

Refugee Law

Associate Professor
Denard Veshi

Overview

- ❖ The definition of refugee
 - ❑ The difference between “economic immigrant” and “refugee”
- ❖ The variables that affect the refugee's decision-making process
 - ❑ Opportunity costs
 - ❑ Psycho-social costs
 - ❑ Migration costs
 - ❑ Adaptation costs
- ❖ Impact of refugees on host countries
 - ❑ Job market
 - ❑ National security
- ❖ Conclusion

Chap. 1

Evolution of refugee law

- ❖ League of Nations 1921

- ❑ International Committee of the Red Cross

- ❖ *Convention Relating to the International Status of Refugees*

- ❑ Art. 3 *“Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order. It undertakes in any case not to refuse entry to refugees at the frontier of their countries of origin. It reserves the right to apply such internal measures as it may deem necessary to refugees who, having been expelled for reasons of national security or public order, are unable to leave its territory because they have not received, at their request or through the intervention of institutions dealing with them, the necessary authorizations and visas permitting them to proceed to another country.”*

Evolution of refugee law

- ❖ Goal: Russian refugee
 - ❑ Extended to Greek, Turkish, Bulgarian, and Armenian refugees
- ❖ Collapse of League of Nation:
 - ❑ the withdrawal of Germany, Japan, and Italy
 - ❑ failure of resolving the Manchurian and Ethiopian conflicts during the 1930s

Evolution of refugee law

- ❖ Supreme Headquarters Allied Expeditionary Force (SHAEF)
 - ❑ coordinate the return of people to Eastern Europe and the Soviet Union.
- ❖ United Nations Relief and Rehabilitation Agency (UNRRA).
 - ❑ was not meant to be an organization dealing specifically with refugees.
 - ❑ Cold War

Evolution of refugee law

- ❖ Refugee Organization (IRO),
 - ❑ Recognition of the right not to be repatriated against personal will.
 - ❑ Refugee status for political persecution.
 - ❑ *shift* in the nature of the right to refugee protection: from group right to individual right
- ❖ Universal Declaration of Human Rights
 - ❑ article 14: “*everyone has the right to seek and enjoy in other countries asylum from persecution*”.

1947 UN Resolution

❖ 1947 UN Resolution

❑ *“early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation”.*

❖ Replacement of IRO with UNHCR materialized in 1952.

❑ USA – only legal protection

❑ UK – temporary material refugee protection

Resolution 428(V) from 14 December 1950

❖ Resolution 428(V) from 14 December 1950

- ☐ three years

- ☐ not inclusion of internal refugees.

- ☐ report only to the General Assembly of UN

- ☐ receive financial support from the UN.

- ☐ geographical restriction

- “*owing to events in Europe*” or “*owing to events in Europe and elsewhere*” (article 1(B)).

- Congo, Madagascar, Monaco, and Turkey.

Geographic and temporal limitation

- ✓ The geographical restriction was formally abrogated with the signature of the 1967 Protocol that brought the 1951 Convention into line with the universal mandate of the 1950 Statute of UNHCR.
- ❖ 1972, East Bengalis crisis
- ❖ 1973, Sudan crisis
 - ❑ Material and not only legal protection of refugees

Geographic and temporal limitation

❖ 1956, Hungarian crisis

- ❑ Mr. Auguste Lindt (1956– 1960), stated that the causes of the flight of Hungarians could be found in the events before 1951.
- ❑ Temporal group right and then permanent individual right
- ❑ USA position after this management

❖ Chinese refugees in Hong Kong

- ❑ *good offices formula*
- ❑ British Colony

❖ 1967, Tunisian crisis

- ❑ 1956 precedent

Regional Refugee Organization

- ❖ Organization of African Unity
- ❖ Refugee Convention states that refugee is *“every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order ... is compelled to leave his place of habitual residence.”*
- ❖ Cartagena Declaration
- ❖ *“persons who had fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.”*

Local settlement schemes

- ❖ Refugees were provided with land for settlement and farming, received technical and financial support from the host state and international organizations
- ❖ Africa
- ❖ 1970s
- ❖ Not applied in 1990s

1970's and 1980's

- ❖ Belief: Generous asylum policy is a 'pull factor' for asylum seekers.
 - ❑ economic recession
 - ❑ election of conservative governments in many Western states
 - left-wing parties enact more friendly asylum policies.
- ❖ Restrictive policies increase migration costs
- ❖ USA – restrictive policy
 - ❑ France - some part of airports as international zones
 - ❑ Denmark – established penalties for agents who smuggle individuals into the country
- ❖ Different type of migration:
 - ❑ 1980s: asylum migration mainly involved south-to-north migration.
 - ❑ 1990s: asylum migration also included east-to-west migration.
 - US and Yugoslavia

Repatriation

- ❖ Application of terminology that entails less demanding standards for stimulating repatriation (UNHCR)
 - ❑ “safe return”.
 - The conditions in the home country did not have to improve “substantially” but only “appreciably” in order to approve repatriation
 - ❑ No *strictly* voluntary decision by refugees.
- ❖ A ‘new’ need emerged to monitor the welfare of the returnees and to facilitate their reintegration back into their home societies.
- ❖ Repatriation and the facilitation of refugee reintegration became the new UNHCR’s mission.

Human security

- ❖ United Nations Development Programme (1994)
 - ❑ Foreign policy agendas of States such as Canada, Sweden, and Norway.
- ❖ Focus: from nation-state's interest to protection of refugee rights
- ❖ Refugees were viewed as posing threats to regional and international security.
 - ❑ Action under Chapter VII of the UN Charter.
- ❖ 1996: refugees constituted only about 50% of the population dealt with by the UNHCR.

Conclusions

Over the past half century the nature and scope of UNHCR's work have changed. From an international organization dealing with the legal assistance of refugees to the material assistance not only in the host country but also in the origin country, where refugees are just one group within the broader mission of the UNHCR. From a small Office of some 30 staff based mostly in Europe in the early 1950s, UNHCR is now a global organization with a staff of more than 9,300 working in 123 countries

Chap. 2

Article 1 (A)2

*As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of **race**, **religion**, **nationality**, membership of a **particular social group** or **political opinion**, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

Article 1 (A)2

The acknowledgement of refugee status is an ascertain proceeding. Therefore, this proceeding does not attribute to a person the refugee status, but it ‘declares’ it. The refugee status is an *ipso iure* status. Moreover, while no universal procedural rules for the recognition of refugee status are specified, Member States (MS) have several obligations towards this group of population. The 1951 Convention recognizes the discretion of national legal systems to set up procedural rules governing the determination of refugee status.

Article 1 (A)2

❖ Right to asylum?

❑ Prohibition of refoulement (article 33)

- right to temporary residence in the host country until a final decision regarding their claims have been taken.

❑ The refugee status is an *ipso iure* status.

❑ Citation of 1948 Universal Declaration of Human Rights

- right to asylum.

❖ ‘right to asylum’ as ‘empty right’, i.e. a right without corresponding duty.

❑ no ‘right to seek asylum’.

- duty to not block this right.

- No refugees rejection in the borders or in international area or expulse them outside their countries without concluding a process of recognition of refugee status.

Article 1 (A)2

❖ Three different types of refugees:

- ☐ refugee tout court,
- ☐ refugee lawfully present in the country,
- ☐ refugee lawfully staying in the country.

While the first two categories of refugees have not had their status officially determined, refugees lawfully staying in the country have a recognised (positive) status. Refugees lawfully present in the country are foreigners who have entered in the host country with valid ID, travel papers and other documents required by national migration laws.

For instance, articles 18 (Self-employment) and 32 (Expulsion) are applied only to ‘refugee lawfully’ in a host country. Therefore, these articles are not applied to refugee tout court. In addition to article 18 and article 32, to the group ‘refugees lawfully staying in a country’ it will be also applied article 15 (Right of Association), article 17 (Wage-earning employment), article 19 (Liberal Professions), article 21 (Housing), article 23 (Public Relief), article 24 (Labour Legislation and Social Security), article 28 (Travel Documents).

Legal Interpretation

- ❖ events occurring before 1 January 1951
 - ❑ How has been this legal requirement been interpreted? (1956, the Hungarian crisis; 1967 Protocol).
- ❖ well-founded fear
 - ❑ Should 'fear' include personal subjective perspective or should it be based only on objective elements? (*The problem of Jewish refugees*).
- ❖ country
 - ❑ The broader interpretation of the attribution to a country.
- ❖ nationality
 - ❑ Does nationality means citizenship? (*The problem of people with multiple citizenships*).
- ❖ former habitual residence
 - ❑ What does this concept mean? (*The problem of stateless people*).

Geographic and temporal limitation

- ❖ 1956, Hungarian crisis
- ❖ Chinese refugees in Hong Kong
 - ❑ British Colony
- ❖ 1967, Tunisian crisis
 - ❑ 1956 precedent
 - ✓ The 1967 Protocol.
- ❖ 1972, East Bengalis crisis
- ❖ 1973, Sudan crisis
 - ❑ Material and not only legal protection of refugees

Fear

❖ Broad position:

- ❑ ‘fear’ should include ‘emotional and sentimental reasons’ among the motives why a person might be unwilling to return to his or her home country.
 - Jewish people returning in Germany (‘horrifying memories’).

❖ Narrow interpretation

- ❑ *Ad Hoc* Committee on Statelessness and Related Problems is that ‘fear’ can be recognized only through objective elements.
 - Legal theory approach: refugee’s state of mind is difficult to be ascertained.
 - Perception of fear might be disproportional – not only because people react to external events in dissimilar manners – but also because lack of information.
 - Textual or *originalist* interpretation of the 1951 Convention will not find subjective elements in the definition of refugee in the 1951 Convention.
 - However, this does not mean that the personal situation of the refugee should not be considered. For example, foreign citizens who convey a public position or contrast a non-democratic political regime publically should be recognized as refugees.

Country

The act of persecution should be attributed to a country.

❖ It includes:

- ❑ cases where these acts are conducted by public organs (*de iure* or *de facto*)
- ❑ acts are conducted by organs controlled by the State
- ❑ violation has been conducted by individuals acting within a sovereign territory of a State, or by groups acting in a context where there is no longer any State authority (such as Somalia).

- ❖ The aim of the 1951 Convention is to protect refugees and not to attribute illegal acts to a certain State.
- ❖ This is fundamental in the current situation since ISIS is a non-State actor. However, it should be mentioned that in USA the status of refugee is not given in case of persecution from non-state actors.

Nationality & Residence

- ❖ Being outside the former habitual residence country.
 - ❑ Country of origin has been interpreted as country of citizenship.
 - Multiple citizenships, refugees must prove that in all these countries they have fear of persecution.
 - ❑ In case that citizens have moved from their own place, but remain within their countries of origin, they are not eligible to receive the refugee status.
 - Nonetheless, according to the UNHCR this is true only if the zone is 'secure'.
- ❖ Stateless persons have the right to be granted a refugee status. This derives from the fact that article 1 (A)2 also includes the phrase of 'his former habitual residence'.

Right to Asylum in EU-28

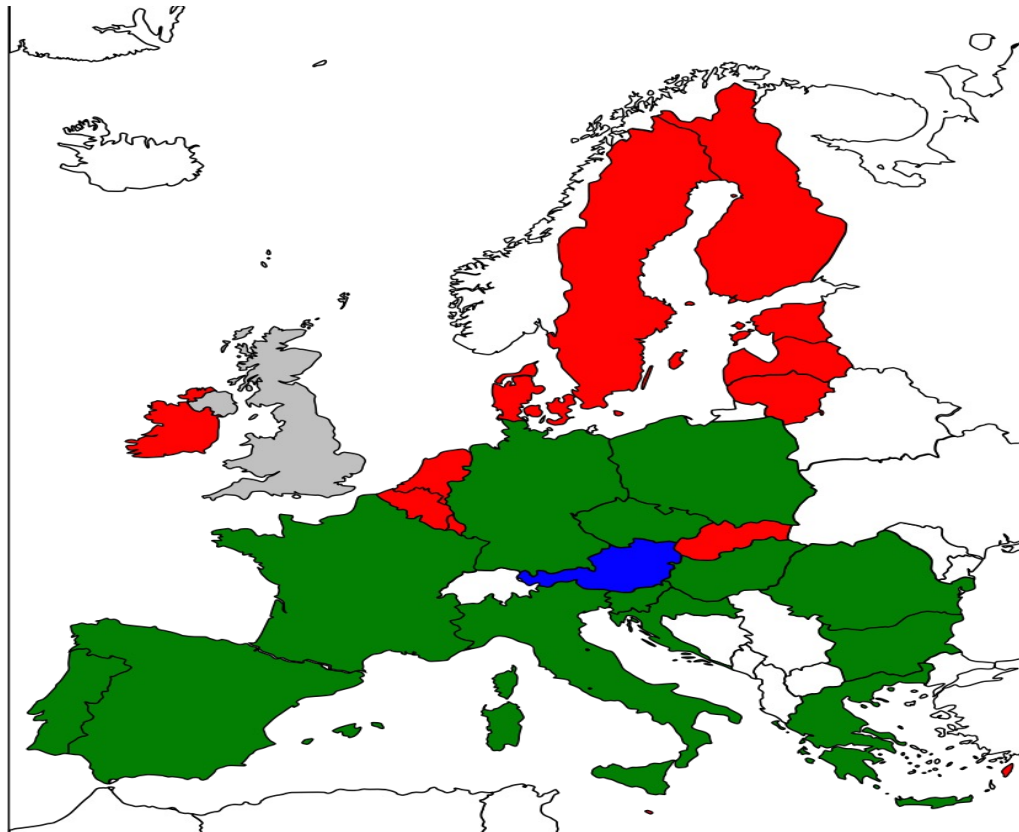
(Constitutional approach)

No written constitution
EU-Member State?

Absence of the 'right
to asylum'

Mentioning the 'right
to asylum'

Protection of the 'right
to asylum'



The notion of Non discrimination in EU-28

Race & Religion & Nationality & Membership of a particular social group or of a particular political opinion
(Constitutional approach)

No written constitution

Absence of the phrase

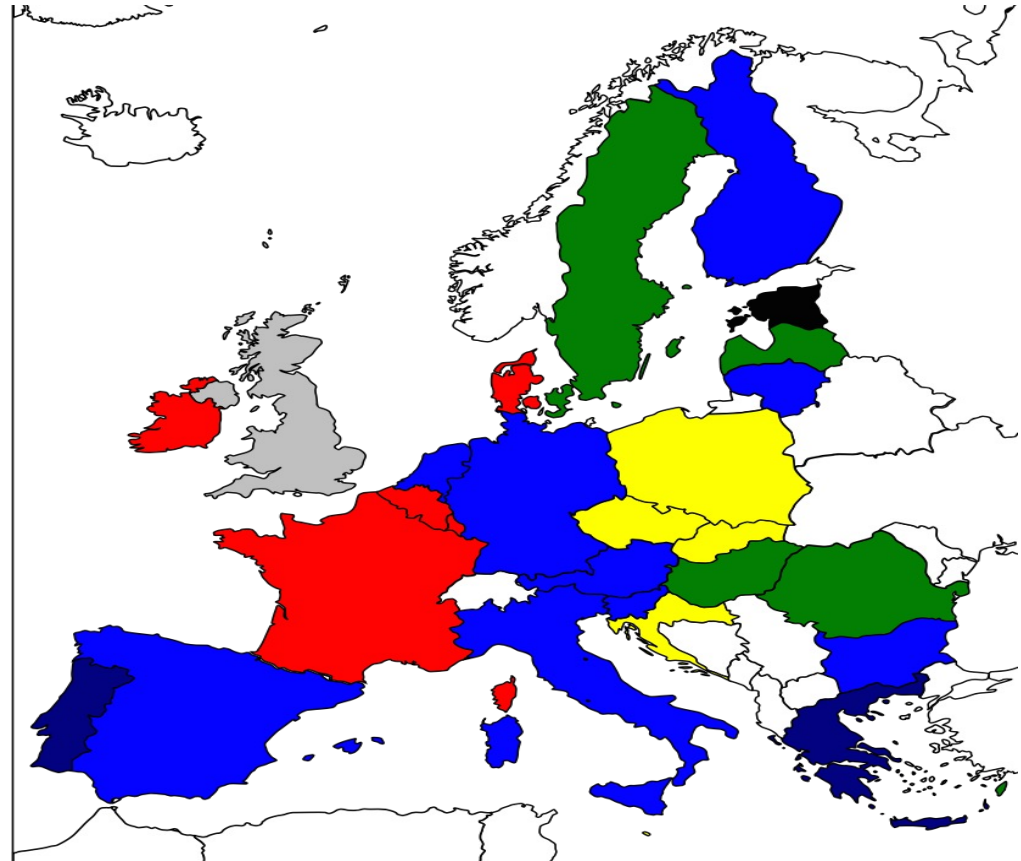
Non discrimination

Equality

No discrimination & equality

Freedom and rights

Other phrases



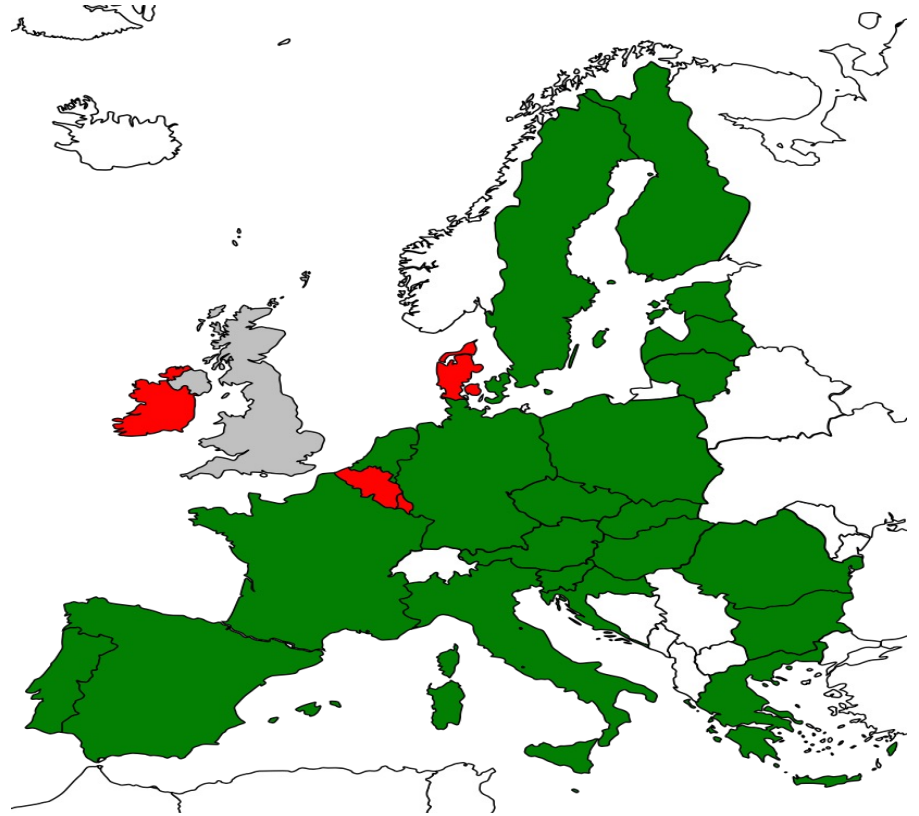
Race persecution in EU 28

(Constitutional approach)

No written constitution

Absence of the
persecution based on
race reasons

Prohibition of race
persecution

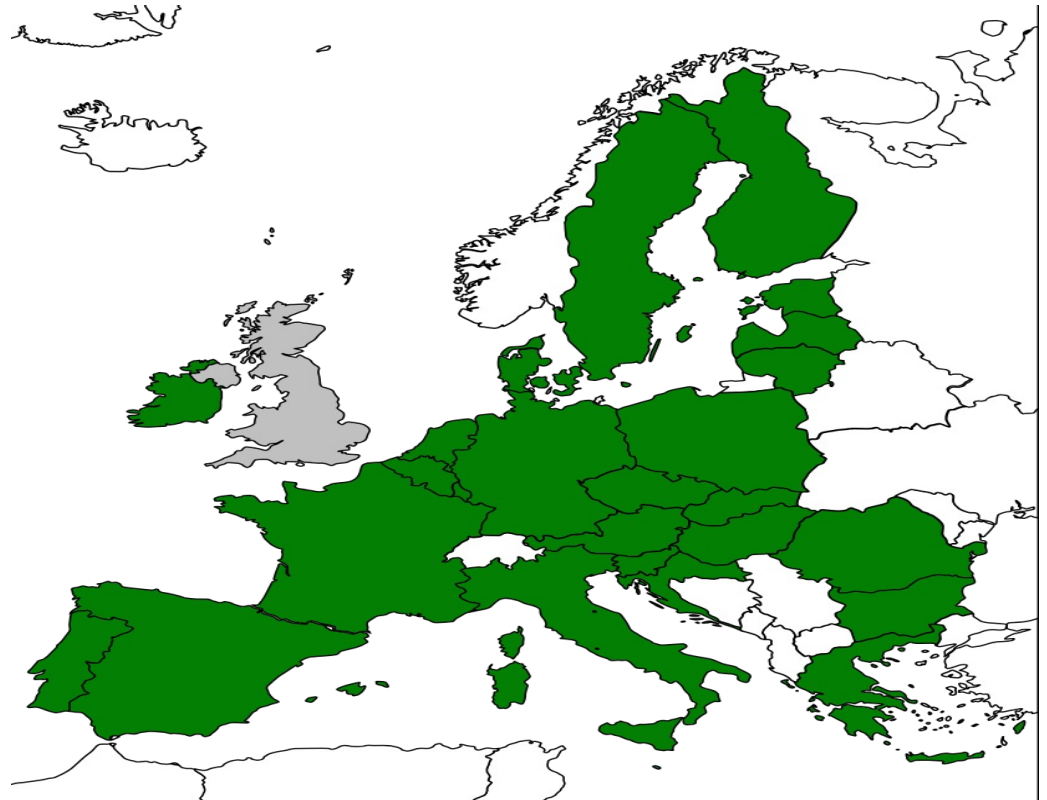


Persecution based on religion in EU 28

(Constitutional approach)

No written constitution

Prohibition of persecution
based on religion



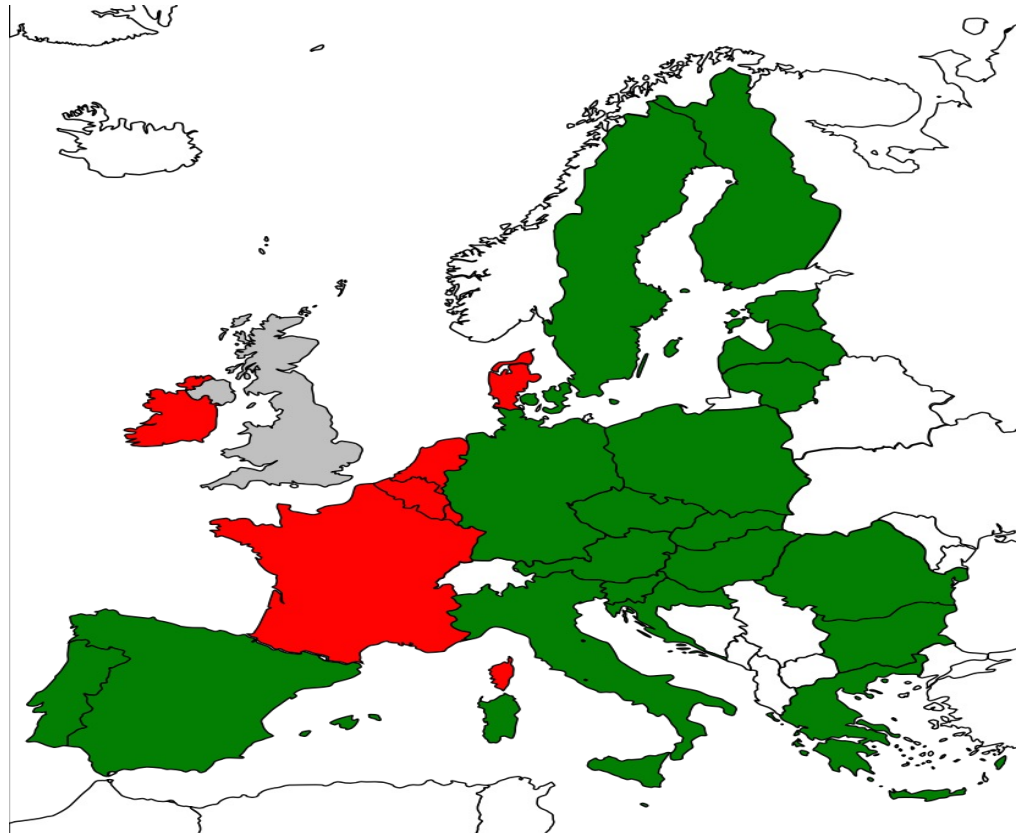
Persecution based on nationality in EU 28

(Constitutional approach)

No written constitution

Absence of the
persecution based on
nationality

Prohibition of
persecution based on
nationality



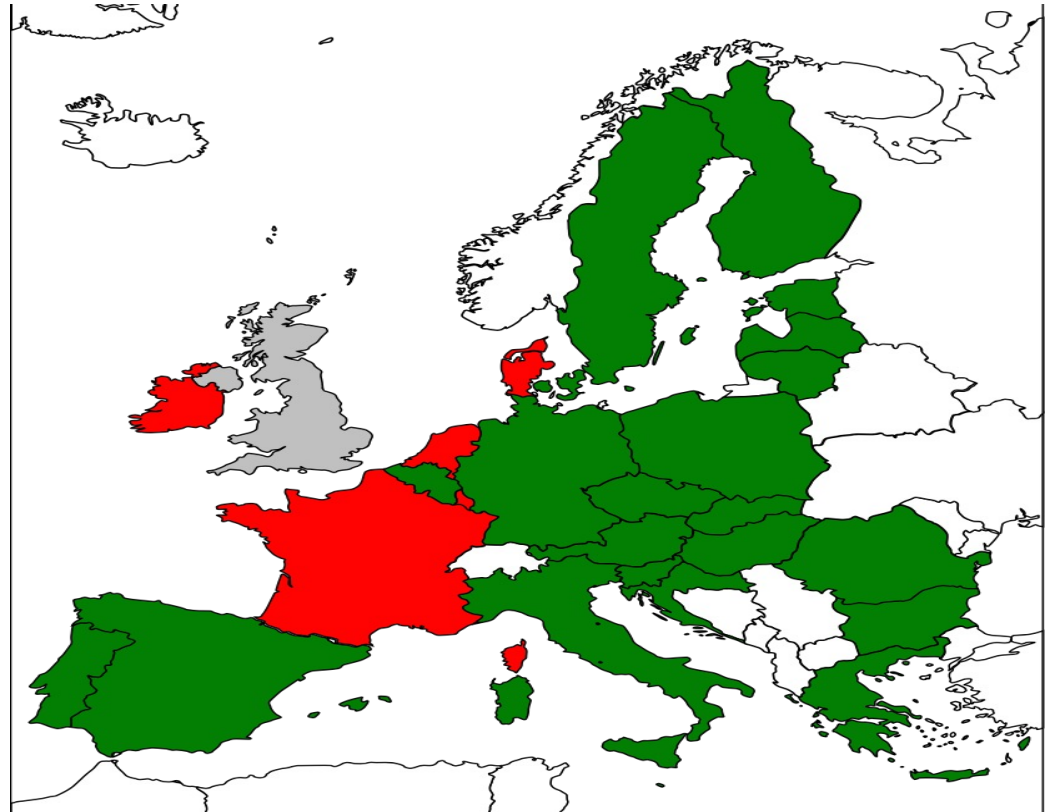
Persecution based on Membership of a particular social group

(Constitutional approach)

No written constitution

Absence of the persecution based on Membership of a particular social group

Prohibition of persecution based on Membership of a particular social group

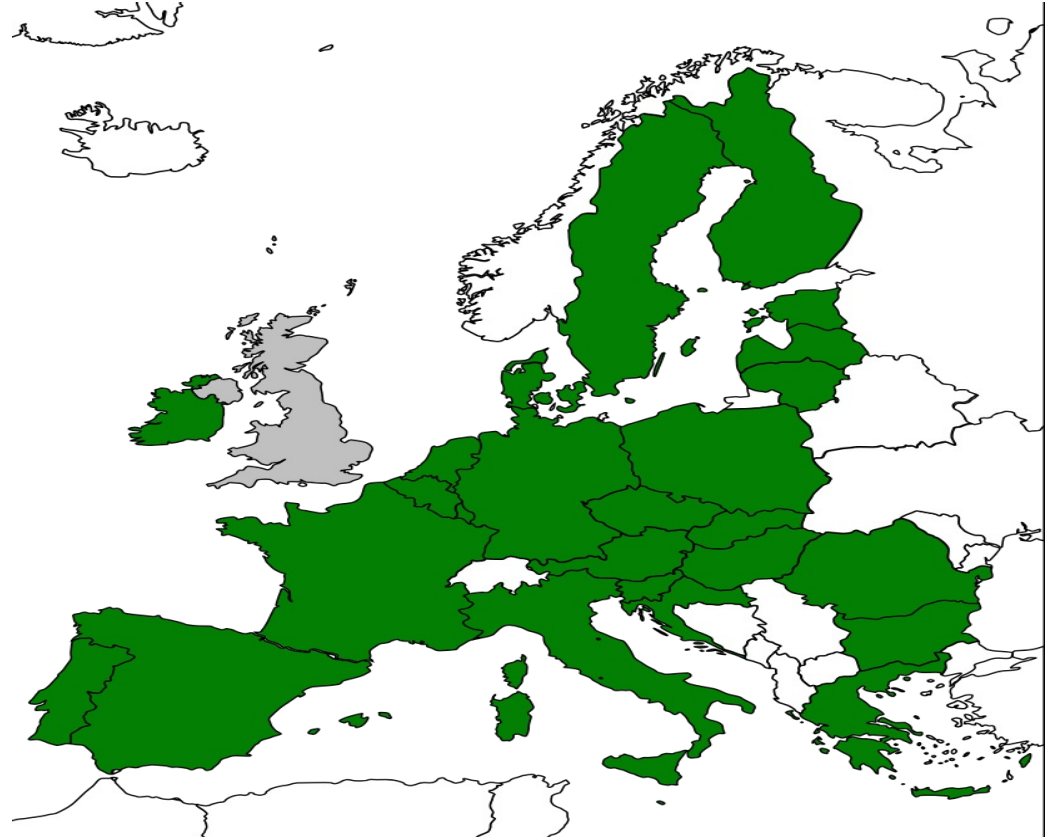


Persecution based on political opinion in EU 28

(Constitutional approach)

No written constitution

Prohibition of persecution
based on political
opinion



Chap. 3

Ratification of the 1951 Convention

- ❖ Previous research
- ❖ Ratification of the 1951 Convention
 - ❑ Historical context
 - ❑ Geographic position
 - ❑ Democratic institutions
 - ❑ Ideology
 - ❑ New States
 - ❑ Flexible clauses
- ❖ Compliance with the 1951 Convention
 - ❑ Reciprocity
 - ❑ Retaliation
 - ❑ Reputation
- ❖ Conclusions

Ratification of the 1951 Convention

❖ The 1951 Convention as Human Right Treaty

□ Refugees as negative externalities

➤ Immigration policy impacts on the political costs of other States

○ States modifying their self-interested behaviours

Ratification of the 1951 Convention

❖ Historical context

□ Future uncertainty

- The case of Serbia (ex-Yugoslavia)
- Ratification of the 1951 within the Region
 - Counterargument: non-signatory countries as free-riders

Ratification of the 1951 Convention

❖ Geographic position

- ❑ The case of Denmark (1952)
- ❑ The case of Baltic countries (1997)

❖ Democratic Institutions

- ❑ Western countries (1952-1978)
- ❑ Ex-Communist countries (1991-2001)
 - Modification of State behaviour through international law

Ratification of the 1951 Convention

❖ Ideology

- ❑ article 1 of the 1951 Convention
- ❑ Protection by NATO

❖ Nonconsequential Treaty

- ❑ ECtHR: fifteen times (retaliation costs)
 - 2005: the first violation

Ratification of the 1951 Convention

❖ Reputation of New Created States

- ❑ Law and Economics finding: ratifying countries have a better record than non-ratifying countries
- ❑ Possibility to ratify other future important agreements (i.e. EU or NATO memberships)

❖ Flexible clauses

- ❑ reservation, denunciation, escape clauses (~~and duration~~)

Compliance with the 1951 Convention

- ❖ Two models of international treaties
 - the ‘enforcement model’
 - the ‘managerial model’
 - Coase reasoning

Compliance with the 1951 Convention

❖ Reciprocity

- ❑ Suspension of the operation of the treaty in whole or in part in the relations to the defaulting State
 - article 60 (5) of the Vienna Convention

Compliance with the 1951 Convention

❖ Retaliation costs

- ❑ economic punishments for the violating States

- Problems: not a regional agreement & a multilateral agreement & public good

- ❑ ECtHR

- Access to the ECtHR

- against Greece (three times) (max. EUR 5,000 per applicant).

- against Italy (four times) (max. EUR 17,000 per applicant)

- ‘efficient breach’ theory

Compliance with the 1951 Convention

❖ Reputational costs

- ❑ easily observed

 - State discretion on ascertainment proceeding

- ❑ sum of different reputational costs

- ❑ weak correlation of compliance rates (i.e. NATO in Former Yugoslav Republic of Macedonia in 2001)

- ❑ timing

 - Extreme conditions (i.e. *originalistic* interpretation)

- ❑ elections

- ❑ collective action

Conclusions

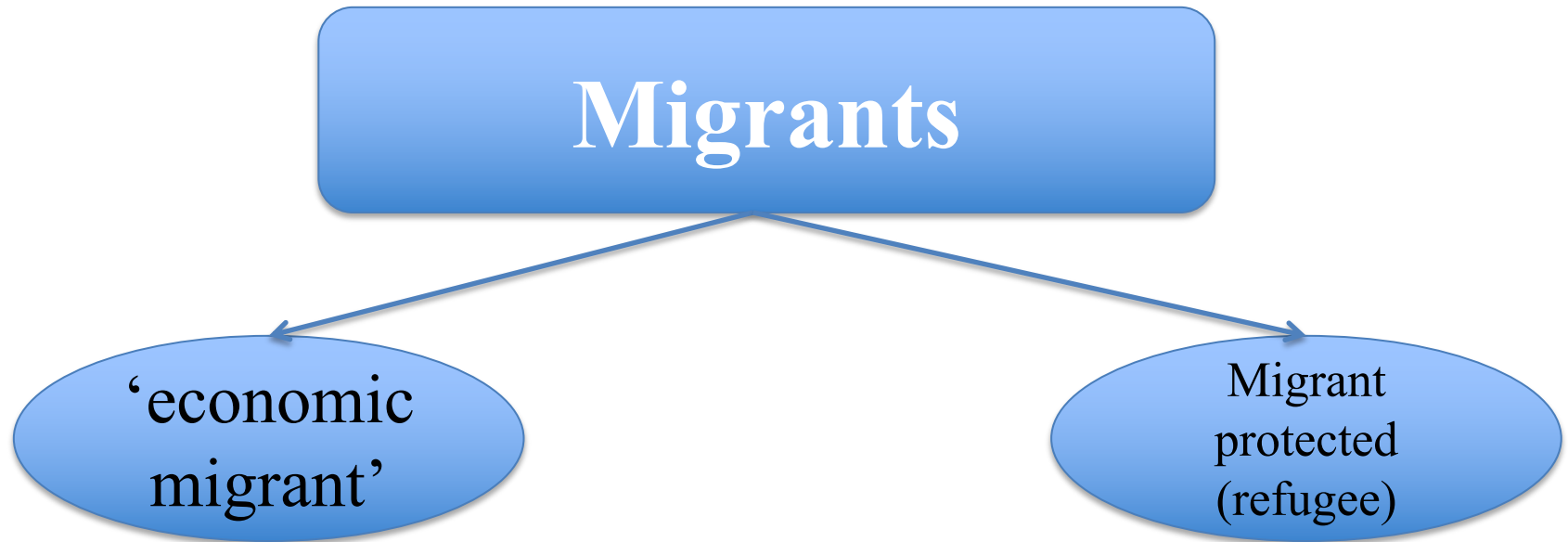
- ❖ Ratification of the 1951 Convention
 - ❑ International cooperation against future uncertainty
- ❖ Deviation from the 1951 Convention
 - ❑ Non-compliance costs (reputational costs and eventual retaliation costs) are lower than performance costs
- ❖ Refugees as negative externalities
 - ❑ Modification of self-interested State behaviour

Chap. 4

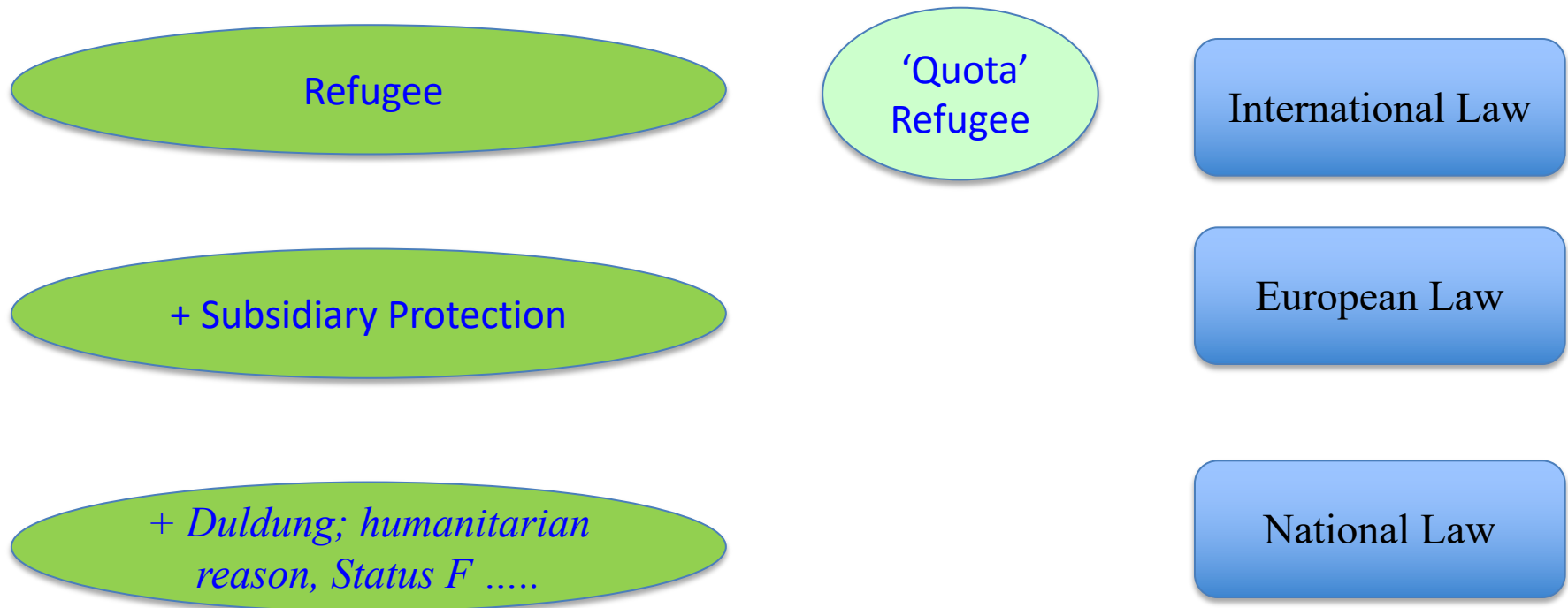
Overview

- ❖ Illegal migrant
- ❖ Opportunity costs
- ❖ Psycho-social costs
- ❖ Migration costs
- ❖ Adaptation costs
- ❖ Conclusions

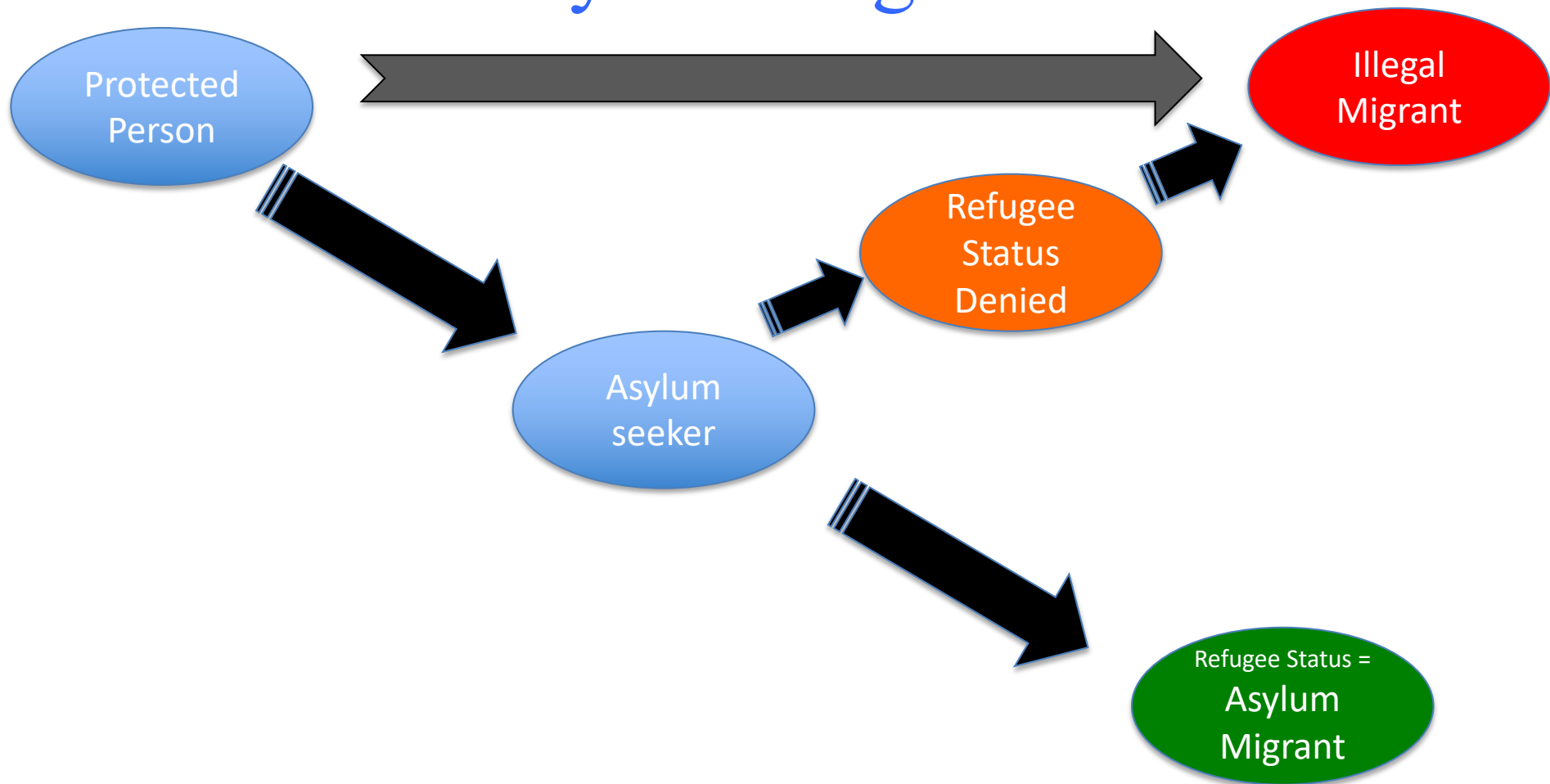
Different categories between migrants



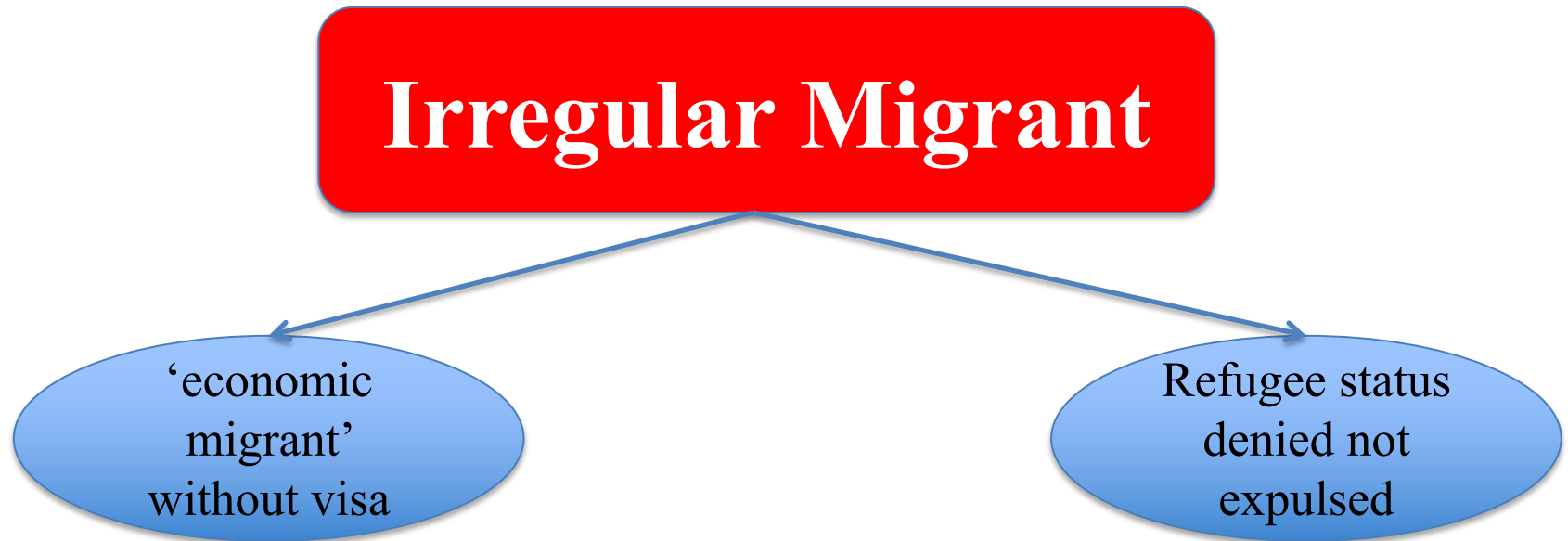
Migrants Protected



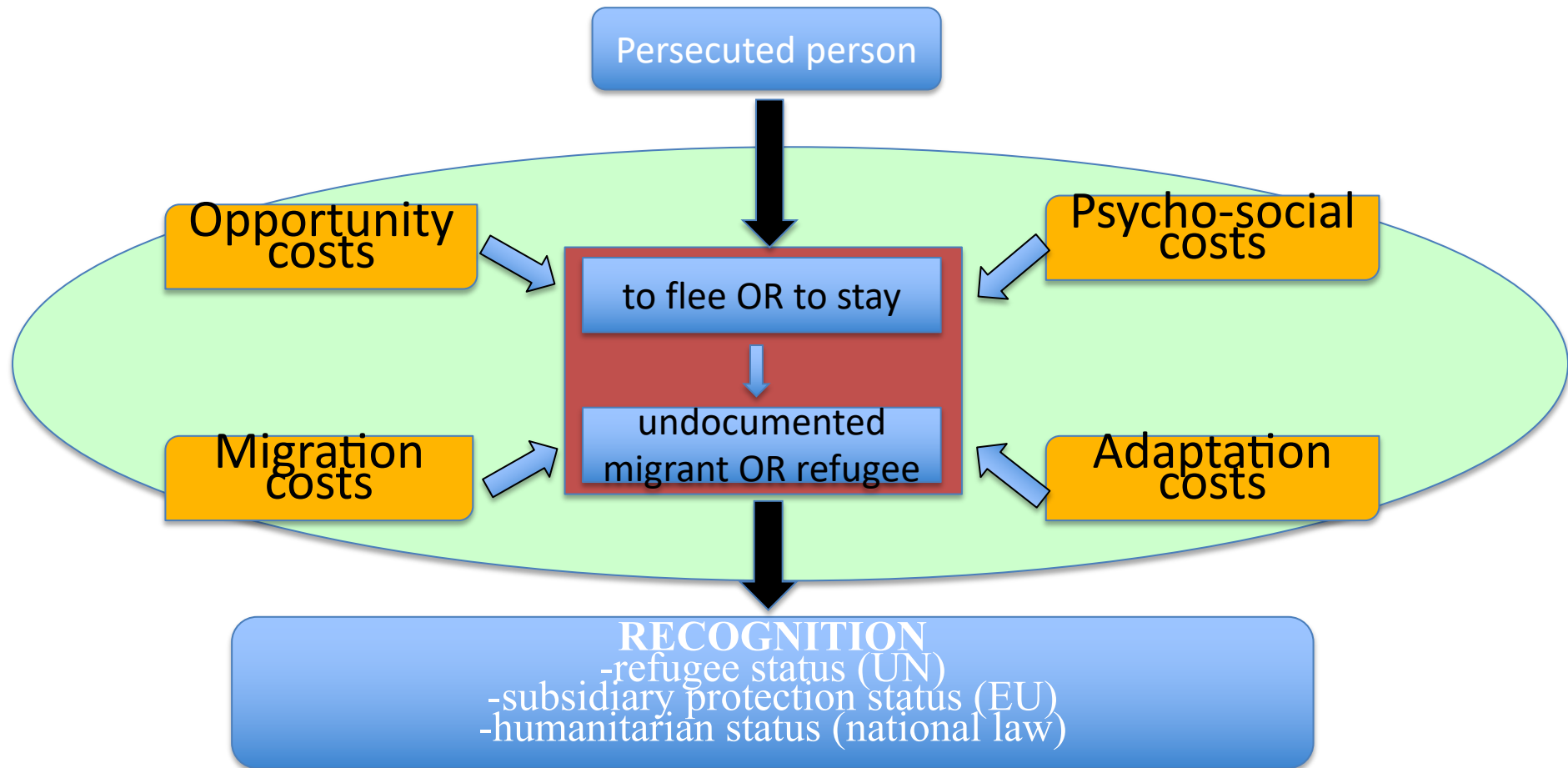
Protected person – Illegal Migrant or Asylum Migrant



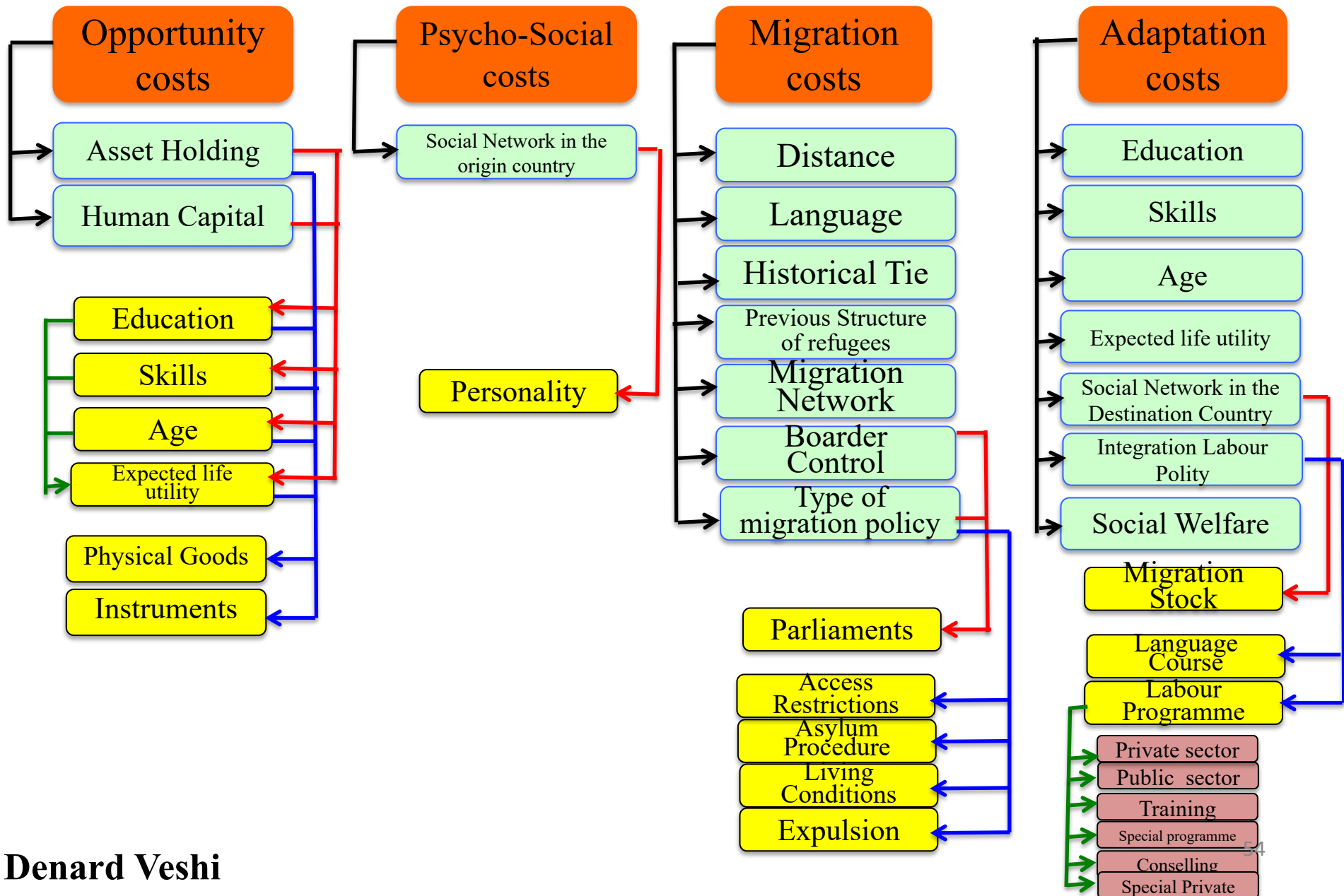
Irregular Migrant



Costs that impact on the choice to flee or to stay and in the choice to become undocumented migrant or refugee



Main variables that influence the costs of migration



Opportunity Costs

❖ Opportunity costs:

❑ Human capital & Initial asset holding (influenced by)

- Level of education
- Skills
- Age
- Expected lifetime utility

❑ Initial asset holding (different types)

- Physical goods
- Investments

Psycho-Social Costs

❖ Psycho-social costs:

□ to social network relationship in the origin country
(influenced by)

➤ individual personality

○ self-centred individuals

○ not self-centred individuals

Migration Costs

❖ Migration costs:

- ☐ Distance
- ☐ Language
- ☐ Historical tie
- ☐ Previous refugee camps
- ☐ Migration network
- ☐ Border control
- ☐ Type of asylum policy

Adaptation Costs

❖ Adaptation costs:

- ❑ Level of education & Skills & Age & Expected lifetime utility
- ❑ Individual network relationship in the destination country
- ❑ Social welfare
- ❑ Adaptation policies in the labour market
 - Language training => always positive significant effect
 - Several elements of active labour-market programmes => depends from the type of program

Chap. 5

Refugee flows – Labour Market

❖ Refugees and Labour Market:

□ type of market

- the type of economy of the destination country;
- the substitutability of natives/locals and refugees;
- the elasticities associated with the labor market.

□ refugees

- the repatriation of French citizens into France after the Algerian War of Independence in 1962;
- the Cuban refugees in the Mariel boatlift in 1980;
- the flow of Jewish émigrés to Israel in the early 1990s;
- the refugee flow in the EUMS during the Balkan wars.

Refugee flows – Labour Market

❖ Refugees and Labour Market:

□ refugee impact on the national labor market is extremely insignificant

- internal migration
- unskilled jobs

□ Covid19

- two-thirds are young low-skilled men
 - BRICS countries
 - technology

Conclusion

Anticipatory refugees will not impact the labor market because they behave as legal economic migrants and can be absorbed by the national market since they are a small group of highly-qualified members. Resettled refugees should not have an impact on host countries as they arrive through programs where the State has the control to affect their behavior. In contrast, bogus refugees or asylum seekers who are not accepted as refugees or residents in host countries will “harm” host countries because they act as illegal migrants. However, their impact is limited to informal (unskilled) jobs.

Refugees and Crimes

❖ Refugees and Crimes:

$$U_{Tot;Net;IL} = (1-p) U_{IL} - p U_{Sanc}$$
$$U_{Tot;Net;IL} > U(L)$$

□ studies in crimes

- share of asylum seekers/recognized refugees and crime rates between 2010-2015 in Germany
- criminal activity between 2014 and 2015 in Germany
- xenophobic hate between 2014 and 2015 in Germany
- impact of refugees toward crimes against citizens in Germany in the latter half of 2015
- refugee impact on crime rates in Sweden between 2002-2017

Conclusion

Persecuted individuals negatively affect crime rates of host countries, independently if they are asylum seekers or refugees, in either violent or non-violent crimes, by increasing victimization of local citizens or hate crimes toward refugees.

Chap. 6

Tiebout theory

- ❖ ‘Allocative efficiency’
 - ❑ Heterogeneous voters’ preferences
 - ❑ Evolutionary efficiency
 - Darwinian evolution
 - Comparative law and economics scholars
 - ❑ Generation of a learning process
 - Disciplinary effect of agents
 - Asymmetric information (the ‘knowledge problem’)
 - ❑ Speed of modifying rules that are considered inefficient
 - Negotiation costs

EU Asylum Law

- ❖ Package of EU asylum law
- ❖ Coasian bargaining
 - Three options
 - Two main transfer systems
 - EU relocation system of 2015

Race to the top

- ❖ Magnitude of cross-border effects
- ❖ Restrictive asylum policies
 - (Eventual) Prisoner dilemma situation
- ❖ Federalism
- ❖ Increase of populism

Reduction of transaction costs

- ❖ Diversity of laws
 - ❑ Different languages
 - ❑ Absence of empirical evidence
- ❖ The case of ‘negative harmonisation’

Protection of Human Rights

- ❖ ‘Europe with a Human Face’

- ❖ Amsterdam Treaty of 1999

 - Article 73k

- ❖ Lisbon Treaty of 2009

 - Article 78

 - The case of Hungary, Poland and the Czech Republic

Cooperation in Asylum Law

- ❖ Fixed-standard regime & Minimum standard regime
 - ❑ State choice
- ❖ Minimum standards (State Discretion)
 - ❑ Flexibility
 - ❑ Increasing total welfare
 - ❑ Maximise the sum of their national net benefits

Conclusion

- ❖ Tiebout argument (total decentralization)
 - ❑ Large number of suppliers of legal rules
 - ❑ No information deficiencies
 - ❑ No externalities
- ❖ EU's competence in refugee law (total centralization)
 - ❑ Reduction of transaction costs
 - ❑ Equalisation of protection of refugee rights
- ❖ EU minimum standard harmonisation
 - ❑ Principle of subsidiarity

Conclusion

Persecuted people are victims. However, that doesn't mean they don't make a choice, even if it is (very) limited. The impact of refugees on the labor market or national security is low. However, in the case of illegal immigrants, the impact on the unskilled labor market or property crime is high.



THE ITALY – LBANY AGREEMENT ON THE MANAGEMENT OF IRREGULAR MIGRATION

(Italian-Albanian Protocol)

- ❖ The outsourcing of the pre -screening process
 - ❑ EU-Türkiye agreement
 - ❑ New pact on migration and asylum of September 2020
- ❖ Protocol analysis
 - ❑ Systematic interpretation
 - ❑ Problems
- ❖ Similarities between this protocol and
 - ❑ Pacific Solution
 - ❑ UK - Rwanda agreement
- ❖ Reaction to the Italian-Albanian Protocol
 - ❑ International reaction
 - ❑ EU reaction
 - ❑ National reaction in Albania

(Italian-Albanian Protocol)

- ❖ Similarities between this protocol and
 - ❑ Pacific Solution
 - ❑ United Kingdom - Rwanda

EU-Türkiye statement



repatriation to Turkey of all people, including asylum seekers, who arrive irregularly on the Aegean islands

❑ Dublin Transfer System

- Case *KRS v. United Kingdom* (application no. 32733/08)
The Dublin transfer system does not involve any violation of human rights
- Case *MSS v. Belgium and Greece* (application no. 30696/09)
The Dublin transfer system must also consider the Geneva Convention.

New Pact on Migration and Asylum

September 2020

EU member states can choose to relocate asylum seekers through the Dublin transfer or cooperation with safe third countries or they can also externally promote voluntary return by helping immigrants with their reintegration.

❑ Problems

➤ approach to human rights

In order to make asylum procedures more efficient, the Pact provides for a rapid repatriation procedure

asylum seekers are presumed not to be refugees

(Italian-Albanian Protocol)



- ❖ Protocol analysis
 - ❑ Systematic interpretation
 - ❑ Problems

Protocol analysis



Premise:

❖ Treaty of Friendship and Collaboration between the Italian Republic and the Republic of Albania (Rome, 13 October 1995)

- ❑ Art. 1: principles of sovereignty, territorial integrity
- ❑ Art. 4, c. 2: The Contracting Parties undertake, at the request of either of them, to immediate consultations in the event of *extraordinary or emergency circumstances arising* which threaten the supreme security interests or stability of the region.
- ❑ Art. 19, c. 1: The contracting parties agree in attributing priority importance to a close and incisive collaboration between the two countries to regulate, in the revised legislation in force, *migratory flows* .
- ❑ Art. 20: The contracting parties will proceed to a joint examination of the problems relating to the methods of *issuing visas* , within the framework of the measures to be adopted in the migration field.
- ❑ Art. 22: The Contracting Parties will cooperate in predicting and combating illicit drug trafficking and organized crime .
- ❑ **Duration** : 20 years + tacitly renewed every 5 years.

Protocol analysis



Premise:

- ❖ Bilateral protocol on combating terrorism and human trafficking (Tirana, 3 November 2017)
 - ❑ Art. 3: various forms of cooperation
- ❖ Aware of the problems that arise from **illicit migration** ;
 - ❑ irregular and not illicit because
 - illicit: presumption of a crime (while irregular is used to indicate someone who has entered in a way that does not comply with the established procedures; i.e. in administrative law)
 - irregular because the immigrant may be a person prosecuted in his country of origin

Protocol analysis



Art. 1

❖ definitions

- ☐ Albanian part

- ☐ Italian part

- ☐ areas

- ☐ *"migrants" are citizens of third countries and stateless persons for whom the existence or non-existence of the requirements for entry, stay or residence in the territory of the Italian Republic must be ascertained;*

 - Introduction: illicit (irregular) migration vs. general definition

- ☐ Italian staff

Protocol analysis



Art. 2

❖ purpose

□ strengthening **bilateral cooperation** between the Parties regarding the management of migratory flows from third countries, in compliance with **international and European law** .

Protocol analysis



Art. 2

❖ The types of transfer

- ❑ transfers from north to south

- rich-poor transfer

- creation of self-selection among refugees

- ❑ transfers from south to south.

- Reduction of social costs

Protocol analysis



Art. 2

❖ Bilateral

☐ Italy

➤ every month there are 3,000 fewer migrants

○ Istat: 2022 – 449,118 new residence permits (where 45% of them, i.e. approximately 202,000, are permits for protection and asylum)

▪ A large number are citizens of Ukraine (148,000 out of 202,000) (temporary protection; (Decision 2022/382 of 4 March 2022) and extended in 2023 (Decision 2023/2409 of October 2023))

• About 54,000 are not citizens of Ukraine

○ Sure that the proceedings end within 1 month taking into account the right of defense and the NSK v. decision. United Kingdom (n. 28774/22) dated 13.06.2022?

➤ creation of self-selection among refugees

Protocol analysis



Art. 2

❖ Bilateral

❑ Albania?

- Art. 3: free concession
- Art. 4, c. 8: collaboration of the Albanian authorities for medical care for (irregular) migrants, with expenses advanced by the Albanian authority (Art. 4, c. 9 because Art. 10 provides for reimbursement)
- Art. 5, c. 1: constructions according to Italian legislation without paying the Albanian administrative procedure for granting the building permit
- Art. 5, c. 4: exemption from indirect taxes and customs duties
- Art. 5, c. 6: The Albanian side facilitates the prompt processing of customs operations

Protocol analysis



Art. 2

❖ Bilateral

☐ Albania

- Art. 6: collaboration in the security of the areas with expenses advanced by the Albanian authority (Art. 6, c. 6 because Art. 10 provides for reimbursement)
 - Art. 297 Albanian Penal Code: Illegal crossing of the state border
 - Art. 6, c. 6: In case of unauthorized exit of migrants from the Areas, the Albanian authorities will bring them back to the same, with costs borne by the Italian Party.
 - Art. 298 Albanian Penal Code: Provide assistance for illegal border crossing
 - further cost for Albania because the protocol does not provide for it

Protocol analysis



Art. 2

❖ Bilateral

☐ Albania

- Art. 7, c. 2: exemption from payment of the Albanian visa/residence permit for Italian staff
- Art. 7, c. 3: Italian staff pay taxes in Italy, except for Albanian citizens resident in Albania
 - Albanian citizen resident in Italy, pays taxes in Italy
- Art. 7, c. 4: Albanian jurisdiction: crimes
 - 1) out of service
 - 2) against an Albanian citizen or Albanian State

Protocol analysis



Art. 2

❖ Bilateral

☐ Albania

- Art. 8: transfer of migrants with expenses advanced by the Albanian authority (Art. 8, c. 2 because Art. 10 provides for reimbursement)
- Art. 9, c. 3: the Albanian side makes the morgue facility available for dead migrants (NO reimbursement provided for in Article 10)

Protocol analysis



Art. 2

❖ Bilateral

☐ Albania

- Art. 11: at the end (5 + 5 years), the improvements are given to Albania without compensation for the improvements carried over
- growth in the sale of agricultural products in the vicinity of the construction sites of these fields
- growth in employment of the local population for auxiliary work for Italian personnel

Problems

Systematic Interpretation



❖ Visa/Residence permit

❑ Are lawyers considered Italian personnel?

- Do the lawyers of the parties, their assistants, international or international organizations have to pay for the visa/residence permit?
 - Art. 9, c. 1: To ensure the **right of defence** , the Parties allow access to the facilities to lawyers, their assistants, as well as international organizations and European Union agencies that provide advice and assistance to applicants for international protection, within the limits established by the applicable Italian, European and Albanian legislation.
 - Art. 7.c. 2: The entry and stay in Albania **of Italian personnel** for the purposes set out in this Protocol **is exempt from visa** , residence permit and other formalities required by Albanian legislation on immigration. Italian personnel who remain in Albanian territory for more than 90 days are issued, free of charge and upon simple request, an identification document (called "single permit").

Problems

Systematic Interpretation



- ❖ Costs for organized crime to provide assistance for illegal passage of the protocol areas (Art. 298 Albanian Criminal Code)
 - ❑ Art. 6, c. 6 provides for the costs Art. 297 Albanian Penal Code (Illegal crossing of the state border), but not for Art. 298 Albanian Penal Code (Providing assistance for illegal border crossing)

Problems

Systematic Interpretation



❖ Identification of criminal jurisdiction

- ❑ Do Italian personnel carry the weapon off duty in Albanian territory without committing a crime? What is the jurisdiction?

Art. 7, c. 10: The Italian Party adopts the necessary measures to guarantee the safety of the armaments and resources used pursuant to this Protocol.

Art. 7, c. 4: Italian personnel are not subject to Albanian jurisdiction for words spoken or written and for actions performed in the exercise of their functions, even after the end of the exercise of the aforementioned functions in Albanian territory. The communications of said personnel with the competent Italian authorities are not subject to restrictions or limitations by the Albanian authorities. Italian personnel are instead subject to Albanian jurisdiction in the event that, during their stay pursuant to this Protocol, they commit, outside of the service, crimes provided for by Albanian legislation in violation of the rights of Albanian citizens or of the Albanian State.

Problems



❖ Organized crime

- ❑ Provide assistance for illegal border crossing (Art. 298 Albanian Penal Code)

❖ National Security

- ❑ a 1% increase in asylum seekers increases by 2% the number of suspects for crimes related to their status (i.e. entry or movement without documents outside asylum centers) (Art. 297 Albanian Penal Code) (*Dehos (2017)*) .
- ❑ In nearby localities there is an increase in xenophobic hate crime (*Entorf and Lange (2019)*)

Problems



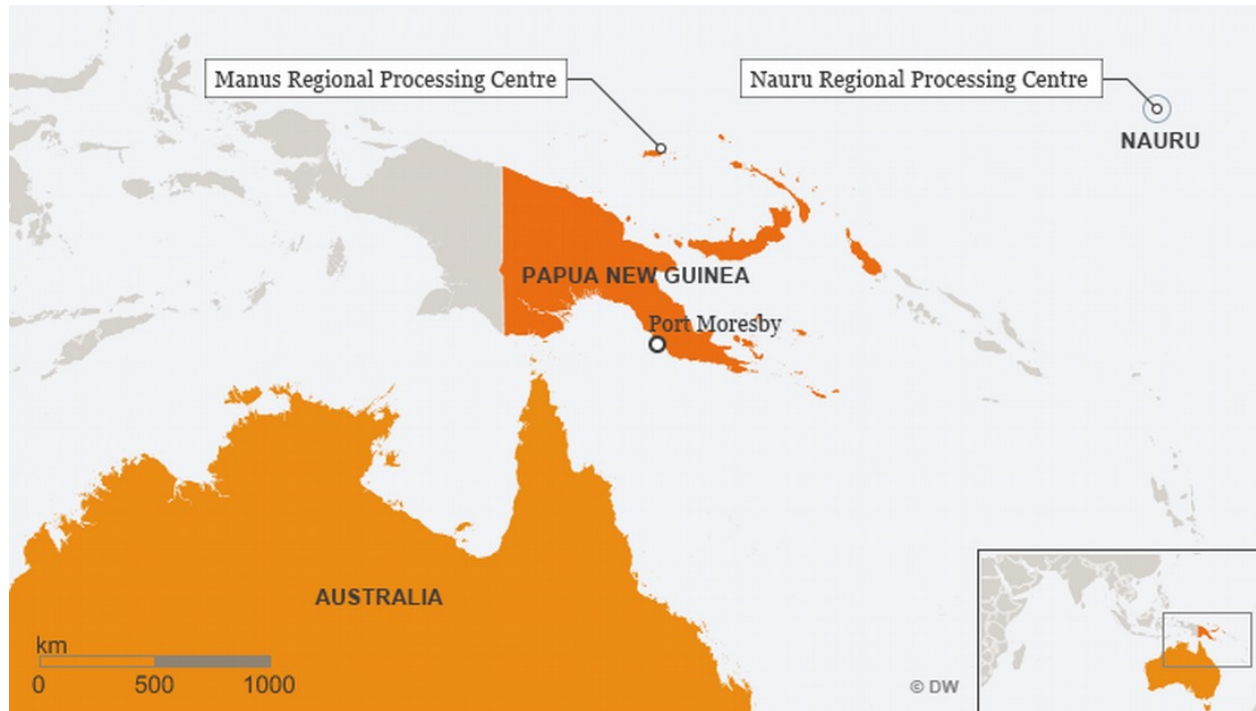
❖ National Security

- ❑ the locations closest to asylum centers experience an increase in crime rates, in particular: violent crime, street crime and drug crimes. (*Gehrsitz and Ungerer (2017)*)
 - ❑ 95 additional crimes per 100,000 inhabitants.
 - ❑ 200 more beds
 - one more non-native suspect
 - 2-2.5% increase in drug crimes
- ❑ In nearby localities there is an increase in suspects, asylum seekers, against the local population (*Huang and Kvasnicka (2019)*)
- ❑ Increase in crime (*Kaddoura (2019)*)
 - a 1% increase in immigration caused a 0.035 increase in the ratio of aggregate crime to population

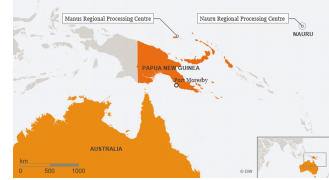
(Italian-Albanian Protocol)

- ❖ Similarities between this protocol and
 - ❑ Pacific Solution
 - ❑ United Kingdom - Rwanda

Pacific Solution



Similarities



❖ Pacific Solution

boats with passengers bound for Australia are transferred to Papua New Guinea (Manus) and Nauru (or other States)

2008-2012: suspended ⇒ increase in asylum seekers in Australia

□ Jurisprudential Decisions

- High Court of Australia (Appellant M70/2011 and Appellant M106/2011 v Minister for Immigration and Citizenship on 31 August 2011) (Australia-Malaysia)

Malaysia's national legislation does not contain provisions that recognize or guarantee rights to asylum seekers

- Supreme Court of Papua New Guinea (Namah v Pato [2016] PJSC 13 (26 April 2016)

the protection of refugees and applicants asylum In the center of Manuse unconstitutional

United Kingdom – Rwanda



Similarities

❖ United Kingdom – Rwanda

create a mechanism for the relocation to Rwanda of people who arrive in the UK illegally and who do not claim asylum or make a formal application for protection in the UK (Art. 2.1.)... but also persecuted people who can apply of asylum in Rwanda according to international law and domestic law (Art. 2.1.3.)

Similarities

❖ United Kingdom – Rwanda

❑ Jurisprudential Decisions

❑ NSK v. United Kingdom (No. 28774/22)

13.06.2022: The ECHR has indicated to the UK Government that the applicant should not be transferred to Rwanda until *three weeks* after the final domestic decision has been delivered in the course of the judicial proceedings (Art. 39 Rules of Court: Interim Measures)

15.03.2023: The High Court of the United Kingdom ruled on 19 December 2022, and the provisional measures ended on 6 February 2023. In the specific case, the dangerousness of the transfer to Rwanda was not proven.

❑ Supreme Court of the United Kingdom 5 November 2023 [2023] UKSC 42

Yes can to conclude that there are founded reasons to keep That the distancing of the applicants in Rwanda would expose them to risk concrete case of mistreatment due to rejection . Therefore it was correct hold the Secretary of State

Overview 2

(Italian-Albanian Protocol)

- ❖ Reaction to the Italian-Albanian Protocol
 - ❑ Amnesty International
 - ❑ EU reaction
 - ❑ National reaction in Albania

Reaction to the Italian-Albanian Protocol

Art. 2

❖ purpose

□ strengthening **bilateral cooperation** between the Parties regarding the management of migratory flows from third countries, in compliance with **international** and **European law** .

and the Albanian constitutional one?

Amnesty International

❖ Amnesty International:

- ☐ it is highly unlikely that the agreement will achieve its stated objective in terms of migration management,
- ☐ its implementation has had a negative impact on a number of human rights, including the rights to life and physical integrity of people rescued at sea, and the rights to personal liberty, asylum and effective remedy of people transferred to Albania

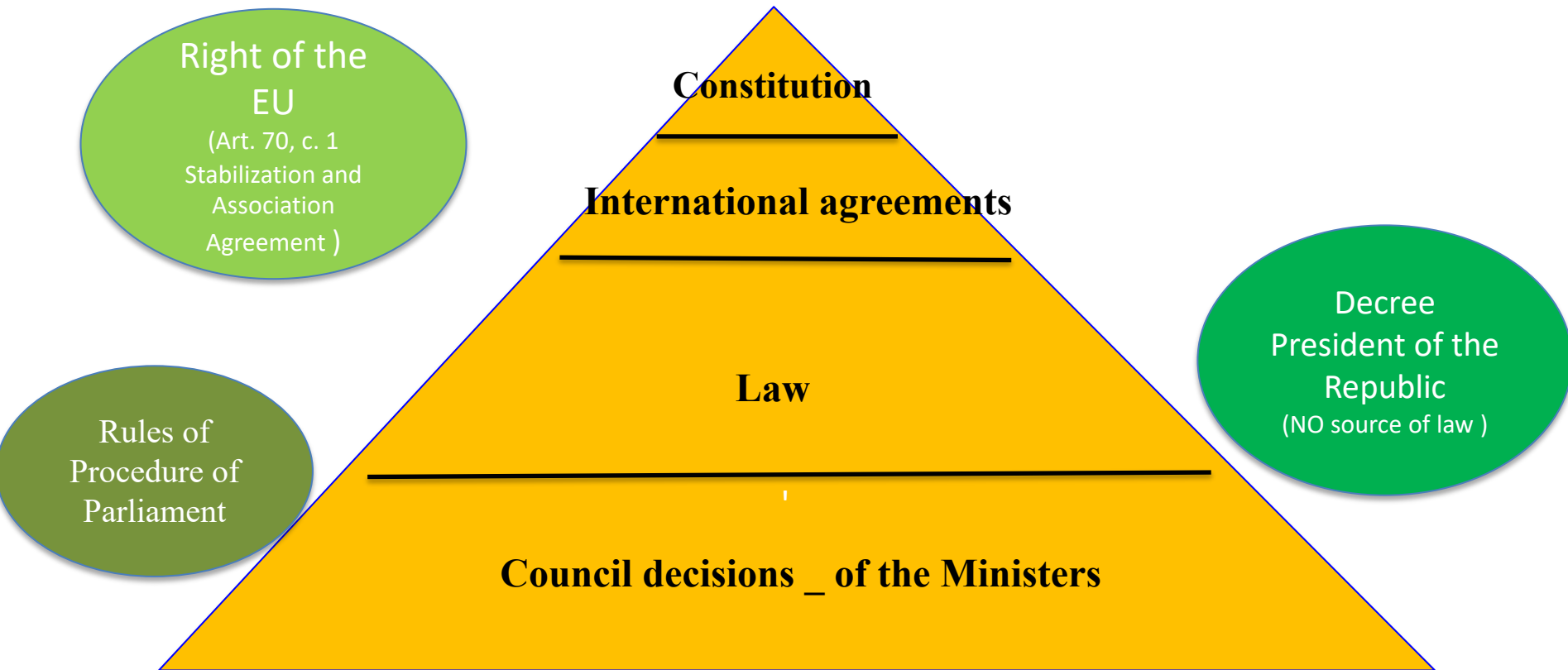


EU reaction

❖ EU

- ❑ The European Commissioner for Human Rights, Dunja Mijatović :
 - raises several human rights concerns and adds
 - worrying European trend towards the externalization of asylum responsibilities
- ❑ European Commissioner for Home Affairs, Ylva Johansson: The agreement does not violate EU law because it falls "outside" EU law

National reaction in Albania



National reaction in Albania



❖ International Agreements

☐ approval

- with referendum (art. 123, c. 3)
 - IF Parliament decides so
- with law approved by the majority of members of parliament (140 members in total)
 - IF it falls within the cases of the art. 121, c. 1
- Approval by the Council of Ministers, in other cases
 - Obligation to notify Parliament for the ratification of international agreements that are not ratified by law (Art. 121, c. 3)

☐ hierarchy

- International agreements and the acts of international organizations to which Albania has joined have greater force than internal legislation (Art. 122)

National reaction in Albania



- ❖ More than 1/5 of the deputies of Parliament (Art. 134, c. 1, letter c) have asked the Constitutional Court
 - ❑ decide on the compatibility of international agreements with the Constitution before their ratification (Art. 131, c. 1, letter b)
 - ❑ request an advisory opinion from the ECtHR

National reaction in Albania



❖ 29.01.2024, Albanian Constitutional Court

- ❑ The protocol is compatible with the Albanian Constitution (Art. 121, c. 1. letter a) international agreements that have to do with the territory)
 - the Treaty of Friendship and Collaboration between the Italian Republic and the Republic of Albania (Rome, 13 October 1995) forms the framework for this protocol
 - The protocol
 - it does not concern the modification of the physical territory of Albania
 - concerns the jurisdiction of the territory
 - it is a dual Italian-Albanian jurisdiction which neither excludes the other
 - does not concern human rights and freedoms (Art. 121, c. 1. letter b)) because it does not create new constitutional rights and freedoms, nor introduce further restrictions on existing human rights and freedoms, in addition to those provided for by Albanian legal system.
- ❑ It is NOT necessary to request an advisory opinion from the ECtHR

Conclusion

The Italian-Albanian protocol is part of the trend to outsource the screening process of asylum seekers to third states that are not members of the EU. This protocol represents more advantages in terms of impact on the psychology of fake asylum seekers, who will decide not to apply for international protection in Italy, than on the economic advantages of Italy, which has a high number of asylum seekers, or of Albania, which will benefit from the investments made by the Italian side after the expiry of the protocol.

Contact

Associate Professor

Denard Veshi

dveshi@beder.edu.al

+355 67-5544335

Rruga Jordan Misja

Tirana, Albania