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„Same but different?

The European legal framework on asylum and modified national implementations of international law indicated by 'The Convention Relating to the Status of Refugees' and the 'Common European Asylum System'“

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2. Glossary

BAMF	- Federal Office for Migration and Refugees (Germany)
BFA	- Federal Office for Asylum and Foreigners
BMI	- Federal Interior Ministry (Austria)
CAT	- Convention Against Torture
CDU	- Christian Democratic Union (Germany)
CEAS	- Common European Asylum System
CFR	- Charter of Fundamental Rights of the European Union
CSU	- Christian Social Union
ECHR	- European Convention on Human Rights
ECtHR	- European Court of Human Rights
EP	- European Parliament
EU	- European Union
Fidesz	- Hungarian Civic Alliance
FPÖ	- Freedom Party of Austria
IDP	- Internally Displaced Person
KDNP	- Christian Democratic People's Party (Hungary)
LR	- The Republicans (France)
LRM	- La République en Marche! (France)
MSZP	- Hungarian Socialist Party
Nice Treaty	- Treaty of Nice amending the Treaty on the European Union
OFPPA	- Office français de protection des réfugiés et apatrides (France)
ÖVP	- Austrian People's Party
Protocol of 1967	- Protocol of the Status of Refugees
Refugee Convention	- Convention Relating to the Status of Refugees of 1951
Socialist	- Parti Socialiste (France)
SPD	- Social Democratic Party (Germany)
SPÖ	- Social Democratic Party of Austria
SZDSZ	- Alliance of Free Democrats - the Hungarian Liberal Party
TEU	- Treaty on European Union
UDHR	- Universal Declaration of Human Rights
UMP	- Socialist Party (France)
UN	- United Nations
WWI	- World War One
WWII	- World War Two

3. Abstract

The Convention Relating to the Status of Refugees of 1951 (Refugee Convention) and the ‘Common European Asylum System’ (CEAS) which will be introduced essentially shape the contemporary legal framework of asylum policies within European Union (EU) member states. The execution of asylum procedures is performed by domestic authorities on the national level. Penetrating the international, European and local legal levels, the implementation of these international law texts differs between nation states. The CEAS aims at the standardisation of the asylum field to grant refugees equal procedures with similar decision outcomes upon their individual cases in all member states. This thesis compares and analyses the rates of positive decisions in four selected member states between 2008 and 2018, and shows that variations in positive decision rates appear to indicate modifications in the implementation of this part of international law. While a continuous standardisation of asylum procedures cannot be observed at the micro-level, the rising influence of national interests are indicated.

Der rechtliche Rahmen des europäischen Rechtsfeld Asyl basiert auf der Genfer Flüchtlingskonvention von 1951 und dem ‘Common European Asylum System’ (Gemeinsame Europäische Asylsystem). Die Durchführung und Entscheidung von Asylverfahren wird auf der nationalen Ebenen durchgeführt. Die Verflechtung unterschiedlicher rechtlicher Ebenen führt zu unterschiedlicher Implementation von Asylrecht zwischen den Mitgliedsstaaten der EU. Durch das Gemeinsame Europäische Asylsystem soll das Asylwesen vereinheitlicht werden um Geflüchteten und Schutzsuchenden gleiche Rechte und gleiche Verfahren in allen Mitgliedstaaten garantieren zu können, in welchen ihre Verfahren zu den gleichen Entscheidungen führen, unabhängig davon, wo es durchgeführt wird. In dieser Masterarbeit werden Entscheidungsquoten von Asylverfahren in vier ausgewählten EU-Staaten zwischen 2008 und 2018 miteinander verglichen und analysiert. Unterschiede in diesen Quoten deuten auf variierende Anwendung des Rechtsrahmens hin. Eine Standardisierung von Asylverfahren auf der Mikroebene kann nicht nachgewiesen werden.

4. Introduction

Annotation by the author

The topic of migration is a heatedly debated one. The author of this thesis wants to highlight that terms and words, as they shape our way of thinking, do have an impact on the reader's view and perspective on the issue. Since flight concerns humans on the very personal and individual level, in exceptionally vulnerable situations, care must be taken when approaching this topic and responsibility over the choice of words must be taken, to prevent repetition, the spread of stereotypes and discrimination and to be aware of our own position reflecting on privileges. Care is taken to use legal, but also neutral as possible, non-judgmental terms. It is presumed that people seeking international protection had to flee their home states. The term 'people seeking asylum' is used to prevent objectification of people only in respect to flight. The following thesis does not aim to explain, judge, criticise or categorise the personal and individual experiences and reasons for people fleeing. This thesis' only goal is to examine the decision-making processes on asylum processes in countries of destination that are member states of the European Union. In the author's view, every person in need of protection should, not only have the legal right to claim asylum, but also the right of the possibility to make the claim.

In the following thesis, if the terms Europe/European are used, this refers exclusively to European Union member states, unless it is explicitly defined elsewhere. This thesis covers only asylum but, in most cases, migration and asylum frameworks got merged and/or shaped hand in hand. When in this thesis the legal framework concerning asylum is referred to, this does not exclude the framework on migration, but to differentiate in all cases (between legal framework of asylum and legal framework of asylum and migration) in detail goes beyond the scope of discussion.

To protect refugees, one of the most vulnerable groups of people worldwide, several legal frameworks have been established on different levels to grant them basic rights. In the EU, different legal statuses may be granted in asylum cases which have been decided positive. This procedure is defined and formed on different legal stages in terms of the EU: International, EU-wide and local. Persons applying for asylum, whose claim is not rejected, may be granted one of the following legal statuses: a.) Geneva convention status, b.) Humanitarian status, c.) Subsidiary protection, d.) Temporary protection status¹. = The order of the listed statuses goes along with the quality and amount of rights they grant to refugees, with a.) granting the most, and d.) granting the least.

This is the case since people asking for asylum may not fulfill the legal criteria to be granted protection according to the Geneva convention status. Still, if in need of protection they may be granted with (an)other legal status(es) from above. Those titles, being decided upon on the domestic level, refer to the Refugee Convention, its Protocol of 1967, the UCHR and the ECHR. In an asylum procedure, all legal bases (legal statuses) will be checked one by one. An applicant may appeal the decision, aiming to be granted any (or a different legal status).

Since the establishment of the CEAS to equalize asylum procedures along the EU, there are national legal bases for the assignment of the respective statuses checked within the legal procedure. Their effectuations and issuance vary along nation states. As described above, however, persons seeking international protection are subject to international and European legal order. For the concerned persons, the decision of their case is key. They depend on whether and what kind of status they are granted. The decision-making process and its outcome therefore should not vary among member states of the EU, which jointly can be seen as one political

¹Annotation: The Temporary protection status will not be covered in this thesis, since in none of the selected case countries this status was granted to applicants between 2008 and 2018. Therefore this legal status will not be included in this research. The title 'Temporary protection' gives the wrong impression, indicating that the validity of the other statuses would not be restricted in temporary means. This assumption has to be countered by the fact that, among other limitations, the subsidiary protection status is awarded only for a limited period of time.

entity. Steps for equalization of asylum law, concerning all levels of asylum, have been taken. Nevertheless, within the EU, divergences and gaps in the asylum field can, for instance, be observed along the external borders. With 1,089 reported migrant fatalities worldwide in 2019 by the 13th of June 2019, more than half of them (555) died just in the Mediterranean en route to the European Union and should therefore be seen as victims at the external borders of the European union (Missing Migrants Project 2009). Currently, the situation in the Mediterranean is highly debated within the European Union. Cities in several member states declared solidarity with refugees crossing the Mediterranean, offering them legal stay and demanding safe passage. At the same time, on the federal level most member states oppose the idea of safe passages or even rescue mission at sea. Italy recently tried to prosecute people conducting and participating in sea rescue missions (Human Rights Watch 2019).. Migration, and in specific asylum, seems to remain one of the key topics in Europe's political debates.

No matter what the reasons for people trying to reach Europe are, they are forced to take deadly routes, because there is no legal way and no safe passage. Still, everyone persecuted and in fear of thier lives or torture has the right to be granted asylum by legal means. To check whether asylum relevant persecution is present, refugees have the right to a fair procedure. This right is neglected since Europe and its borders are more and more borders are subject to tighter security, border controls take place and especially since rescue missions in the Mediterranean have been restricted.

Concerning the right of international protection, persons need to have the possibility to ask for asylum in a safe state. Even though the European Union member states did ratify the UCHR and adopted the European Charter of Fundamental Rights as well as the European Convention of Human Rights, people often do not have the chance to ask for asylum in an EU-member state or first have to risk their lives. This contradiction between the intention to protect people's lives, but giving them no possibility to reach the safe haven stands out.

Moreover, the journey of a refugee, who has reached a member state and asked for asylum, does not immediately end easily. It would be assumed that a political union such as the EU has a fully

uniformed and common system to deal with arriving persons, since it is not lacking in legally binding apparatuses. For the asylum procedure there is a legal framework for asylum, which is basically the same for all countries: The Refugee Convention and the CEAS. Nevertheless, it is not clear whether or not the implementation of this treaty is consistent. There are clearly marked differences and gaps in application numbers depending on the member state. When it comes to decisions it is less distinct, how independently these decisions are made. Changes in positive decision numbers appear, but whether there are arbitrary divergences or political intentions behind specific decisions can by this point just assumed. Whether is only is there political influence behind decisions is still not immaterial. It can be assumed that violations or non-application of signatory legal conventions are not only outsourced outside the EU and at the external borders, but also happen in the heart of the EU. Since such inequalities cannot be safely ruled out, it matters to examine how the implementation of the international law concerning asylum is applied at different levels.

The European Commission in 2008 did itself identify severe problems in the area of asylum. Not only are Third World countries much more affected by refugee movements but are in a high need for support by other countries. Within the Union, member states are not carrying the same responsibilities and costs when it comes to the protection and assistance of refugees (European Commission 2008). This dilemma of missing cooperation and solidarity concerning the care, providing for and safety of refugees was addressed by the Policy Plan on Asylum called for by the EU Heads of State and Government.³ The ongoing establishment of a Common European Asylum System aims to surmount such and other problems by standardizing the legal framework of the European asylum system. Whether this process of unification can be seen as progressive within the asylum procedures, whether it leads to similar decisions on asylum cases and to what extent divergences do exist will be subject of this thesis. To investigate variations, rates of positive asylum decisions in four EU-member states (Austria, France, Germany, Hungary) will be generated for the time period between 2008 and 2018. Those will be later analysed in a comparative manner. The focus will be on outcomes for people seeking protection, not on outcomes for the selected case countries. The probability of getting a positive decision will be the object of the empirical research, rather than specific procedures. It will be investigated

whether reproducibility of asylum procedures within the EU is given. To analyse the decision rates, linkage policy will be applied. An introduction of the current legal framework and its development will be given before the empirical analysis and will be followed by a brief overview of research interest and the relevance of this research. This thesis concludes with further research interest.

5. Legal Framework of Asylum Law

In this part the legal framework of asylum in EU-member states will be introduced. Asylum law is a field that is quite specific and very complex, many aspects of which are beyond the scope of this thesis. However, it is necessary to understand several key aspects of the asylum system to understand the empirical part of this study.

1. Asylum procedures are executed by nation states and asylum decisions are decided by national authorities. Even though international and global frameworks do exist and are intertwined with the domestic level, the execution of asylum in the end is fully administered on the national level.
2. Even though asylum is a historical pillar of societies, the ground for contemporary asylum was established by the United Nations in 1951. The Refugee Convention and its Protocol of 1967, which will be discussed later in more detail, frame today's asylum law.
3. For almost 20 years the EU has tried to standardise the asylum procedure among its members. It developed the Common European Asylum System that is in place today, the execution of which remains the responsibility of the member states' authorities. This part of the thesis will give a short overview of the domestic legal situation concerning asylum, the international framework and further details to provide a picture of the European framework and its evolution.

Domestic legal framework

An important principle of the EU, and the point in which it differs from other international alliances, is supranationality. This means that the member states cede (some aspects of) national sovereignty (TEU Art. 5) and co-operate at the European level.

As highlighted, despite the common EU framework and the legally binding international laws, asylum law is still established and executed at the domestic level, which can be seen as the implementation of the principle of subsidiarity. This states that regulation at the European level is only taken, if this is more effective than at the national, regional or local level. We can apply this principle in the case of asylum law to the concerned levels: international, EU-level and domestic.

With the introduction of the CEAS and its revisions which followed, asylum law finally became implemented in the domestic law of the member states (Mratschkowski 2016, 181), the different legal levels are inter-penetrated. Boswell and Geddes argue that taking account of contemporary European politics of migration cannot be done without accounting for the EU dimension, but this union level may not be accounted for without the analysis of political responses in the member states, “politics of migration and mobility in the EU are thus entwined, multilevel and dimensional” (Boswell, Geddes 2011: 9). Similarly, it is important to consider the implementation of international law in the domestic legal body. Therefore, it must be noted that all of the case countries’ national asylum laws refer to international law.

Besides this similarity, a remarkable situation can be observed in French and German national law. In Germany, the right to asylum has a high status compared to other nation states worldwide (Deutschland 2017). For historical reasons emanating from the horrific events of WW2, the right to asylum was granted constitutional status; it is now part of the German Basic Law. The German Constitution/German Basic Law is the only German fundamental right that is granted solely to foreign nationals. France also recognizes the right of asylum by constitution. The preamble of the 1958 Constitution refers directly to the preamble of the 1946 constitution (France 1958), which states among others fundamental rights: “Tout homme persécuté en raison

de son action en faveur de la liberté a droit d'asile sur les territoires de la République” (France 1946).

The French ‘Code de l'entrée et du séjour des étrangers et du droit d'asile’ deals with the right of entry and residence for foreigners and with asylum law in detail (Légifrance - Le service public de l'accès au droit 2019).

In Austria, the federal law on the granting of asylum, ‘Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005 - AsylG 2005)’, which is subject to constant evolution and adaptations, is the statutory basis for asylum (Rechtsinformation des Bundes 2019). According to the same law, the Refugee Convention and its Protocol of 1967 and the ECHR have to be applied in Austria.

The Hungarian Act LXXX of 2007 operates in conjunction with the Government Decree 301/2007 on the implementation of the first frame of the domestic legal code on asylum in Hungary (Hungary 2016).

Since the domestic legal situations on asylum are very specific in terms of design and composition (all four of the selected case countries have their own legal text(s) embellishing on asylum) an intense discussion or even an overview of the same would extend beyond the scope of this thesis.

International Legal Framework

The international legal system is decentralized and horizontally structured. This is the result of the process of developing an international system, which guarantees national sovereignty and equality of states. According to Beenakker ‘In the absence of a central legislative authority which has the power to impose binding rules upon the system’s legal subjects, legal norms have been developed by the primary subjects themselves’ (Beenakker 2018). She also argues that through the emergence of norms, states are entrusted with the task of enforcing those rules themselves and all impositions are directly dependent on the consent of the actors. “Although the imposition of enforcement measures or sanctions for alleged violations of international law by states may have some supra-national aspects, these procedures depend, directly or indirectly, on

the consent of states.” (Beenakker 2018). This very specific interplay of states and international law is specific to all fields of international law. In some fields of international law nation states not only provide their legal bodies with competencies to implement international law, but develop their own domestic legislation codifying the obligations of international treaties (O’Byrne 2013). O’Byrne titles the Convention Relating to the Status of Refugees from 1951 (Refugee Convention) as just such an international treaty, with specific domestic implementation. She highlights that this convention differs from other international human rights treaties in various aspects. One example is the existence of the United Nations Human Rights Council (UNHCR) with the dedication to the implementation of the Refugee Convention.

Asylum law builds on the 1951 Refugee Convention, which is signed by 144 signatories, is a multilateral treaty and thus part of international law (United Nations High Commissioner of Refugees 2010).

Asylum is one of the oldest institutions of humanity and in the periods of WWI and WWII the protection of refugees became the subject of international treaties and agreements of international organizations. The basis of today's rights for refugees was developed when the General Assembly of the United Nation adopted the Universal Declaration of Human Rights (UDHR) and Article 14 declared:

- 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.*
- 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. (United Nations 2019).*

This fundamental right to seek and enjoy asylum has been codified in The Refugee Convention, one of the first pillars of international human rights, and has since become a part of International Law. António Guterres, by that time the United Nations High Commissioner for Refugees, stated in 2011: “Refugees are among the most vulnerable people in the world” (United Nations High Commissioner for Refugees 2011). To protect their rights and to enforce the obligations of the

international community, the Refugee Convention was signed in 1951 in the aftermath of World War II.

The Refugee Convention defines the term refugee and determines both a refugee's rights and the obligations of states. According to Article 1 of the Refugee Convention a refugee is a person who "is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there for fear of persecution" (United Nations High Commissioner for Refugees 2010). This definition is referred to when an EU-member state considers an asylum-seeker's request for Geneva convention status. The 'well-founded fear of persecution' arose from events associated with the WWII in Europe, until the Protocol of 1967 extended the Refugee Convention's geographical and time limitations. Having originated in specific historical conditions, this principle was at first bound by treaty and only applicable to refugees, whose cause of flight had its source in World War 1 and/or World War 2. Since the Protocol of 1967's temporal amendment, states accessing the 1951 Refugee Convention must make a declaration of choice between the two options of Article 1B (1) of the Refugee Convention concerning its range. Nearly all states have accepted the alternative 'events occurring in Europe and elsewhere before 1 January 1951' rather than the second alternative 'events occurring in Europe before 1 January 1951' for the purpose of the obligations under the Refugee Convention (United Nations High Commissioner for Refugees 2010).

In addition to Art. 14 of the Refugee Convention, key Articles are Article 1 A and 33. Art. 33 concerns the principle of non-refoulement, stating no state shall "expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened [...]" (Art. 33 CRTR).

Signatory parties must apply the Refugee Convention, but some UN members only signed the 1976 Protocol. In conclusion, the Refugee Convention with its signatories is legally valid either directly or through the 1967 Protocol upon all UN member states (not only the 144 signatories

who signed the Convention, but also the signatories of the 1967 protocol) (Mratschkowski, et.al. 2016, 25). There is no monitoring or enforcement mechanism in place to observe and control the implementation of the international framework on asylum, the responsibility is incumbent upon the nation states.

European Legal Framework and the ‘Common European Asylum System’

The asylum procedure decides whether a person applying for international protection receives a legal right to stay in the country of application, which is not the home country. In this process, several criteria are checked, and decisions upon legal statuses are rendered. All decisions which result in a legal status, i.e. an application was not rejected, count as positive decisions in the asylum system, even though a person is possibly not granted the status of a refugee, but a different legal status. It is possible that persons not granted with the Refugee Convention status for refugees, fulfill other criteria for a legal status. This is the case when the criteria for subsidiary protection, temporary protection or humanitarian status are given.

The above part explained the UN legal framework and its recent development. In the European Union, a common legal framework exists, which the member states have agreed on and which is takes precedence over the national ones. With 28 member states all applying the principle of subsidiarity, it can be assumed that, despite the common international legal basis, national jurisdiction leads to a different interpretation of European regulation. Decisions upon asylum within the EU are part of the national area of responsibility and fall under national jurisdiction. The ongoing process of European integration and the sharing of responsibilities especially affected the field of migration and asylum. European states are the main players in the process of European integration, but increasingly they share fields of action and agency with each other and with the EU institutions. An ongoing process of bargaining of sovereignty takes place in the Union (Boswell, Geddes 2011: 54).

To understand the field of asylum within the EU, a short and limited overview of the development of the current legal situation concerning asylum law within the Union will be given. The current framework, which is known nowadays as the Common European Asylum System (CEAS), was established in stages over decades and is still developing today, intertwining all legal levels (Mratschkowski 2016, 18). The CEAS is based on the Refugee Convention and its Protocol (Mratschkowski 2016, 25) and has been legally binding since 2013 for all EU-member states (Mratschkowski 2016, 18). The complex legal system of the Union itself makes a simple overview of the field of asylum almost impossible. Therefore, the most important milestones in the process of the current EU situation will now be highlighted.

Although the ECHR of 1950, which is still valid today, does grant the right to life (Article 2), prohibits torture (Article 3) as well as slavery and forced labor (Article 4), there is no explicit right to asylum. Also, neither the right to apply for nor the right to be granted asylum is part of the ECHR, asylum is not covered by the ECHR at all. The member states of the European Union have created, through their increasingly close cooperation since the founding of the Union and in particular by signing the Schengen Agreement in 1985, the need to jointly decide on border issues internally within the EU (Mratschkowski 2016, 27). It was therefore also to be expected that the field of asylum would, in this case, have to become part of a common policy. For the first time, the Maastricht Treaty set asylum policy as a matter of common interest 'for the purpose of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community' (Maastricht TEU 1992).

However, it was only with the Treaty of Amsterdam in 1999 that the decision-making process in this policy field changed. If unanimity on asylum policies in the Council was required up to this point, now a polyphony principle came into force, as asylum matters were placed in the supranational sphere. The area of asylum law was further consolidated with the Amsterdam Treaty and formulated as a common field of action, creating a "legal base for EU action of migration and asylum policy, as well as extended jurisdiction to the Commission, European Parliament and European Court" (Boswell, Geddes 2011: 9).

The Nice treaty of 2001 changed the policy-making process and introduced qualitative majority voting in the European Parliament and the principle of co-decision in the Council in the area of asylum. (Boswell, Geddes 2011: 9). With the CFR, which came into force in 2009 and got legal effect together with the Treaty of Lisbon, the right to asylum at the European Union level was established, directly referring to the Refugee Convention (European Union 2007). Article 18 of the CFR refers directly to the Refugee Convention and extends its scope, stating: “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union” (CFR Art. 18). Consequently, all EU-member states since 2009 have to grant asylum to refugees. Compared to the ECHR (which does not mention asylum), the UDHR (which grants the right to seek asylum), and the Refugee Convention and its Protocol of 1967 (which defines the term ‘refugee’), the CFR is the most far-reaching legal text granting the fundamental right for asylum.

The Amsterdam Treaty can be understood as meaning that the intention behind the transfer and the intensification of the asylum right into the Community sphere of action, making it becoming an issue of the ambit of the EU, was possible, since at the same time police co-operation, securing the external borders and other security policies were decided (European Union 1997).

Walter Frenz argues that the legal status of refugees is guaranteed by Art. 18 CFR. This legal status refers to the UN’s Refugee Convention, and even if it does not contain asylum rights, fundamental rights for refugees are guaranteed. The protection of these rights is strengthened by the CFR, an interference of which by member states must be justified (Frenz 2009: 352). Hence, no common procedures of institutions were established by this point, but the process of establishing a more common framework for common asylum policies was started to strengthen the legal framework. The process of creating a Common European Asylum System, which was initiated by the Treaty of Amsterdam, marked the introduction of the first steps on the way to the standardization of the common legal asylum framework. Three five-year work plans or programs have been put in place since 1999: the Tampere agreement, the Hague Program and the Stockholm program.

Building on each other, all three programs pursued the goal of expanding the CEAS step-by-step. The Tampere Program identified four main objectives for achievement of a common asylum policy. There are two objectives relating to the treatment of third-country nationals who apply for asylum: a.) The establishment of a Community asylum procedure; and b) fair treatment of third-country nationals and their rights that approximate those of EU citizens (Boswell, Geddens 2011: 52). The other provisions of the Tampere program did not cover the rights of refugees. The Stockholm program tackled several issues from 2010-2014, including partnership with third countries, intensifying the security and defence policy field, covering labor market demands, family reunification, monitoring and control of illegal migration as well as, in some aspects, promotion of the unification of the asylum procedure, and the partition of responsibilities in a fair manner. (Boswell, Geddens 2011: 53).

The Hague program followed, concentrating mainly on common measures to tackle trafficking, smuggling and illegal immigration and to provide better integration policies within the nation states. The focus was not the extension of the affected persons rights in the countries of destination, rather the intensified securing of the member states.

Another big milestone in the standardization process of the asylum procedure was clearly the Lisbon treaty, ratified in December 2009. Several provisions were set out by the treaty. Most importantly, it introduced the full incorporation of migration and asylum within the EU legal framework. (Boswell, Geddes 2011: 10). In addition the Art. 77-89 Lisbon Treaty provides provisions on border, asylum and migration standards. All of those have a significant impact, but Art. 78 in particular is fundamental to this thesis (European Union 2007). It did install the status of subsidiary protection for third national citizens for the first time on a common level. Article 78 standardizes not only the legal status, but standards concerning the reception of applications EU-wide. Article 80 of the Lisbon Treaty shows the intention behind these provisions, since it provides for solidarity and fair sharing of responsibility in the areas of migration and asylum (European Union 2007). Therefore, the Lisbon treaty can be described as the progression of the provisions initiated in the Amsterdam treaty.

Consequently, this legal status is guaranteed to persons who do not face personal persecution in their home countries, but would be threatened by violations of Article 2 and 3 of the ECHR (their right to life or their right to be protected from torture would be violated). Persons who do not fulfill the criteria for asylum laid out in the Refugee Convention, and are therefore by definition not refugees but are nevertheless in need of protection, can be granted the status of subsidiary protection. Thus, they can be protected through the implementation of subsidiary protection, and for the content of the protection based on the ECHR granted by Qualification Directive 2011/95/EU (which will closer be depicted above) they may gain a legal status protection through their right of subsidiary protection. Both conventions, the ECHR as well as the Refugee Convention, are legally binding for the signatory parties. The enforcement of the ECHR is granted by the European Court of Human Rights in Strasbourg and all 47 parties of the Convention agree to act in accordance with European Court of Human Rights decisions. Similarly to the Refugee Convention, there are no enforcement mechanisms for the ECHR. The pillars of International Law provide the frame for the international community and, at least within Europe, guarantee that persons arriving in Europe and asking for asylum will be treated equally, independent of where their claim is made. A person crossing the border to a foreign country can ask for asylum and for protection from persecution (United Nations 2010) and has a right to a fair and open investigation of their case. Still, without monitoring and/or sanction mechanisms at either the international or EU level being imposed, implementation remains the responsibility and exegesis of the member states.

In 2009 Alexandra Tryjanowski and Thomas Gross, in their article on the status of non-EU nationals in migration law in the EU, summed up the fact that the European Union has missed a basic concept in the area of asylum (Gross, Tryjanowski 2009, 255). The authors argue that the Union's legal focus is not on human rights obligations and the protection of refugees, and does not take sufficient account of them. Tryjanowski and Gross continue to point out that the focus instead is on the prevention of irregular migration (Gross, Tryjanowski 2009, 260). Since 2009, cooperation and migration and asylum arrangements have been further developed and institutionalized and the more moderate regulations currently in place often leave the member

states to interpret regulations, even if the "migration sector is at the heart of Community law" (Gross, Tryjanwoski 2009, 261). Although Article 18 CFR clearly guarantees the right to asylum subject to the Refugee Convention, the authors note that those seeking protection are in fact largely hindered from seeking asylum in EU states. "Huge obstacles, based on the combination of strict border control and the concept of so-called safe third countries" block access to this explicitly European fundamental right. (Gross, Tryjanwoski 2009, 274). With this, the European Union guarantees a human right for the most vulnerable persons, which is almost impossible to claim in practice and, as a result, hardly anyone who is entitled to it can benefit (Gross, Tryjanwoski 2009, 275). Irrespective of how member states apply and interpret this right, this constitutes a fundamental problem and clearly highlights the discrepancy between the Union's own claim and actual practice. If this fundamental right is applied and interpreted differently, this will probably mean that access to this right will be further limited and restricted (Gross, Tryjanwoski 2009, 260). Humanitarian, non-governmental-organizations have for years voiced public criticism of the EU's asylum system. In 2008 the Red Cross called to mind the provision of "humanitarian assistance to vulnerable migrants (including asylum seekers), irrespective of their legal status" to be established as part of any common system or to any EU-policies (Linde 2009, 578).

To streamline the asylum procedure, through the regulation EU 439/2010 the EU-parliament and the Council agreed to set up the European Asylum Support Office (EASO) with the aim of promoting the development of a Common European Asylum System (CEAS) (European Asylum Support Office 2019). The development of the CEAS by then had been an issue of EU-politics for more than a decade. Since the very late 1990s the member states had worked, as explained above, on a common legal framework to harmonize the system among all nation states and to standardise the quality of protection for refugees, as well as sharing responsibilities and enhancing solidarity between EU states (European Commission 2016).

Since 2013, three EU directives and the two regulations together have formed the CEAS:

- *The revised Asylum Procedures Directive aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture.*
- *The revised Reception Conditions Directive ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort.*
- *The revised Qualification Directive clarifies the grounds for granting international protection and therefore will make asylum decisions more robust. It will also improve the access to rights and integration measures for beneficiaries of international protection.*
- *The revised Dublin Regulation enhances the protection of asylum seekers during the process of establishing the State responsible for examining the application, and clarifies the rules governing the relations between states. It creates a system to detect early problems in national asylum or reception systems, and address their root causes before they develop into fully fledged crises.*
- *The revised EURODAC Regulation will allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.*

(European Commission 2019)

To conclude, the Qualification Directive 2011/95/EU, the Dublin III Regulation 604/2013, the Asylum Procedures Directive 2013/32/EU, the Reception Conditions Directive 2013/33/EU and

the Eurodac Regulation 603/2013 can be seen together with their antecedents as the European approach to asylum.

According to the Commission, the EU, as an area of protection, has set “high standards and stronger co-operation to ensure that asylum seekers are treated equally in an open and fair system – wherever they apply” (European Commission 2016). Since the Dublin III and the Eurodac Regulation do not focus on mainly procedural issues concerning asylum cases, they will not be taken further into account, as this study focuses on the legal outcomes of asylum cases on the micro-level. The current legislation of CEAS indicates that the original criticism remains relevant. Member states’ security interests are treated as equal to the regulations concerning the rights of refugees. There is no clear separation between those two different issues.

Domestically and legally, since the first Schengen agreement, the EU has conflated the legal asylum field with the security of its borders. Agreements with states of origin and transit countries concerning, for example, the execution of deportations or the acquisition of travel documents show that the EU is focusing on isolation. The responsibility of securing external borders is externalized as is the protection of refugees (Mratschkowski 2016, 182).

Recently, the failed Proposal of the Commission for an Asylum Procedure Regulation and other proposals presented as part of the CEAS reform package, were being discussed by the European Parliament (EP) (during the legislative period 2014-2019) and the Council. Two further proposals put forward by the EP concerning asylum law were presented but were not accepted by the Council (European Parliament 2019). The EP states in its report on the last legislative period: “It will be up to the new Parliament to ensure that the Common European Asylum System contributes as a part of a holistic approach to migration to improvements for asylum seekers and Member States in the spirit of solidarity and fair sharing of responsibility in line with the Treaties” (European Parliament 2019).

All the above-described layers and the interplay of different legal frameworks demonstrate the complexity of law in the field of asylum.

In general, in all European Union member states, the same legal framework should be applied. Despite the national differences in execution and the sovereignty principle, a lot of steps have been taken to strengthen subsidiarity and standardization to establish equal and fair procedures EU-wide.

6.Importance of Research Interest and Research Question

The European Commission states on its website quite clearly that uncertainties and arbitrariness should not be part of the asylum procedure of the Union and, to prevent such, the Common European Asylum System is needed:

“Asylum must not be a lottery. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar.” (European Commission 2016).

With the adoption of the above mentioned revised directions and revised regulations, the Commission claimed the CEAS to be in operation (Pollet 2016, 74). Nevertheless, the provisions focus as much on member states’ interests as on the protection of refugees (e.g. securing the external borders). Tensions between the rights of refugees and the incorporation of national interests strengthens the question of whether or not the process of making asylum case decisions uniform is implemented not only on a theoretical level, but also applied in practice. Even though the aim of the CEAS is clear: ‘similar cases are treated alike and result in the same outcome’ (Pollet 2016, 75), the practical implementation and interpretation of the different legal frameworks is not that lucid. How is the CEAS implemented and executed and is standardization visible and perceptible? The relevance of this question is material: CEAS development is still not completed today. As long as the operation of asylum law occurs at the domestic level, this has to be monitored and compared in order to grant equal and standardised procedures within the Union.

As mentioned above, the Commission's interest was to manufacture a framework that guarantees that similar asylum cases are treated in the same way and receive a similar outcome. Since there are still divergences and gaps in the procedure (Mratschkowski 2016, 75), the question arises, whether there are still striking differences between EU countries in the decision-making part of the procedure, despite the coexistence of different legal frameworks? The outcome of the decisions can be seen for individual refugees at the micro-level. Every refugee who has made their way to the EU, is most concerned with their legal status, since without it, a life within the Union is a legal impossibility resulting in non-conferral of rights. Are differences in the proportions of legal statuses granted for asylum seekers observable among member states of the EU? If so, those inconsistencies should be analyzed. This thesis aims to judge whether the already existing common framework can really be seen as common in terms of how it is applied in the contemporary system.

To examine this issue more accurately and precisely, the following research question will be studied:

To what extent does the implementation of the international law provision specified in the Convention relating to the Status of Refugees of 1951 and the 'Common European Asylum System' vary among European Union member states, Austria, France, Germany and Hungary between 2008 and 2018?

To answer this question it is important to examine whether there have been differences in the application of international law in different countries. Has the Refugee Convention been interpreted differently and subsequently executed differently? If so, can these differences be traced to changes and differences on the national level? How, why and when did national decisions and responses to applications for international protection change, and how did the development of EU policies play into this procedure? This thesis aims to give a general answer to these questions, and will not examine all EU-member states, nor look at all applications of all states of origin, nor research in detail the allocation of all legal statuses designated as asylum statuses. To initiate further and deeper research and to ignite a debate, this thesis aims to reveal

variations in decisions and therefore variations in the implementation of the common legal framework. If such variations and gaps are discovered, the thesis will draw a connection between the contemporary legal situation on asylum in the EU and those variations. The choice to investigate asylum decision was chosen to focus on the outcomes for the individual refugees. Linkage theory according to Wolfram F. Hanrieder will be applied to analyze the results of the empirical research.

7. Theory

When it comes to the implementation of international law in general, the concept of linkage politics will be applied. A constructionist approach underlies my thesis' treatment of legal questions that arise. The relationship between international law and domestic law plays a key role in the context of the cases investigated. First, because of the national application of the Refugee Convention. Second, as the selected states are member states of the EU, they are subjected to another common international law framework: EU law.

If one of the fundamental principles of the European legal system, the principle of subsidiarity, applies, then the observance of the fundamental rights, legal certainty, equality before the law and proportionality are relevant, since these principles have a hierarchical equal rank.

Michael Potcas deals with the relationship between different legal systems and deals with the traditional distinction between dualism and monism in law. Both approaches aim to describe the relationship between international and national law. For example, according to Potcas, dualism is based on 'two different legal systems' (Potcas 2010: 118). Monism, on the other hand, assumes that these two spheres of law are each part of a unified legal system which 'exhibits its particular features within the framework of this overall legal system' (Potcas 2010: 118f.). Potcas points out that this special relationship can be particularly challenging. Looking at the EU legal order, it becomes clear that the Lisbon Treaty has given EU law priority over national law. This claim to validity makes clear, in relation to the EU, that EU law can no longer be equated with

international law, since its relationship to national law means that it is a 'separate' international legal order (Potcas 2010: 119).

The examination of asylum cases is in and of itself a subject that is interlinked with different fields. International law is implemented on a regular basis by domestic institutions on the basis of national law. Different theories can be used to understand why observed variations appear. It is also useful to understand that the observed issue touches on multiple disciplines: International Law and Political Science (and its subfield of International Relations).

Wolfram F. Hanrieder states that the domestic or national and the international level of political systems are divided. He argues that two concepts may allow foreign policy to “bridge the analytical barriers between the international and the domestic political system” (Hanrieder 1971, 253). Even though the field of asylum is not specifically part of foreign policy, this argument can be adopted. Despite being domestically located in the interior political field, asylum law is based on International Law, especially in the European framework. At the same time, the development of a Common European Asylum System can be understood as part of foreign policy of the member states, since their EU-politics are still part of their foreign policies.

Hanrieder further examines the concept of compatibility, “which is intended to assess the degree of feasibility of various foreign policy goals, given the strictures and opportunities of the international system” and the concept of consensus, “which assesses the measure of agreement on the ends and means of foreign policy on the domestic political scene” (Hanrieder 1971, 253). Applied to asylum law, we could describe the treaties the members signed, the Refugee Convention, ECHR, CFR, the revised directions and regulations, as the goals imposed by international law. Since those treaties are only feasible when applied by all signatories, compatibility depends clearly on the member states’ foreign policies. By tradition, foreign policy is the political field which includes all subjects concerning foreign interests of nation states. International agreements, as well as International Law, fall into foreign policies. Even though contemporary asylum law is still executed on the domestic level, the conditions are agreed on by

international arrangements and therefore asylum law falls additionally under the foreign policy field of EU-nation states.

With compatibility, Hanrieder pictures a specific object, that has a “reasonable chance of realization if implemented by a policy that an outside observer would deem appropriate” and fits the conditions of the international system as well as a nation state’s foreign policy interests (Hanrieder 1971, 253). Vice versa, if the interest is “judged to be compatible with the conditions prevailing in the international system, and if the pursuit of this goal is seen to have a negative effect on the other goal’s chances of attainment, these two goals can be regarded as incompatible” (Hanrieder 1971, 253). Considering the degrees of compatibility between state interests and the international system can help to analyze the implementation among different actors’ goals (Hanrieder 1971, 253). Since Hanrieder ascertains that the terms of the international system set the boundary condition for interactions between domestic and international systems, the concept of compatibility can be adapted to asylum law within the EU (Hanrieder 1971, 253). The EU, as the international system, sets the backdrop for the interplanar interactions.

On the other hand, the concept of consensus in democracies is, according to Hanrieder, a norm of practicality within one political system. “Defined as the existing measure of agreement on policy projects among the relevant elements of a national system’s decision-making process, it necessarily imposes boundaries on the activities the political system can pursue without risking fragmentation” (Hanrieder 1971, 254). States need to meet the requirements of compatibility and consensus to form sustainable foreign policy. To picturise Hanrieders theory of linkage policy: if nation states want to form foreign policy that is accepted and respected by the international community, compatibility has to be upheld. At the same time, in democratic systems, foreign policy has to be formed in respect to the societies’ interest, both concepts need to associate and, therefore link, the international level with the domestic level. Thus, to break those two concepts down and set them into relation, consensus is a part of compatibility, and to fulfill the criteria of compatibility, consensus must be present. Hanrieder highlights the isomorphic quality of the concepts and stipulates two terms for the application of compatibility and consensus: comparative political science and international politics (Hanrieder 1971, 254f.). Therefore its

application for this study seems promising and was chosen. “The coupling of the concepts of compatibility and consensus provides an analytical framework which specifically recognizes that two different analytical environments are involved” (Hanrieder 1971, 256). Later on it is argued that in the case that international and domestic systems are recognized as interpenetrated, “the distinction between foreign policy and domestic policy diminishes substantially”. If external events occur, those affect the penetrated system internally and policies will be adopted as response, depending on the level of consensus and compatibility (Hanrieder 1971, 258).

As the Refugee convention and the European Human Rights Convention were mainly developed by former colonial states and the operators on the state level are also mainly countries of the Global North, the imbalance between countries of the so-called prosperous, post-colonialist Global North and the so-called Global South shall be acknowledged. Therefore it is desirable to focus on the concerned peoples perspective and not only research asylum from the perspective of destination countries.

8. Methodology

Research design

To answer the question of whether a governmental change and consequent domestic policy changes have influence on the implementation of international law, an inductive research approach has been chosen.

First, this work will empirically investigate in a comparative manner whether there has been a different application of international law in the field of asylum law. Further, the application of the laws in four different case countries is analyzed. For this empirical part a reasoning, comparative case study of the case countries will be conducted based on quantitative data. Positive decision proportions of first-instance asylum applications will be conducted and

compared. The comparison will be conducted on three different levels: along time within the case countries, case country by case country and case country by state of origin. Those different levels of comparison are needed to examine whether variations appear which are not solely attributable to variations in the cases of applicants of international protection. Comparable values have to be obtained, which allow the basis for this comparative research design. In this way, an intensive strategy with few cases but many variables has been chosen. The analytical part of this thesis will utilize qualitative methods.

For all cases the same time frame will be examined. Additionally, in all four case countries governmental elections have been held within this period. Those similarities shall allow and enable the comparison of the cases and the examination of other leverage factors on variations. Rates for each year are generated by gathering annual numbers. This is done for a period of ten years from 2008 to 2018 and the most recent data will be analyzed. Those rates will be referred to as positive decision rates/rates of positive decision. The term recognition rate is not used, since it is typically used for the recognition of one specific title and not the composition of all positive decisions. The current legal framework can be taken into account because the most recent data available will have been used. Next, total positive decisions for each country by state of origin will be generated. A huge time period like this is needed to cover at least more than one legislative period in each of the destination countries and to include at least one change of the governing parties in each of those for later analysis of influencing factors.

The first-instance decisions are decided by domestic authorities subordinated to ministries. Therefore they can be seen as decisions made by the executive part of the political system. Accordingly, it cannot be ruled out that there is political influence on the respective authorities responsible for asylum procedures. Even if there are no clear instructions, the national ministries to which the offices are subordinate have a hierarchical authority. The four countries offer themselves for comparison, since the first-instance decisions in the four states are made by similar offices (Office of the National Interior Ministry). In all of the case countries, as they are

states under the rule of law, one can file a complaint against a legal decision and try to be more successful in the next higher legal instance.

The first decision about a refugee's case is made by a governmental institution, while further stages are decided by courts. Applicants are able to file an appeal against the first-instance decision, if any of the legal base was decided negatively, rejected or not examined. The case therefore moves on appeal into the judicial branch. Generating a proportion of second-instance positive decisions which would be compared to the first instance positive decision proportion could be used as a controlling mechanism and tool. Differences could be researched, including reasons given not to overrule the first-instance decisions. Clearly, since a second-instance does exist, there will be differences in the two proportions. There are two reasons why this thesis does not compare those two levels. Firstly, differences between those two branches could be traced back to several variables including mistakes within the procedures, etc. which do not indicate political influence. Also, in the case of appeals, if the second-instance is active, the decision is only legally binding after the second-instance. It is possible that an appeal is made, even though the first decision was decided positively, as defined by this study's definition (no rejection), to achieve another legal status. For instance, people may, and do, appeal against a positive decision if they are granted subsidiary protection against their negative decision on the Geneva status. The second-instance decision on such appeals would, no matter whether the appeal is approved, result in no change in the rate. Even though the judicial branch becomes involved and overrules first-instance decisions, those decisions would not appear if the outcome grants another positive status, as all positive decisions are merged in this thesis. As this thesis' main focus is discovering whether political influence could be a factor for variation in decision rates, only the first-instance decisions and the analysis of influencing factors are of interest. Including the judicial decision would either go beyond the scope of this paper if included in the analysis or not fulfill the desired purpose. One could imagine that the granting of subsidiary protection could be a political strategy, since this status does not grant refugees as many rights as the Geneva protection status does. Since a differentiation of the different positive statuses is not possible, the second-instance decisions cannot clear the picture. Secondly, since second-instance decisions may not be ruled in

the same year as the first-instance decision, a comparison by annual numbers would probably not compare the same cases which each other and therefore would produce no valid outcome. From a methodological viewpoint this comparison would be not as helpful as it seems at first. Nevertheless, comparison of the two different instances may be interesting for further research, as it opens up further research questions depending on the outcome.

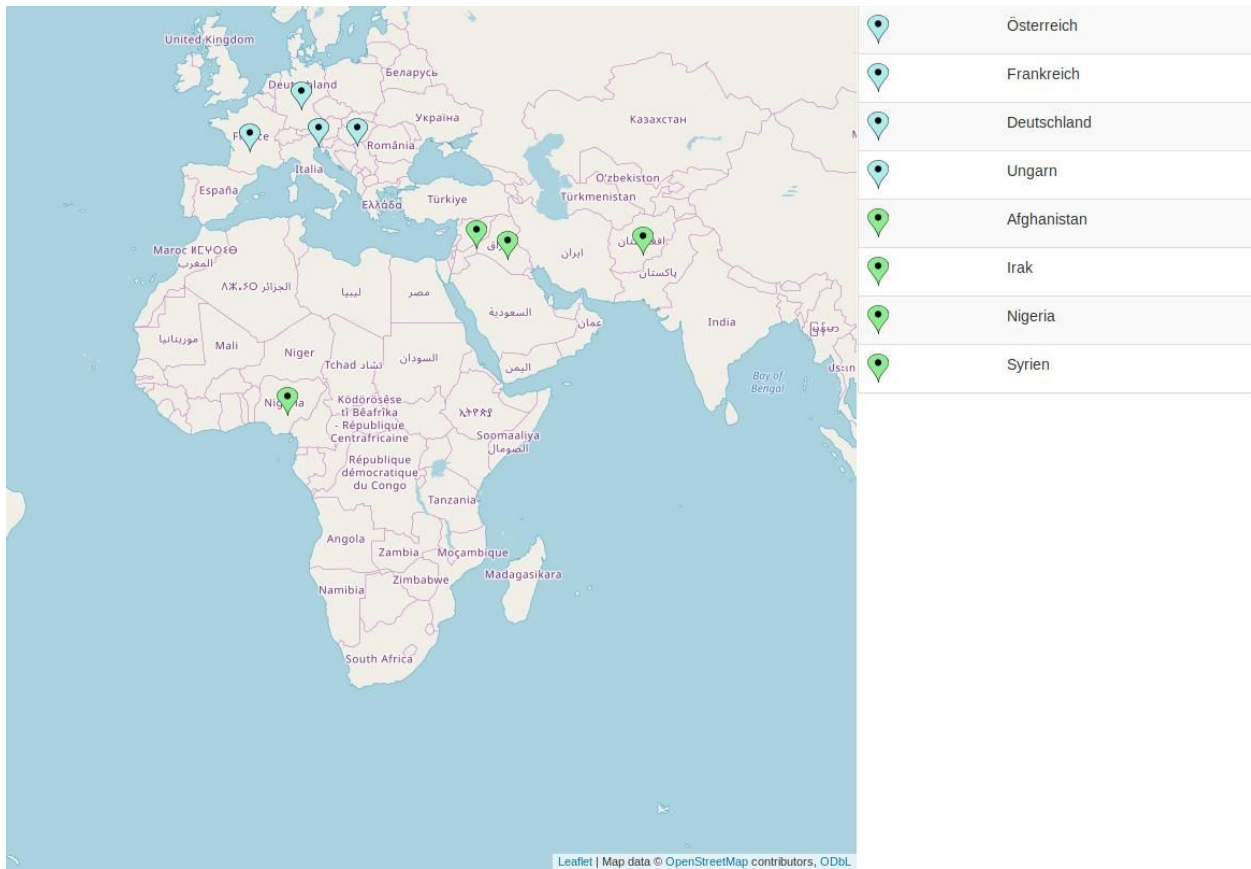
Case selection

A mixture between the method of difference and the method of agreement will be applied. Four countries that are rather similar were chosen for the case studies so the comparability is as high as possible. The EU countries, Austria, France, Germany and Hungary, signed the Refugee Convention and the European Convention on Human Rights and do not have external EU-borders. All states have specific administrative bodies which are responsible for refugees and procedures. In France the 'Office français de protection des réfugiés et apatrides' (OFPRA) is the institution responsible for asylum procedures, in Austria it is the 'Bundesamt für Fremdenwesen und Asyl' and in Germany the 'Bundesamt für Migration und Flüchtlinge'. In Hungary, the responsibility for the asylum system lies with the Immigration and Asylum Office, 'Bevándorlási és Menekültügyi Hivatal', which is subject to the Ministry of Interior (Asylum in Europe 2019). This is an element of the method of agreement, which aims to compare cases in order to detect those relationships between dependent and independent variables, but do not differ across comparable cases with respect to the other observed variables.

For the asylum cases, states of origin were chosen that differ in their geographical location and political situation as regards political status and systems: Afghanistan, Iraq, Nigeria and Syria. Colonial past and oppression by European countries as well as their location in the Global South can be seen as their similarities. Since asylum decisions are decided based on the situation of the person in its nation state the similarities do not play into the choice of methods. The asylum system takes nation states and citizenship as yardsticks and does not challenge their

constructionist nature. As this thesis analyses the system as it works at the moment, from the methodological perspicacity those variables can be described as different.

The following map (Tab.1) depicts the selected case countries and the selected states of origin of this study.



Tab. 1

Even though this thesis talks about state of origin and citizenship, it has to be noted that state of origin is not the same as citizenship. Also, in asylum procedures, if a person does not have any identification documents the persons is assigned a procedural identity by the authorities, which may differ from the person’s real nationality. Stateless persons are not listed within the used data sheets, it therefore has to be assumed that such persons were assigned another nationality by the authorities.

Persons fleeing from the four states of origin applied for asylum in all four case countries in the last ten years. The comparison is more comprehensible if variations cannot be ascribed to same changes in the states of origin, guaranteeing independent interpretation of data. It cannot be excluded that variations in rates are attributable to individual case decisions. Therefore, it is not only one year and one country, but four case countries over ten years which are being examined. This method of comparison is used so that the cases that are examined, differ with respect to either the dependent variable or the independent variable but do not differ across comparable cases with respect to the other variables (Caramni and Caramni 2017).

In this thesis, order and lists are not organized by any kind of priority but simply ranked alphabetically.

Since an inductive research method has been chosen a hypothesis cannot be stated so far. Hence, this thesis will test the influence of governmental policies on the decisions of asylum cases in European states. If variations appear, do these affect refugees of different citizenship in the same way? If marked differences in the rates appear this could be connected to the individual cases, however, since an extended period of time is analysed other factors can be examined to explain variation in the rates..

Several factors at the national level could explain variations and will be evaluated: in particular, national governance and changes in government. Also, the number of applications, domestic policies and national history will be examined.

Data

For this study, the data of all asylum and first time asylum applicants will be used. The statistical office of the European Union ‘Eurostat’ prepared the asylum statistics of the European Union in accordance with Article 4 of Regulation (EC) No 862/2007 (of the European Parliament and the Council on Community statistics on migration and international protection). The figures for asylum applications (first and subsequent applications) are supplemented by information from

the IGC (Intergovernmental Consultations on Migration, Asylum and Refugees) and national authorities.

All statistics are merged and are published on the free dissemination database on the Eurostat web page. The following Eurostat datasets were used:

- ‘First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)’, last update: 07/05/2019 (Eurostat code for identification: migr_asydcfsta)
- ‘Asylum and first time asylum applicants - annual aggregated data (rounded)’, last update: 08/05/2019 (Eurostat code for identification: tps00191)
- ‘Population on 1 January by age and sex’, last update 08/05/2019, (Eurostat code for identification: demo_pjan)

Eurostat provides the member states with statistics at the European level that enable comparisons between countries and regions concerning all social areas. The demographic and social statistics unit covers the subject of Population Census, Asylum and Managed Migration statistics. According to the responsible unit, its subject is to evolve high-quality statistics on the field of migration and international protection, relevant for the development of policies. Moreover, the statistics shall provide data for the process of developing the CEAS (Eurostat, 2018).

The member states, Iceland, Liechtenstein, Norway and Switzerland are obliged to transmit data on the following: Collection of Asylum statistics (Article 4 of the Regulation) -asylum applications, applications of unaccompanied minors, decisions on asylum applications at first and final instance, resettlement, grants of temporary protection. Time of obligation: continuous. Periodicity: asylum applications -monthly, first instance decisions on asylum applications -quarterly, applications of unaccompanied minors and resettled persons, final decision on asylum applications

Dublin statistics -annually, temporary protection -collected in the case of mass influx. Publication: statistics are published on the free dissemination database in Eurostat website. (Eurostat 2018)

In all selected cases, it will be checked prior to the substantive asylum procedure whether an asylum case actually becomes the subject of an asylum procedure. This could be ruled out if an asylum procedure is already underway in another EU country. This procedure was defined by the Dublin Regulation, which came into force in its original form in 1997 and was first replaced in 2003 by the Dublin II Regulation and finally by the Dublin III Regulation in 2014, which is still in place today (EU 604/2013). The regulation in general “establishes the Member state responsible for the examination of the asylum application” (European Commission - Migration and Home Affairs 2019). The Dublin agreement, which was established together with the CEAS, was renewed twice and includes in its recent edition several additional provisions aiming to protect asylum applicants.

Another reason for not admitting a case could be that the asylum application has previously been filed and denied, and the reason for seeking asylum has not changed.

The member states have provided the annual numbers of applicants for international protection. Eurostat also publishes the decisions by year, the country of origin of the applicant, the gender of the applicant and the type of decision (issued/non-granted residence permit). This first decision of whether to allow an asylum procedure is made in the four selected countries by the relevant asylum authority. In Austria the BFA is responsible for the asylum system, which is subordinate to the Ministry of the Interior. In France, the OFPRA is also subordinate to the national ministry of the interior. In Hungary, the responsibility for the asylum system lies with the Immigration and Asylum Office, 'Bevándorlási és Menekültügyi Hivatal', which is subject to the Ministry of Interior (Asylum in Europe 2019). The BAMF in Germany is a higher federal authority in the business area of the Federal Ministry of the Interior (Bundesamt für Migration und Flüchtlinge, 2019). It is worth pointing out that all figures show only registered and approved asylum procedures. Applications which were refused a permit are not counted within those numbers.

The BAMF, the ministry for migration and refugees in Austria, publishes monthly statistics. The yearly published magazine “Das Bundesamt in Zahlen – Aktuelle Zahlen zu Asyl, Migration, ausländische Bevölkerung und Integration” contains central data and will be the base for the data analysed for the case of Germany. Figures for both asylum applications and positive decisions itemized by state of origin are given. For Austria, figures published yearly by the interior ministry BMI are forwarded to Eurostat. The interior ministry of France and Hungary also publish their numbers of asylum applications and decisions and provide Eurostat with the same. For the later analysis application numbers by country (in relation to population) will be taken into account, so they are also indicated in the empirical part. For the same reasons data sets of population of the case countries have been adduced. The first-instance decisions in general are subdivided according to (non-)issued statuses as listed above; because of this thesis’ limited means, the rates used in the empirical analysis will not differentiate between positive statuses.

It strongly has to be remarked, that decisions on asylum cases are decided on upon every applying individuals personal situation. The situation of all refugees will be checked, but mostly a person has to be believed by the authorities. Since the Geneva convention status and the subsidiarity protection status are granted upon the situation of the individual refugee, individual factors always come into place, when decision numbers or rates are observed. When observing and comparing the results of decision numbers, it has to be taken into account, that all cases are individual cases. On the one hand side, this indicates that similarities do not have to appear, since divergences could be related or caused by specificities of appearing cases in the observed year. On the other hand side, this shows that appearing similarities may be connected to a political decision how to decide on cases within a case country.

It should be noted at this point that the term ‘temporary protection status’ indicates that this status will only be temporary, and that the other residence permits in the asylum system, on the other hand, are also not granted indefinitely.

For the empirical part of this study, several data sets published by Eurostat have been adduced. Eurostat publishes the numbers of refugees seeking asylum in member states by year. This means that in the number of decisions made, initial and subsequent applications have been combined. It is true that a subdivision might allow for a more accurate analysis, as it can be assumed that subsequent applications will be rejected more often and will be decided negatively more often. However, not all member states publish the numbers of first and subsequent applications separately. Austria does not publish figures on the decisions of “subsequent applications”, but only categorizes them in the published data records with the initial applications. Hungary did not continuously provide separate data for first time and all applications; the country first started to list those numbers separately in 2013.

Accordingly, the numbers of applicants (both first-time applicants and subsequent applicants) and the number of first-instance decisions taken are used each year. The data for the period from 2008 to 2018 will be used. The data are broken down by the EU-member state which made the decision, type of decision and country of origin. The number of applications (first-time applicants and subsequent applicants together) will be used to monitor how applications vary over the year and per member state. Only the figures for approved procedures are included.

However, these figures cannot be used to determine a relationship between the type of decision and the applications submitted, since the applications submitted do not have to be decided in the same calendar year. The number of applications submitted does not match the number of decisions, but the number of applications is considered, as variations in the number of applications could have an impact on a change in the decision-making practice of the offices.

To investigate the research question, a rate measuring the relationship between first-instance decisions and positive applications is generated. This rate is generated for each year of the specified period by EU country, type of decision and country of origin.

A rate is also generated for each EU country studied, indicating how many applications were decided on, regardless of the country of origin of the applicants. Thus, differences between

decision-making trends of the authority in the different states may become visible independently of the countries of origin. Absolute data may fluctuate, therefore the relationship of positive decisions to rejected decisions has to be determined.

This study aims to analyse data that is as comprehensive as possible in order to obtain results that are as meaningful as possible. It should be noted that France has not submitted data on all legal statuses to Eurostat for the entire period of investigation. In response to a (repeated) request submitted to the competent authorities in Austria and France asking whether these data were collected, if so, why they were not sent to Eurostat, if such data could be made available for research, and if so, why these data were not collected, was not answered by the authorities. Multiple requests to the Austrian Federal Office for Aliens and Asylum, regarding a breakdown of all asylum seekers after first and subsequent applications went unanswered. Austria and France did not provide data for humanitarian statuses granted before 2013.

The procedure of generating positive decision rates will be performed with the numbers of refugees from four different states of origin and cover each group separately. In the end there will be rates of positive asylum cases in the first instance for four states of origins in four countries of destination.²

The chosen method shows the interdisciplinary aspiration of this master's thesis. Through the focus on governmental policies and the comparative research design, the study contributes to the field of International Relations. The analysis of the implementation of the Refugee Convention and the Common European Asylum System additionally brings it into the field of International Law.

Legislative periods will be observed in all four case countries to find out whether they influenced variations. For instance, if immense variations appeared after changes in government in one case

²Annotation: The share does not show deprivation of statuses. Especially subsidiary protection statuses do not get prolonged in all cases, statuses like subsidiary protection status and Geneva convention status can get revoked.

country, while the positive decision rate stayed stable in the other countries, this could be an indicator of influence.

9. Empirical Section

The total decisions rate shows the overall trend of the domestic authorities deciding on asylum cases within the observed country. All legal statuses in this thesis are merged together under the category of positive decision, in case at least one of the statuses was obtained. Since rates of positive decisions in relation to all applications are examined, those can be used to describe nationwide trends in asylum decisions first instance. Comparing total decisions is one step of the comparative part. To get different perspectives on the rates of positive decisions, the rates (all compared over time) will be arranged in graphs to change the perspective: First gathered by case countries (total decisions), followed by rates for states of origin and, finally, graphs showing the positive decision rates for the selected states of origin within the case countries. In the second component of the empirical part, the results of the comparison will be analysed. The rate shows the statistical probability of asylum applicants getting any kind of positive decision, but not being fully rejected in the first-instance of the asylum process. Since the rates are utilized for comparison, they do not show the total numbers, which will play a role in the later analysis. Therefore a short description of the numbers of applications is included in the empirical part as well.

Depending on which rate is considered and whether the focus of the consideration or comparison lies with the country of origin or the case country, different aspects become visible, which will be taken into account when analysing governmental changes.

As a first step, the total positive decision rate is investigated, which shows the relation between positive decisions and all decisions independently from the state of origin (or citizenship) of the applicant. This not only merges all states of origin, selected for more specific analysis in this thesis, but all applications from all EU-external countries. Since the total decision rate does not differentiate between the different states of origin of the applicants, variations could be based on

factors in the states of origin. For that reason, a second observation of different states of origin by country has been conducted.

All data is compared over the same selected period, but from different initial points. For this reason, the same rates will be considered and compared in different ways below. At the beginning, the focus is on the case countries, and the general, total positive decision rates, which refer to all non-EU countries of origin, are examined. In the following, the application rates of the case countries in relation to the four selected countries of origin for this study in Afghanistan, Iraq, Nigeria and Syria are considered and compared. Finally, the comparative perspective is analysed from the point of view of the countries of origin by visiting the rates over the selected period, comparing the positive application rate for each country of origin to the destination country.

Austria - Application numbers and total positive decision rate

In Austria, 2015 was the year with the highest number of total applications: 25,265 persons applied for international protection. The years 2015 and 2016 (11,795) were the years with exceptionally high numbers. From 2008 (1,345) to 2013 (2,560) no high variations appeared. In 2014 (5,075) the numbers of applications did rise, but started to decrease again in 2017 (3,780) and settled with 2,055 applications in 2018. The rate of total positive decisions in Austria was the lowest in 2009 with 22% of applicants being granted a positive decision and the highest in 2014 with 76%. Between 2008 and 2013, the odds remained relatively constant in the lower third, with only a 10% fluctuation. In 2014 there was a strong increase of more than 46% in positive decisions, reaching 76%. The rate remained over 70% for two more years and began to decline again in 2017. In 2018, the rate was 44%. Overall, we see quite a stable rate around 30% of positive decisions, rising to almost 80%, staying over 70% for three full years then starting to decline from 2017 on. The jump between 2013 and 2014 is clearly the most remarkable observation concerning the positive decision rate of Austria in the chosen time period.

France - Application numbers and total positive decision rate

When considering the number of applications in France over time, a steady rise of applications can be seen. Starting with 31,765 applications in 2008, the number slowly rose year by year and peaked in 2018 with 115,045 applications. No slump in application numbers appeared during the ten years. There have been no major fluctuations in the 10-year period under review in France. The rate ranged between 16% and 14% from 2008 to 2011, rising steadily in 2012 and peaking in 2016 at 33%. In the following years, the rate fell again slightly, to 28% but only 5% away from the peak in 2016. Overall, a fairly low and stable developing rate can be observed, indicating that in the last ten years, there has been little change in the decision rate on asylum applications in relation to the number of applications. Although the number of applications did increase, the rate has doubled from 2008 to 2018, while the application rates have almost quadrupled.

Germany - Application numbers and total positive decision rate

The number of applications filed in Germany are higher in total than the other countries and increased greatly during the period under review. In 2008 there were 815 applications; eight years later there were 127,830 (almost 100,000 applications more than in the previous year). One year later, this sharp increase was again declining, and in 2018 the number of applications was one-tenth of the 2016 high, with 12,150 applications. The positive decision rate shows three trends over the past ten years in Germany. From 41% in 2008, the 2010 rate fell to 23%. Up to and including 2013, the rate remained stable between 20-30% and then began to increase sharply, to 69% in 2016. In the following years, the rate plummeted and was 42% in 2018.

Hungary - Application numbers and total positive decision rate

In Hungary we see different developments in the total number of applicants. From 2008 until 2012 the number varied between 1,690 (2011) persons and 4,665 persons (2009) with no clear trend. In 2013 the number rose to 18,895 applications, followed by 42,775 applications in 2014 and almost quadrupling in 2015 (177,135 applications). One year later the number fell lower than in 2014, with 29,430 filed applications and quickly decreased to 670, making 2018 the year with the fewest applications. Concerning the rate of accepted applications, Hungary as mentioned, stays stable at under 50% positive decisions. Besides varying trends from 2008 until 2013, there

was a stable low period of 8% (2013 and 2016) to 13% (2015) from 2013 until 2016 (maximum of 4% changes in successive years). In the last two years, an increase of positive decisions appeared, ending with 38% in 2018, the second highest figure in the observed period.

Total positive decision rate – Comparison by case country

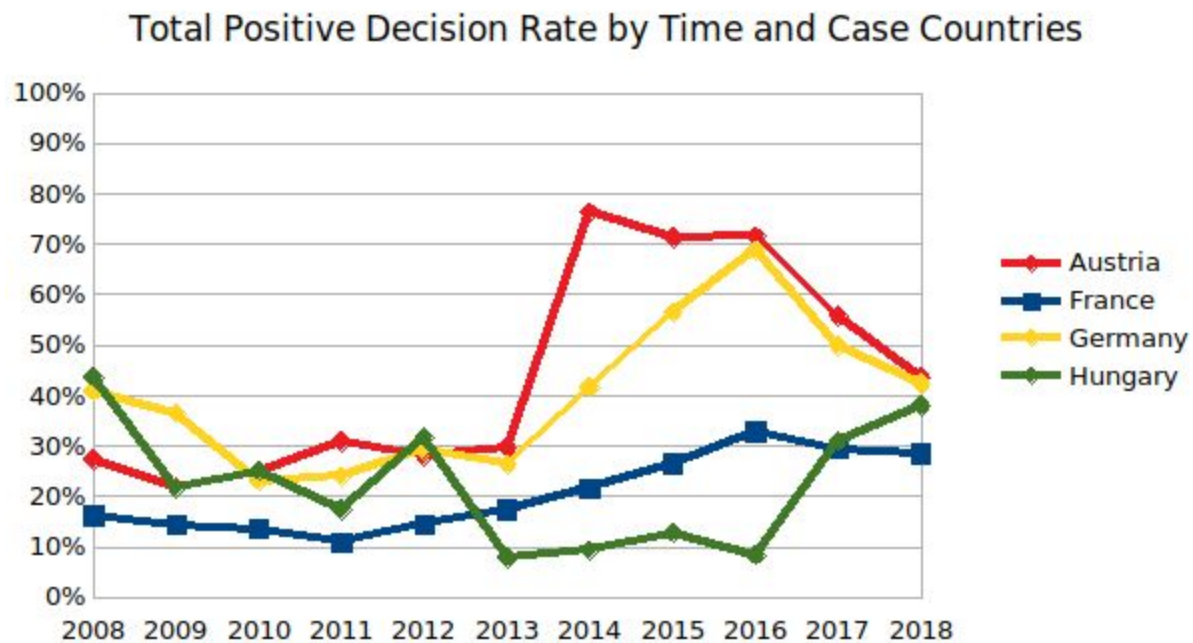
In 2018, the countries' rates of total positive decisions for all states of origin merged do not vary much. In the four countries over all, the chance of getting a positive decision in the first instance of an asylum procedure is lower than 50%: the rates are between 44% (Austria) and 28% (Hungary). A closer look at the odds of all positive decisions in relation to all decisions per year and depending on the country of origin reveals the following developments:

In Austria, the rate of positive decisions ranged between 22% and 31% from 2008 to 2013, with the rate rising to its previous peak of 76% in 2014, to more than 70% in the following two years and decreasing to 56% in 2018. The rate of positive decisions in France seems on first sight different to the trends in Austria: It is constantly lower than the Austrian or German rate. From 2008 to 2013 it ranged from 17% to 11 %, slightly decreasing since 2011, reaching the highest point in 2016 with 33%. The rate increased in 2017 then down slightly to 28% (2008).

In France, the rate primarily grew, ranging from 11% to 33%, with no strong deviations. Hungary shows several deviations and jumps in the rate, steady only from 2013 to 2016. The biggest divergence can be seen in 2014, when Hungary decided only 9% of all applications positively, while Austria granted 76% of all applicants a positive status, making for a difference of 67%. In 2008, Germany's rate was close to Austria's with 41% and moved within similar ranks, slightly falling until 2010 and slightly rising again until 2013. From 2014 until 2016, Germany's rate rose constantly from 26% (2013) up to 69%, almost as high as Austria's rate in this year. Until 2018, the German rate sunk to 42% again, similar to Austria's. Hungary had the highest rate in 2008 with 44% of applications accepted. There were slight ups and downs in the following years until 2013, when the rate fell from 32% to 8%. Only minor changes appeared through 2016, but in 2017 the rate jumped to 31% then rose to 38% in 2018. Germany and Austria show rather similar developments, while Hungary has a lot of deviations and no similar trends with any of the other cases. Although France falls out of alignment in terms of numbers,

there is a slight similarity in overall trend to Austria and Germany. Remarkably, by 2018 all countries are converging in terms of percentage, while there were many differences over the previous period.

The following graph (Tab 2.) shows the rate of total positive decisions of all total decisions in all examined case countries.



Tab 2.

From 2008 until 2013, all four countries move between 8% and 44% percent, with not even every second application being decided positively. Starting with 2014, huge differences can be observed. Rates are rising in all countries; while in France and Hungary this is only a slight, moderate increase, the rate in Germany rises by more than 40% within one year and from then on remains much higher than in Hungary. In turn, the rate collapses in Austria, France and Germany in 2016, while the rate in Hungary is rising sharply. By 2018, the rates of all countries have converged again and are at 29% to 45%. A look at the graph shows that by 2013, all countries were in a similar range, with positive decision rates consistently below 50%. With 2014 this changed sharply in Austria and Germany, the recognition rate increased strongly, while in France

and Hungary the rate did not vary much. The biggest discrepancy appeared in 2014, when the decision rate in Austria was at 76%, the highest stake in this ten-year period, while in Hungary it was as low as 9%, meaning 82% of applicants for asylum were rejected that year in Hungary.

More precise observation is necessary to produce rates for each state of origin. Since the granting of legal statuses is based on the situation of the refugee in the state of origin, immense changes in decision rates could indicate changes in the state of origin and do not have to be connected in any way with the legal framework of the case countries. Consequently, such changes should then correspondingly appear alike in all member states.

In the case of Afghanistan, similarities to all total decisions are visible. While the rates did not differ too much until 2013, in 2014 they diverge and then in 2018 they converge again. Therefore it will be checked whether this similarities only appeared along one state of origin in one case country or whether similar trend within one case country appear. Those would indicate trends in states independently from the situation in the state of origin and the personal persecution of the applicants. The observance of only total positive decision rates in different countries would not sufficient nor adequate be substantive for the desired analysis.

Austria – Total Positive Decision rate – Afghanistan

The number of total positive decisions concerning applications from Afghanistan decreased from 69% in 2008 to the lowest in 2012 with 35%. The data shows a strong increase up to 90% in 2014 but then started to decrease again. In 2016 we can see the number falling to 55% and settling at 34% in 2018.

Austria – Total Positive Decision rate – Iraq

In 2008 there were 80% positive decisions made by Austria concerning asylum applications from Iraq. Looking at the numbers it can be observed that the rate decreased until 2010 when it hit 66%, then started increasing again until it peaked in 2014 at 95%. The statistic shows an enormous decrease: the number of positive decisions in 2017 is less than half, compared to 42% the year before. The data shows an ongoing decreasing trend as the number falls to 32% in 2018.

Austria – Total Positive Decision rate – Nigeria

Overall, the rate of positive decisions of asylum applications from Nigeria varies between 3% and 5%. In 2014 the numbers show a great increase to 27%, but slowed down to 15% in 2015 and decreased to 4% in 2018. A tiny upsurge to 6% can be observed in 2018.

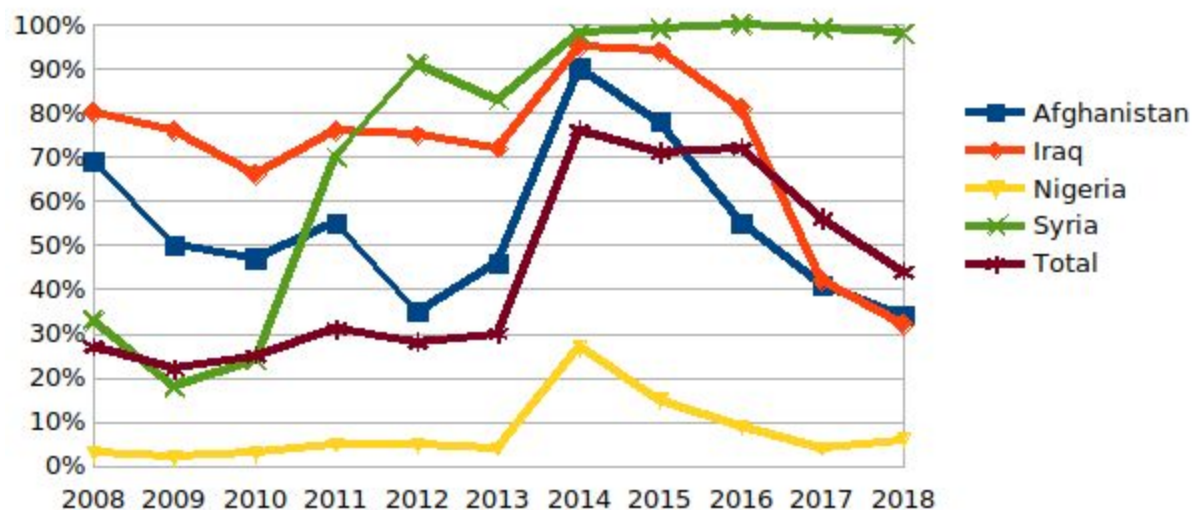
Austria – Total Positive Decision rate – Syria

There has been a decrease of almost half from 2008 with 33% positive decisions to 18% in 2009. The number picked up again in 2011 at 70% and continued increasing to 91% in 2012. After a small decrease in 2013, down to 83%, we can see quite a stable rate around 98%.

Austria – Total positive Decision rate - Comparison by time

The overall trend in Austria, independently from state of origin of the applicant, is a decrease in the rate of positive decisions, starting in 2015, but for Syrians in 2017. While for Afghani and Iraqi applications the positive rate was above 50% most of the time, with the decline in the recent years it went lower than this in 2017. Austria shows some variation in all countries, but most trends at least follow several years and, therefore, appear quite stable.

Austria - Total Positive Decision Rate by Time and State of Origin



France – Total Positive Decision rate – Afghanistan

The positive decisions of asylum applications from Afghanistan in Austria remained stable at between 30% and 38% from 2008 to 2011. The rate shows an increase to 45% in 2012 and the number jumped up to 83% in 2014, almost twice as much as the years before. In 2017, the highest number of positive decisions was reached, but that was then followed by a sharp drop to 67% in 2018.

France – Total Positive Decision rate – Iraq

From 2008 to 2011 the data shows a decrease from 82% to 65% positive decisions made by France concerning applications from Afghanistan. It can be observed that the number started rising again to 98% in 2015, but afterwards came down to 82% in 2016. There has been a constant decline of positive decisions, to 63% in 2018.

France – Total Positive Decision rate – Nigeria

The rate of positive decisions for Nigerian applicants shows no high variations and a low number of positive decisions within the investigated time frame. In 2008 there were 4% positive decisions, but in 2012 we can observe an upsurge to 8% which is twice as much as before. The trend has been growing until 2017 with 13% and decreased to 8% in 2018.

France – Total Positive Decision rate – Syria

Looking at the numbers concerning positive decisions for Syrian applications in France, we can see a remarkable jump from 2010 to 2011. While numbers slightly fell from 29% in 2008 to 29% in 2010, the positive decisions increased threefold in 2011 to 73%. The statistic shows a further increase to 91% in 2012 and a stable rate around 97% until 2016. In 2017, the number started slowly falling again to 94% and continued decreasing to 85% in 2018.

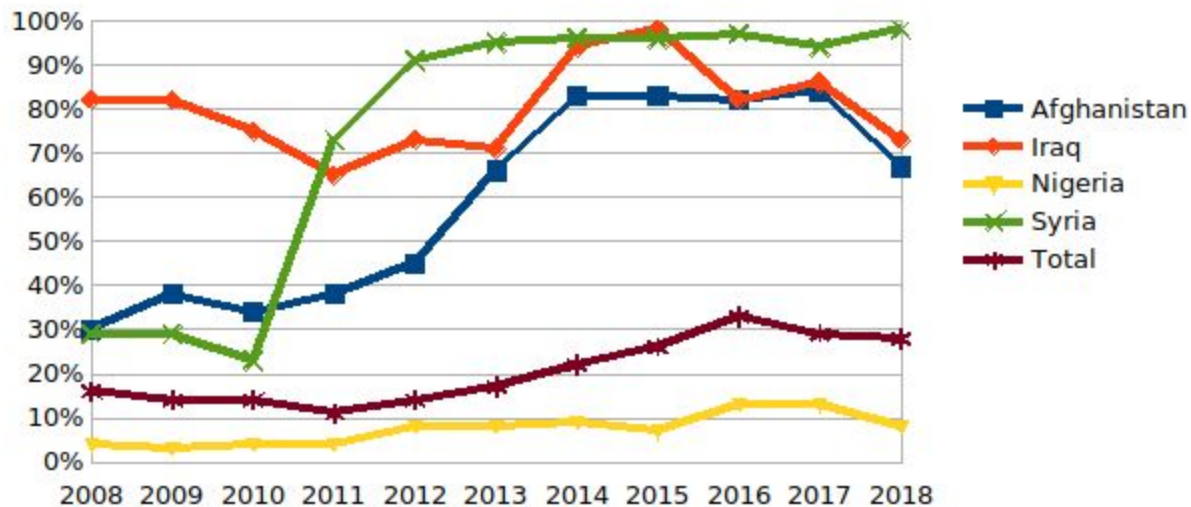
France - Comparison by time

In France the rates differ immensely concerning the applicant's state of origin. Almost all rates move in times of numbers in similar parts of the scale : Afghanistan ranked first between 30% and 50% until it ranged between 66% and 84% in the years 2013-2018. Applications from Iraq always where accepted at a higher rate, continuously in the highest third between 71% and 98% in the selected ten year period. A clear difference can be seen when it comes to Nigerian applications; the rate of positive decisions always stick to the lowest rate, reaching a maximum of 13% in two years, but then decreasing again. Applicants with Nigeria as state of origin, clearly have by far the highest probability being rejected by authorities in the first instance in France. Examining the development of the decision rate for applications filed by Syrians, a jump of 50% from the lowest third up to 73% is recorded from 2010 to 2011. In the following years this growth climbed even more (until 2016) , but started slowly to decrease again in 2017.

The one thing in common between all the graphs is the current development: all rates decrease from 2017 to 2018, no matter which country of origin. Although the rate of positive decisions ruled by french authorities mostly range within the same level for several years, there are few outstanding jumps in trends. Still, the rates differ greatly depending on the applicant's state of origin.

This is mirrored in the graph of the total positive decision rate for France: Steady curve, only three slight knees, showing quite steady development.

France - Total Positive Decision Rate by Time and State of Origin



Tab. 8

Germany – Total Positive Decision rate – Afghanistan

The rate of the positive decisions in total made by Germany concerning the asylum applications from Afghanistan does not show much continuity. Between 2008 and 2009 there was an increase from 48% to 60%. Thereafter the numbers go down to 35% in 2011 and increase sharply to 73 % in 2015. The figure shows a decrease of positive decisions to 43% in 2018.

Germany – Total Positive Decision rate – Iraq

It can be observed that the number of positive decisions regarding the asylum applications from Iraq has been quite high at 80%. Afterwards, the numbers settle down and remain stable around 50% to 60%. The highest number of positive decisions made by Germany concerning Iraq in total appears to be in 2015 with 96%, but immediately decreases sharply to 39% in 2018, after slightly falling to 77% in 2016.

Germany – Total Positive Decision rate – Nigeria

The numbers of total positive decisions of Germany regarding asylum applications from Nigeria constantly range within the lowest third of the graphic. A slight increase from 2008 with 5% to

2013 with 13% can be observed, followed by an enormous growth to 29% positive decisions in 2014. But afterwards, the number starts to fall to 16% in 2016, going up again to 23% in 2017 and decreasing to 21% in 2018.

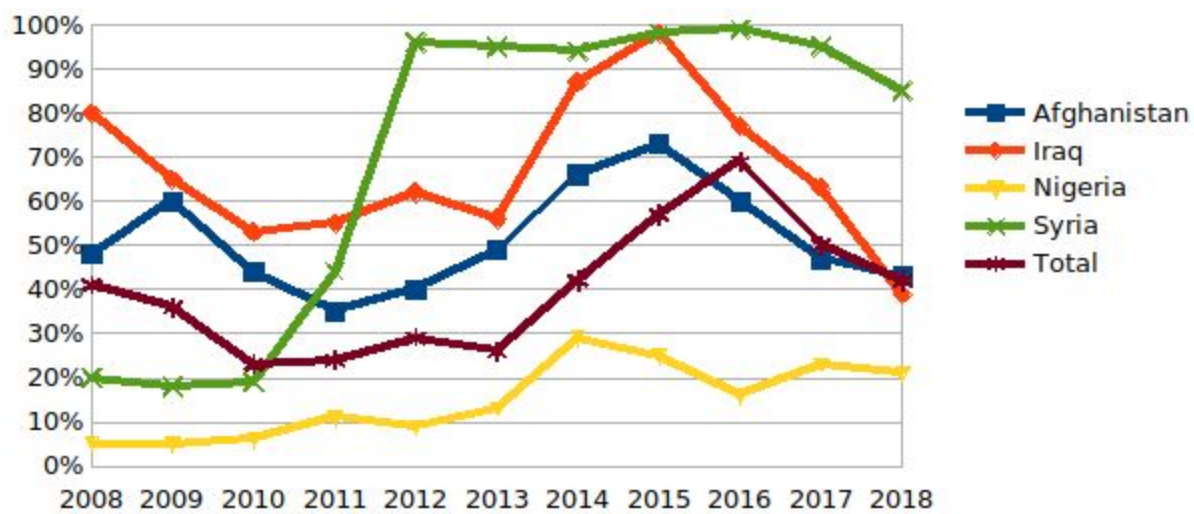
Germany – Total Positive Decision rate - Syria

The rate of total positive decisions of Syrian asylum applications filed in Germany show a stable range at about 20% between 2008 and 2010. The numbers double in 2011 to 44% and continue to increase to 96% in 2012. This is three times as much as two years before. The numbers peaked in 2016, increasing to 99%, which is the highest number of positive decisions of all investigated countries. In 2017 the numbers once again decline, reaching 85% in 2018.

Germany comparison by time

The positive decision rate for all four selected states of origin fell from 2017 to 2018. The peak of all graphs was 2014/2015. While applications from Afghanistan and Iraq show somewhat similar trajectories (peaking in 2015 and falling from there), Nigeria and Syria differ from this trend and show a totally different progression over time: Applicants from the two countries ranked in the lowest third, but then rose to the top and have stayed above 90% since 2011.

Germany - Total Positive Decision Rate by Time and State of Orig



Hungary – Total Positive Decision rate – Afghanistan

Looking at the rate of total positive decisions made by Hungary regarding asylum applications from Afghanistan, it is striking that the highest number can be found in 2008 with 75%. It can be observed that the positive decisions jumped down to 23% in 2011 and rose up a little in 2012 with 37%. The figure shows a quite stable rate until 2016 when the number sharply decreases to 6%, increasing to 32% in 2017. The trend has been growing, until reaching 38% in 2018.

Hungary – Total Positive Decision – Iraq

Similar to positive decisions concerning Afghanistan, the positive rate of asylum applications by people from Iraq peaked in 2008 at 69%, but enormously decreased to 20% in 2011. In 2013 and 2014 the data shows an increase up to 67% positive decisions. Afterwards, it can be seen that the number strongly declines to 13% in 2016 and reaches 27% in 2017. In 2018, the positive decisions made by Hungary fell slightly again to 24%.

Hungary – Total Positive Decision rate – Nigeria

The figure points out that the rate of positive decisions of asylum applications from people from Nigeria is constantly low until the last two years of the investigated time frame. In 2008 the rate shows 20%, but in 2014 it comes down to 0% positive decisions. It can be observed that in 2014 there is a slight increase to 4% and the number jumps between 2016 and 2018 from 13% to 100%, meaning all applications of people from Nigeria have been granted a legal status.

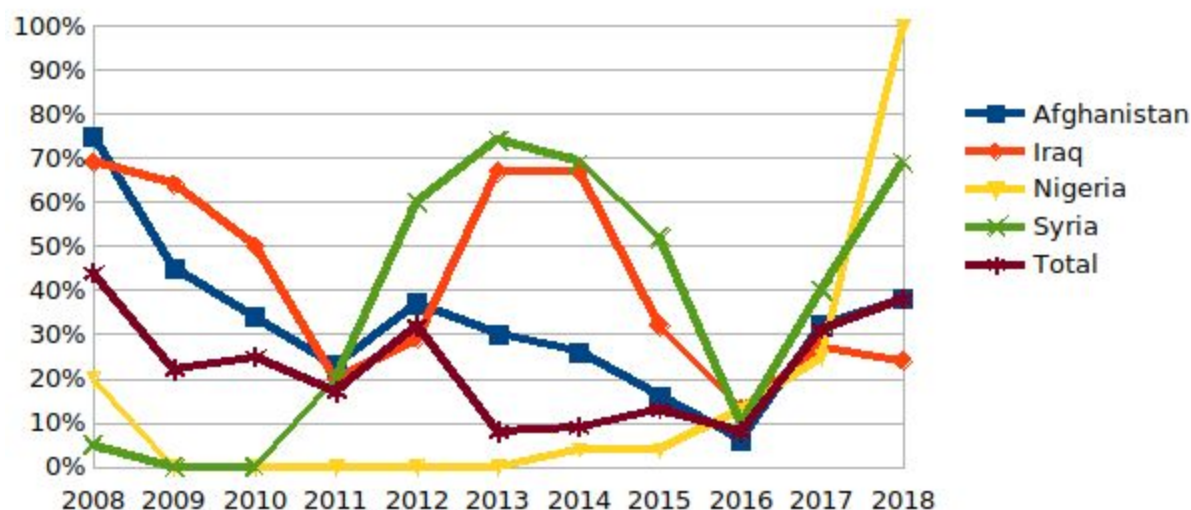
Hungary – Total Positive Decision rate – Syria

As every other investigated country, Hungary shows high rates in 2008 with 50% positive decisions regarding applications from Syria. But then, several large variations are observable: Between 2009 and 2010 it falls to 0% and starts rising again up to 60% in 2012 and in 2013 the peak is reached with 74% positive decisions. Afterwards, it starts to decrease again in 2016 with 10% then increased in 2018 with 69%.

Hungary – Comparison by time

Comparing the Hungarian positive decision rate over time, several things strike one. Firstly, there are no similar trends. Secondly, the positive rate of Nigerian applicants decisions stands out, since, although all applications were rejected for years, the rate rose slowly until it quadrupled and reached 100% positive applications. It has to be noted that in 2018 out of 5 (rounded) applications from Nigerian citizens, all of them received a positive decision. For applications of all other states of origin, the positive decision rate was the lowest in 2016, rising remarkably in the following year. From 2007 to 2010 the positive decision rate fell in all four countries; for persons from Nigeria and Syria, in fact, the rate was 0%.

Hungary - Total Positive Decision Rate by Time and State of Orig

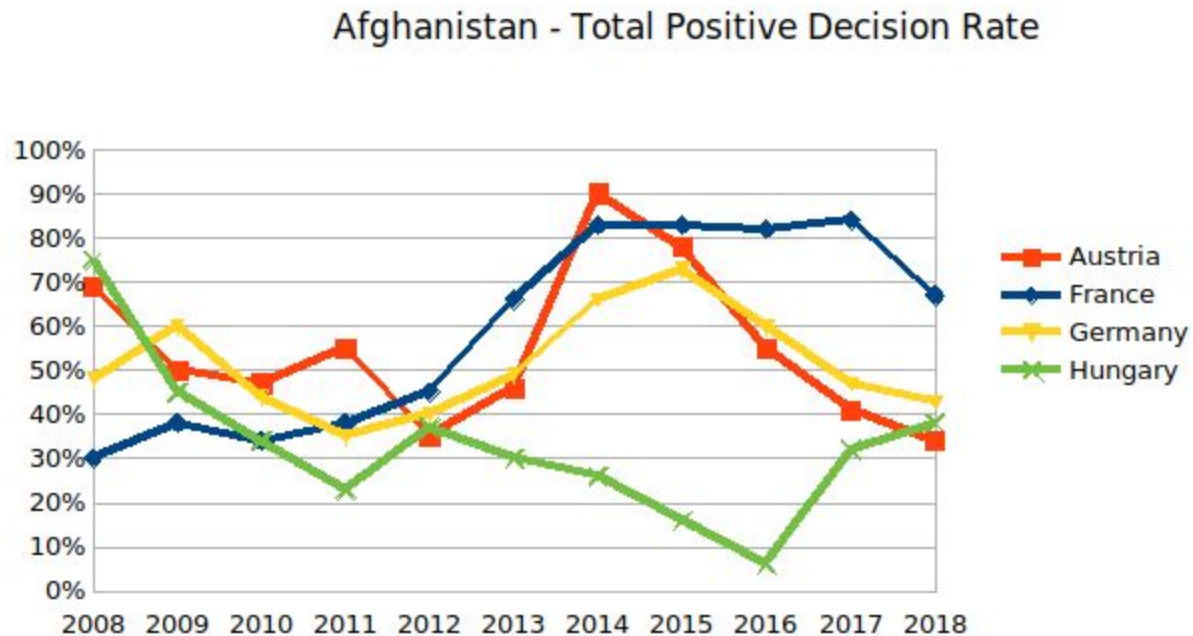


Tab. 10

Afghanistan

It can be observed that Austria and Hungary show a similar rate of positive decisions regarding asylum applications by people from Afghanistan with 69% and 75% in 2008, while France has a lower one of 30% and Germany made 48% positive decisions in total. The following years all rates decrease except for France, whose numbers grow steadily. With 2013 the rate shows that

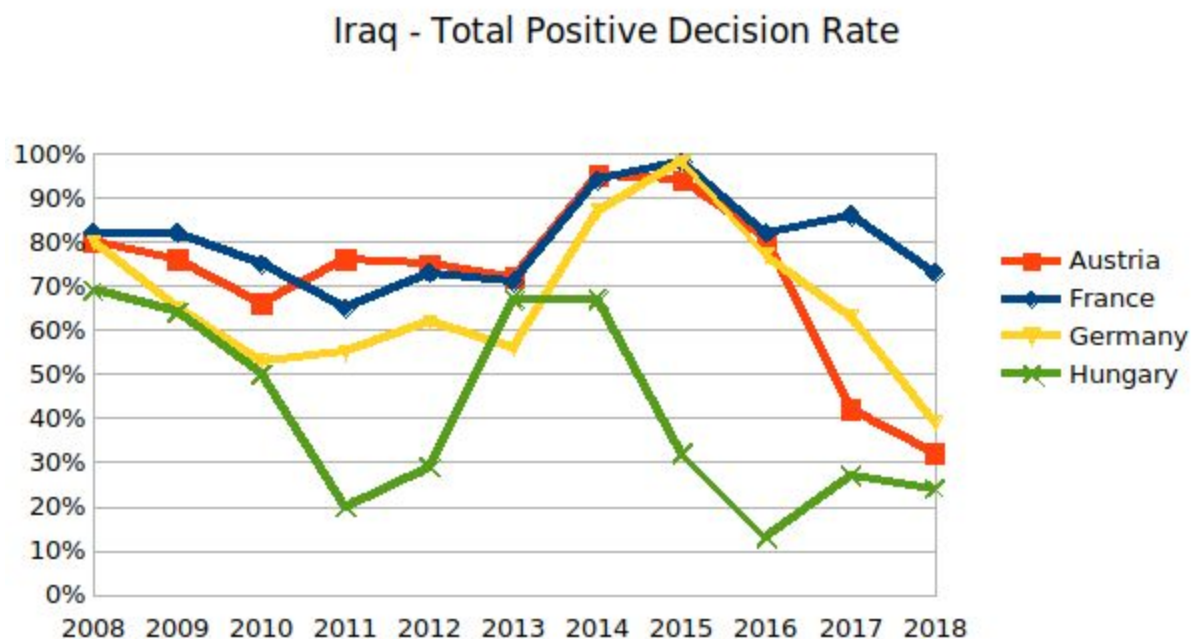
numbers increase, all but Hungary have their peak around 2014 to 2015. The figure shows that only Hungary sharply decreases to the point where the number is down to 6%. The trend of all surveyed countries goes downwards.



Tab. 3

Iraq

The rate shows that all countries made a similar number of positive decisions concerning asylum applications of people from Iraq in 2018. Approximately 80% positive decisions were made, only Hungary made less than that, with 69%. The following years France, Germany and Austria remained stable in their decisions until 2013, whereas Hungary continuously decreased in its positive decisions. In 2011, with 20%, the figure shows that Hungary's numbers increase enormously and get closer to the other countries. While Hungary reaches its peak in 2013, the rest around 2015, all rates drop heavily thereafter. After reaching the lowest numbers of positive decisions made by Hungary in 2016, with 13%, the numbers again rise a bit, but fall right after. Compared to 2008, the positive decisions of Austria, Hungary and Germany have a great decrease in 2018; France's decrease, however, is less remarkable than the others.

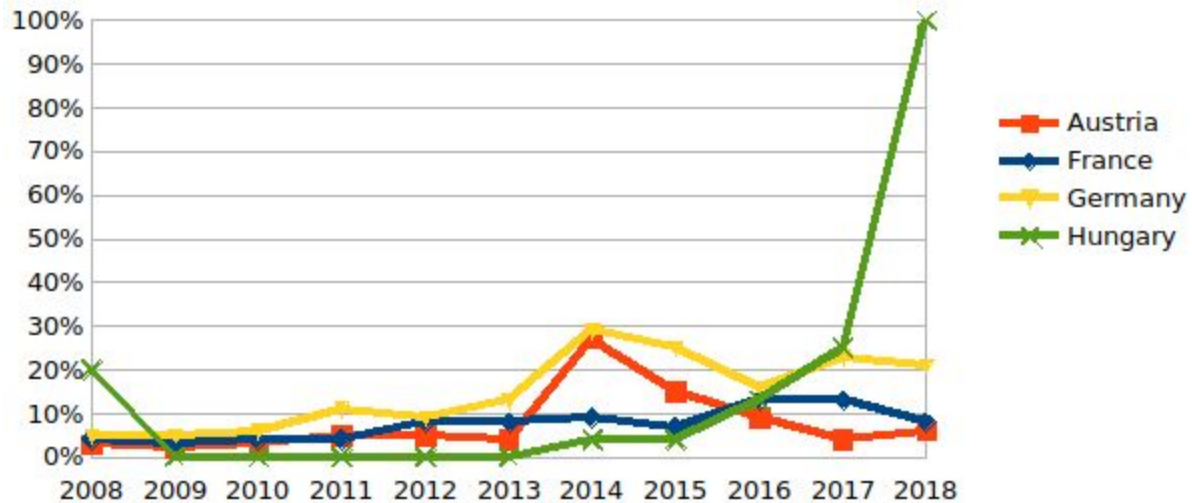


Tab 4.

Nigeria

Compared to the other graphs it can be observed that Nigeria's numbers remain stable. Until 2017, the positive decisions made by France, Hungary, Germany and Austria of asylum applications from people from Nigeria are in the lowest third of the figure. In 2014 there appears to be a slight increase of positive decisions by Austria and France, followed by a decline. France remains stable almost the whole period of analysed time. Hungary is the only line on the graphs which changes a lot; starting in 2013, the numbers increase and jumps between 2016 and 2018 from 13% to 100%. The rest of the investigated countries can be characterized by a continuous, slight increase.

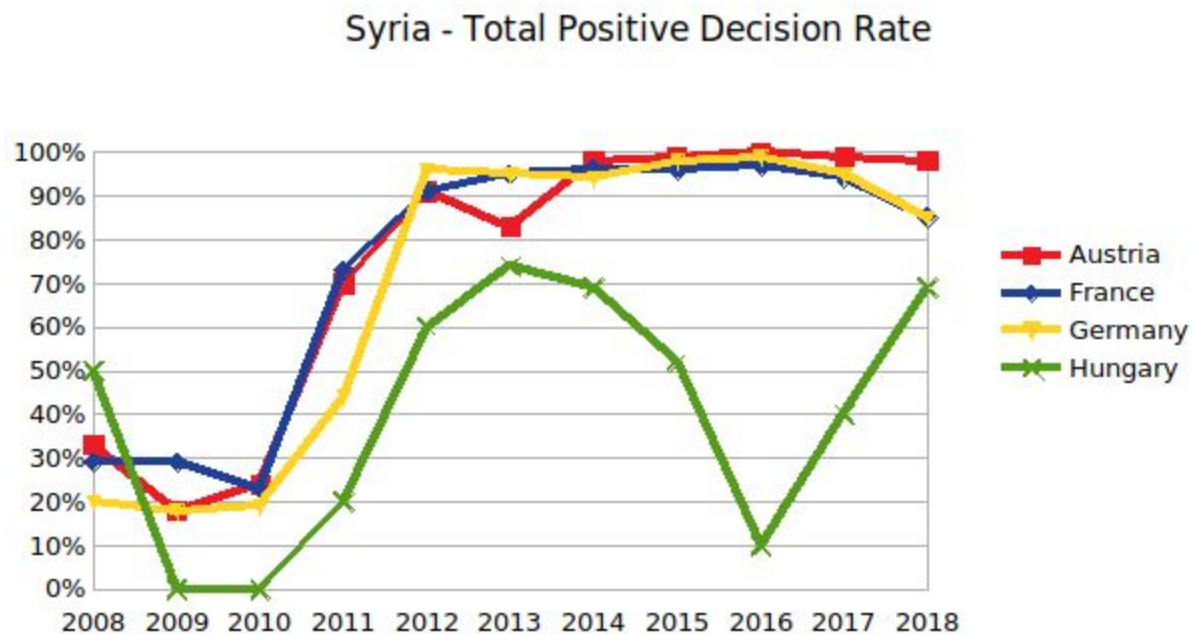
Nigeria - Total Positive Decision Rate



Tab 5.

Syria

Considering the data of positive decisions made by Austria, France, Germany and Hungary of Syrian asylum applications, it can be said that they are all similar except for Hungary. In 2008, the numbers are between 20% and 50%. In 2010, the total number of positive decisions climbs sharply. Around 2012 the numbers stay stable, all of them about 90%. Only Hungary has a slightly different pattern. It can be observed that Hungary's peak of positive decisions can be found in 2013 with 74%, decreasing to 10% in 2016 then showing an upward trend since 2016.



Tab. 6

Comparison state of origin by time

Overall, we see that the rate of positive decisions is the lowest in Hungary, except for Nigerian citizens in the last 3 years. The rates for applicants of Afghanistan, Iraq and Syria show not only similar trends, but also broadly similar percentages.

10. Comparison and Analysis

It is assumed that, for instance, a smoldering confusion in one country leads to many people forced to flee. These people flee due to the same emergency situations. Accordingly, the rate of recognized asylum applications should be approximately the same in all countries, since the destination countries decided on the same legal basis on the asylum application. Of course, people flee differently, arriving in different countries and applying for asylum in different states, which means that the number of applications depends on whether a country is a so-called "transit country" or "destination country". Since an analysis of the absolute numbers would have to disregard this aspect, the ratio of recognized decisions is considered in relation to the total

number of decisions made in each calendar year. At the same time, the level of personal persecution cannot be neglected as well. Each case is decided on by its own, checking the criteria for the Geneva convention status. To differentiate between all statuses would exceed the scope of this Master's thesis, still it has to be acknowledged, that similarities along different positive decision rates within one case country prompts question. Taking into account, that all cases are individual cases, there should be no nation-trends, when checking the numbers of Geneva convention statuses. Since for this empirical work, all positive decisions were merged, subsidiary protection status was included, too. This specific legal status does, juxtaposed to the Geneva convention status, introduce similar trends in rates based on the different legal criteria. For the subsidiary protection status the overall security situation of states of origin is taken into account.

The comparison of graphs showed various divergences on all compared levels. The existence of variations themselves is not remarkable. Variations only indicate modifications of decisions, if they do not appear in a similar time period in other case countries or if they are similar in trends within one case country. Such observations have been made and the following results describe the key findings. Comparing the case countries' total positive decision rates with each other, we see that in 2014, the numbers disperse. Countries do not act similarly. This is seen with Hungary, following a totally different trend than the others from 2016 on. Its rate starts to increase while in the other countries the rate decreases. Therefore we can say that countries' positive decision rate not only vary in quantitative manner, but according to their trends. Comparing the rate within one country over time, we can see that similar trends appear over time along different states of origin (see Germany between 2013 and 2018, Tab. 9). When focusing on the states of origin, we see that positive decision rates may vary immensely according to where an application has been made (see for instance Afghanistan Total positive Decision Rat, Tab. 3).

Several things have been noticed through the different ways of positive decision rate comparison and three key outcomes appear:

- 1.) The comparison of the total positive decision rate by case countries indicated that variations within case countries over time are observable (see Tab 2). This has to be expected, since the

situation within the states of origin are taken into account, as well as the personal persecution of the applicant (as describe above) account and those rates therefore will certainly vary. The Austrian positive decision rate of Syrian applicants therefore serves as an example, showing an immense rise in 2011, when the situation in Syria worsened because of the Syrian Civil War. Still, we see similar trends overall although the rate differs. Regardless of the state of origin, all rates peaked in 2013 and all rates fell within the last four years. Additionally, all rates fell in the years 2008-2009. Some rates seem to develop more closely than others: Austria and Germany look alike and show mostly similarities according to their trend and the height of the figures, moving in similar levels. Still, we see that even though trends and/or numbers in some years have been similar, in others strong divergences appear.

2.) The total positive decision rate in case countries over time shows that variations within one case country appear, which affects applicants from all selected states of origin. Such similarities in trends indicate that factors other than personal persecution and the situation in the state of origin were taken into account, since in the states of origin, the situations differ greatly. It cannot be eliminated that those similar trends are based on similar situations in state of origins or personal persecution of applicants, if only one destination country is observed. Since we can compare this trend with the trend in other case countries we can conclude that either a.) case country one is politically influenced and therefore similar trends along all case countries are visible, or b.) the persecutions for refugees did worsen/better simultaneously in all selected states of origin, but were not perceived similarly in the case countries. This can be seen when checking the decision situation for Afghani applicants in Austria and France (see Tab. 3 and Tab. 4)

3.) Changing perspective, focusing on the states of origin and comparing the decision rates in the case countries over time, highlights variations among positive decision rates. The chances of receiving a positive decision as a refugee is dependent on the location where the application is filed. For instance, this can be seen in the total positive decision rate of for all states of origin as well as in the total positive decision rates of the selected states of origin (see Tab. 2, 3, 4, 5, 6). Those variations appear for applicants of all selected origins to a variable extent.

These findings show that variations between decision rates appear over time, country state and state of origin. More than that, they indicate that influence (originating from the case countries,

but not the applicants nor the states of origin) could have shaped the decision rates in the way they appear, since those variations do not always appear simultaneously or similarly.

Factors influencing those modifications in the decision rates may be, for instance, the location and political position of a case country (transit-/destination country), the relationship between case country and state of origin, and history of the case country. Another factor of influence may be the number and the variation of the number of applications, when it comes to changes in positive decision rate. Nevertheless, this should always be put into relation. In relation to population there has not been a great change in any of the case countries concerning the ratio of applicants to population.

Setting this into relation with the existence of the CEAS, it can be clearly seen that there are gaps in the implementation of the common EU law. The aim of unifying the procedures does not seem to have been reached. Additionally, the application of the Refugee Convention and its 1967 Protocol is modified along case countries. Even though member states of the EU are bound to apply those parts of international law, they do this in a modified, differing manner. According to Hanrieder, foreign policy of a nation state depends on national consensus and international compatibility. National governments need to pander to their voters' interests to fulfill the criteria of consensus and to gain interior stability, which is needed for fruitful and sustainable foreign policy. In the case of asylum, this can explain occurring variations, if assumed, that governments decided to apply international law not in the common interest to please the Union or the affected refugees, but in a manner that pleases their own interests on domestic level simultaneously. Likewise, the concept of compatibility can be applied to explain why member states apply common asylum policies, even though it is not in their domestic interest to apply and implement them in a unifying manner. Not risking their membership to a bigger political entity such as the EU or UN (and therefore their position within the international political system) could be their only incentive and interest to ratify common asylum policies. If so, member states do, according to the concept of compatibility, apply and implement common policies on asylum, but according to the concept of consensus, do so in their one way.

11. Summary

As mentioned above, variations appear in the implementation of the international law provision specified in the Convention relating to the Status of Refugees of 1951 and the ‘Common European Asylum System’ among European Union member states, Austria, France, Germany and Hungary between 2008 and 2018. The fact that this variations seem to be influenced and the fact that any kind of political or domestic influence on decision-making cannot be ruled out, has to be connected to the composition of the international legal framework. The design of the current CEAS leaves the implementation and the execution of its directives and regulations in the hands of the nation states. Even though the field of asylum is now part of the European ambit, modifications appear on domestic levels, since nation states try to balance their national interests, which can be distinguish from international and European ones. Since the preservation of the right of asylum is not really a foreign policy interest of a nation state, but should be seen as a legal and moral duty of all societies, it can be assumed that nation states value their interests more than the protection of refugees’ rights. The fact that the CEAS framework also includes regulations concerning the EU’s interests and not just concentrated on the concerned persons, underscores this assumption.

What can be said, is that prior examination and discussion of the CEAS showed that the EU legal framework on asylum does not restrain political influence that may influence asylum decisions. The observation of the decision rates along the three different variables (time, case country and state of origin) did show variations and divergences. Modifications of the implementation of the Refugee Convention and the ECHR are given, even though the CEAS was established. The prerequisite of this thesis’ research question therefore is confirmed: variations did appear and there may have been influence on the national decision-making level. As the positive decision rates in one case country show deflection in one year (or a series of years) for all states of origin this can be an indicator that a factor influenced the decision process (Tab XYZ). The decisions

are made by political authorities which depend on changes in government. decision-making-process cannot be eliminated.

Checking those three variables (time, case countries and states of origin) from different perspectives, we have a lot of indications that the CEAS is lacking and that it cannot be referred to as a standardized EU-asylum system nor can be spoken about consequent implementation of the Refugee Convention and the ECHR in EU-member states. No definite connections between modifications and divergence can be made, since many more factors play into the asylum procedures on the national level, influencing the decision. Nevertheless, we see that political influence on the one hand has not been ruled out and on the other hand a sufficient and compulsory standardization has not been put in place.

External validity is one of the strengths of this research. The results are not only valid and from importance for the chosen cases. The result, that reason for modification and divergences along implementation of international law is the missing development of a more deepened common system, indicates that those divergences can appear in all member states and decisions in the first instance may be politically influenced. Governmental change during the observed time period of 2008-2018 is exemplary observed as one factor, that may result on political influence on the decision-making process of the case countries:

It will be analyzed, whether political change did appear simultaneously, indicated by remarkable divergences in positive decision rates. For that reason, governmental changes in the four case countries during the observed period of time will be taken into account. A short overview of those changes will be given: In 2008 Austria was ruled by the social democratic chancellor Gusenbauer and his SPÖ-ÖVP coalition. The coalition remained in power until 2017, the government changed in the years 2008, 2013, 2016 and 2017. With the elections in late 2017, a new black-blue coalition by ÖVP and FPÖ took power in the Austrian parliament. The interior ministry was for the whole time frame within the hands of the conservative ÖVP, up to 2017, when the FPÖ took it over. In 2015, the Austrian national law, which has been in place since 2009, was intensely amended and common EU-guidelines were implemented. In 2016 a further amendment was incorporated.

Factoring this into the decision rates of Austria, variations following these amendments nor the change in rate can be seen. One indication that the amendment from 2015 had an impact on the decisions on asylum cases, could be the decrease of positive decisions for refugees from Afghanistan. The rate constantly fall from 78% in 2015 to the lowest rate (34%) in 2018. In the same year, the decision rate for Afghani people in France stayed higher and did not decrease in such a manner. Even though the positive rate for Afghani refugees in France also decreased until 2018, it stayed 33% higher than in Austria, while in 2014 the positive rate was higher in Austria.

To observe the governmental developments in France, changes in the presidential office and the Prime Minister changes are taken into account. From 2007 until 2012 both offices were held by the UMP. In 2012 the socialists took over both positions and remained in power until 2017. The French people then voted for Macron, who is still president, and the prime minister office was taken by Phillipe (former Republican) who campaigned for Macron's LRM. Concurrently to this last change in government we see changes in decision rates in France, especially the rate for Afghanistan and Iraq which decreased. Hence, this decreasing trends for those two states of origin match with the rising number of rejected applications by persons of those citizenship in Austria and Germany. The total rate for persons of all states of origin does not show any huge variations over all time.

In Germany, the governmental changes are straightforward. CDU-Chancellor Merkel has been in power since 2005 and governed always within a coalition with the SPD, with the exception of the legislative period between 2009 and 2013, when she agreed to form a coalition with the Liberals. The overall trend of positive decision rates changed in 2014, similarly for the rates of all observed states of origin, which strongly rose. From 2014 to 2016 the rates for all states of origin decreased. Same changes appeared in Austria, while the trend in France appeared differently. In the outstanding years, no similarities can be observed in Hungary. The interior ministry was, for most of the observed period, under a CDU-minister. From 2011 to 2013 and since 2018, the minister were CSU-politicians. This recent change in the ministry did not lead to major changes in positive decision

rates. After 2011, we saw decreases in the positive decision rate of Iraqi and Afghani applicants, but the Nigerian rate did not change notably and the Syrian decreased immensely.

In Hungary the MSZP governed together with the SZDSZ during the legislative period of 2006-2009, as the prime minister was from the MSZP. Following, from 2009 until 2010 the MSZP kept the government while the independent prime minister Gordon Bajnai was head of government. The following three legislative periods were ruled by the Fidesz in coalition with the KDNP under Viktor Orbán.

As described above, Hungary shows totally different trends from the other case countries. Those changes cannot be connected to changes in government. One aspect that makes Hungary different from the other case countries is its history: Hungary was part of the eastern bloc during the period of the Cold War entered the EU (latest compared to the other case countries). This is only mentioned to indicate that several factor have to be taken into account, if one would try to identify reasons for the observed variations more precisely. Governmental changes may have influence, but for sure several other factors come into play, since political systems are not closed, but intertwined with all other societal fields. History, economics, domestic political situations and many other factors may influence the national authorities behaviour on asylum decisions. What can be recognized is first the fact that divergences in decision do appear, which seem to have their origin on the domestic level. Secondly, the international law (Refugee Convention as well as CEAS) are applied and executed in modified ways.

12. Conclusion

As discovered, modifications along member states of the EU appear and those may be amenable to political influence. Two main questions arise. 1.) How can this “not so common” Common European Asylum System be standardized more and 2.) How can the legal focus be shifted back

to the protection of the individual refugee rather than of the national interests? Additionally, how can the domination of national interests be restricted in favour of the observance of human rights?

To answer the first question, as with most EU law-packages, a problem is the lack of monitoring mechanisms. Even though individuals may appeal against decisions in last instance at the ECtHR, there is no regular monitoring on the domestic level. Individuals may proceed against domestic mistakes through one procedure, but no sanctions or ramifications will appear, when the CEAS is not applied as intended by its directives and regulations. Also, a general revision framework could be introduced to check the outcome of the CEAS on EU-scale.

The naturalness of asylum as a fundamental right, which all people have to be granted everywhere, with its composition today grounded in the horrific and cruel events of WWII, should never be left unnoticed, whenever asylum law is addressed. The fact, that the EU did ratify law, which restricts and limits those fundamental rights - only one example would be the Dublin Regulation - has to be noticed and highly criticised. Mentioning this, one can question why the CFR and its Article 18 is never applied, even though the CFR is part of the European legal framework and legally binding for all 28 member states. None of them execute it or have implemented it into national law. It seems to be an ignored part of European law, neither recognized nor put into practice by any institutions or nation state.

To answer the second question, how the protection of refugees can be focused on within the EU, one suggestion may be the establishment of an independent EU institution monitoring national asylum procedures and decisions. This would only be a sufficient option provided the EU removes its focus from the securing of its border and transfers it to the protection of refugees. This suggested institution could be responsible for the common training of national clerks, for

instance, to provide member states not only with legal frameworks but with education and common tools and methods to achieve fair and equal decisions within all member states.

Theory showed that the difficulties lie within bridging the difference in the interest of nation states and international interests. Since all member states once agreed to common policies, these should no longer interfere with the nations aim to domestic consensus. As long as nation states coexist within the EU there will always be gaps between compatibility and consensus. The only solution to close this gap and to merge interests seems utopian: The establishment of one common legal EU-entity, a European federal state, in which the competencies of asylum are positioned on the federal level.

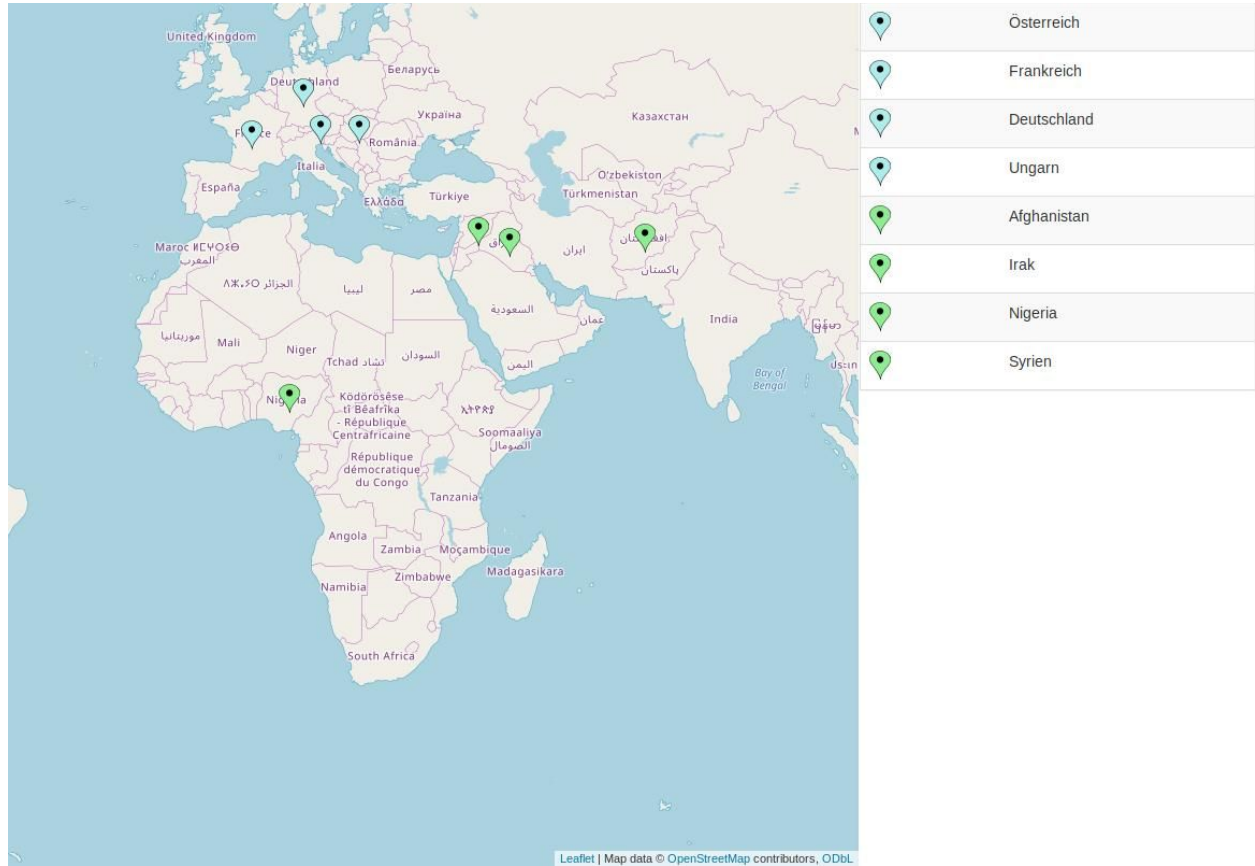
Conclusively, since political influence within first-instance decision making cannot be ruled out, the consequences of this has to be briefly averted. Procedures, even though later instances may overrule those influences, should be expelled first hand. Not only the right to asylum should be granted in case the criteria are fulfilled, but also the independence of the procedure has to be assured. Every possible violation of the basic right to asylum and the execution have to be combatted, otherwise one of the most vulnerable group of people is put into even greater and more long-term danger.

This Master's thesis nudges several ideas for further research, especially regarding the empirical section. Comparison of asylum decisions between first- and final-instance decisions could provide academia with more details on the rate of influenceability of asylum authorities. The influence of governmental change could be studied more in detail as well as other factors that may influence the decision making process. The CEAS framework could be studied more in detail, checking other parts of asylum procedures according to the intent of standardization, like the registration processes for refugees. A closer look on application numbers and rates could be

taken. Also, for the specific research question of this Master's thesis, it could be of much use to take the different legal statuses into account separately. Following such an approach, the individual case levels, as well as the situation within the states of origin, as well as the domestic situations within case countries would have to be additionally taken into relation and put under investigation. Such research design would not have been possible in the scope of this Master's thesis, but the research done by this study showed the relevance of the subject and the great need for further studies on the conjunction between international law and national politics.

14. Appendix

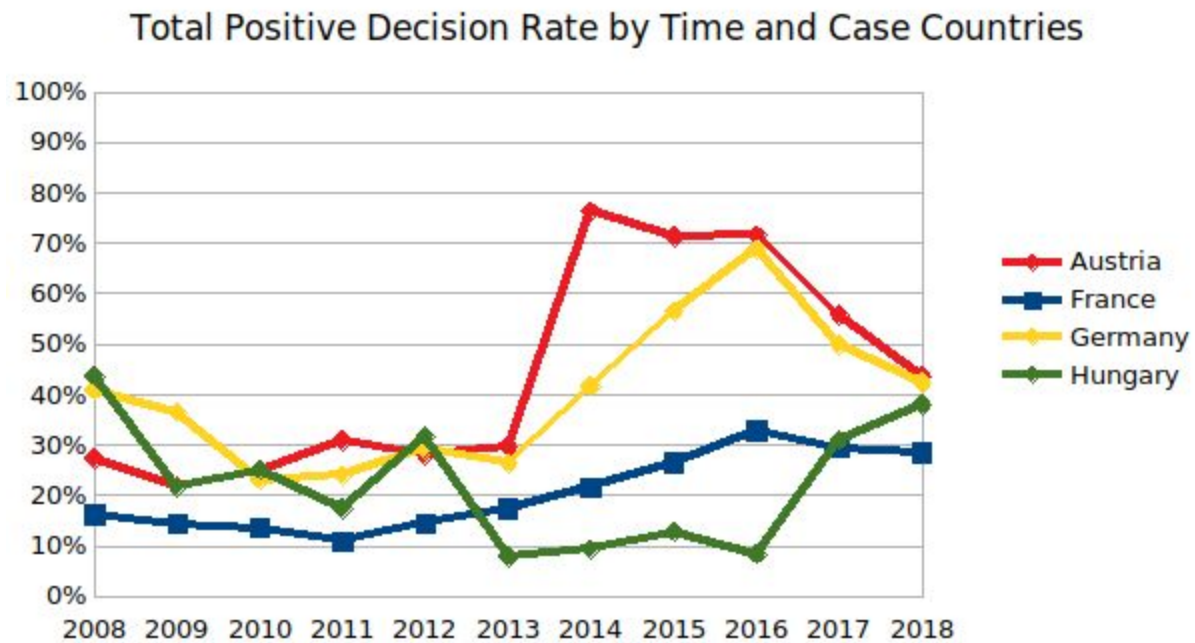
Tab. 1



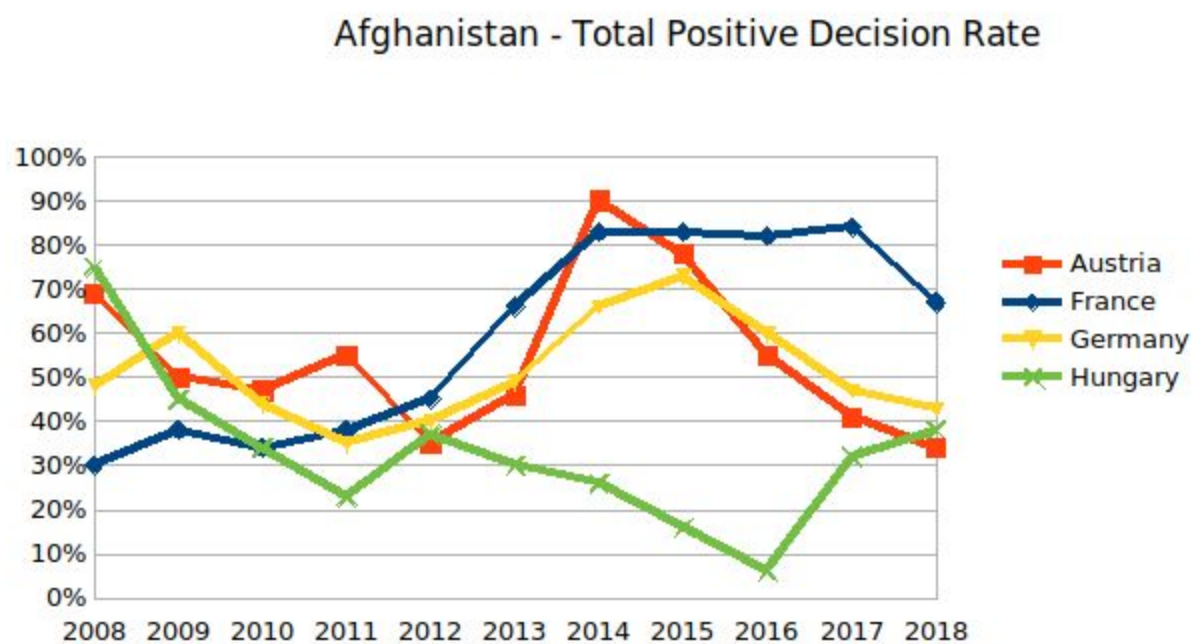
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All of the following graphs and tables were generated by the author.

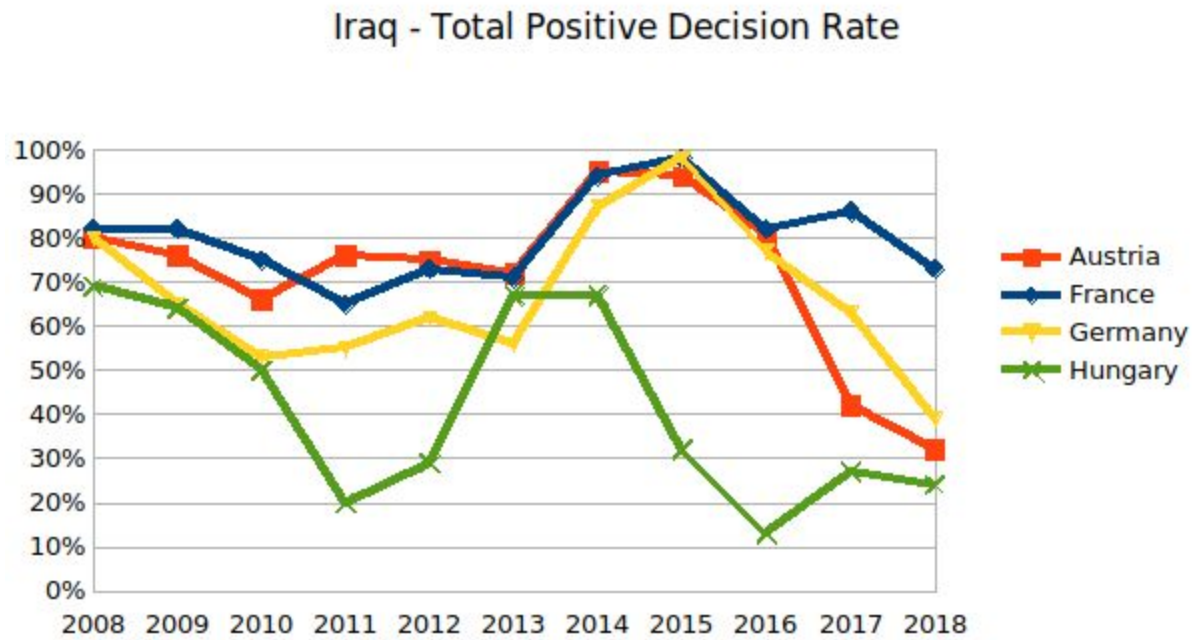
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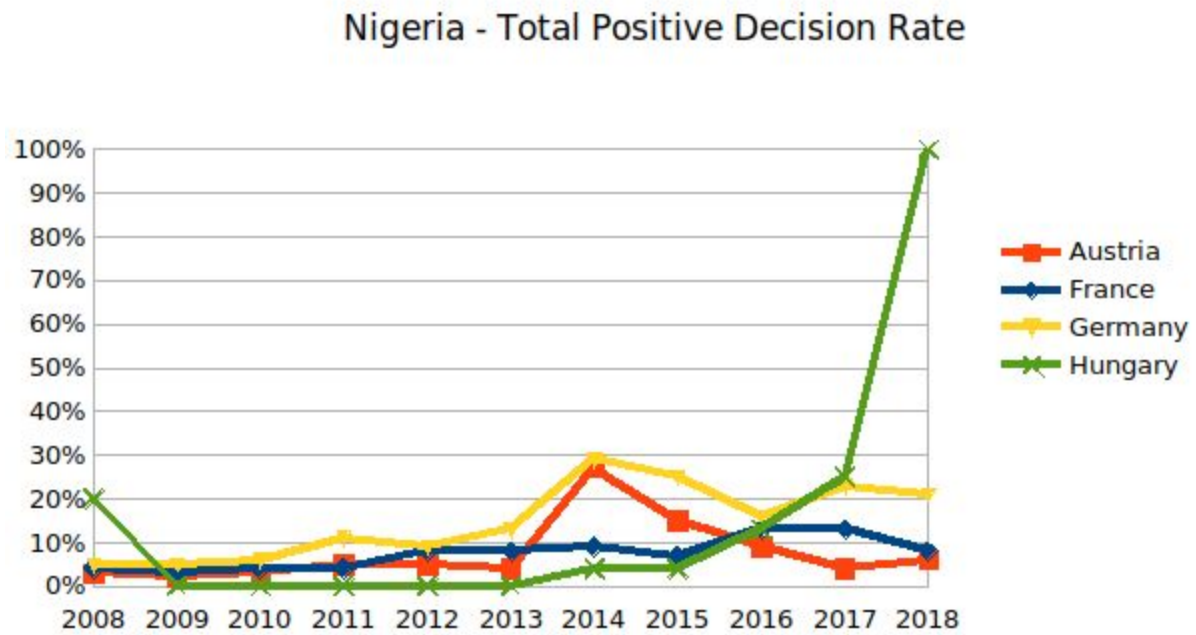
Tab. 3



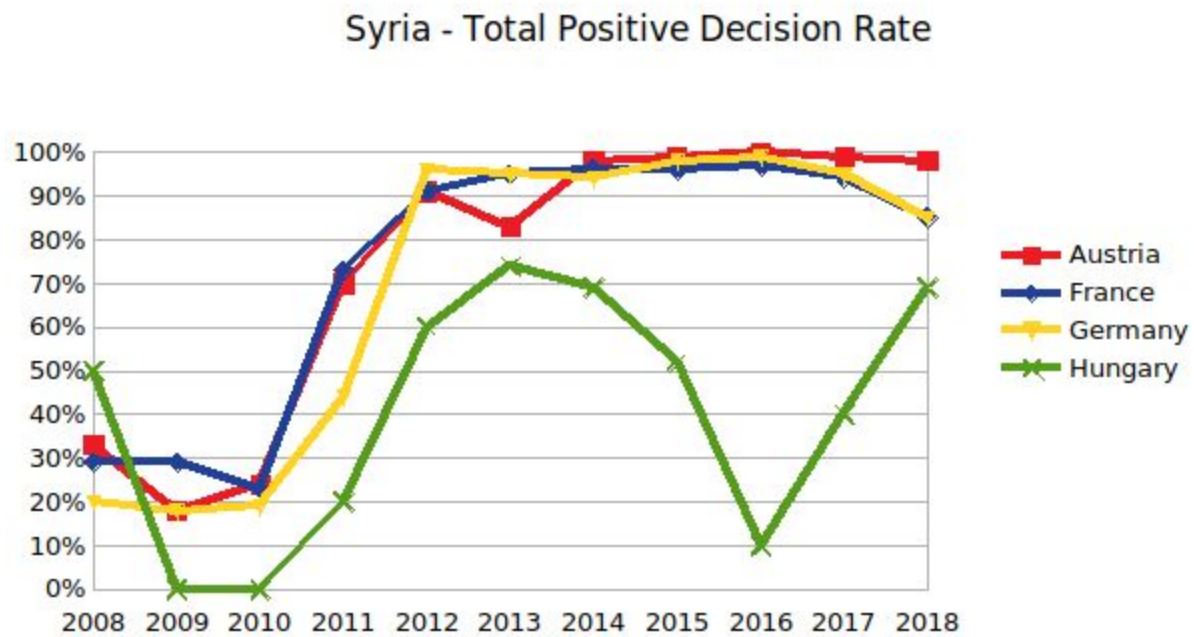
Tab 4.



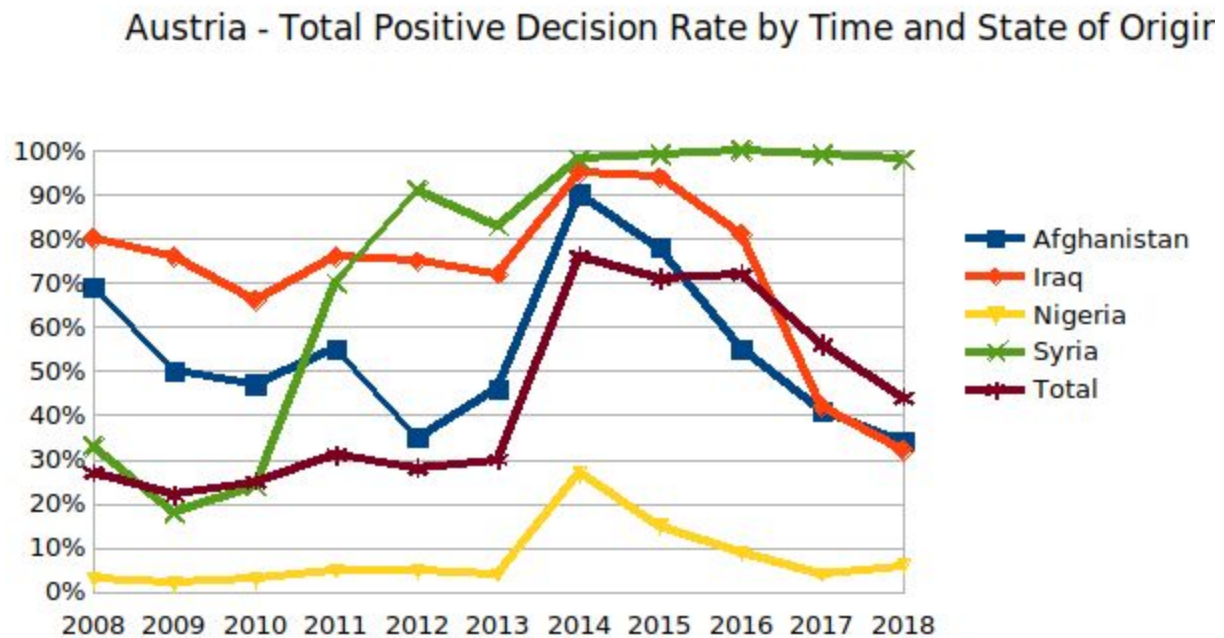
Tab 5.



Tab. 6

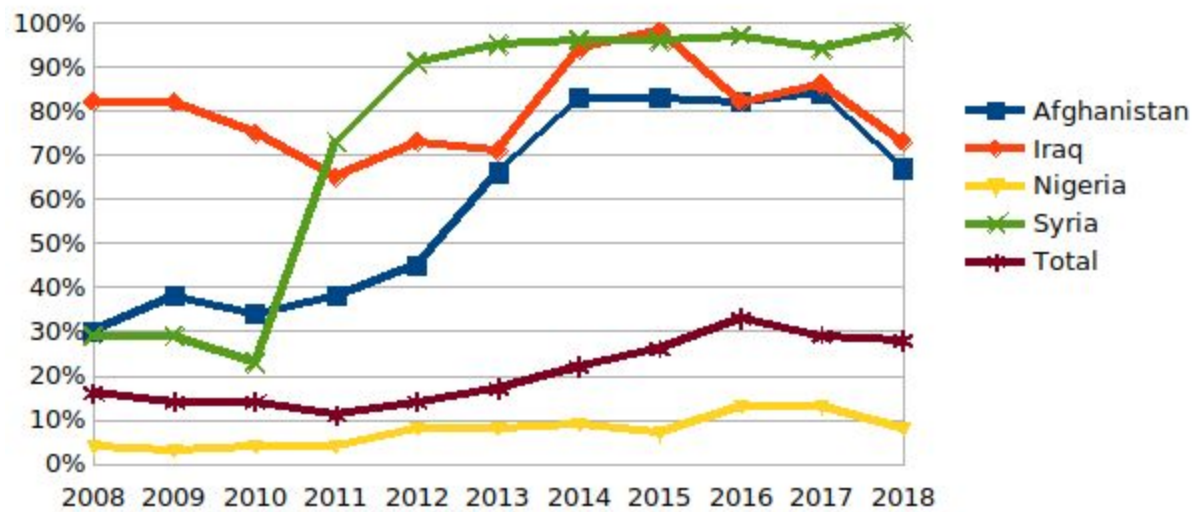


Tab. 7



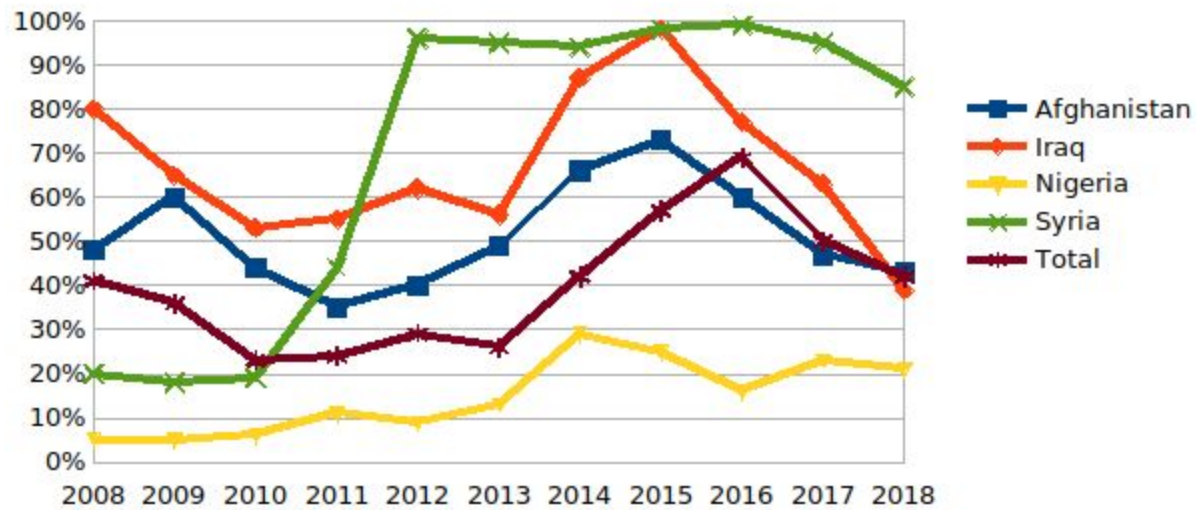
Tab. 8

France - Total Positive Decision Rate by Time and State of Origin



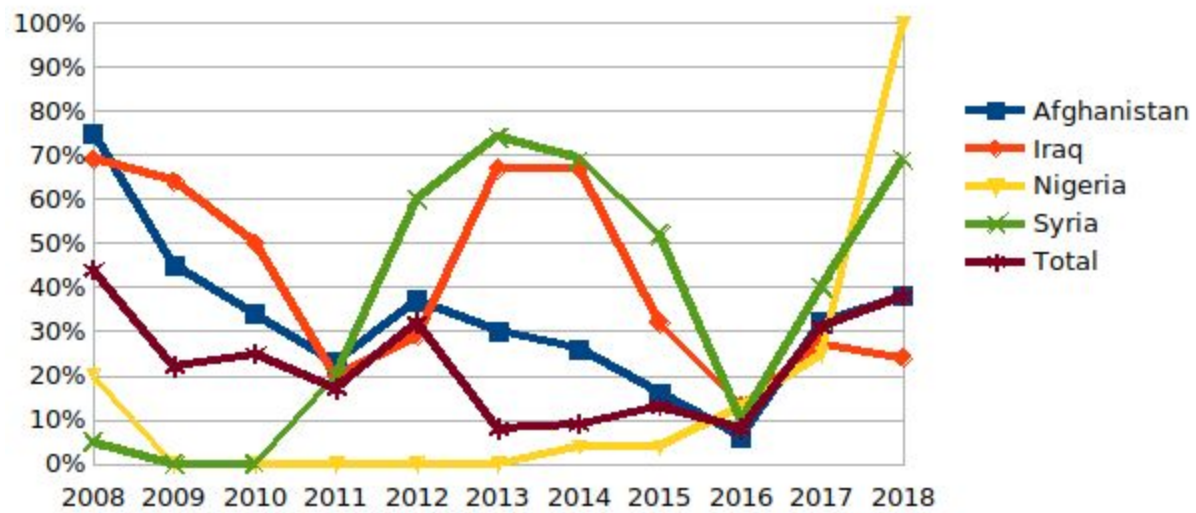
Tab. 9

Germany - Total Positive Decision Rate by Time and State of Origin



Tab. 10

Hungary - Total Positive Decision Rate by Time and State of Orig



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16. Pledge of Honesty

On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

Alexandra Andrea Hoheisel

Vienna, June 2019