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The Concept of a Safe Country of Origin: Are Territorial and Personal Exceptions Permissible?

ABSTRACT: *This article examines the concept of a safe country of origin within the framework of European Union asylum law and its implementation in the Czech legal order, focusing specifically on the permissibility of territorial and personal exceptions. It analyses Articles 36 and 37 of Directive 2013/32/EU (Procedures Directive) and Annex I thereto, which set out the material and procedural conditions under which Member States may designate a third country as safe. The study explores the legal consequences of such designation for applicants for international protection, including the use of accelerated procedures, the shifting of the burden of proof, and limitations on the suspensive effect of appeals. Particular attention is paid to the tension between procedural efficiency and the obligation to ensure effective judicial protection and compliance with the principle of non-refoulement. The core of the article critically assesses the practice of certain Member States, including the Czech Republic, of introducing territorial or personal exceptions when designating safe countries of origin. It evaluates whether such exceptions are compatible with EU law, especially in light of the legislative history of Directive 2013/32/EU and the case law of the Court of Justice of the European Union, notably the Grand Chamber judgment of 4 October 2024 in Case C-406/22 (CV). The article concludes that the designation of only part of a country as safe is incompatible with EU and it reflects on the implications of this finding for national asylum systems and the principle of equality of applicants.*

KEYWORDS: *Safe Country of Origin, Territorial Exceptions, Personal Exceptions, International Protection, Asylum Procedure, Directive 2013/32/EU, CJEU Case Law*

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1.

Introduction: The concept of 'Safe Countries of Origin'

One of the key institutions of Czech and European asylum law is the 'safe country of origin.' In the most general sense, the concept of 'safe country' can be defined as a legal construction under which a state does not grant a person international protection and moves him to another state that is safe for him. When applying this concept, states start from the premise that a person fleeing persecution or the threat of serious harm could already obtain protection in that state. A distinction is made between 'safe country of origin' and 'safe third country.' If possible, the refugee is primarily returned to his country of origin if it can be judged as safe. If it is not possible to proceed in this way, the state seeks to return the refugee to a so-called safe third country.¹ The return of a refugee to a safe country must not contradict the principle of *non-refoulement*.²

This concept is used around the world (e.g. the US and Canada consider each other a safe third country),³ including Europe and the European Union. When the migration crisis broke out in Europe in 2015, the European Union faced an influx of large numbers of people seeking refuge in the EU at its external borders. In practice, the legal norms belonging to the so-called Common European Asylum System were applied as part of the solution to the situation. Particularly as a result of the application of Regulation of the European Parliament and the Council (EU) no. 604/2013 of 26/06/2013 (the 'Dublin Regulation'),⁴ states on the periphery of the EU were overwhelmed with requests for international protection. One of the ways in which Member States attempted to cope with the sharp increase in the number of applications for international protection and the overloading of their asylum systems was the application of the concept of safe countries in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26/06/2013⁵ (hereinafter referred to as 'Procedural Directive'). As already mentioned above, if a person is fleeing persecution, he should use the protection of the first state where he has the opportunity to obtain protection. European

1 Gil-Bazo, 2015, pp. 49–64.

2 Goodwin-Gill and McAdam, 2007, pp. 390–391. <http://doi.org/10.62733/2025.1.5-15>

3 The Canada–United States Safe Third Country Agreement (STCA) is a treaty, entered into force on 29 December 2004, between the governments of Canada and the United States to better manage the flow of refugee claimants at the shared land border.

4 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

5 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

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states are thus trying to deal indirectly with the second movement of refugees and the so-called asylum shopping.⁶

The application of the concept of safe countries is very closely dependent on whether the applicant has the possibility to find really 'effective protection' in another state. However, a universally accepted definition of 'effective protection' is missing in international law. The minimum standards that effective protection must meet are therefore defined by the doctrine. For example, S.H. Legomsky, referring to UNHCR documents, characterises them as follows:

- prior consent of the receiving state to accept the asylum seeker under its jurisdiction;
- the applicant is not at risk of refoulement in a third country;
- the third country will respect the rights of the applicant guaranteed by the European Convention and other international or regional instruments in the field of human rights;
- the third country will allow the applicant access to a fair procedure for granting refugee status, including ensuring the applicant's access to the UNHCR, taking into account the applicant's private life and potential vulnerability;
- the third country is a party to the Geneva Convention;
- a possible resolution of the refugee situation in which the applicant is in a third country in the long term.⁷

Another prerequisite necessary for the transfer of the applicant to a safe country is the existence of a link between the state and the applicant. Furthermore, the UNHCR states that it is necessary to insist that the refugee's basic economic rights are ensured and that he is enabled by the third country to provide for his own livelihood. The state must take into account any vulnerability resulting from e.g. from the age or gender of the refugee.⁸

2.

Safe Country of Origin From the Point of View of EU Law and the Czech Legal Order

The ability of Member States to designate a state as a so-called safe country of origin according to their national standards derives from Art. 37 Procedural Directive. Member States have proceeded to apply the concept of safe countries of origin as a

6 Goodwin-Gill, McAdam, 2007, p. 392.

7 Legomsky, 2003, pp. 52–81.

8 UNHCR, 2003, p. 3.

means of distinguishing between justified and unjustified requests for international protection and, as a result, speed up asylum procedures. The essence of this concept is that if a person comes from a country that does not generate a high number of refugees, it is likely that the person will not face persecution in that country either.⁹ Regarding the asylum seeker, the state is the country of origin if the applicant is its national or stateless person and previously resided safely in that country (Art. 36 of the Procedural Directive).

Art. 36(1) of the Procedural Directive states that:

'A third country designated as a safe country of origin in accordance with this Directive may, after an individual assessment of the application, be considered a safe country of origin in relation to a particular applicant, only if [...] the applicant has not submitted no serious reasons why this country cannot be considered safe in his specific situation and he could thus be recognised as a person enjoying international protection according to Directive 2011/95/EU.'

In other words, if the applicant comes from a country marked as safe, he still has the opportunity to present to the state serious reasons why the said country is not safe in relation to him and why the given concept thus cannot be applied.

In Art. 37(1) of the Procedural Directive, the Member States have the option, for the purpose of assessing applications for international protection, to keep in force or adopt legal regulations which, in accordance with Annex I to this Directive, allow safe countries of origin to be designated at national level. Simultaneously, however, it requires that Member States ensure a regular review of the situation in third countries designated as safe (Art. 37, Para. 2). The assessment of whether a country is a safe country of origin should be based on a number of sources of information – specifically, information from other Member States, from the Office of the United Nations High Commissioner for Refugees, the Council of Europe, and other important international organisations (Art. 37, Para. 3).

The material conditions that a third country must fulfil in order for a member state to designate it as a safe country of origin are regulated in Annex I of the Procedural Directive. According to this annex, a country is considered to be a safe country of origin if it can be demonstrated – on the basis of the legal situation there, the application of law within a democratic system, and the general political situation – that there is generally and consistently no persecution under Art. 9 of Directive 2011/95/EU (hereinafter referred to as the 'Qualifying Directive'), no torture or inhuman or degrading treatment or punishment, and no threat of arbitrary violence in the event

⁹ Hunt, 2014, p. 502.

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of international or internal armed conflict. In assessing a country of origin as safe, a State should consider, inter alia, the extent to which it provides protection against persecution or ill-treatment through:

- a) the applicable laws of the country and the manner in which they are applied;
- b) compliance with the rights and freedoms stipulated in the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment – in particular the rights from which, according to Art. 15, Para. 2 of the Convention, it is not possible to deviate;
- c) compliance with the principle of *non-refoulement* according to the Geneva Convention on the Legal Status of Refugees as amended by the New York Protocol;
- d) a system of effective remedies against violations of these rights and freedoms. The Czech Asylum Act also defines the concept of a safe country of origin as follows.

A safe country of origin is the state of which the foreigner is a citizen, or in the case of a stateless person, the state of last permanent residence:

1. in which persecution, torture, inhuman or degrading treatment or punishment and the threat of indiscriminate violence in the event of international or internal armed conflict do not generally and consistently occur;
2. in which its citizens or stateless persons do not leave for the reasons specified in Section 12 or 14a of the Asylum Act (persecution for the exercise of political rights and freedoms, or justified fear of persecution due to race, gender, religion, nationality, belonging to a certain social group, or for holding certain political opinions, imminent serious harm in the form of the death penalty or execution, torture, or inhuman or degrading treatment or punishment of an applicant for international protection, or a serious threat to the life of a civilian or his human dignity due to arbitrary violence in a situation of international or internal armed conflict)
3. which has ratified and complies with international treaties on human rights and fundamental freedoms, including norms relating to effective remedies, and

4. which enables the activity of legal entities that supervise the state of compliance with human rights.¹⁰

The Procedural Directive does not contain, mainly for political reasons,¹¹ a list of states that can be considered as safe countries of origin. However, as part of the implementation of the Procedural Directive into national law, some EU Member States proceeded to draw up their own, national lists of countries that they consider to be safe countries of origin. It should be noted that these national lists contain deviations, due to the application of which Member States may assess a given state's safety quite differently. Among the main differences in national systems are, for example, whether states differentiate the definition of persecution in the country of origin depending on the gender of the applicant; or which Member State authority is responsible for issuing these lists. In addition, there are EU states that do not apply this concept at all (e.g. Spain, Italy, Poland, Sweden).

The Czech Republic has also used the option provided by Art. 37 of the Procedural Directive, according to which a Member State may adopt a legal regulation that designates safe countries of origin, under the conditions set out in Annex I of this Directive. The list of safe countries of origin was issued by the Ministry of the Interior of the Czech Republic. This is Decree No. 328/2015 Coll. At least once a year, the ministry must then review the rationale for the (non) inclusion of countries on the given list.

3.

Territorial and Personal Exceptions to the Safe Country of Origin Concept

The Czech Republic lists the countries it considers safe countries of origin in the above-mentioned decree. However, for three countries, it considered only a part of the country safe until 30 September 2023 – instead of the country as a whole. Namely, Georgia (with the exception of Abkhazia and South Ossetia), Moldova (with the exception of Transnistria), and Ukraine (with the exception of the Crimea peninsula and parts of the Donetsk and Luhansk regions under the control of pro-Russian separatists; however, since the beginning of the war, all of Ukraine has no longer

10 On the difference between the criteria of a safe country of origin under the Procedural Directive versus the Czech Asylum Act, see the Judgment of the Regional Court in Brno of 20 October 2021, No. 41 Az 58/2020. In any event, all the criteria set out in Section 2(k) of the Asylum Act must be interpreted in a Euroconformist manner. See: Kosař, Molek, Honusková, Jurman, Lupačová, 2010, pp. 15–16.

11 ECRE, 2015, p. 2.

been considered safe). The Czech Republic therefore applied the so-called territorial exceptions for a very long time, and only withdrew from them at the end of 2023.

This approach is not unique. In the practice of Member States, territorial exceptions for specific geographical areas or even personal exceptions for applicants from safe countries of origin are common. For example, Denmark and Finland designate Georgia as a safe country of origin, excluding South Ossetia and Abkhazia. Similarly, Cyprus provides an exception for Ukrainian applicants from the Crimea peninsula and the Donetsk or Luhansk regions. Hungary designates the US as a safe country of origin, but only in relation to countries that do not apply the death penalty. The Czech Republic is the only country to designate Moldova as a European safe third country, with the exception of Transnistria (other countries designate all of Moldova as safe).

In addition to territorial exceptions, personal exceptions also appear. For example, Luxembourg has designated Benin and Ghana as safe countries of origin, but only for men. In the case of Russia, Denmark applies exceptions for ethnic Chechens, LGBTI applicants, Russian Jews and politically active persons who have faced abuse by the authorities. The Netherlands also has exceptions for specific groups of people in Armenia, Morocco, and Tunisia.¹²

Council Directive 2005/85/EC of 1 December 2005 on minimum standards for proceedings in Member States on the granting and withdrawal of refugee status expressly provided for the possibility of territorial and personal restrictions ('Directive 2005/85'). It was repealed by the current Directive 2013/32. Art. 30(1) of Directive 2005/85 stated:

'Without prejudice to Art. 29, Member States may, for the purposes of assessing asylum applications, maintain or adopt legislation which, in accordance with Annex II, allows other third countries to be designated as safe countries of origin countries other than those listed on the common minimum list. This may include the designation of a part of the country as safe if the conditions set out in Annex II are met in relation to that part.'

Directive 2013/32, unlike Directive 2005/85, no longer explicitly regulates this option. From the preparatory work for Directive 2013/32, it is clear that the EU legislator intentionally removed the possibility of territorial or personal exceptions. The explanatory note to the proposal for Directive 2013/32 states that an optional provision is deleted, which allows Member States to apply the concept of safe country of origin to a part of the country. The material requirements for the national designation of a country as safe must therefore be met by the entire territory of the given

¹² European Union Agency for Asylum, *Applying the Concept of Safe Countries in the Asylum Procedure*, 2022, pp. 7–8.

country. Expert literature in the field of international refugee law also concludes that it is impossible to designate only a part of the country as safe.¹³ Only a country that meets the conditions defined in Annex I of Directive 2013/32 in relation to its entire territory can be designated as a safe country of origin. Therefore, if some territories of a specific country do not meet these conditions, it disqualifies the country as a whole from being included in the list of safe countries of origin.¹⁴

4.

Procedural Implications for International Protection for an Applicant From a Safe Country of Origin

If an applicant for international protection comes from a safe country of origin, the state considers the application to be unfounded within the meaning of Art. 32, Para. 2 in conjunction with Art. 31, Para. 8 letter b) of the Procedural Directive. Member states are thus not obliged to decide on the merits of an application for international protection,¹⁵ as it is considered that the applicant could have been granted protection by his home state.¹⁶ If the concept of safe countries of origin is applied by the Member States, such a procedure is also reflected in the procedural level – the states assess the specific request in the so-called accelerated procedure;¹⁷ however, they are still obliged to proceed in the procedure according to the principles stated in Chapter II of the Procedural Directive. Compared to the previous adjustment, according to Art. 14 of the Procedural Directive, applicants are guaranteed the opportunity to participate in a personal interview about their application, where they can also present serious reasons why their country of origin cannot be considered safe in their case. The applicant must demonstrate that he or she is at greater risk of persecution or serious harm than others in a similar position. The designation of a certain country as safe essentially puts the burden of proof on the applicant for international protection.¹⁸ According to the EU Court of Justice, speeding up the procedure for international

13 Goodwin-Gill, McAdam and Dunlop, 2021, p. 449.

14 Resolution of the Regional Court in Brno of 20 June 2022, No. 41 Az 14/2022.

15 Access to a 'full' substantive review is limited for applicants from safe countries, see the Judgment of the Supreme Administrative Court of the Czech Republic of 23 April 2020, No. 1 Azs 43/2020.

16 Boeles et al., 2014, p. 280.

17 Judgment of the Regional Court in Brno of 20 October 2021, No. 41 Az 58/2020: *'The safe country of origin institute is in any case a procedural institute, not a substantive one. It therefore leads only to certain procedural simplifications for the defendant.'*

18 Judgment of the Supreme Administrative Court of the Czech Republic of 30 September 2008, No. 5 Azs 66/2008, and/or the resolution of the Supreme Administrative Court of the Czech Republic of 24 March 2022, No. 5 Azs 218/2021.

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protection does not discriminate against applicants depending on their country of origin, but only if they are able to fully exercise the rights granted to applicants by EU legislation as part of the due process.¹⁹

One of the consequences for an applicant rejected by the deciding authority on this basis is that, in contrast to a simple rejection, the Member State in which he submitted the application does not have to allow him to remain on its territory until it decides on the appeal (Art. 46, Paras. 5 and 6 of Directive 2013/32). In this context, it is up to each Member State to designate safe countries of origin. In particular, it may do so by the national legislature adopting a list of third countries in accordance with the criteria set out in Annex I, issuing further implementing rules and procedures and submitting the list of safe countries of origin to the Commission or regularly reviewing it. However, the Court of Justice of the EU recalled in this regard that – according to points 11 and 12 of the justification of Directive 2013/32, as well as according to Art. 1 of this directive – the framework for granting international protection is based on the concept of a unified asylum procedure and on minimum common rules.²⁰ Thus, a Member State cannot apply the rebuttable presumption regulated by the rules of Directive 2013/32, concerning procedures based on the concept of a safe country of origin, without at the same time ensuring the full implementation of those rules in terms of the laws and regulations it has to adopt (see judgment CJEU, *A. v Migrationsverket*).

It follows – in the context of the right to an effective remedy (remedy) before a court under Art. 46(1) and (3) of Directive 2013/32 and Art. 47 of the Charter – that on judicial review of a decision to reject an application based on the safe country of origin concept the court must have two options: (a) not only assess whether the applicant succeeded in rebutting the presumption of safety, but (b) first also focus on the question of whether the general inclusion of the country on the list of safe countries of origin at all took place in accordance with Directive 2013/32.²¹

A contrary conclusion would contradict Arts. 36(1) and 37(1) of Directive 2013/32. Designation of the country of origin as safe must take place in accordance with this directive, or in accordance with Annex I thereto. If it does not correspond to it, a simplified procedure based on the concept of a safe country of origin cannot take place according to § 31 Para. 8 letter b) Directive 2013/32. It completely changes the procedural obligations and roles of its participants. In particular, it is necessary to remind again of the threat that the applicant whose application the state rejects for

19 Judgment of the Second Chamber of the CJEU in *H.I.D. and B. A v. Refugee Applications Commissioner and Others* of 31 January 2013, No. C-175/11.

20 Ibid.

21 Judgment of the Supreme Administrative Court of the Czech Republic of 12 October 2022, No. 10 Azs 161/2022, or similarly the Resolution of the Supreme Administrative Court of the Czech Republic of 24 March 2022, No. 5 Azs 289/2021.

obvious lack of justification using the safe country of origin concept will face the threat of an exit order associated with the obligation to leave the Czech Republic, or another country where he is applying for protection.

5.

Exceptions: Yes or No?

M. Kopa believes that the admission of territorial exceptions distorts the decision-making body's approach to assessing applications for international protection of applicants from the same country.²² Some applicants from the part of it marked as safe by Member States are in a completely different – and disadvantageous for them – procedural position. It must rebut the presumption of safety of the country of origin. And if they fail, they are threatened with the issuance of an exit order, regardless of their specific reasons for asylum. Meanwhile, applicants from the territory of the same country covered by the territorial exception can rely on a full review of their application and automatic suspensive effect of the subsequent action. The EU legislator seemingly wanted to prevent this difference in treatment between citizens of the same country. The use of the safe country of origin concept should therefore only be applied to countries whose overall safety cannot be doubted. If a part of a country is not safe, that country cannot be a safe country of origin. The difference in the legal advantage of persons from the 'dangerous' part of the territory covered by the territorial exception, and the disadvantage of applicants from the remaining part of the territory of the same country, can be characterised as discriminatory.

In addition, the use of territorial exceptions for safe countries of origin may lead to further marginalisation, stereotyping and prejudice against applicants from a part of the country not covered by the territorial exception, which is considered safe and is generally perceived as 'not producing refugees.' Moreover, it promotes the stereotype that applicants from parts of the country marked as safe were 'ahead of the queue' or they were 'bogus claimants' who just want to take advantage of the asylum system and its generosity.²³ This stereotype no longer applies to applicants from the same country who are from the area covered by the territorial exception.

Paradoxically, even persons from the territory affected by the territorial exception from the use of the safe country of origin concept can be affected by this concept in practice. Territorial exceptions also distort the assessment of the alternative of national protection according to Art. 8 of Directive 2011/95. According to it, Member

²² Kopa, 2022, pp. 28–30.

²³ Judgment of the Supreme Administrative Court of the Czech Republic of 12 October 2022, No. 10 Azs 161/2022.

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States may conclude that an applicant is not in need of international protection if, in a particular part of the country of origin (a) he/she has no well-founded reason to fear persecution or is at a real risk of serious harm, or (b) has access to protection from persecution or serious harm, as defined in Art. 7 of Directive 2011/95, if he can safely and legally travel to that part of the country of origin, can enter it and can reasonably be expected to settle there. This evaluation then works with the argument that, although the applicant comes from an area covered by the territorial exception of an otherwise safe country of origin, the rest of his country is a safe country of origin, so he will undoubtedly find an alternative to national protection there.²⁴ Therefore, there is no proper consideration of the overall situation prevailing in the concerned part of the country.

This raises concerns as to whether the possibility to define a safe country with territorial exceptions for the reasons described does not constitute different treatment based on the criterion of country of origin, which already contradicts Art. 3 of the Geneva Convention. In addition to the above-described differential treatment between applicants from the same country, it also leads to unfavourable differential treatment compared to applicants from countries that are not at all on the list of safe countries of origin. As a result, they enjoy higher procedural guarantees. At the same time, the non-inclusion of a country on this list can also be justified by problems only in certain parts of its territory. At the same time, it is not at all clear where the limit of admissibility of territorial exceptions lies. What if the exception already applied to the vast majority of the country's territory? Would that be permissible?²⁵

The determination of whether someone is a refugee or a beneficiary of subsidiary protection should always be based on the current factual reality in the place of origin. It should not depend on the box in which the Member State places the applicant or the label it assigns to the applicant's place of origin. Even if a country is not on the list of safe countries, it can provide an individual with effective protection from persecution or serious harm. And vice versa – a person from a part of the country marked as safe can have an exceptionally strong asylum story. Nevertheless, the starting point for the assessment of his request is a certain form of prejudice about the groundlessness of his request.

The concept of safe countries of origin is intended to represent a certain procedural simplification for the assessing administrative authority. However, only if the country in question meets the relevant criteria according to Annex I of Directive 2013/32, which are intended to guarantee that the country in question properly observes basic human rights, does not persecute its own citizens and, in case of isolated excesses, is able and willing to protect individuals. However, Member States

24 Kopa, 2022, pp. 20–21, 28–29.

25 Kopa, 2022, pp. 27–29.

should only be able to use this procedural simplification in the case of ‘problem-free’ countries that are genuinely unlikely to produce refugees.²⁶ However, this is absent in countries where the state does not exercise effective control over part of the territory. This situation does not have an impact only on this territory. It can cause instability on the territory of the entire state. As an extreme example, we can cite Ukraine, which also belonged (and still formally belongs in the Czech Republic) to the countries that some Member States considered safe countries of origin (with the exception of the Crimean peninsula and the Donetsk and Luhansk regions). This changed from day to day.

The view just described is not clear-cut, which is shown by the practice of other Member States, which still designate certain countries as safe with territorial or personal exceptions (see above). The situation can also be viewed in the way that Directive 2013/32 does not absolutely exclude exceptions, unless it explicitly says so. If one were to examine this issue more generally from the point of view of the system, and not from the perspective of individual applicants for international protection, he may miss a material reason (reflected in Annex I to Directive 2013/32), from which it would clearly follow that a country such as Moldova can never be safe for the purposes of Directive 2013/32. There are Member States that have Moldova on their list of safe countries as a whole – specifically, Cyprus, Denmark and France.

6. Conclusion

It is therefore a question whether Art. 36 and 37 of Directive 2013/32 prevent Member States from designating only parts of the territory of specific third countries as safe countries of origin, or whether they do not and exceptions can be applied. Exceptions of a territorial and personal nature are applied by some states in relation to the concept of a safe country of origin. However, as pointed out above, their establishment is associated with negative consequences, especially in relation to asylum seekers. They can also be considered to violate the principle of equality and the prohibition of discrimination. This is particularly evident in the case of territorial exceptions. In the case of personal exceptions, more consideration can be given to their reasonableness and compatibility with the will of the EU legislator.

As mentioned above, the Czech Republic has also long applied the institution of territorial exceptions. However, it is evident that the Czech state is aware of the problematic nature of this situation. In fact, the Ministry of the Interior has prepared an amendment to the Decree, which abolished most of the exemptions as of 1 October

26 Resolution of the Regional Court in Brno of 20 June 2022, No. 41 Az 14/2022.

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2023. I believe that this is an appropriate step, but it will be all the more important for the state to consider carefully whether or not to designate a country as safe. After all, if there are parts of a country's territory that do not meet the requirements required to fulfil the notion of a safe country of origin, it cannot be designated as a safe country as a whole. At the same time, it should be added that the Regional Court in Brno referred a preliminary question to the CJEU on the issue:

Are Articles 36 and 37 of the Procedures Directive to be interpreted as precluding a Member State from classifying a country as a safe country of origin with certain territorial exceptions? If a Member State designates a country with such territorial exceptions as safe, can the country concerned as a whole be regarded as a safe country of origin for the purposes of that Directive?²⁷

The importance of this institution and its function is emphasised, for example, by M. Kopa when he states:

*'The preliminary ruling procedure has the charm that the opinion of the Court of Justice can already be expressed in the proceedings before the court of first instance. Whereas the European Court of Human Rights only comes into play after national remedies have been exhausted, the Court's decision-making is much more effective in this respect.'*²⁸

During the publication of this article, the CJEU ruled on the matter (judgment of the Court, Grand Chamber, of October 4, 2024, CV, Case C-406/22) and stated that Article 37 of the Procedures Directive must be interpreted as precluding a third country from being classified as a safe country of origin if certain parts of its territory do not meet the material requirements for such a classification set out in Annex I to that directive. It is therefore clear that the Czech Republic's practice of 'applying exceptions' was contrary to EU law, and the legislative changes and the termination of this practice are therefore to be welcomed.

²⁷ Ibid.

²⁸ Kopa, 2014, pp. 27–29.

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Legislation and legal instruments

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted.
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.
- The Canada–United States Safe Third Country Agreement, entered into force on 29 December 2004.