

Stories and arguments in refugee law

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Introduction

- Rational theories of proof often focus on criminal law
 - Wigmorean legacy?
- What about refugee law and asylum requests?
- Idea: take a generic theory of IBE and apply it to the Dutch Asylum procedure

Refugee law: some context

- Article 1 Geneva Convention

A refugee is any person is owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself to the protection of that country

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Refugee law: some context

- Article 1 Geneva Convention
- Exception: article 1f – crimes against humanity

Refugee law: some context

- Article 33 Geneva Convention
- Prohibition to expel or return a person whose life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion
- Cf. article 3 ECHR: *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*
- No well-founded fear necessary

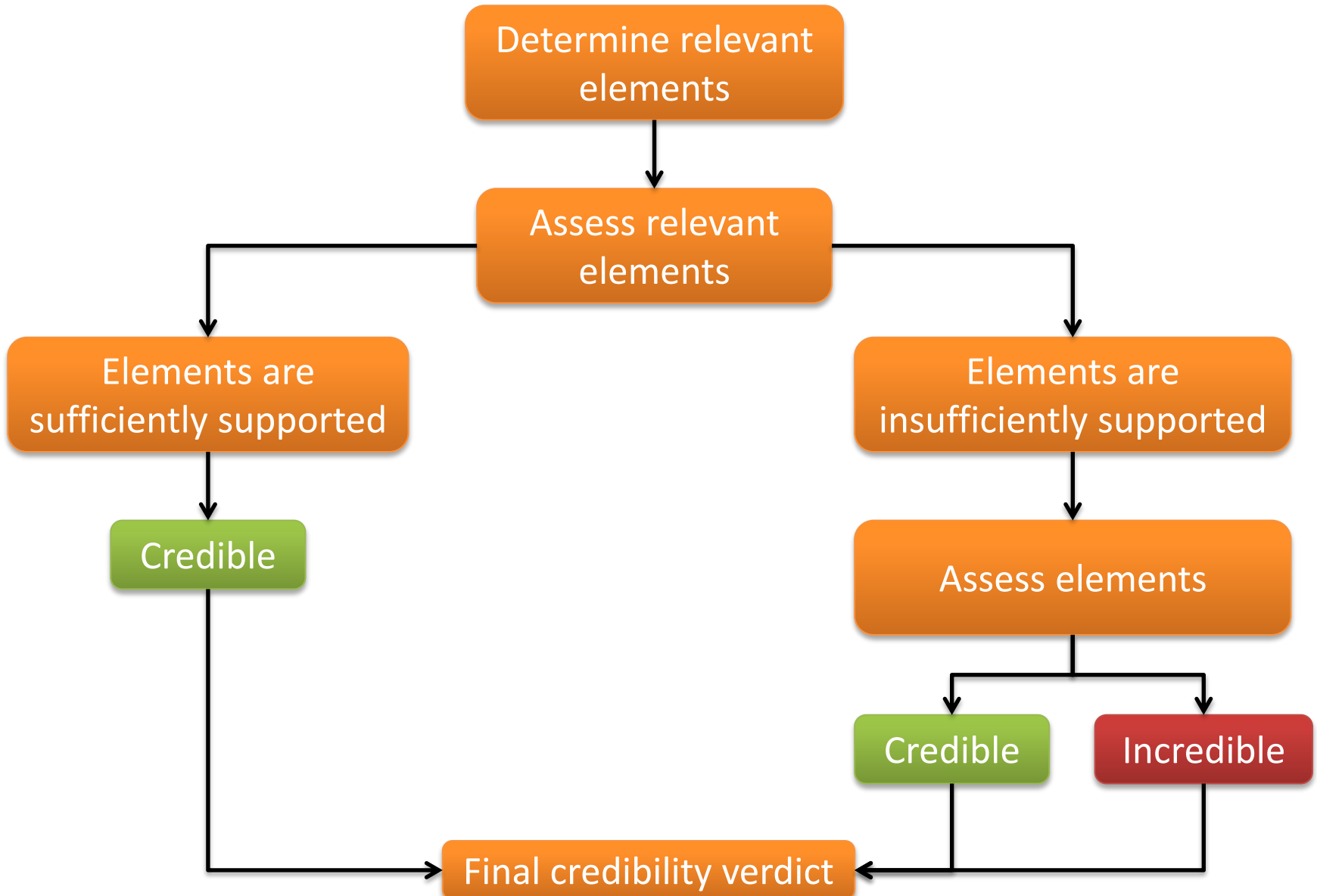
The Dutch Asylum Procedure

- 8 days (with possibilities of extension)
- Day 1: identify the applicant
- Day 3: reasons for leaving and flight story are explored
- Day 6: decision is sent to Immigration Office
- Day 8: Applicant is informed of the final decision

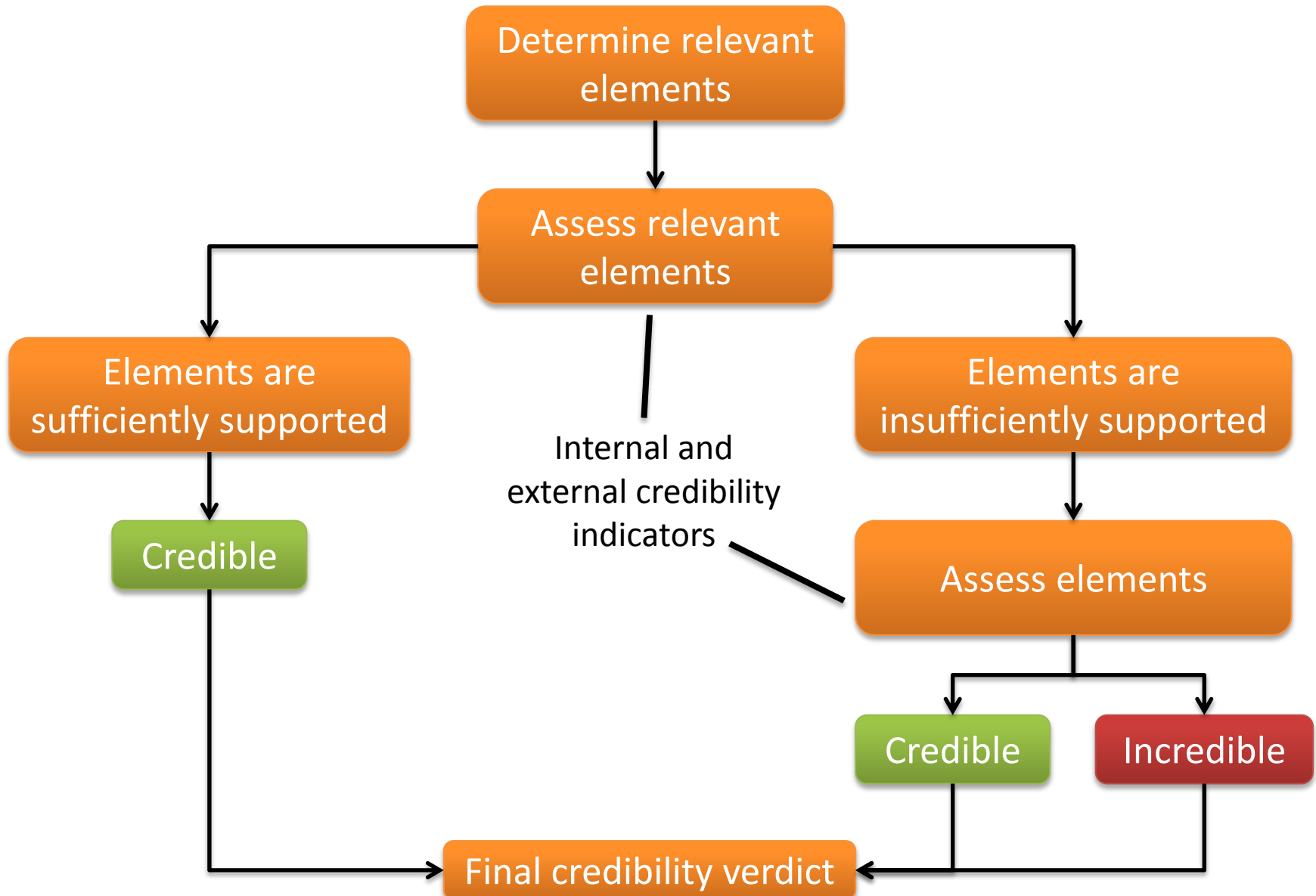
The Dutch Asylum Procedure

- Assessments consists of 2 phases
 - Credibility assessment
 - Risk assessment
- Integrated Credibility Assessment
 - Credibility of all the relevant facts and circumstances should be assessed
 - Werkinstructie IND 2014/10

Guidelines for credibility assessment



Guidelines for credibility assessment



Credibility Indicators

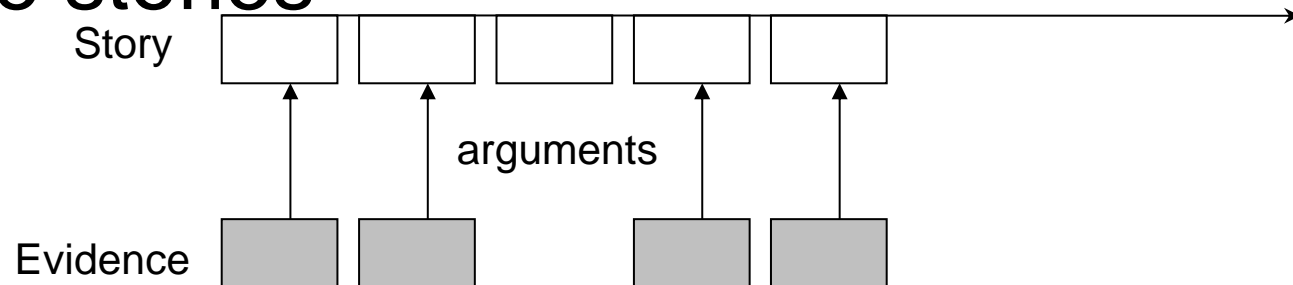
- Internal: what does the refugee say?
- Are the statements detailed and specific?
- Are there inconsistencies in the information given by the refugee?

Credibility Indicators

- External: what do others say?
- Are the statements consistent with what others said?
- Are the statements consistent with what is known about the country of origin and other reports (medical, language reports)?

A hybrid theory of stories and arguments

- Combining stories and arguments in one model for IBE
 - F.J. Bex & B. Verheij (2012)
- Stories explain what happened
- Arguments used to support (and attack) these stories



Critical questions for fact-finding

- Are the facts of the case made sufficiently explicit in a story?
- Is the story sufficiently supported by evidence?
- Is the support that the evidence gives to the story sufficiently relevant and strong?
- Has the story itself been sufficiently critically assessed?
- Have alternative stories been sufficiently taken into account?

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Critical questions for fact-finding

- Are the facts of the case made sufficiently explicit in a story?
- Is the story sufficiently supported by evidence?
- Is the support that the evidence gives to the story sufficiently relevant and strong?
 - Is the reasoning from evidence to events sufficiently warranted? Are there exceptions?
- Has the story itself been sufficiently critically assessed?
- Have alternative stories been sufficiently taken into account?

Critical questions for fact-finding

- Are the facts of the case made sufficiently explicit in a story?
- Is the story sufficiently supported by evidence?
- Is the support that the evidence gives to the story sufficiently relevant and strong?
- **Has the story itself been sufficiently critically assessed?**
 - Is there evidence that refutes the story?
 - Is the story itself coherent and consistent?
- Have alternative stories been sufficiently taken into account?

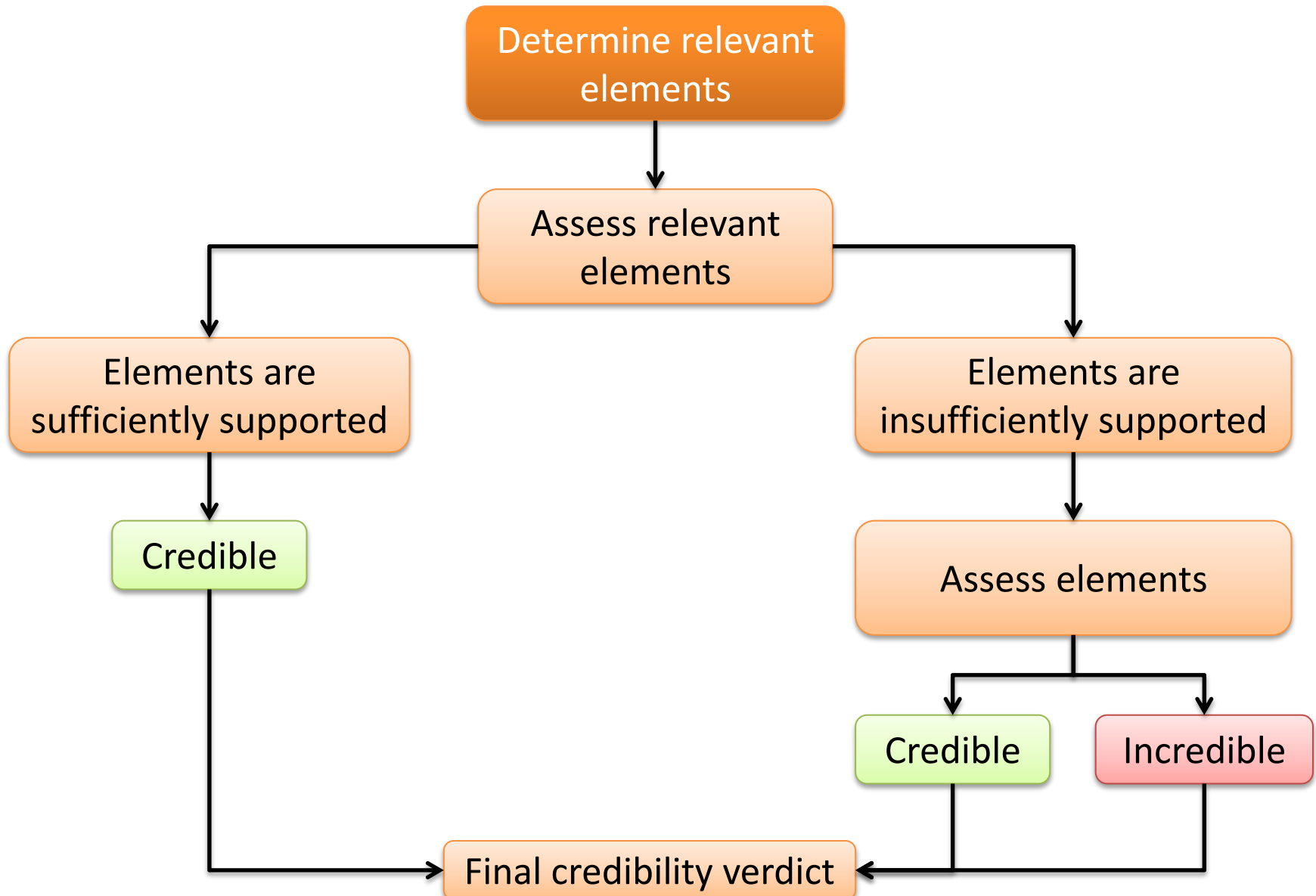
Critical questions for fact-finding

- Are the facts of the case made sufficiently explicit in a story?
- Is the story sufficiently supported by evidence?
- Is the support that the evidence gives to the story sufficiently relevant and strong?
- Has the story itself been sufficiently critically assessed?
- **Have alternative stories been sufficiently taken into account?**
 - Has there been a sufficient search for alternatives?
 - Have the alternatives been assessed properly?

Questions and asylum guidelines

- CQ: Are the facts of the case made sufficiently explicit in a story?

Guidelines for credibility assessment



Questions and asylum guidelines

- CQ: Are the facts of the case made sufficiently explicit in a story?
- Guidelines: determine relevant elements

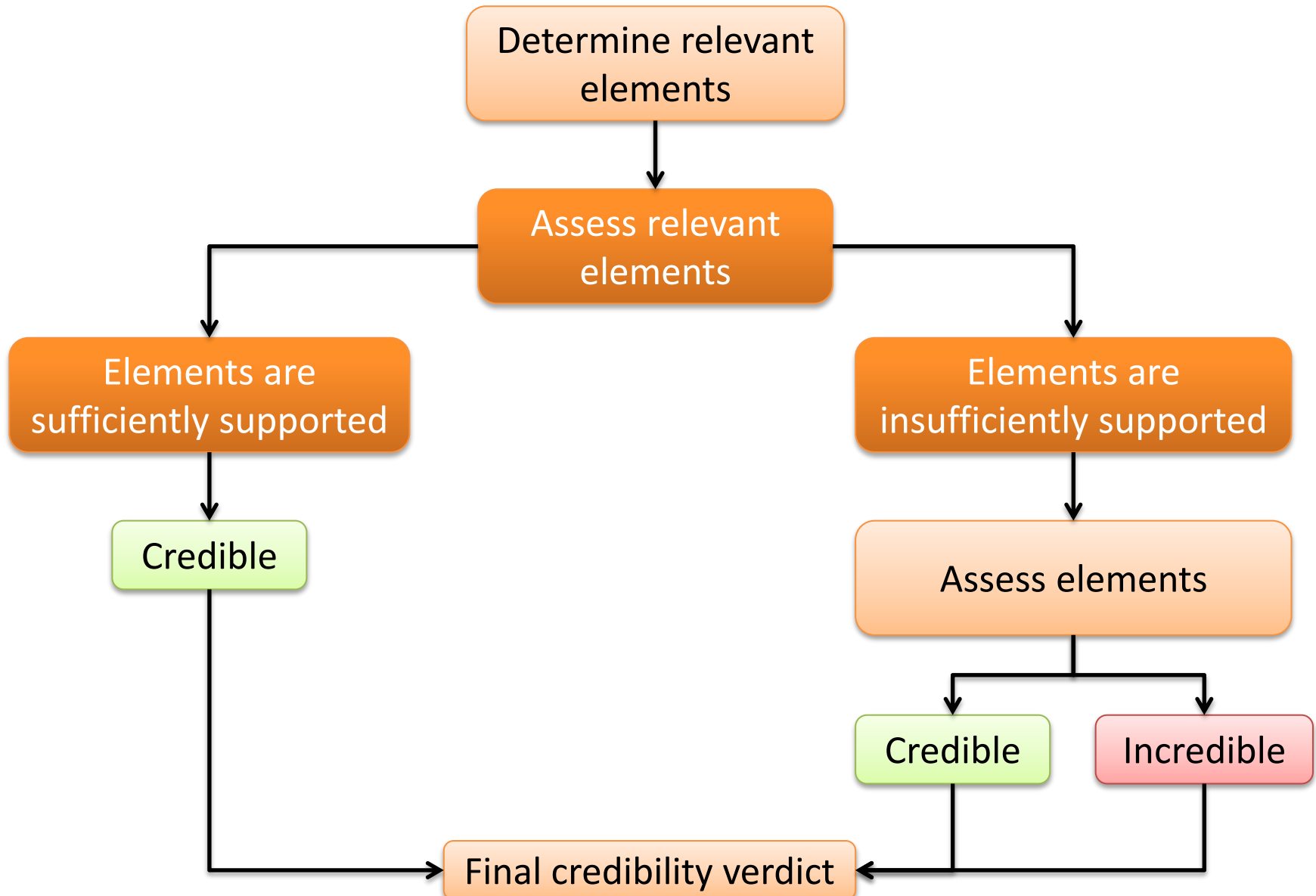
Questions and asylum guidelines

- CQ: Are the facts of the case made sufficiently explicit in a story?
- Guidelines: determine relevant elements
- **Is the story relevant for what you're trying to prove?**
- Difficulty of determining relevance
 - Relation between facts and legal provisions
 - Relevance can change over time

Questions and asylum guidelines

- CQ: Is the story sufficiently supported by evidence? Is the support that the evidence gives to the story sufficiently relevant and strong?

Guidelines for credibility assessment



Questions and asylum guidelines

- CQ: Is the story sufficiently supported by evidence? Is the support that the evidence gives to the story sufficiently relevant and strong?
- Guidelines: asses whether elements are sufficiently supported
 - Take into account credibility indicators <- not very clear from guidelines

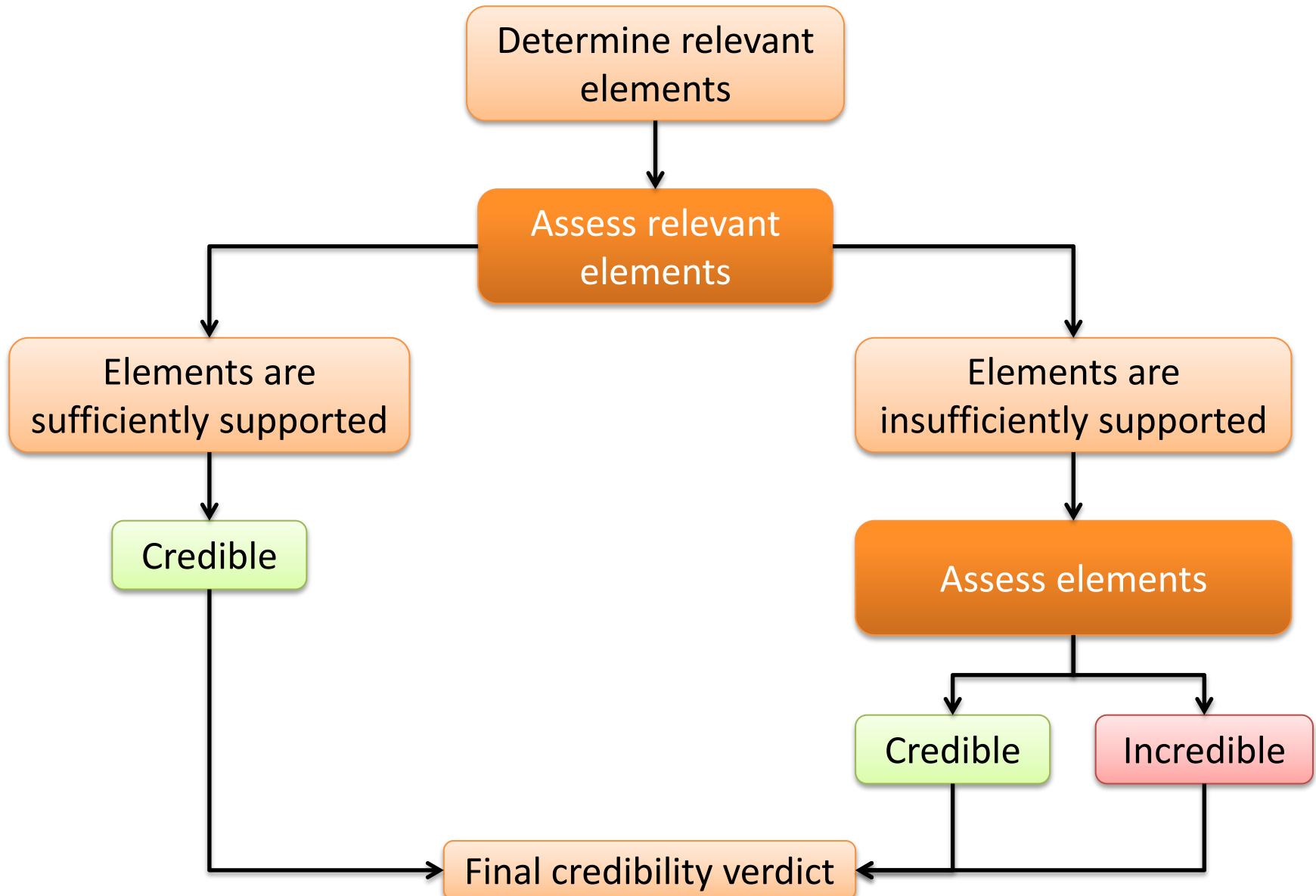
Questions and asylum guidelines

- CQ: Is the story sufficiently supported by evidence? Is the support that the evidence gives to the story sufficiently relevant and strong?
- Guidelines: asses whether elements are sufficiently supported
- Very little “objective” evidence available
- Warranting generalizations? Exceptions?

Questions and asylum guidelines

- CQ: Has the story itself been sufficiently critically assessed?

Guidelines for credibility assessment



Questions and asylum guidelines

- CQ: Has the story itself been sufficiently critically assessed?
- Guidelines: assess whether elements themselves are credible
 - Elements claimed only by the applicant
 - Take into account credibility indicators: consistency, specificity

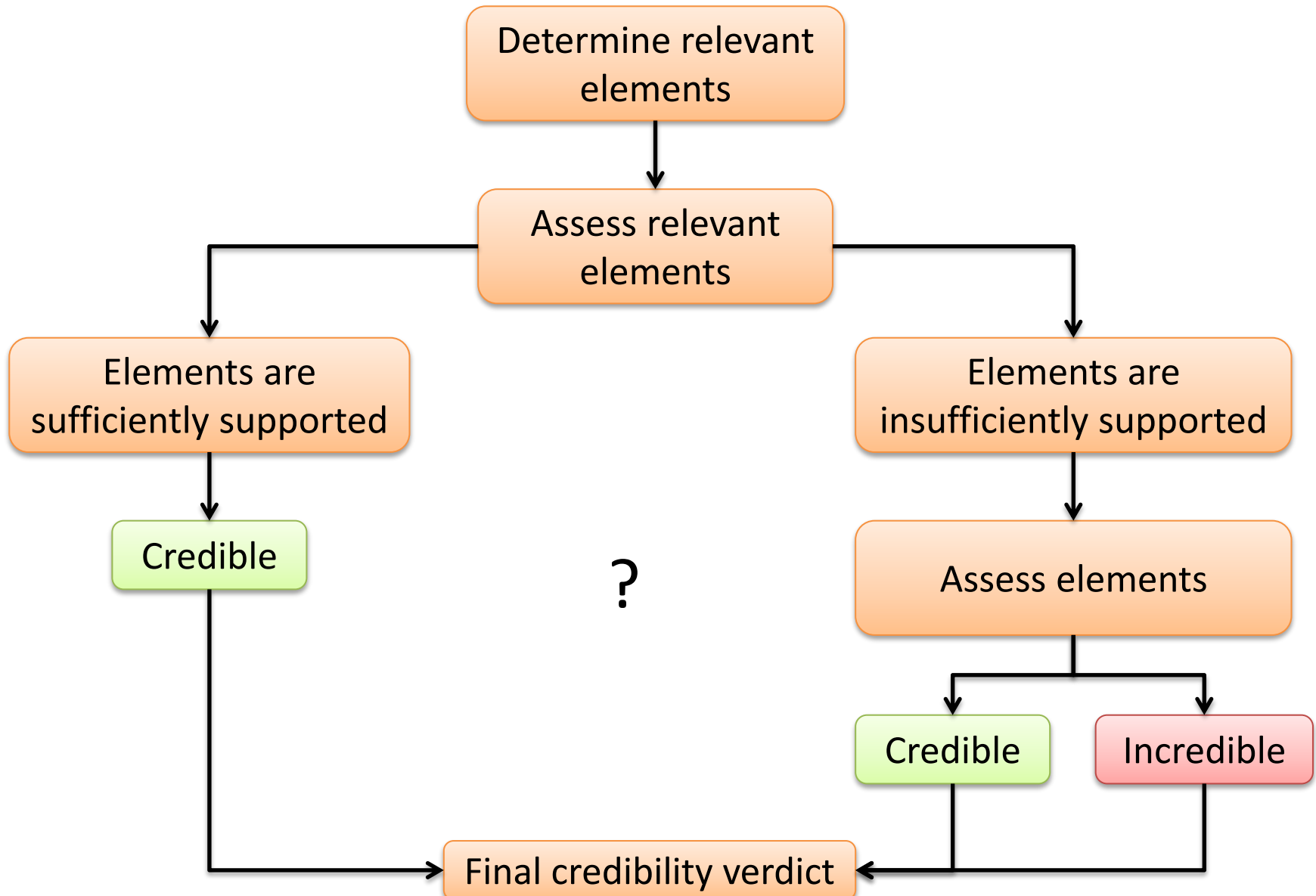
Questions and asylum guidelines

- CQ: Has the story itself been sufficiently critically assessed?
- Guidelines: assess whether elements themselves are credible
- Credibility of the refugee
 - What about trauma, shame, culture?
- Plausibility of the story
 - General knowledge of officer about country of origin, flight patterns,....
 - Knowledge of officer vs. knowledge of refugee

Questions and asylum guidelines

- CQ: Have alternative stories been sufficiently taken into account?

Guidelines for credibility assessment



Questions and asylum guidelines

- CQ: Have alternative stories been sufficiently taken into account?
- Nothing in the guidelines!
- Alternatives require time, resources
- Alternatives require “creativity” & general knowledge

Concluding

- Critical questions are almost all applied in asylum decisions
 - In theory – and instructions can be more structured
- Is it realistic to expect alternatives?
- Relevance is leading
 - Legal stories

Concluding

- Fact-finding secondary?
 - Other considerations (political, social)
- How much formalism?
- Standard of proof?

- **Many decisions on facts, with little evidence, in a short time**

References

- F.J. Bex & B. Verheij (2012) Solving a Murder Case by Asking Critical Questions: An Approach to Fact-Finding in Terms of Argumentation and Story Schemes. *Argumentation*, 26:3, 325-353.
- Werkinstructie IND 2014/10 (Guidelines Immigration and Naturalisation Office), https://ind.nl/Documents/WI%202014_10.pdf