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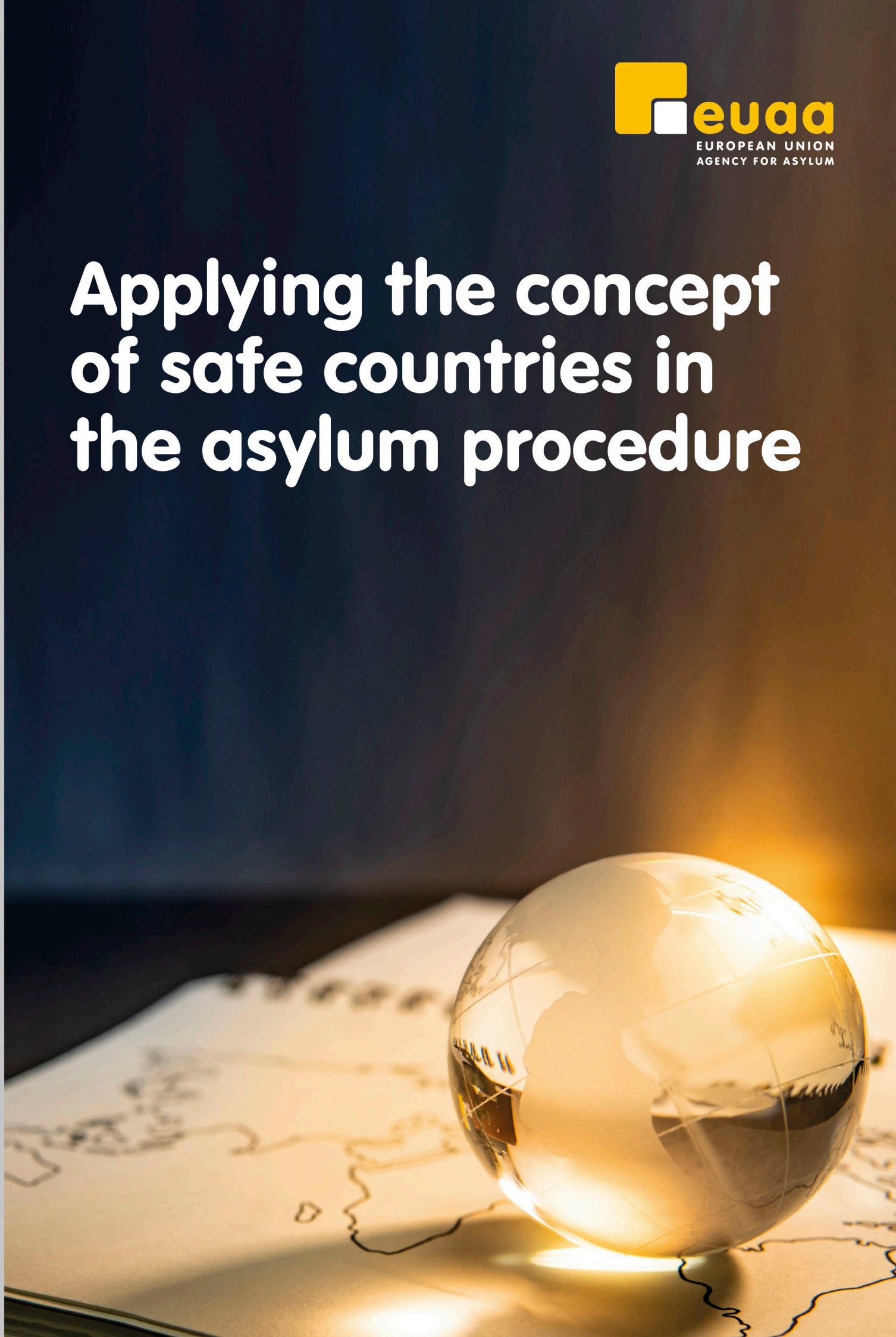
AGENCY FOR ASYLUM

Applying the concept of safe countries in the asylum procedure



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Errata sheet

2 June 2023

A correction was included in Section 6, Conclusions on page 25:

> “However, the practical aspects should not be side-lined. Challenges remain with country assessments, the adoption of lists and application of the concept when special procedures and detention are involved. The EUAA’s Asylum Report highlights related issues which have been reported by civil society organisations and other stakeholders. For example, a significant number of potential beneficiaries of international protection were left in a state of legal insecurity as Türkiye does not accept readmissions from Greece and the EU-Turkey Statement has not been in force since March 2020. This, in turn, has led to prolonged detention in the Aegean islands *(see Asylum Report 4.8.2. Recourse to detention)*. To address these situations, relevant questions have been submitted by the European Parliament to the European Commission *(see for instance P-000604/2021 and answer)*.

Contents

1. Introduction

In the context of asylum, the term 'safe country' refers to countries which generally do not generate protection needs for their people or countries in which asylum seekers are protected and are not in danger. European Union (EU) law provides four safe country concepts which can be applied in the asylum procedure: safe country of origin, safe third country, first country of asylum and European safe third country. These concepts are regulated in the recast Asylum Procedures Directive (APD).

This report summarises the implementation of the concepts of a safe country of origin, a safe third country and a European safe third country by authorities in EU+ countries.[1] For countries not bound by the recast APD – namely Denmark,[2] Iceland, Ireland,[3] Norway and Switzerland[4] – a similar national legal framework applies. References to these countries should be read in relation to the applicable national legal framework.

This report is based on information exchanges with the EUAA IDS Advisory Group and the information has been validated by all EU+ countries. For additional information, the analysis is supplemented by diverse sources, which are duly referenced.[5] The overview of relevant jurisprudence is based on the EUAA Case Law Database.[6]

The Who is Who in International Protection platform supplements this report by presenting in an interactive way all EU+ countries which apply the concept of safe countries in the asylum procedure, including information on competent authorities and national lists of safe countries.

[1] EU+ countries include EU Member States, Iceland, Norway and Switzerland.
[2] Pursuant to Protocol No 22 on the position of Denmark, annexed to the Treaty on the Functioning of the European Union (TFEU), Denmark is not bound by the recast APD nor by the 2005 Directive.
[3] Pursuant to Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union (TEU) and the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of the recast APD and is not bound by it or subject to its application. Ireland had previously transposed Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.
[4] Pursuant to EUAA Regulation 2021/2303, the Agency should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply EU law in the field covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland. Consequently, and having regard to the fact that Liechtenstein, Norway and Switzerland participate in the activities of EASO on the basis of arrangements concluded by those countries with the EU concerning their participation in EASO, Iceland, Liechtenstein, Norway and Switzerland should be able to participate in the activities of the Agency and contribute to the practical cooperation between Member States and the Agency in accordance with the terms and conditions established by existing or new arrangements. In this context, analysis by the EUAA includes Iceland, Norway and Switzerland.
[5] EUAA expresses gratitude to asylum and reception authorities in EU+ countries for the continued cooperation and information exchange. The contributions of national asylum experts are invaluable in supporting EUAA maintain an accurate and up-to-date overview of asylum-related developments. The reporting does not mean an endorsement of practices or opinions on the part of the EUAA.
[6] For any additional clarifications or feedback, contact the Information and Analysis team at: ids@euaa.europa.eu

2. Safe country of origin concept in EU+ countries

2.1. EU legal framework

In the context of the EU asylum *acquis,* the notion of a 'safe country of origin', as described in the recast APD, is based on the presumption that certain countries can be designated under specific circumstances as generally safe for their nationals or stateless persons who were formerly habitual residents in that country.

The safe country of origin concept is analytically defined in Articles 36-37 and Annex I of the recast APD. A country is considered as a safe country of origin when, with regard to a legal basis the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in the Qualification Directive, no torture or inhuman or degrading treatment or punishment, and no threat by reason of indiscriminate violence in situations of international or internal armed conflict. The concept can be used during the accelerated procedure according to Article 31(8) or conducted at the border or in transit zones in accordance with Article 43.

In line with Article 37, the designation of a safe country of origin falls within national competences. The criteria for considering a country as safe are set out in Annex I, and Member States applying the concept must incorporate the criteria in their national legislation, at least by referring to Annex I of the recast APD. EU+ countries lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

2.2. Safe country of origin lists

EU+ countries regulate at the national level the procedure for designating countries of origin as safe for the purpose of examining an application for international protection. To this end, national lists are adopted.

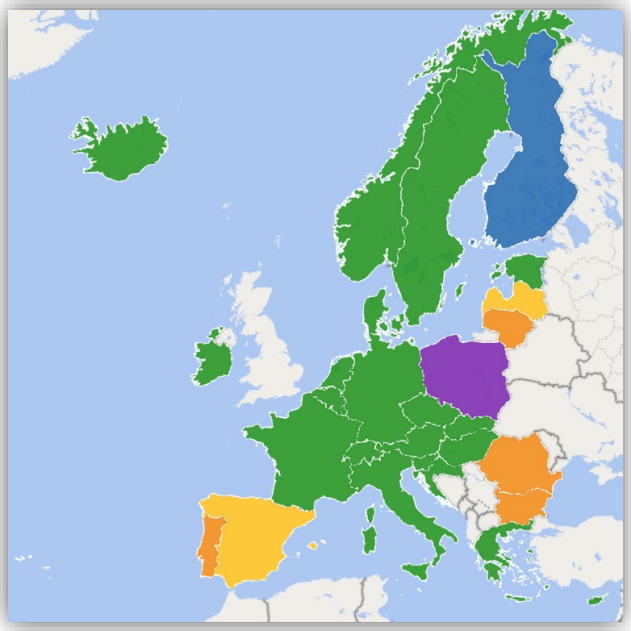
In this regard, countries tend to designate a country of origin as safe when they receive relevant numbers of applicants from that country. Accordingly, the differences in national lists reflect to a certain extend the differences in countries of origin of applicants in EU+ countries.

Currently, safe country of origin lists have been introduced in 22 EU+ countries, namely:

Austria	**Germany**	**Netherlands**
Belgium	**Greece**	**Norway**[7]
Croatia	**Hungary**	**Slovakia**
Cyprus	**Iceland**	**Slovenia**
Czechia	**Ireland**	**Sweden**
Denmark	**Italy**	**Switzerland**
Estonia	**Luxembourg**	
France	**Malta**	

Although the national law includes relevant provisions, the safe countries of origin concept is not applied in the absence of an adopted list in Bulgaria, Lithuania, Portugal, and Romania. In contrast, Finland applies the concept on a case-by-case basis, despite the absence of a list of safe countries of origin.

In Latvia and Spain, there is no legal provision on the designation of a national list of safe countries of origin, and in Poland, the concept of a safe country of origin is not defined in law.



73% (22 out of 30 EU+ countries) implement the safe country of origin concept on the basis of an adopted list

3% (1 EU+ country) implements the safe country of origin concept on a case-by-case basis

14% (4 EU+countries) do not implement the concept in the absence of an adopted list

7% (2 EU+countries) do not implement in the absence of relevant legal provisions on the designation of a list

3% (1 EU+ country) does not define the safe country of origin concept in law.

2.3. Competent authorities

The adoption of a safe country of origin list usually requires extensive consultation and the active engagement of various authorities *(see Who is Who)*. In principle, the list is prepared by the asylum authority or the competent policymaking authority, which is usually the Ministry of

[7] Norway does not have a list of safe countries of origin as such. However, a 48-hour accelerated procedure applies to citizens of certain countries. The UDI issues Guidelines on Countries in the 48-hour procedure. See UDI 2021-009V Land i 48-timersprosedyren as updated on 24 February 2022.

the Interior or the Ministry of Migration, on the basis of COI research and analysis. In some rare occasions, NGOs may submit comments (for example in Austria).

Following the proposal, the list may be adopted by an overseeing (e.g. Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Greece, Iceland, Ireland, Italy, Luxembourg, Romania, Slovenia) or the same authority (e.g. France, Germany, Hungary, Lithuania, Malta, Netherlands, Norway, Sweden, Switzerland). In eight countries, the Ministry of Foreign Affairs is also actively engaged in the preparatory phase or the adoption of the list.

2.4. Exceptions to the rule

The designation of a country of origin as safe is not necessarily all-encompassing, as in many cases EU+ countries define exceptions for specific geographical areas or profiles of asylum seekers within a country of origin.

Exceptions for certain geographical areas are found for:

- Armenia in relation to **Nagorno-Karabakh** (Estonia).
- Bosnia and Herzegovina in relation to **Republika Srpska** (Estonia).
- Georgia in relation to **Abkhazia** and **South Ossetia** (Czechia, Denmark and Estonia). The Netherlands makes reference to applicants from areas that are not under the effective control of the government.[8]
- Moldova in relation to **Transnistria** (Czechia and Switzerland).
- United States of America for states that apply the death penalty (Hungary).
- India in relation to the union territories of **Jammu** and **Kashmir** (Netherlands)[9].

Exceptions for certain profiles of asylum seekers are frequently applied to specific groups and vulnerable people, namely:

- **LGBTQI applicants** from Georgia (Netherlands), Russia (Denmark), Armenia (Netherlands), Brazil (Netherlands), Ghana (Netherlands and Norway), Jamaica (Netherlands), Mongolia (Netherlands), Namibia (Norway), Senegal (Netherlands), Serbia (Netherlands), Tanzania (Norway), Trinidad and Tobago (Netherlands) and Tunisia (Netherlands).
- **Minorities** such as religious minorities, including Christians and Muslims from India (Netherlands); minorities in Kosovo (Norway), ethnic Chechens from Russia (Denmark) and Russian Jews (Denmark).
- **Albino** people from Tanzania (Norway).

[8] https://www.rijksoverheid.nl/documenten/kamerstukken/2021/05/06/tk-herbeoordeling-veilige-landen-van-herkomst-georgie-marokko-en-tunesie

[9] https://www.rijksoverheid.nl/documenten/kamerstukken/2021/12/14/tk-herbeoordeling-veilige-landen-van-herkomst-india

- Persons who have been placed in **criminal detention** in Armenia (Netherlands) or are facing **(criminal) prosecutions** in Mongolia (Netherlands), Senegal (Netherlands), or could be placed in criminal detention in Serbia (Netherlands).
- **Political activists** who have been exposed to authority abuse from Russia (Denmark). People who have been barred from travelling under the S17 border control measure' in Tunisia in Tunisia (Netherlands).
- **Journalists** from Ghana (Netherlands), India (Netherlands), Serbia (Netherlands) and Brazil who report on crime, corruption or criticize of the government (Netherlands). Environmental **activists** who actively oppose (illegal) mining and land mining (Netherlands). Journalists who have reported on the situation in the Rif mountains and the demonstrations in Morocco (Netherlands).
- **Human right defenders**, namely persons who are critical of the government and government policies, such as human rights activists, scholars and protesters in India (Netherlands), human rights defenders who have experienced issues and need to rely on the protection of domestic authorities in Mongolia (Netherlands) and Hirak Rif activists in Morocco (Netherlands)[10].
- People who could be victims of social **discrimination** in Ghana (Netherlands) or discrimination in general in Senegal (Netherlands).
- Dalit **women and girls** from India (Netherlands), girls under the age of 18 from Ghana and Tanzania (Norway) and single women from India (Norway).
- Applicants who faced **forced marriage** in Ghana and Tanzania (Norway).
- Benin, Ghana and Mali are considered **safe only for men** (Luxembourg).

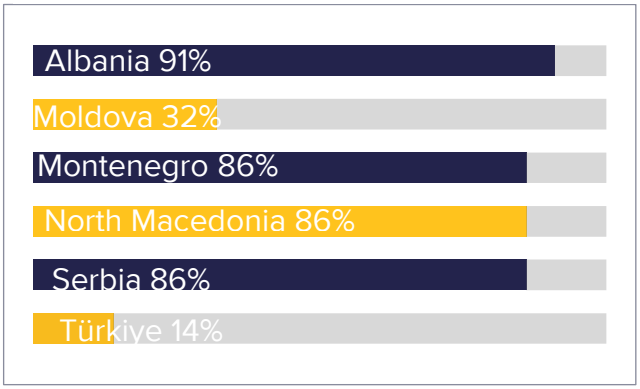
In these cases, the safe country of origin concept is not applicable, and thus, the regular asylum procedure is applied according to the recast APD.

[10] The Netherlands indicate Morocco, with the exception of LGBTQI+ applicants, (online) journalists and (human rights) activists, who criticise Islam, the King and/or the Moroccan government (including for the official government stance regarding the Western Sahara), Hirak Rif activists and journalists who reported on the situation in the Rif mountains and the demonstrations. Read more https://www.rijksoverheid.nl/documenten/kamerstukken/2021/05/06/tk-herbeoordeling-veilige-landen-van-herkomst-georgie-marokko-en-tunesie

2.5. Range of countries considered as safe

EU candidate and potential candidate countries represent the Top 5 safe countries of origin on national lists in EU+ countries. At the top, Albania is designated as safe in 20 out of 22 national lists (with the exceptions being Malta and Slovakia). Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia complement the Top 5.

Figure 1. EU candidate countries listed as safe countries of origin



Kosovo (82%) and Georgia (73%) are also often recognised as safe countries of origin by EU+ countries.

On the lower end of the spectrum, Moldova and Türkiye – which are also EU candidate countries – appear much less on national lists of safe countries of origin. Moldova is designated as safe in 7 EU+ countries *(see Who is Who)*, while Türkiye is listed by only 3 countries, namely Croatia, Hungary and Slovenia.

Ukraine was also designated as a safe country of origin in 9 EU+ countries until the Russian invasion in February 2022. It was subsequently removed from national lists or the implementation of the designation was suspended.

Ghana is currently included in 13 national lists (59%) and Senegal in 11 (50%). Both countries were recently removed from the list of safe countries of origin in France *(see Table 2)*, but they still represent the top countries in Africa which EU+ authorities consider to be safe countries of origin for asylum seekers.

Furthermore, 56 countries of origin reach less than 50% designation rate as a safe country of origin on national lists.

Table 1. Designation rate of countries of origin considered to be safe by EU+ authorities

41%	36%	32%	27%	23%	18%	14%
9 lists	**8 lists**	**7 lists**	**6 lists**	**5 lists**	**4 lists**	**3 lists**
India	Algeria	Armenia	Benin	Japan	Bangladesh	Chile
Liechtenstein	Australia	Moldova	Iceland		Cape Verde	Gambia
Mongolia	Canada	Norway	UK and Northern Ireland		Egypt	Nepal
Morocco	New Zealand	Switzerland				South Africa
Tunisia	USA					Türkiye

Countries which have the lowest designations (i.e. designated only once, representing 5%) in national lists of safe countries of origin are:

Argentina (NO)
Barbados (NO)
Faroe Islands (NO)
Gabon (MT)
Israel (NO)
Mali (LU)
Nigeria (CY)
Philippines (CY)
Russia (DK)
Seychelles (SK)
South Korea (AT)
Sri Lanka (CY)
Tanzania (NO)
Trinidad and Tobago (NL)
Vietnam (CY)
Vatican City (NO)

5%

This group is followed by countries which are considered to be safe countries of origin in two EU+ countries (representing 9%)

9%

Botswana (MT, NO)
Brazil (MT, NL)
Costa Rica (MT, NO)
Jamaica (MT, NL)
Kenya (CY, SK)
Mauritius (FR, SK)
Monaco (IS, NO)
Namibia (AT, NO)
Pakistan (CY, EL)
Togo (CY, EL)
Uruguay (AT, MT)

2.6. Recent developments in 2022

According to the recast APD, Member States should conduct regular reviews of the situation in safe countries based on a range of sources of information. When a significant change related to the human rights situation occurs in a country which has been designated as safe, Member States must evaluate the situation as soon as possible and, where necessary, assess the designation of that country as safe.

During the periodic reviews, new countries may be determined as safe and others may be withdrawn from the national list. On some occasions, the annual review offers an opportunity to 'clear' the national list. For instance, in the Netherlands, the State Secretary announced that 12 countries will be removed because there was no substantial interest or relevance to keep them on the list.[11]

In 2022, some EU+ countries revised their lists. Belgium was the only country where no changes were introduced.[12]

[11] This applied to Andorra, Australia, Canada, Iceland, Japan, Lichtenstein, Monaco, New Zealand, Norway, San Marino, Vatican and Switzerland. Read more in the EUAA Asylum Report 2022, under 4.3.2 Safe country of origin and safe third country concept

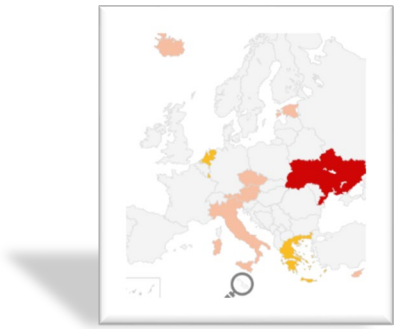
[12] The list was last updated on 15 January 2022 by Royal Decree C – 2022/20096

The main changes in Cyprus,[13] Denmark,[14] Estonia,[15] France,[16] Greece,[17] Iceland,[18] Netherlands, Norway[19] and Slovenia[20] are summarised in Table 2.

Table 2. Changes to national lists of safe countries of origin in 2022

New additions	Removals	
Benin (EL)	Algeria (NL)	Kosovo (CY)
Egypt (EL)	Andorra (NL)*	Liechtenstein (NL)*
Gambia (SI)	Australia (NL)*	Monaco (NL)*
Ghana (SI)	Benin (FR)	New Zealand (NL)*
Great Britain (DK, IS)	Canada (NL)*	Norway (NL)*
India (NL)	Ghana (FR)	San Marino (NL)*
Nepal (EL)	Iceland (NL)*	Senegal (FR)
Türkiye (SI)	Japan (NL)*	Switzerland (NL)*
United Kingdom (NO)		Vatican City (NL)*

*The inclusion in the list was considered redundant (see above).



Ukraine

Following the Russian invasion in February 2022, Ukraine was removed from the list of safe countries of origin in 4 countries (Austria,[21] Cyprus, Estonia, and Iceland). The implementation of the safe country of origin concept for Ukraine was *de facto* suspended in

[13] The list was last updated on 27 May 2022 by Ministerial Decree No 202/2022 on the basis of the Refugee Law, Article 12B3. (Gov. Gaz. 5703/27.05.2022).
[14] The list was last updated 9 August 2022.
[15] The list was last updated on 25 May 2022.
[16] By decision of the Council of State, three countries were removed from the list of safe countries of origin set by the OFPRA Management Board: Benin (which had already been suspended from the list by the board in 2020), Senegal and Ghana.
[17] The list was last updated on 10 February 2022 by Joint Ministerial Decision No 78391 (Gov. Gaz. 667/15.02.2022).
[18] The list was last updated 9 August 2022. https://www.nyidanmark.dk/en-GB/You-are-waiting-for-an-answer/Asylum/Processing-of-an-asylum-case
[19] UDI 2021-009V
[20] The list was last updated on 31 March 2022 by New Ordinance determining the list of safe countries of origin (Official Gazette of the Republic of Slovenia, No 47/22).
[21] List was last updated on 31 March 2022 with amendment to the regulation on countries of origin (Federal Law Gazette II No. 129/2022). https://www.ris.bka.gv.at/eli/bgbl/II/2022/129

all EU+ countries that had previously designated Ukraine as a safe country of origin, namely in Czechia,[22] Greece, Italy,[23] Luxembourg,[24] and the Netherlands.

3. Safe third country concept in EU+ countries

3.1. EU legal framework

In the context of the EU asylum *acquis*, the notion of a safe third country is based on the presumption that certain countries which are not EU Member States can be designated as safe under specific circumstances for applicants for international protection. The concept is defined in the recast APD, Article 38, which stipulates that a Member State may apply the safe third country concept only when the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country:

i) Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

ii) There is no risk of serious harm as defined in QD;

iii) The principle of *non-refoulement* in accordance with the Geneva Convention is respected;

iv) The prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

v) The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

If these conditions are met, a Member State may consider an application for international protection to be inadmissible (recast APD, Article 33(2c)). If the third country does not permit the applicant to re-enter its territory, a Member State must ensure that access to the asylum procedure is given, in accordance with the basic principles and guarantees described in the recast APD.

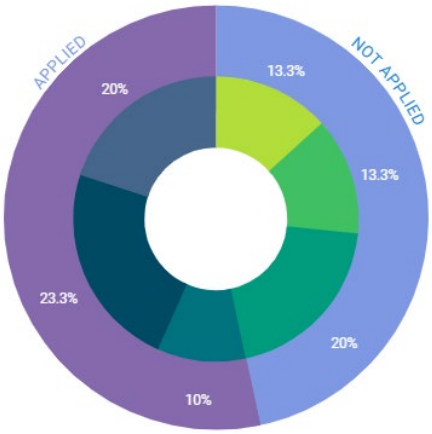
[22] Following a court ruling, the concept is not applied for Ukraine.
[23] The list was last amended on 9 March 2022 by decree, suspending the application of the decree on safe countries of origin to Ukraine until 31 December 2022.
[24] See EUAA, Analysis of Measures to Provide Protection to Displaced Persons from Ukraine: Situational Report, July 2022.

3.2. Application of the safe third country of origin concept

The safe third country concept is not implemented uniformly across EU+ countries. Several discrepancies are found in the transposition of the concept, both in law and practice. For instance:

- The concept of the safe third country is not defined in the national law: **13% (4 out of 30 EU+ countries)**
- The concept of the safe third country is not applied as there is no legal provision on the designation of a national list of safe third countries: **13% (4 out of 30 EU+ countries)**
- The concept of the safe third country is not applied as there is no adopted list: **20% (6 out of 30 EU+ countries)**
- The concept of the safe third country is applied on a case-by-case basis as there is no legal provision on the designation of a national list of safe third countries: **10% (3 out of 30 EU+ countries)**
- The concept of the safe third country is applied on a case-by-case basis as there is no list adopted although the law defines the relevant procedure: **23% (7 out of 30 EU+ countries)**
- The concept of the safe third country is applied on the basis of an adopted list: **20% (6 out of 30 EU+ countries)**

Figure 2. EU+ countries which apply the safe third country concept



The concept of the safe third country is not defined in national law in France, Iceland, Italy and Poland. In Malta, Portugal, Spain and Sweden, the concept is not implemented as there is no legal provision on the designation of a national list of safe third countries. In contrast, despite the absence of relevant provisions on the designation of a national list, the concept is applied on a case-by-case basis in Austria, Belgium (only for applicants who previously resided in Norway and Switzerland) and Latvia.

Despite the relevant legal framework, in Cyprus, Denmark, Finland, Lithuania, Luxembourg, Norway and the Netherlands, no list of safe third countries has been adopted. Thus, the concept is also applied on a case-by-case basis.

Lastly, the concept is not applied in practice as no list of safe third countries has been adopted in Bulgaria, Croatia, Czechia, Romania, Slovakia and Slovenia.

Estonia, Germany, Greece, Hungary, Ireland and Switzerland have recently introduced national lists of safe third countries.

3.3. Similarities in safe third country lists

Given that only six countries have adopted a safe third country list, the possibility to draw comparative conclusions is limited. As with the safe countries of origin, exceptions are found for specific geographical areas, for example in Armenia (in Estonia) [25], Bosnia and Herzegovina (in Estonia),[26] Georgia (in Estonia)[27] and the United States of America (in Hungary).[28]

For specific profiles of applicants, a reversed methodology is used. To this end, Greece applies the safe third country concept only to specific profiles of applicants. Accordingly, Albania and North Macedonia are designated as safe third countries for asylum applicants entering the Greek territory illegally through the respective borders. In addition, Türkiye is designated as a safe third country only for applicants of international protection from Afghanistan, Bangladesh, Pakistan, Somalia and Syria.

Table 3. EU+ countries with a list of safe third countries

Countries designated as a safe third country	Estonia	Germany	Greece	Hungary[29]	Ireland	Switzerland[30]
Albania	Yes	No	Yes	Yes	No	No
Armenia	Yes	No	No	No	No	No
Australia	No	No	No	Yes	No	No
Bosnia and Herzegovina	Yes	No	No	Yes	No	No
Canada	No	No	No	Yes	No	No
EU Member States	No	Yes	No	Yes	No	Yes
Georgia	Yes	No	No	No	No	No
Iceland	No	No	No	Yes	No	Yes
Kosovo	Yes	No	No	Yes	No	No
Liechtenstein	No	No	No	Yes	No	Yes
Montenegro	Yes	No	No	Yes	No	No
New Zealand	No	No	No	Yes	No	No
North Macedonia	Yes	No	Yes	Yes	No	No
Norway	No	Yes	No	Yes	No	Yes
Serbia	Yes	No	No	Yes	No	No
Switzerland	No	Yes	No	Yes	No	Yes
Türkiye	No	No	Yes	Yes	No	No
UK and Northern Ireland	No	No	No	No	Yes	No
United States of America	No	No	No	Yes	No	No

[25] Except Nagorno-Karabakh.
[26] Except Republika Srpska.
[27] Except Abkhazia and South Ossetia.
[28] For states that do not apply the death penalty.
[29] The list was last updated on 1 April 2016 by Government Decree No 63/2016 (III. 31) to determine safe countries of origin and safe third countries at the national level. The decree refers to EU Member States and candidate countries and Member States of the European Economic Area.
[30] The concept may apply to other countries as well on a case-by-case basis.

Despite the limited number of lists, Albania, Norway and North Macedonia are designated as safe in 50% of the lists. It should also be noted that not only countries with direct geographical vicinity are included in the safe third country lists, as in the case of Australia, Georgia and the United States of America, as well as Balkan countries for Estonia.

3.4. Recent developments

On 31 December 2020, Ireland adopted the International Protection Act 2015 (Safe Third Country) Order 2020, indicating the United Kingdom of Great Britain and Northern Ireland as a safe third country.[31]

Greece introduced the list in June 2021, specifying Türkiye as a safe third country for certain nationalities.[32] The list was further supplemented in December 2021[33] with the addition of applicants entering from Albania and North Macedonia.

Following the Russian invasion, Estonia removed Ukraine from the list of safe third countries on 25 May 2022.

4. European safe third country concept

The concept of a European safe third country, as described in the recast APD, Recital 45, refers to certain European third countries which observe particularly high human rights and refugee protection standards. In such cases, Member States may not need to carry out a full examination of the application for international protection.

The following criteria for a European safe third country are laid down in the recast APD, Article 39(1):

- Ratification and observation of the Geneva Convention without any geographical limitations;
- Asylum procedure prescribed by law; and
- Ratification and observation of the European Convention of Human Rights (ECHR), including the standards on effective remedies.

If an asylum applicant is seeking to enter or has illegally entered the territory of a European safe third country, the Member State may opt to not examine, or fully examine, the asylum

[31] S.I. No. 725/2020 - International Protection Act 2015 (Safe Third Country) Order 2020.
[32] The list was adopted on 7 June 2021 by Joint Ministerial Decision No 42799 (Gov. Gaz. B' 2425/7.06.2021).
[33] The list was last updated on 16 December 2021 by Joint Ministerial Decision No 458568 (Gov. Gaz. B' 5949/16.12.2021).

application or the safety of the applicant in the European safe third country. In line with the recast APD, Article 39(4), Member States must lay down in national law the modalities for implementing the concept and the consequences of decisions based on the concept, in accordance with the principle of *non-refoulement*.

The ambiguity of the concept of a European third country is reflected in its limited use by EU+ countries. For example, the concept is not defined in law in 24 EU+ countries (Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden). In 3 EU+ countries (Croatia, Czechia and Slovenia), the concept is defined in law but not applied in practice. Czechia, which has formally designated Moldova and Montenegro on the list, has not used the concept in practice as there have been no cases where the concept could be applied.

In contrast, the concept may be applied on a case-by-case basis in Cyprus, and only in exceptional cases, in Norway. In the latter, it is applied when the safe third country is a European country and after the case has been assessed in accordance with the Dublin III Regulation.

For Switzerland, the concept is, by definition, redundant as the concept is applied in the context of safe third country in relation to the EU and EFTA Member States.

5. Court cases related to the safe country of origin concept

The national courts of EU+ countries remain the primary guardians of the Common European Asylum System (CEAS) within the national framework. When necessary, they review the practical implementation of safe country concepts in line with their relevant competences. In addition, the Court of Justice of the European Union (CJEU) interprets the relevant rules in the context of preliminary rulings or assesses their implementation in cases of infringement procedures. The European Court of Human Rights (ECtHR) indirectly reviews safe country concepts when examining human rights violations.

The court cases presented in this report cover the period 2017-2022.

5.1. Safe country of origin

5.1.1. European courts

The safe country of origin concept has been interpreted or further defined by the CJEU in one case, while the ECtHR indirectly assessed its implementation on cases related to a potential risk of inhuman or degrading treatment for applicants subject to expulsion to their country of origin.

When a Member State has not implemented the concept of a safe country of origin by adopting the relevant laws, regulations and administrative provisions, the CJEU held in *A. v Migrationsverket* that asylum applications cannot be rejected as manifestly unfounded on grounds that the applicant is from a safe country of origin, as this is contrary to the recast APD. Specifically, the CJEU clarified that a Member State cannot rely on the rebuttable presumption deriving from the designation of a country as safe and consider that the applicant's statements were insufficient, without fully implementing the provisions of the recast APD.

The *Khlaifia and Others v Italy* case concerned the alleged collective expulsion of a group of applicants to Tunisia. The ECtHR stated that an expulsion without a thorough examination of the individual circumstances of a case and without procedural safeguards, including a personal interview, increase the risk of *refoulement*. It concluded to a violation of Article 4 of Protocol No 4 of the Convention.

In contrast, in *D.L. v Austria* the ECtHR found that there was no violation of the Convention for an extradition to Kosovo, which was considered to be a safe country of origin for the applicant. Based on extensive investigations and country reports, the court concluded that there was no evidence of a threat amounting to a risk of treatment contrary to the ECHR, Article 3.

5.1.2. National courts

As a common approach, national courts interpret and apply the concept of the safe country of origin after a thorough examination of a case based on country of origin information and individual circumstances that can rebut the presumption. Applicants have the burden of proof to show a lack of protection due to individual circumstances. A failure to provide evidence will result in the conclusion of the designated country being safe. Moreover, national courts have underlined the importance of first seeking protection in the country of origin before claiming a lack of it in an EU+ country.

Updated country of origin information enable courts to properly assess whether a country or a region in a designated country of origin can be considered safe in specific cases. More recently, national courts have addressed questions to the CJEU for preliminary rulings on the application of the concept to countries which have territorial exceptions and have temporarily suspended their obligations under international treaties.

The change in the security situation in Ukraine led national courts to swiftly reassess the designation of the country as safe.

The Czech Brně Regional Administrative Court stayed the proceedings on 21 June 2022 and referred questions to the CJEU for a preliminary ruling on the designation of Moldova as a safe country of origin according to criteria in the recast APD. The questions referred to the Moldavian authorities temporarily refraining from international obligations under the ECHR in a time of emergency. In addition, the court referred to the fact that Moldova was designated safe only in part, with certain territorial exceptions. The same court addressed questions before the CJEU for a preliminary ruling[34] and interpretation of whether a return decision adopted under the Return Directive, Article 6 can lead to a breach of the *non-refoulement* principle and the concept of a safe country of origin as enshrined in the recast APD.

The Italian Court of Cassation pronounced a judgment concerning the retroactivity of the legislative provision which established a list of safe countries of origin, which came into force while appeal procedures were ongoing. According to the court, applicants from safe countries who lodged an appeal before the entry into force of the new legislative provision do not have the burden of proof to demonstrate dangers in their country of origin.

5.1.3. Assessing the situation in a safe country of origin

In February 2022, the Dutch Court of the Hague ruled that **Ukraine** was a safe country of origin and that the applicant did not prove that Ukrainian authorities were unwilling or unable to offer protection. However, after the Russian invasion on 24 February 2022, national courts no longer considered Ukraine to be safe. The Supreme Administrative Court in Czechia ruled on 10 March 2022 that Ukraine can no longer be considered a safe country of origin, annulled a negative decision and ordered a full examination of the application for international protection. A similar approach was adopted in two judgments in May and June 2022 when the Supreme Administrative Court overturned negative decisions because the situation in Ukraine has changed to such as extent that it can no longer be considered to be a safe country of origin.

The Regional Court of Brno in Slovakia stated that the administrative authority had not analysed country of origin information on **India**, which describes serious issues with human rights violations and torture, discrimination, violence against women and a risk of *refoulement*. In addition, no country-of-origin information exists on available remedies against persecution.

The Dutch Council of State confirmed in a judgment of 19 March 2019 that the safe country of origin concept could be applied to **Morocco** even for the Rif region as it considered the security situation to have stabilised. The court recently re-examined whether Morocco is a safe country of origin for an unaccompanied minor who claimed to have been threatened by gang members. It noted that the State Secretary had conducted a reassessment of the situation in Morocco and concluded that its designation as safe was still valid except for LGBTQI+ people and journalistic activities, categories to which the applicant did not belong.

Similarly, the Dutch Court of the Hague noted that the State Secretary conducted a thorough reassessment of the situation in **Georgia**. It concluded that the country is safe, except for LGBTQI+ applicants, a category to which the applicant did not belong. In addition, the

[34] The case was registered under Case C-406/22 before the CJEU.

applicant did not substantiate that she could not be expected to settle independently in Georgia without being at risk of domestic violence by her relatives, thus Georgia was considered a safe country of origin for her.

The Estonian Administrative Court of Tallinn stated that **Cameroon** was a safe country of origin. Despite originating from the anglophone part of the country where incidents of discrimination were reported, the applicant could return and settle in another region of Cameroon.

The French Council of State allowed an appeal from several associations against an OFPRA decision to keep **Benin**, **Ghana** and **Senegal** on the list of designated safe countries of origin. The Council noted that country of origin information showed that Benin has been under serious political crisis since April 2019, and due to the deterioration of the situation, the country should have been withdrawn from the list. Although Ghana and Senegal have democratic systems, the Council noted that they cannot be considered safe because homosexuality is criminalised by law.

In Italy, the Bologna Tribunal ruled that **Tunisia** could not be considered to be safe based on the most updated country of origin information which showed violent protests and unrest. The Tribunal of Catania also concluded that Tunisia was no longer a safe country after a careful examination of the current situation.

The Italian Civil Court of Florence ruled that the Casamance region in **Senegal** should not be considered safe for applicants who claimed persecution based on sexual orientation. Same-sex relationships are punished in Senegal with imprisonment, and the Casamance region has ongoing internal conflict, and has thus been declared unsafe for the LGBTQI+ community, journalists, rights activists and potential victims of female genital mutilation.

The Dutch Council of State examined **Mongolia** as a safe country of origin for an LGBTQI+ applicant and stated that a reassessment should be carried for this specific category based on a variety of sources and criteria used by the State Secretary.

5.1.4. Individual circumstances and evidence to rebut the presumption

When examining the designation of Benin, Serbia and Senegal as safe countries of origin, the Administrative Tribunal of Luxembourg stated that the applicants have the obligation to first demonstrate that they reasonably attempted to seek protection when claiming a lack of protection in the country of origin. The tribunal underlined that the applicants should have sought support and protection from national authorities, in some cases higher authorities, when there were doubts concerning the police.

In contrast, the Irish High Court overturned decisions based on Albania and Georgia being considered as safe countries of origin. The High Court stated that the lower court should have investigated whether the applicants would have adequate protection when there were serious claims of a real risk of persecution or serious harm based on political opinion.

However, the Dutch Court of the Hague ruled that the application of a Georgian asylum seeker of Ossetian ethnicity was correctly rejected as manifestly unfounded. This was because the applicant failed to provide evidence to demonstrate that Georgian authorities were unwilling or unable to offer protection and that his livelihood would be severely affected due to the Ossetian ethnicity. The court also confirmed the findings of the State Secretary that Morocco was a safe country of origin for an applicant who did not provide evidence to rebut the presumption.

In a case concerning Bosnia and Herzegovina, the Administrative Tribunal in Luxembourg found that the applicants had not proven any risk of persecution or serious harm. For Montenegro and North Macedonia, the tribunal ruled that their sole inclusion on the list of safe countries does not justify an application being rejected as inadmissible., However, the applicants had not provided any reason to consider that their rights would be infringed upon return.

A Regional Administrative Court in Czechia stated that an applicant should have the opportunity to challenge the presumption deriving from Georgia being considered as safe, but the applicant had not proved his assertions. Similarly, despite having several opportunities to present documents and evidence, the High Court in Ireland found that the applicant failed to substantiate his claim and to rebut the presumption resulting from the designation of Georgia as safe country of origin.

The International Protection Administrative Court (IPAC) in Cyprus rejected appeals submitted by applicants from Pakistan and Vietnam for failing to substantiate individual circumstances to rebut the presumption deriving from the designation of the countries as safe. In the first case, the applicant expressly mentioned that there was no risk upon return, while the second one had previously travelled back to Vietnam without any hindrance or risk.

In two other cases, the court rejected a request for legal aid submitted by applicants from Egypt and India because there were no prospects of success in the appeals. Both countries were designated as safe and the applicants' statements lacked credibility. In addition, the court ruled that a Christian applicant from Egypt did not demonstrate to have been personally affected him by alleged violent incidents between Christians and Muslims. The application was rightly rejected since Egypt was on the list of designated safe countries of origin and there were no individual circumstances to rebut the presumption.

The Administrative Court in Luxembourg confirmed a negative decision given to an applicant from Senegal who claimed that his country of origin would not be safe for him because homosexuality is punishable by 5 years of imprisonment. The Administrative Court confirmed the findings of the lower court that the applicant failed to make credible statements and submitted his claims about sexual orientation very late, thus weakening the overall credibility of his application.

5.2. Safe third country concept

5.2.1. European courts

European courts have analysed the safe third country concept from various angles when interpreting the recast APD. The CJEU has clarified that a list of safe third countries cannot be adopted at the EU level. It has focused on the compliance of national legislation with the CEAS, in particular with procedural safeguards and requirements when applying the concept to individual cases. The ECtHR analysed the concept mainly by verifying that Member States comply with the principle of *non-refoulement*.

When assessing the Hungarian legislation in the case of LH, the CJEU found that the conditions laid down in the recast APD, Articles 33(2) and 33(2b) were not satisfied since the condition of having a connection to a safe third country or to the first country of asylum was not met and transit alone does not constitute a connection. The court clarified that the conditions to deem an application inadmissible, as provided in the recast APD, Article 38, are cumulative, and Hungary had only transposed it partly. In addition, the CJEU reiterated in *FMS and Others* in May 2020 that an automatic rejection of an asylum application based on transit through a safe third country, as provided by Hungarian legislation, is contrary to EU law.

In *Mikyias Addis*, the CJEU underlined that a personal interview must be conducted prior to adopting an inadmissibility decision. In addition, the procedural safeguards in the recast APD, Article 15 must be ensured when applying the safe third country concept.

In *Alheto*, the CJEU clarified that a full and *ex nunc* (for the future) examination of the facts and points of law may also concern the grounds of inadmissibility based on the safe country concept. Precisely, when permitted under national law and when deciding in an appeal, if a court considers examining a ground of inadmissibility which has not been assessed by the determining authority, it must conduct a hearing of the applicant to allow the applicant to express his/her views in person on its applicability.

Chain *refoulement*

The case of *Ilias and Ahmed* set the general principles of protection against *refoulement* and inhuman or degrading treatment of asylum applicants prior to applying the safe third country concept. A thorough examination must be conducted to confirm that there is no risk that the asylum applicant would be deprived of accessing the asylum procedure in the third country, the applicant is not at risk of expulsion or *refoulement* in the third country, even if the third country is an EU Member State or party to the Convention. According to the ECtHR, the asylum applicant is not to be removed to a third country if there are insufficient guarantees against *refoulement*.

The same guiding principles and safeguards prior to a removal were also reiterated in the judgment, *M.K. and Others*. The ECtHR found a violation of the ECHR, Article 3, due to the

expeditive removal of a third-country national to Belarus without due consideration to the risk of chain *refoulement* and without effective guarantees against a real risk of being exposed to inhuman and degrading treatment or torture. Similarly, in *M.A. and Others* v *Lithuania*, the ECtHR found that the authorities failed to assess if the applicants can be safely returned to Belarus, which is not party to the European Convention, and it should not be presumed to be a safe third country.

5.2.2. National courts

National courts have primarily clarified the concept of a safe third country and the conditions for applying it, such as having a sufficient and demonstrated connection with the safe third country, along with proof of legal access. When the concept is applied, national courts consider the right to family life and the best interests of the child. They also place significant weight to specific guarantees for the applicant in the safe third country – including access to the asylum procedure, protection against *refoulement* and the fulfilment of obligations deriving from international treaties, such as the Geneva Convention and other instruments related to the respect of human rights.

Criteria to apply the concept

The Administrative Tribunal in Luxembourg confirmed that Georgia was a safe third country because it fulfilled the criteria as a democratic country where there was no risk of persecution. In addition, the applicant had a sufficient connection established since he was born there, lived there for 11 years and had a Georgian spouse.

In contrast, the Administrative Tribunal analysed the situation of Morocco as a safe third country based on individual circumstances and the connection criteria and found that a Syrian applicant, married to a Moroccan national and he parent of a Moroccan child, could obtain a residence permit according to national legislation. It concluded that Morocco could not reasonably be considered to be a safe third country for the applicant in the absence of a sufficient connection, since his attempts to obtain a visa in Morocco were unsuccessful, despite his wife having Moroccan nationality.

In another case, the same tribunal found no link between the applicant and Moldova because the facts of being born there, allegedly knowing the language and having visited his grandparents twice were assessed as not sufficient proof to consider it reasonable for the applicant to return.

The Grand Committee of the Norwegian Immigration Appeals Committee ruled that a determining authority can reject an application for international protection as inadmissible based on the safe third country concept if it is established that the applicant has legal access to that country. However, the processing of an application should not be refused solely on the fact that some years ago the applicant had a residence, or a residence permit in a safe third country.

The Icelandic Immigration Appeals Board had a similar approach when applying the safe third country concept and considered that the determining authority failed to properly and duly determine if the Venezuelan applicant would have real access and legal authorisation to stay in Ukraine.

Although in theory an applicant could be admitted to a safe third country based on applicable legislation, the Dutch Court of the Hague ruled that Georgia cannot be a safe third country for an Egyptian applicant who had unsuccessfully applied for a residence permit. The applicant was married to a Georgian national with whom he had a child of Georgian nationality, but he was not granted legal access to Georgia, thus the inadmissibility decision was overturned by the court.

The Dutch Council of State decided that all individual circumstances that would prove a connection to the safe third country have to be considered by the determining authority. In particular, the right to family life constitutes a circumstance deemed to be included in the context of the reasonableness test.

The Belgian Constitutional Court ruled that the safe third country concept may be applied to applicants for international protection who are unaccompanied minors when the principle of best interests of the child is respected.

Guarantees in the safe third country

Based on the principles reiterated in ECtHR case law, namely *Ilias and Ahmed v Hungary* and *M.K. and Others*, the Croatian Constitutional Court made a thorough assessment of the nature and content of the duty to ensure that the third country is safe. This includes a thorough examination of the risk that the applicant would be deprived of access to an adequate asylum procedure in the receiving third country and protecting the applicant from *refoulement*.

In the absence of a ratification of the Geneva Convention, the Greek Council of State ruled that it is sufficient that the third country, in this case Türkiye, has equivalent national provisions and guarantees against *refoulement* to be considered to be safe.

The Council for Aliens Law Litigation (CALL) in Belgium ruled that Switzerland is a safe third country for an applicant who feared a return to Eritrea. CALL found that Switzerland binds by international treaties, has an effective asylum system, complies with the *non-refoulement* principle and no systemic deficiencies have been found. In addition, CALL took into consideration that the applicant has a strong connection with Switzerland due to his long stay in the country and the support received for many years from the Swiss government.

The Norwegian Court of Appeal ruled that the safe third country concept can be applied when the applicant can be guaranteed effective protection if returned to Ukraine. The court of appeal also noted that the applicant was not persecuted there and there was no risk of indirect *refoulement*, according to information from UNHCR.

The Dutch Council of State established three cumulative criteria that must be fulfilled when applying the safe third country concept for Syrian applicants who lived and worked in the United Arab Emirates and Kuwait. The cumulative criteria include access to the asylum

procedure, protection according to the Refugee Convention, respect for the principle of *non-refoulement* and access to basic facilities for asylum applicants and beneficiaries of international protection.

In Switzerland, the Federal Administrative Court (FAC) established criteria to apply the concept of a safe third country and stated that the third country must be a signatory of the Geneva Convention and abide by the principle of *non-refoulement*, it has to be on the list of safe third countries and has to accept the readmission of the applicant. In a case concerning a Turkish journalist of Kurdish ethnicity, the FAC has found that Swiss authorities insufficiently investigated whether Brazil is a safe third country with protection for the applicant. Brazil is not on the Swiss list of safe third countries, and no consideration was given to the agreement between Brazil and Türkiye which provides for the latter to request information on persons considered to be terrorists.

Recently, the FAC has ruled mainly on cases related to secondary movements of beneficiaries of international protection. While the asylum applications were rejected as inadmissible because Greece is considered to be a safe third country, the FAC analysed whether a sufficient examination of the living conditions in Greece had been conducted prior to the removal.[35]

[35] Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. (Eritrea) v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, Case E-4639/2017, 25 September 2019; Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, Case D-559/2020, 13 February 2020; Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, Case D-1333/2021, 31 March 2021; Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, Case E-1413/2021, 8 April 2021; Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, Case E-1018/2019, 8 April 2021; Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A, B, C, D v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, E-1332/2021, 9 April 2021.

6. Conclusions

A few key conclusions can be drawn from the analysis in this report:

- The safe country of origin concept is commonly applied in the majority of EU+ countries.
- Despite general consistency with the Top 5 countries of origin which are designated as safe, discrepancies among the rest prevail. This is particularly visible with regard to EU candidate countries, where there is a pronounced lack of convergence.
- Reference to the safe third country concept remains limited, both in terms of national legal frameworks and its practical application.
- The European safe third country concept is rarely applied, possibly due to the relative vagueness of relevant European provisions and the overlap with the safe third country concept.
- National and European courts analysed safe country concepts in several cases, determining questions on standards and the practical implementation of the law.

However, the practical aspects should not be side-lined. Challenges remain with country assessments, the adoption of lists and application of the concept when special procedures and detention are involved. The EUAA's Asylum Report highlights related issues which have been reported by civil society organisations and other stakeholders. For example, they highlighted that a significant number of potential beneficiaries of international protection were left in a state of legal insecurity as Turkey does not accept readmissions from Greece and the EU-Turkey Statement has not been in force since March 2020. This, in turn, has led to prolonged detention in the Aegean islands *(see Asylum Report 4.8.2. Recourse to detention)*. To address these situations, relevant questions have been submitted by the European Parliament to the European Commission *(see for instance P-000604/2021 and answer)*.

Looking forward, standardising safe country concepts and their application in practice will remain crucial to ensure convergence in practices across EU+ countries. The role of the EUAA in that context will increase based on its enhanced mandate (ref. EUAA Regulation, Article 12), which includes assistance to Member States and the European Commission by providing information and analysis.

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