



Safe Third Country Concept

UNHCR Training – Belarus

1 November 2013

# LEARNING POINTS

1. Definition and rationale behind the concept of “safe third country”
2. Difference between safe third country and other concepts that restrict access to asylum procedures
3. Safe Third Country Agreements
4. Case Law
5. Factors that must be considered when assessing whether a third country is “safe”

# ACCESS TO PROCEDURES - ISSUES

- First Country of Asylum
- Safe Countries of Origin
- Safe Third Countries

Rationale – To prevent asylum shopping and secondary movement

# VARIOUS CONCEPTS AND UNHCR'S POSITION

First Country of Asylum – A country where the applicant has been recognized as a refugee. A host country may return an applicant to a country where he has already found safety.

- Applicant should have the opportunity to explain why the country where he was recognized as a refugee is not safe

# VARIOUS CONCEPTS AND UNHCR'S POSITION

Safe Countries of Origin – Countries that are designated “safe” and non-refugee producing. Applicants from these countries can be precluded from making an asylum application or are fast tracked or have to rebut the presumption that the country is safe for them.

- When used to deny access to asylum procedures, it precludes a whole group of asylum seekers from refugee status
- Is inconsistent with the spirit of the *1951 Convention*

# SAFE THIRD COUNTRY

Country of origin – The country from where the asylum applicant came. It is either his country of citizenship or country of former habitual residence. He claims he will face persecution if returned there.

Host Country – The country where the applicant wants to make an application for protection.

Safe Third Country – The applicant has come to the host country through another country that has been designated “safe” by the host country and, therefore, the applicant can be removed to that safe third country.

# DO NOT CONFLATE FIRST COUNTRY OF ASYLUM WITH SAFE THIRD COUNTRY

- A first country of asylum is where a person has found safety and is therefore a recognized refugee with refugee status
- A safe third country is where a person may apply for protection but has no status

# WHAT DOES “SAFE” MEAN IN RELATION TO THE SAFE THIRD COUNTRY CONCEPT?

## UNHCR Position

A country should not return an applicant to a third country without sufficient guarantees that the person:

1. Will be re-admitted to the third country
2. Will have effective protection against refoulement
3. Will have the possibility to seek and enjoy asylum, and
4. Will be treated in accordance with accepted international standards



# EXAMPLES OF SAFE THIRD COUNTRY AGREEMENTS

*Dublin II Regulation* – Mechanism for determining the Member State of the EU responsible for examining an asylum application lodged in one of the Members States by a third country national.

*Canada – U.S. Safe Third Country Agreement* – Mechanism by which refugee claimants are required to request refugee protection at the first safe country they arrive in, unless they qualify for an exemption specified under the agreement

# CASE LAW

## European Court of Human Rights

*M.S.S. v. Belgium and Greece, Judgment of 21 January 2011, Appl. 30696/09*

- Applicant returned to Greece from Belgium pursuant to Dublin II
- Alleged Article 3 violation due to deplorable detention and reception conditions and treatment by Greek police
- Court held that one cannot assume that a country is “safe”. There is a positive duty on the country in question to verify safety.
- Court held that poor detention conditions, brutality of Greek police and being forced to live on the street violated Article 3 of the *European Convention of Human Rights* and that EU countries should suspend removals to Greece

# CASE LAW

## **European Court of Justice**

*N.S. (C411/10) v. Secretary of State for the Home Department and M.E. (C493/10) and Others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform, Court of Justice of the European Union, 21 December 2011*

- Concerned nationals of Afghanistan, Iran and Algeria who objected to being transferred to Greece pursuant to Dublin II on the grounds that procedures and conditions for asylum seekers were inadequate.
- Court held that Member States may not make transfers where they cannot be unaware of systematic deficiencies in the reception conditions and asylum procedures of the country responsible for examining the asylum application.

# SAFE THIRD COUNTRY DESIGNATIONS

Whether a country is safe for the purpose of sending an asylum seeker there or using the safe third country concept as a ground to deny refugee status cannot be answered in a generic fashion for all asylum seekers in all circumstances.

There is a duty to determine if the country is safe for that applicant.

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# Questions?

- Thank-you for your attention!