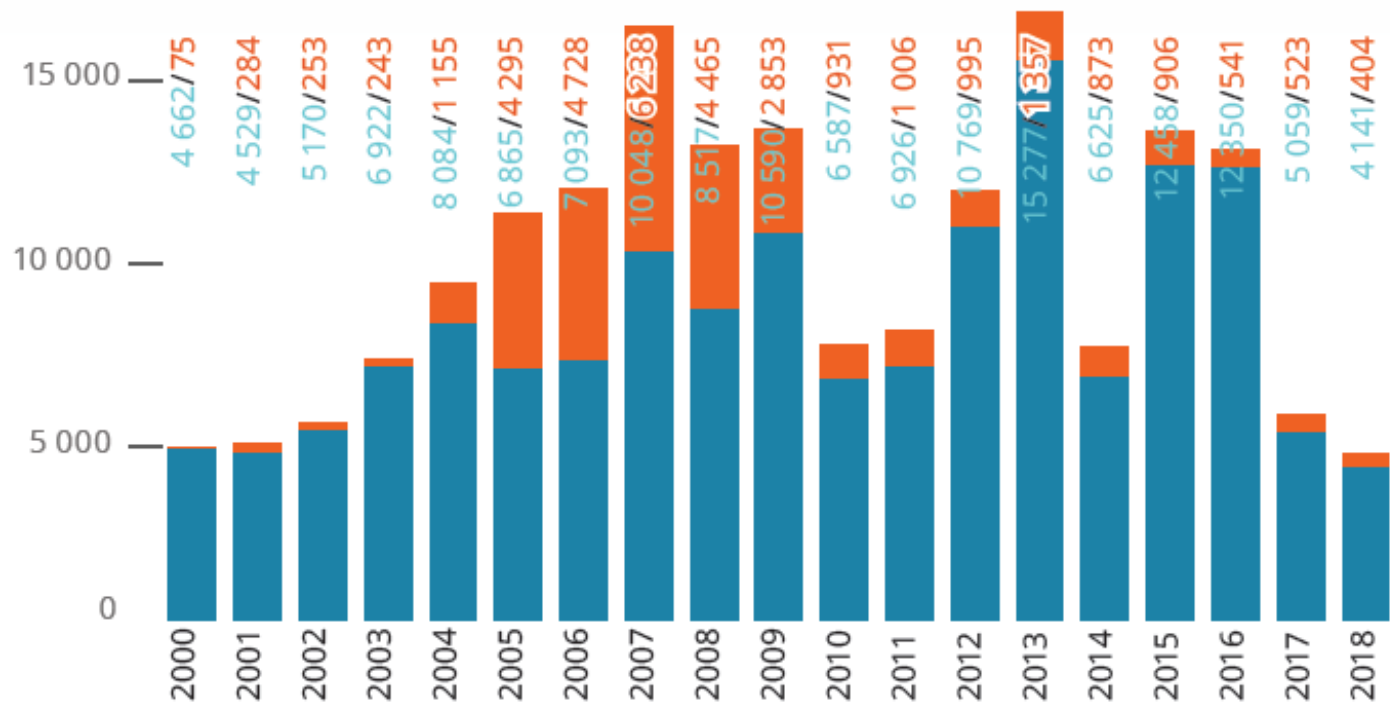


# Number of applications (Poland)

## DEVELOPMENT OF NUMBER OF ASYLUM SEEKERS AND BIPS IN POLAND

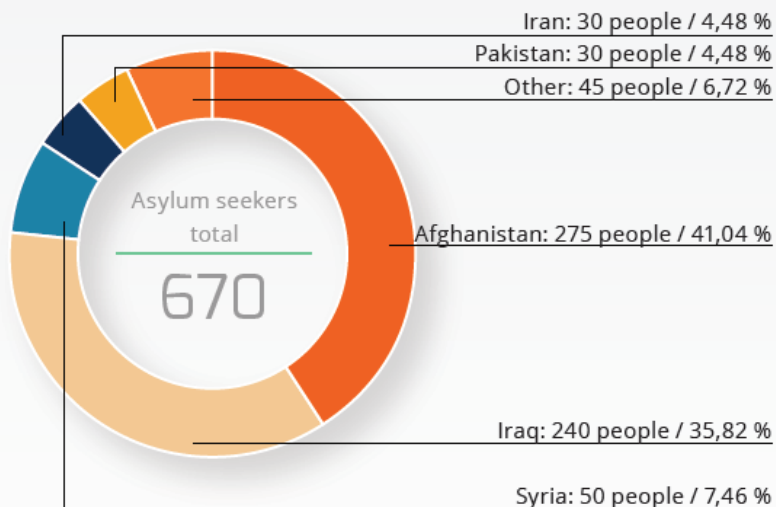
UDSC 2018, Data accessed on 14. 5. 2019

Asylum Seekers / Number of granted international protection statuses



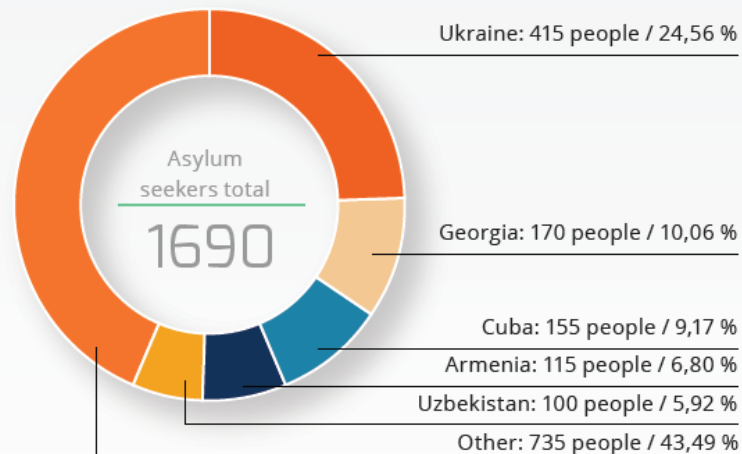
## WHO WERE THE ASYLUM SEEKERS IN HUNGARY IN 2018?

Eurostat



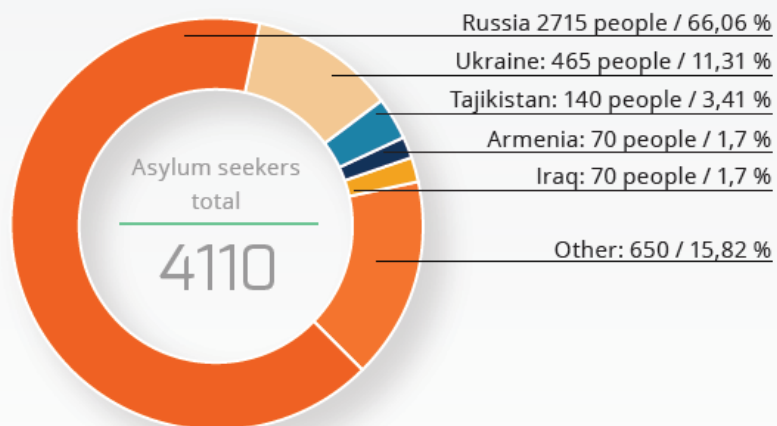
## WHO WERE THE ASYLUM SEEKERS IN CZECHIA IN 2018?

Eurostat



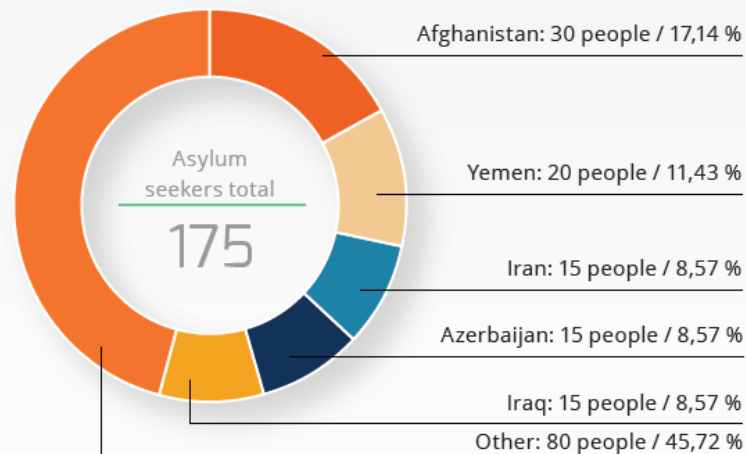
## WHO WERE THE ASYLUM SEEKERS IN POLAND IN 2018?

Eurostat



## WHO WERE THE ASYLUM SEEKERS IN SLOVAKIA IN 2018?

Eurostat





# 2015 – how „migration crisis“ impacted the Czech Republic

- Asylum-seekers arriving from the Balkan peninsula – across Hungary – not registered in other countries
- A lot of Afghan, Syrian, Iraqi foreigners arriving on their way to Germany crossing the Czech Republic by train
- When discovered by the police, detained in Czech detention centres – situation deteriorated quickly: no legal aid, bad reception conditions
- Hungary requested to take responsibility under the Dublin III regulation – but no transfers realized – i. e. people detained for maximum length and then released

# Number of applications (Czech Republic)

<b>Rok</b>	<b>Celkem žádostí</b>					
		<b>1999</b>	<b>7218</b>		2009	1258
1990	1602	<b>2000</b>	<b>8794</b>		2010	833
1991	2226	<b>2001</b>	<b>18094</b>		2011	756
1992	841	<b>2002</b>	<b>8484</b>		2012	753
1993	2207	<b>2003</b>	<b>11400</b>		2013	707
1994	1187	2004	5459		2014	1156
1995	1417	2005	4021		2015	990
1996	2211	2006	3016			
1997	2109	2007	1878			
1998	4086	2008	1656			

# Number of applications (Czech Republic)

- 2016: 1447
- 2017: 1450
- 2018: 1702
- 2019: 1922