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
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)
• 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.
GROUNDs 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 persecution** (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