



Jurisprudence on Secondary Movements

by Beneficiaries of International Protection



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Jurisprudence on Secondary Movements by Beneficiaries of International Protection:

Analysis of Case Law from 2019–2022



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List of abbreviations

recast APD	Asylum procedures directive. 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 (recast)
BAMF	Federal Office for Migration and Refugees (Germany)
CALL	Council for Alien Law Litigation (Belgium)
CEAS	Common European Asylum System
Dublin III Regulation	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 (recast)
CGRS	Commissioner General for Refugees and Stateless Persons (Belgium)
CJEU	Court of Justice of the European Union
COI	Country of origin information
CNDA	National Court of Asylum Court nationale du droit d'Asile (France)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Agency for Asylum
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union and associated countries
FAC	Federal Administrative Court (Switzerland)
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
FGM/C	Female genital mutilation/cutting
FIS	Finnish Immigration Service
LGBTIQ	Lesbian, gay, bisexual, trans-gender, non-binary, intersex and queer
Member States	Member States of the European Union
CSO	Civil society organisation
OFII	Office for Immigration and Integration Office Français de l'Immigration et de l'Intégration (France)
OFPRA	Office for the Protection of Refugees and Stateless Persons Office Français de Protection des Réfugiés et Apatrides (France)
PTSD	Post-traumatic stress disorder





QD (recast)	Qualification directive. 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 for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
RCD (recast)	Reception conditions directive. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
Refugee Convention	The 1951 Convention relating to the status of refugees and its 1967 Protocol
SEM	State Secretariat for Migration (Switzerland)
THB	Trafficking in human beings
UNE	Immigration Appeals Board (Norway)
UNHCR	United Nations High Commissioner for Refugees





Note

The cases presented in this report are based on the [EUAA Case Law Database](#) which presents more extensive summaries of each case. The summaries cover the main elements of the court's decision. The full judgment is the only authoritative, original and accurate document, which should be consulted for the authentic text.

The EUAA Case Law Database contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU), the European Court of Human Rights (ECtHR), the UN Committee on the Rights of the Child (UN CRC) and UN Committee on the Rights of Persons with Disabilities (UN CRPD). The summaries are drafted in English with the support of translation software and are reviewed by the EUAA Information and Analysis Sector before publication.

The database serves as a centralised platform on jurisprudential developments related to asylum, and cases are available in the [Latest updates](#) (ten most recent cases by date of registration), [Digest of cases](#) (all registered cases presented chronologically by the date of pronouncement, by country or by topic) and the [Search](#) bar.

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Methodology

This report covers judgments, decisions and interim measures by national and European courts on secondary movements of third-country nationals who had been granted international protection in one EU+ country and further moved and applied for asylum in another EU+ country. The selected cases cover the period January 2019–April 2022 to provide a comprehensive overview of significant trends and challenges faced by national and European courts when reviewing the situation of and requests from third-country nationals moving across EU+ countries.

The cases are gathered from various sources, including EUAA research, EUAA networks of asylum officers, judges, members of courts and tribunals, independent experts and civil society organisations. We would like to express our appreciation for their time and effort in registering these cases in the EUAA Case Law Database and thus contributing to shared knowledge on asylum systems in EU+ countries.

The selection of cases presented in this report is indicative and not exhaustive to identify trends and common approaches at the national or European levels, as well as various jurisprudential developments. Various national reports were consulted in the drafting process of this overview.¹

The report does not cover cases in connection with the Dublin III Regulation and related procedures, except in one example on applicants whose residence permits were withdrawn in Denmark and they re-applied in the Netherlands. However, in some cases the courts refer to the Dublin III Regulation or to principles that are *mutatis mutandis* applicable, such as the principle of inter-state mutual trust and legitimate expectations, best interests of the child and family unity, as well as the prohibition of torture, inhuman or degrading treatment.

¹ Belgium, Agency for Integration (AGII), The CALL annuls the inadmissibility of asylum applications of applicants with protection status in Greece due to an insufficient examination, 2021: <https://www.agii.be/nieuws/rvv-vernietigt-niet-ontvankelijkheid-asielaanvraag-van-verzoekers-met-beschermingsstatuut-in>; Germany, Current jurisprudence on status holders in Greece, 2021: https://www.asyl.net/fileadmin/user_upload/publikationen/Arbeitshilfen/2021-6_rues_griechenland_web.pdf; Sweden, Legal position paper (RS/065/2021) Rejection of an application of residence permit according to Chapter 5, section 1 b Aliens Act (2005:716), 2021, available here: <https://www.bing.com/ck/a?!&p=e5821adc76fc9276bb82d4676739781e1186d9d53789b0d4bc324e6fa8f430d7JmItDhM9MTY1Mjg2NTQzNiZpZ3VpZD1jMjRlMmRmMCOxNzUwLTQ2NmUtODhmZS1hZTc1ZmM3OTM3OTEmaW5zaWQ9NTE1Mg&ptn=3&fclid=4f4382d2-d68b-11ec-86e7-f18b903d23d2&u=a1aHR0cHM6Ly9saWZvcy5taWdyYXRpb25zdmVya2V0LnNlL2Rva3VtZW50P2RvY3VtZW50QXR0YWNobWVudElkPTQ4NDA0&ntb=1>





Main highlights

- There has been an increase in secondary movements by beneficiaries of international protection over recent years.²
- In the *Ibrahim* case, the CJEU clarified the standard of proof and the threshold of severity for inhuman or degrading treatment that would lead to the annulment or prohibition of a transfer back to the country that granted international protection.
- Based on the *Ibrahim* threshold, national courts overturned transfers to a country which granted international protection when a risk of inhuman or degrading treatment upon a return was found, for example for non-compliance with the Common European Asylum System (CEAS), insufficient living conditions and difficulties due to COVID-19 measures.
- Insufficient investigation by the determining authority or lower courts on living conditions in the country of transfer or on individual circumstances led to requests for re-examination, for example in Belgium, the Netherlands and Switzerland.
- National courts concluded that particular vulnerabilities of applicants require a stricter examination of individual circumstances and of the general situation in the country of transfer, for example related to a serious medical condition, mental illness or psychological problems; unaccompanied minors; proper treatment in the country or single parents with minor children.
- In the absence of a risk of treatment contrary to the EU Charter, Article 4, or the ECHR, Article 3, a transfer to the country that granted international protection can be allowed or confirmed by a judicial decision.
- The principles of the best interests of the child and preservation of family unity call for particular attention when deciding on the country responsible for an application for international protection.
- The movement of beneficiaries of international protection to seek asylum in another EU+ country may create procedural issues, such as the omission of a personal interview or unjustified delays in the examination.

² See Asylum Report 2022 (forthcoming in June 2022) and the EASO Asylum Report 2021, <https://euaa.europa.eu/sites/default/files/EASO-Asylum-Report-2021.pdf>





Introduction

While a legal definition does not exist, secondary movements are characterised as “*the phenomenon of migrants, including refugees and asylum seekers, who for various reasons move from the country in which they first arrived to seek protection or permanent resettlement elsewhere*”.³

There has been an increase in secondary movements of beneficiaries of international protection to other EU+ countries over the last few years.⁴ The trend has an important impact on the functioning of the Common European Asylum System (CEAS). In general, EU law does not allow a beneficiary of international protection to lodge a second asylum procedure in another Member State based on the same claims as in the first application. These applications may be considered inadmissible and do not have to be re-examined by the second State.⁵ The Dublin system was established to avoid such secondary movements and guarantee that only one Member State is responsible for an asylum application.

The European Commission proposed further actions by making the prevention of secondary movements one of the objectives of the Pact on Migration and Asylum.⁶ For example, the proposed Asylum and Migration Management Regulation (relocation of beneficiaries of international protection under the proposed solidarity mechanism) would allow the transfer of recognised beneficiaries to another EU+ country.⁷ The amended proposal revising the Eurodac Regulation includes better tracking of this type of secondary movements.⁸ In contrast, some proposed amendments of the Dublin III Regulation and the recast Reception Conditions Directive (RCD) within the Migration Management Regulation intend to prevent onward movements through punitive provisions, for example by excluding applicants from reception entitlements if they engage in secondary movements.⁹

Despite existing legislation and the principle of mutual trust between Member States, practices and jurisprudence have revealed that countries cannot always rely on another country fully implementing and complying with EU law and standards. In fact, an asylum applicant or a beneficiary of international protection may face “a whole range of insecurities

³ European Parliament Research Service (EPRS), Briefing Note, Secondary movements of asylum-seekers in the EU, October 2017, [Secondary movements of asylum-seekers in the European Union \(europa.eu\)](https://epra.europa.eu/secondary-movements-of-asylum-seekers-in-the-eu)

⁴ See EUAA Asylum Report 2022 (forthcoming in June 2022) and the EASO Asylum Report 2021, <https://euaa.europa.eu/sites/default/files/EASO-Asylum-Report-2021.pdf>.

⁵ Revised Asylum Procedures Directive (2013/32/EU), Article 33(1), (2)

⁶ New Pact on Asylum and Migration, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>

⁷ Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund], [EUR-Lex - 52020PC0610 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0610-EN-EN-2020-0610)

⁸ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, [EUR-Lex - 32013R0603 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0603-EN-EN-2013-0603)

⁹ Ibidem 3.



and risks, triggering their movement to another EU+ country to legitimately seek an adequate standard of life under the umbrella of international protection”.¹⁰

European and national courts are increasingly called to provide guidance related to secondary movements as there are many challenges connected to the transfer of responsibility in cross-border movements. To harmonise the application of EU law across countries, the Court of Justice of the European Union (CJEU) provide interpretations of CEAS legislative instruments. In several landmark cases, the CJEU has set the standard for assessing a new application by a refugee status holder and ruled on the threshold of gravity to consider a breach of the EU Charter, Article 4, the importance of the admissibility interview and assessing the best interests of a child, and the applicability of other legal instruments, such as the Return Directive.

National courts have a duty to analyse each case individually on correlative matters, such as family unity and best interests of the child, the risk of inhuman and degrading treatment, reception and integration conditions, the minimum subsistence level, available medical treatment and consequences of COVID-19 measures. The range of decisions taken between 2019 and 2021 show that practices by national courts have varied greatly.

An aspect that was raised many times before national courts concerned the individual assessment of the evidence submitted by a beneficiary of international protection, which should be corroborated with general information from public reports on reception conditions and integration opportunities in the EU+ country which first granted refugee status or subsidiary protection. National courts allowed appeals and referred cases back for re-examination on grounds that determining authorities or lower courts failed to properly investigate individual circumstances, including specific vulnerabilities, state of health or the minor age of the applicant. The threshold of severity and the criteria for assessing such risks, as defined in the CJEU judgment in *Ibrahim*, were extensively applied by national courts.

During the COVID-19 pandemic from 2020 to 2021, some national courts confirmed inadmissibility decisions when international protection status had been acquired in another Member State. They ruled that transfers would not be in breach of the EU Charter, Article 4 when there was a lack of proof of a risk of inhuman or degrading treatment, individual circumstances of the applicant ruled out vulnerabilities (e.g. healthy, able to work), or support could be provided by state authorities or civil society organisations (CSOs). In contrast, other courts considered the pandemic to create additional burdens which prevented the transfer of a beneficiary of international protection to the country which first granted protection.

National courts were called to analyse complex cases involving children who were born in a different Member State than the one in which the parents acquired international protection. They reiterated the important role of the right to family life and of best interests of the child.

Illegal cross-border movement and resubmitting another application for international protection can create many practical challenges. Between 2019 and 2021, national courts analysed and ruled on excessive and unjustified procedural delays, the provision of an interview, the importance and weight of the status acquired in the first country, and the effectiveness of protection.

¹⁰ CEPS Paper in Liberty and Security. (2019, December), *When mobility is not a choice Problematising asylum seekers' secondary movements and their criminalisation in the EU*. [LSE2019-11-RESOMA-Policing-secondary-movements-in-the-EU.pdf](https://ceps.eu/LSE2019-11-RESOMA-Policing-secondary-movements-in-the-EU.pdf) (ceps.eu)



1. Assessing living conditions in the transfer country

1.1. The CJEU standard of severity for deficiencies in the first country of international protection

- ✚ CJEU, Grand Chamber, [*Bashar Ibrahim, Mahmud Ibrahim, Fadwa Ibrahim, Bushra Ibrahim, Mohammad Ibrahim, Ahmad Ibrahim, Nisreen Sharqawi, Yazan Fattayrji, Hosam Fattayrji v Bundesrepublik Deutschland, and Bundesrepublik Deutschland v Taus Magamadov*](#), Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, ECLI:EU:C:2019:219, 19 March 2019.

The CJEU examined whether living conditions in the first country of protection may expose a beneficiary of international protection to a situation of extreme material poverty, in breach of the prohibition of inhuman or degrading treatment. In Joined Cases C-297/17, C-318/17, C-319/17, the three applicants had left Syria in 2012 and were granted subsidiary protection in Bulgaria in 2013. They then reapplied for international protection in Germany, and in 2014 BAMF rejected the applications as inadmissible on grounds that they came from a safe third country and ordered their deportation to the Bulgarian border. Following appeals on points of law submitted before the Higher Administrative Court Rheinland-Pfalz,¹¹ both by the applicants and BAMF, the Federal Administrative Court ruled that the safe third country concept is not applicable to an EU Member State and stayed the proceedings to seek interpretation on rejecting an application as inadmissible when the applicant has been granted international protection in another Member State.

All applicants alleged in the appeal proceedings that a deportation to Bulgaria would infringe the EU Charter, Article 4 by exposing them to a risk of inhuman and degrading treatment. They argued that recognised refugees in Bulgaria do not have access to housing and there were no real prospects to secure a minimum subsistence level. Without housing, refugees in Bulgaria cannot obtain a certificate of registration, making it difficult to obtain an identity document. This, in turn, would block access to medical treatments.

The fourth applicant (C-438/17), a Russian national of Chechen origin, was granted subsidiary protection in Poland but he re-applied in Germany, where the application was rejected as inadmissible based on the safe third country concept. In the first appeal, the Higher Administrative Court Berlin Brandenburg¹² annulled the BAMF decision and held that the safe third country was not applicable in the case, Germany was responsible for processing the application and the recast APD allows an application to be rejected without assessing the merits, only when another Member State has granted refugee status. BAMF submitted an appeal on points of law and the Federal Administrative Court referred the case to the CJEU.

The CJEU relied on the principle of mutual trust to state that all Member States must comply with EU law, particularly by respecting the fundamental rights recognised by EU law. In the context of CEAS, the presumption is that the treatment of an applicant for international protection in each Member State complies with the requirements of the EU Charter, the Geneva Convention and the ECHR and the principle of mutual trust between Member States is of particular relevance when applying the recast APD, Article 33(2a).

¹¹ Judgment of 18 February 2016 - 1 A 11081/14; 1 A 11082/14; 1 A 11083/14 annulled the BAMF decision.

¹² Judgment of 21 April 2016 - OVG 3 B 16.15.





Referring to the EU Charter, Article 4, the CJEU stated that, in an appeal of an inadmissibility decision, a national court or tribunal must assess the evidence presented by the applicant to establish if there is a risk in the Member State which first granted subsidiary protection. The CJEU confirmed that national courts are obliged to make an assessment based on information that is objective, reliable, specific and updated to check if systemic or general deficiencies exist. The deficiencies must attain a particularly high level of severity, which “is attained where the indifference of the authorities of a Member State would result in a person wholly dependent on State support finding himself, irrespective of his wishes and his personal choices, in a situation of extreme material poverty that does not allow him to meet his most basic needs, such as food, personal hygiene and a place to live, and that undermines his physical or mental health or puts him in a state of degradation incompatible with human dignity”.

- ✚ Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicant v The Federal Republic of Germany, represented by the Federal Office for Migration and Refugees \(BAMF\)](#), ECLI:DE:BVerwG:2020:210420U1C4.19.0, 21 April 2020.

Following the above-mentioned CJEU judgment, the Federal Administrative Court referred a case back for a thorough investigation into the living conditions in Bulgaria for beneficiaries of international protection. The Federal Administrative Court stated that only a non-EU Member State can be considered to be a safe third country. It also underlined that an inadmissibility decision for a refugee status holder must be based on the first country having living conditions which do not equate, for the beneficiary, to inhuman or degrading treatment within the meaning of the EU Charter, Article 4.

- ✚ CJEU, [Federal Republic of Germany \(Bundesrepublik Deutschland\) v Adel Hamed and Amar Omar](#), Joined Cases C-540/17 and C-541/17, ECLI:EU:C:2019:964, 13 November 2019.

The applications by two Syrian nationals were rejected as inadmissible in Germany because they had been granted refugee status in Bulgaria. On appeal, the Higher Administrative Court Hesse¹³ overturned the decision because the applicants cannot be returned to Bulgaria due to systemic deficiencies for beneficiaries, which would result in a violation of human rights. On these grounds, the court stated that a new asylum procedure could be opened in another Member State. BAMF contested the decision and the Federal Administrative Court sought interpretation on the application of the recast APD, Article 33(2a) and living conditions amounting to a breach of the EU Charter, Article 4 or the ECHR, Article 3.

In its preliminary ruling, the CJEU confirmed that the recast APD, Article 33(2a) must be interpreted as precluding a Member State from rejecting an application for international protection as inadmissible on the ground that the applicant has already been granted refugee status in another Member State, where the foreseeable living conditions in that other Member State would expose the applicant to a serious risk of suffering inhuman or degrading treatment within the meaning of the EU Charter, Article 4.

¹³ Judgment of 4 November 2016, No 3 A 1292/16.





1.1.1. Status holders in Bulgaria and systemic deficiencies

- 🇩🇪 Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), No 1 C 35.19, DE:BVerwG:2020:170620U1C35.19.0, 17 June 2020 (following the above case Omar).
- 🇩🇪 Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicant v The Federal Republic of Germany, represented by the Federal Office for Migration and Refugees](#), No BVerwG 1 C 34.19 (1 C 37.16) VGH 3 A 1292/16.A., 20 May 2020 (following the above case Hamed).

Following the CJEU judgment in the Joined Cases C-540/17 and C-541/17, the Federal Administrative Court clarified in decision No 1 C 35.19 that a safe third country can only be a country that is not an EU Member State. However, the Federal Administrative Court decided that the determining authority had insufficiently investigated the risk for the applicants of being exposed to inhuman or degrading treatment upon return to Bulgaria.

In both cases, the Federal Administrative Court reiterated the standards and principles of CJEU judgments in [Jawo](#), [Hamed and Omar](#) and [Ibrahim](#) in order to underline that the lawfulness of an inadmissibility decision when the applicant has been granted international protection in another Member State implies that living conditions in that Member State do not amount to inhuman or degrading treatment, contrary to the EU Charter, Article 4. The Federal Administrative Court also stated that systemic deficiencies in the asylum procedure in the Member State of first recognition of international protection and the fact that living conditions for status holders do not meet the requirements of the recast QD, Article 20 do not preclude an inadmissibility decision under the Law on Asylum, Section 29(1)(2).

1.2. Overturned transfers to a country of first recognition

Referring to the threshold set up by the CJEU judgment in [Ibrahim](#), national courts have overturned transfers of beneficiaries of international protection to countries, such as Greece or Hungary, due to a serious risk of treatment contrary to the ECHR, Article 3.

1.2.1. Application of the principle of mutual trust

- 🇮🇪 Ireland, High Court, [Applicant MAH v Minister for Justice](#), No [2021] IEHC 302, 30 April 2021.

In Ireland, the High Court allowed a judicial review of the case of an applicant who was previously granted refugee status in Hungary. Due to multiple procedural shortcomings and deficiencies in the asylum and reception conditions in Hungary, both for asylum applicants and beneficiaries of protection, reportedly insufficient respect for fundamental rights, and the poor medical condition of the applicant, the High Court held that the lower courts incorrectly applied the principle of inter-state mutual trust without sufficient analysis of the situation, living conditions and alleged xenophobic violence in Hungary.

The High Court emphasised the CJEU judgments against Hungary on asylum and reception, in addition to “the European Parliament’s resolution calling on the European Council to determine the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded referencing, amongst other concerns, Hungary’s treatment of the fundamental rights of migrants, asylum seekers and refugees”.



1.2.2. Non-compliance with CEAS

- ✚ Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A. v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), E-1018/2019, 08 April 2021.

An Afghan national who had been granted subsidiary protection in Hungary re-applied for international protection in Switzerland and requested a re-examination of his case. The State Secretariat for Migration (SEM) ordered his removal to Hungary, following confirmation from Hungary. On appeal, FAC in Switzerland examined whether Hungary complies with international human rights standards for applicants and beneficiaries of international protection. The FAC made an extensive analysis of the asylum system in Hungary, including infringement procedures and judgments from the CJEU and ECtHR against Hungary between 2019–2021. The FAC found that Hungary had not complied with CEAS recently and does not enforce judgments by European courts. It also found that the individual situation of the applicant was not clearly established.

The case was sent back for re-examination of the situation in Hungary and the consequences of a long absence from Hungary, including whether the applicant still held subsidiary protection in the country since the residence permit for this status is valid for 3 years.

1.2.3. Support services from the state or CSOs

In Germany, administrative and higher administrative courts made extensive and detailed assessments of the living conditions in Greece and the support a refugee or subsidiary protection status holder can receive from state authorities and CSOs in terms of housing, access to social services, access to employment and a minimum standard of living.

The courts also consulted CSO reports with general information on the situation in Greece to conclude that applicants would be exposed to a real and serious risk of inhuman or degrading treatment if returned, because beneficiaries of protection in Greece are not able to secure a minimum subsistence level and have difficulties in accessing accommodation, employment and social services.

- ✚ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v The Federal Republic of Germany, represented by the Federal Office for Migration and Refugees \(BAMF\)](#), VGH A 4 S 2443/21, 27 January 2022.
- ✚ Germany, Higher Administrative Court of Berlin-Brandenburg (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [The Federal Republic of Germany, represented by the Office for Migration and Refugees \(BAMF\) v Applicant](#), OVG 3 B 54.19, ECLI:EN:OVGBEBB:2021:1123.OVG3B54.19.00, 23 November 2021.
- ✚ Germany, Higher Administrative Court of Bremen (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), 1 LB 371/21, 16 November 2021.
- ✚ Germany, Higher Administrative Court of Lower Saxony (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), 10 LB 244/20, ECLI:DE:OVGNI:2021:0419.10LB244.20.00, 19 April 2021.



The German national courts acknowledged that state support for beneficiaries of international protection was not adequate in Greece in terms of access to housing, social services and health care, and looked into the possibility for a beneficiary of international protection, upon individual initiative, to access community networks or receive support from churches or CSOs. When assessing whether there is a risk of a violation of the EU Charter, Article 4 in the event of return or deportation, it must be first established if assistance or support services from CSOs for beneficiaries of international protection exist in reality and are sufficiently reliable and of permanent nature, without unreasonable access conditions.

By applying this criteria, national courts found that church projects or civil society organisations in Greece are extremely limited and permanently overburdened, offering often short-term, ad hoc and limited support. Thus, status holders would be at risk of facing extreme material deprivation if returned to Greece due to a lack of housing, employment and health care, treatment that would reach the [Ibrahim](#) threshold for inhuman or degrading treatment contrary to the EU Charter, Article 4.

1.2.4. Impacts of COVID-19 measures

- 🇩🇪 Germany, Higher Administrative Court of North Rhine-Westphalia (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), No 11 A 1564 / 20.A, ECLI:DE:OVGNRW:2021:0121.11A1564.20A.00, 21 January 2021.

The application of an Eritrean national, who received asylum in Greece, was rejected in Germany where BAMF considered that there was no sign that a single and healthy man would find himself in an inhuman situation in Greece despite the prevailing difficult conditions. Upon appeal, the Higher Administrative Court overturned the transfer decision and commented on the hardships encountered by hundreds of beneficiaries of protection in Greece due to a lack of accommodation, social services and access the employment market. The High Administrative Court added that COVID-19 restrictive measures, coupled with curfews, made it even more difficult for refugees who are homeless to secure a minimum subsistence level.

- 🇩🇪 Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), case No 1 K 373/18.A, 3 July 2020.

A regional administrative court in Aachen overturned the transfer of a Syrian applicant who was previously granted international protection in Romania. The court based its decision on the fact that the applicant would risk being subject to inhuman or degrading treatment caused by poor economic and living conditions for beneficiaries of protection in Romania and took into account his medical problems and the lack of suitable medication. The COVID-19 pandemic was considered to have drastically changed the economic situation in Romania by making it more difficult to access the labour market, resulting in beneficiaries of protection to be able to secure a minimum standard of living, coupled with insufficient state or CSO support.



- ✚ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), case No 6 A 243/20 , 7 July 2020.

Similarly, the Oldenburg regional administrative court considered that an applicant who had been granted subsidiary protection in Italy would be without basic needs and accommodation in Italy, even though he had no vulnerabilities and was healthy and fit for work. The economic situation due to the COVID-19 pandemic diminished the prospects of finding employment to secure a minimum livelihood. Consequently, the transfer to Italy was overturned.

1.3. Insufficient investigation of living conditions and a risk of material deprivation

1.3.1. Living conditions in Greece

Although CALL has acknowledged the efforts made by Greek authorities and CSOs to support beneficiaries of international protection, there are still impediments to access housing, social services and medical care. While it is clear that there are challenges for beneficiaries to secure a minimum livelihood in Greece, the general information does not demonstrate that the threshold of severity in *Ibrahim* is met. Therefore, CALL assesses each case individually, with reference to the to general country information and sources regarding the situation and circumstances of status holders in Greece, prior to annulling an inadmissibility decision and ruling on the application of the principle of mutual trust between Member States on transfers to Greece.

In two cases, CALL allowed the appeals submitted by beneficiaries of international protection in Greece against inadmissible decisions by the CGRS and ruled that the latter must apply the [Ibrahim](#) judgment and properly assess the individual circumstances of the case and general objective, reliable and updated information on the situation in Greece.

- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 234.963, 8 April 2020.

The first case concerned an Afghan family who was entitled to material reception conditions and financial support while being asylum applicants in Greece. The support ended when they were granted subsidiary protection, and due to difficulties in accessing housing and employment in order to secure a minimum standard of living, they moved to Belgium. Their asylum application was rejected and they appealed, arguing that living conditions in Greece would lead to a risk of inhuman and degrading treatment.

- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 245.948, 10 December 2020.


The second case concerned an applicant who invoked material deprivation for status holders when returned to Greece and a non-fulfilment of the duty of the determining authority to take into consideration that, despite multiple attempts and best efforts of the applicant, he encountered difficulties to access proper medical assistance, employment and housing, being left without prospects of integration in Greece.



Similarly, the Council of State in the Netherlands overturned inadmissibility and transfer decisions because the State Secretary failed to properly investigate and assess whether the principle of inter-state mutual trust can be applied to Greece and if there was a risk of inhuman or degrading treatment if returned.

-  Netherlands: Council of State [Afdeling Bestuursrechtspraak van de Raad van State]], [Applicant v State Secretary of Security and Justice](#), ECLI:NL:RBROT:2020:9770, 28 July 2021.
-  Netherlands: Council of State [Afdeling Bestuursrechtspraak van de Raad van State]], [Applicant v State Secretary of Security and Justice \(No 2\)](#), ECLI:NL:RVS:2021:1627, 28 July 2021.
-  Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State]], [Applicant v State Secretary of Security and Justice](#), ECLI:NL:RVS:2021:1869, 23 August 2021.

The Dutch Council of State relied on various civil society reports for a comprehensive and detailed overview of support provided for housing, employment, social services and health care. It concluded that, despite significant efforts by the Greek authorities, who are supported by CSOs, the authorities are in practice unable to cope with the demand and to prevent beneficiaries of international protection from being in severe hardship, in particular in a situation of practical impossibility to secure a minimum livelihood. For these reasons, the Council of State held that the State Secretary must properly investigate and reason that living conditions in Greece for status holders would not put them at risk of the threshold of gravity in the CJEU judgment in [Ibrahim](#), if returned.

-  Austria, Constitutional Court [Verfassungsgerichtshof Österreich], [Applicant v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), E599/2021, 25 June 2021.

The Austrian Constitutional Court annulled a decision of inadmissibility for an Afghan national who was granted international protection in Greece for a lack of proper investigation by the lower court of the situation in Greece and the potential risk of inhuman and degrading treatment due to the living conditions there, specifically on access to housing.

1.3.2. Lack of integration support in Bulgaria

-  Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicants v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), ECLI:NL: RBDHA: 2020: 10437, 19 October 2020.

A single mother with four children from Syria were granted refugee status in Bulgaria in 2017. Their asylum application in the Netherlands was rejected as inadmissible by the State Secretary since they were recognized beneficiaries in Bulgaria and there were no impediments to being transferred back. Under appeal, the applicants claimed that the determining authority insufficiently investigated their individual circumstances, namely that they were victims of illegal pushbacks, they lacked access to legal assistance in Bulgaria and they would be exposed to inhuman and degrading treatment contrary to the EU Charter, Article 4.





The Court of the Hague annulled the inadmissibility decision and sent the case back for a thorough examination of individual circumstances. The court reiterated that the principle of inter-state mutual trust and legitimate expectations should be applied, unless there are serious concerns that a person would be subjected to inhuman or degrading treatment in the country of transfer. Public reports showed that Bulgarian authorities did not offer any integration support for status holders and the court considered that the State Secretary must justify why a failure to provide integration support would not qualify as official indifference from Bulgarian authorities towards beneficiaries of international protection, coupled with administrative obstacles (e.g. possibility to obtain a valid identity document) that impeded access to basic services despite best efforts.

The court pointed out that Bulgarian authorities took no initiative for several years to provide integration facilities and Bulgarian legislation does not provide access to social housing for status holders because Bulgarian nationality is required. Under these circumstances, the court considered that the high threshold of *Ibrahim* was reached if the indifference of the authorities places a person who is dependent on state aid, beyond the applicant's will and personal choices, into a situation of material deprivation without basic needs being met.

1.4. Insufficient investigation of particular vulnerabilities

1.4.1. Poor mental health and living conditions in Greece

The Belgian CALL reviewed a number of cases related to assessing vulnerabilities individually. CALL ruled to annul inadmissibility decisions where a thorough and detailed investigation was needed when applicants had special needs, such as unaccompanied minors, single parents with a minor child or someone with a serious medical condition (mental or psychological issues).

For example, CALL annulled inadmissible decisions in five cases where it considered that the determining authority failed to conduct a proper investigation, either of the statements of the applicants on their particular vulnerable situation or to adequately take into account new elements provided by the applicants in subsequent applications. Applicants invoked a poor mental health situation which, combined with inadequate living conditions and difficulties in accessing medical care in Greece as beneficiaries of international protection, could result in a risk of inhuman and degrading treatment.

CALL referred to the CJEU judgment [Ibrahim](#) and reiterated that a risk of severe material deprivation may lead to treatment reaching the threshold of the EU Charter, Article 4 or the ECHR, Article 3, which can prevent a Member State from transferring an applicant to the Member State where international protection was granted. Moreover, CALL underlined the [Ibrahim](#) standard of assessing such a risk, namely that national authorities must base their decisions on "objective, updated, reliable and precise information" and carry out a proper investigation into the individual circumstances of each case.

In all cases, CALL requested a re-examination and requested the determining authority to ensure a proper investigation of whether the applicants are at risk of being subject to a situation of extreme material hardship, especially by taking into account their particular vulnerabilities.





- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 241.571, 29 September 2020.
- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [X \(Palestine\) v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), No 242 096, 12 October 2020.

These cases concerned applicants who suffered from serious psychiatric issues or psychological vulnerability. In both cases, the CALL considered that a return to Greece would expose the applicants to a serious risk by facing extreme material hardship.

- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 259 842, 31 August 2021.
- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 260.134, 3 September 2021.
- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 260.192, 6 September 2021.

In these three cases, CALL reviewed applications by beneficiaries of international protection in Greece who were applicants under psychological treatment and assistance in Belgium for fragile mental health, which was evidenced by medical reports. Their return to Greece was annulled.

1.4.2. Access to proper medical care

- ✚ Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v The Secretary of State for Justice and Security](#), No. 202006266/1/V3, ECLI:NL:RVS:2021:179, 28 January 2021.

The Dutch Council of State overturned an inadmissible decision for an applicant who was granted international protection in Greece but could not receive adequate treatment in Greece for alleged mental health issues. It found that the State Secretary requested a medical opinion of the Medical Advice Office (BMA), which confirmed that the applicant had serious mental health problems which would deteriorate in the absence of proper medication and would increase the risk of suicide in a short period of time.

The Council of State found that the lower court and the State Secretary had not acknowledged the applicant's vulnerability and referred the case for a re-examination.

- ✚ Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), [Applicant v Directorate of Immigration \(Útlendingastofnun\)](#), No. KNU21030045, 10 June 2021.

The Immigration Appeals Board in Iceland annulled a transfer to Hungary of an Afghan applicant after finding that more information was needed to properly assess the feasibility of the transfer. In fact, the applicant was granted international protection in Hungary but claimed to have left because the authorities did not renew his residence permit and he did not receive assistance for his health problems.



The Immigration Appeals Board consulted a number of reports on the situation in Hungary, including the EASO Asylum Report 2020, and noted that, while in theory status holders have the right and access to medical treatment, there are practical obstacles to receiving services. In the absence of sufficient information on the applicant's medical needs and the availability of proper medical care in Hungary, the case was referred back for further investigation.

- ✚ Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A, B, C, D, E and F v State Secretary for Migration](#), E-3427/2021, E-3431/2021, 28 March 2022.

The Swiss FAC recently clarified the assessment to be undertaken by the determining authority when considering an expulsion to Greece. Despite difficulties identified in accessing housing, health care, social services and employment for beneficiaries of international protection in Greece, the FAC stated that a return was possible and admissible since the reception system cannot be deemed dysfunctional. However, stricter criteria apply for the return of vulnerable persons. The FAC ruled that families with minor children must be considered to be vulnerable, and there must be a detailed assessment of their individual circumstance for a reasonable return to Greece. This case was sent back to the SEM for a proper examination of the facts, including health claims and access to various services in Greece.

- ✚ Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A, B, C, D v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), No E-1332/2021, 9 April 2021.
- ✚ Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), No E-1413/2021, 8 April 2021.
- ✚ Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), No D-1333/2021, 31 March 2021.

By applying the safe third country concept, the FAC confirmed the rejection of three asylum applications by the SEM. However, the FAC made a separate assessment of the transfers to Greece and the risk of being subject to inhuman or degrading treatment when the applicants invoked medical conditions, namely psychological issues attested by medical certificates, and a lack of adequate medical treatment in Greece. The FAC found that the SEM had not sufficiently assessed the facts and concluded that more investigation must be carried out.

1.5. Absence of a risk of inhuman or degrading treatment

1.5.1. Lack of evidence that the principle of mutual trust cannot be applied


- ✚ Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], [A.H. v Czech Ministry of the Interior \(Ministerstvo vnitra\)](#), 5 Azs 65/2020-31, 9 November 2020.

The Czech Supreme Administrative Court ruled in a case concerning an application for international protection by a Syrian national who was granted asylum in Greece. The court consulted the CJEU judgment in *Ibrahim* and stated that, despite the implementation of the CEAS and the principle of mutual trust, the prohibition of torture or inhuman or degrading treatment has an absolute nature and national authorities must analyse the risk in each specific case.




The applicant did not raise a specific risk and no evidence was produced. The court noted the passivity of the applicant, together with reports confirming a general improvement of the situation in Greece. Thus, it concluded that no further examination was needed, and national authorities can rely on the principle of mutual trust between Member States.

1.5.2. Lack of evidence of the COVID-19 pandemic creating an additional burden


-  Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [X v Commissioner General for Refugees and Stateless Persons](#), No 237 377, 23 June 2020.

The Belgian CALL confirmed an inadmissibility decision for an applicant who held international protection status in Greece and underlined the burden of proof on the applicant's part. The decision was based on the absence of compelling arguments and evidence from the applicant that the situation in Greece and the consequences of the COVID-19 pandemic reached a level that would lead to a risk of torture or inhuman or degrading treatment. CALL stated that the pandemic situation was similar in Belgium and Greece.

1.5.3. No right to a certain standard of living¹⁴

-  Germany, Regional Administrative Court Schwerin [Verwaltungsgerichte], [Applicants v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), No 5 A 3753/17, 18 February 2020.

The German Regional Administrative Court found no impediment to returning a Syrian family with young children to Greece, where they had been granted asylum. In fact, the court stated that third-country nationals cannot claim a right to remain in a country to access medical care, social services or other benefits on the basis of the ECHR, Article 3. It also does not mean that there is a general obligation by a Member State to offer financial support or a certain standard of living to refugees. The threshold of the ECHR, Article 3 would not be reached even if accommodation was not provided and there was a significant impact on life expectancy for example due to a different standard of health care. Moreover, the court considered that country of origin information for Greece did not reveal any significant evidence concerning a risk of inhuman or degrading treatment for status holders.

-  Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A. v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), Case D-559/2020, 13 February 2020.

An Iraqi national who was granted subsidiary protection in Greece requested international protection in Switzerland. His application was rejected as inadmissible and he appealed and argued that living conditions and medical assistance were insufficient in Greece and his removal would lead to a violation of the *non-refoulement* principle. Despite some irregularities in accessing housing, social services and medical care both for asylum applicants and beneficiaries of international protection in Greece, the FAC held that a low standard of living would not amount to inhuman and degrading treatment.

¹⁴ Case law on the assessment of conditions in Greece is also presented in Sections 1.2-1.4.



1.5.4. Lack of evidence of treatment contrary to the ECHR, Article 3

- ✚ Ireland, High Court, [HZ v The International Protection Appeals Tribunal and The Minister for Justice and Equality](#), [2020] IEHC 146, 17 February 2020.

An Iranian national who was granted refugee status in Greece in January 2018 requested international protection in Ireland. His application was rejected as inadmissible, and a removal order was issued. The International Protection Appeals Tribunal and the High Court confirmed the inadmissibility decision. The High Court held that the applicant did not demonstrate that the living conditions in Greece would entail a risk of treatment contrary to the EU Charter, Article 4 or the ECHR, Article 3.

- ✚ Luxembourg, Administrative Tribunal [Tribunal administratif], [A and Other v Ministry of Immigration and Asylum \(Ministere de l'Immigration et de l'Asile\)](#), No 46333, 25 August 2021.

The Administrative Tribunal in Luxembourg confirmed an inadmissibility decision for two Syrian nationals holding refugee status in Greece on the basis that the applicants failed to prove that they risk an inhuman and degrading treatment upon transfer to Greece, their rights will not be secured and they will not have the possibility to invoke their rights before the Greek authorities.

- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [X v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), No 265 464, 14 December 2021.
- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [X v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), No 264 963, 6 December 2021.
- ✚ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [XX v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), No 262 266, 14 October 2021.

Despite information available on the difficulties for beneficiaries of international protection in Greece to access housing, employment, social services and medical treatment, CALL reiterated that each applicant must provide concrete and personal evidence of a risk of treatment contrary to the EU Charter, Article 4 or the ECHR, Article 3. To rebut the presumption that a status holder in Greece can rely on the protection granted, a beneficiary of international protection must demonstrate a personal situation of severe material deprivation upon return.

In three cases of applicants who had obtained refugee status in Greece, CALL ruled that the reports presented by the applicants contained general statements on reception conditions in Greece for status holders, but the information did not establish with sufficient certainty that each refugee or holder of subsidiary protection in Greece would be subjected to the risk of inhuman or degrading treatment. CALL reiterated that deficiencies in reception, difficulties in Greece and a lack of integration programmes for beneficiaries of international protection did not reach the threshold set up in [Ibrahim](#) and did not necessarily lead to a situation of severe material deprivation and inability to secure a minimum standard of livelihood. Moreover, CALL underlined that the applicants should have demonstrated individual circumstances to prove a specific risk of inhuman or degrading treatment upon their return to Greece.



- ✚ Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Security and Justice \(Staatssecretaris van Justitie en Veiligheid\)](#), ECLI:NL:RBDHA:2021:1155, 21 January 2021.

Similarly, the Court of the Hague ruled that there was no evidence to suggest that the conditions in Romania would preclude the application of the principle of mutual trust when transferring an applicant from the Netherlands.

- ✚ Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [State Secretary v Applicants](#), 202005713/1/V3, ECLI:NL:RVS:2021:2857, 16 December 2021.
- ✚ Germany, Higher Administrative Court of Niedersachsen (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [The Federal Republic of Germany, represented by the Federal Office for Migration and Refugees v Applicant](#), 10 LB 257/20, ECLI:DE:OVGNI:2021:1207.10LB257.20.00, 7 December 2021.

The Dutch Council of State and the German Higher Administrative Court have also ruled that the *Ibrahim* threshold of severity was not attained when applicants had obtained international protection in Bulgaria.

Despite noticeable uncertainty and a significant deterioration of the situation in Bulgaria, the Dutch Council of State emphasised that the applicant did not prove a risk of treatment contrary to the EU Charter, Article 4, and thus, the State Secretary correctly applied the inter-state principle of mutual trust.

The German Higher Administrative Court reasoned that there was no prohibition of transfers to Bulgaria for status holders who are healthy, able to work and who did not prove a risk of inhuman or degrading treatment upon return to Bulgaria.

1.5.5. Sufficient and reliable CSO support in Hungary

- ✚ Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicants v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), BVerwG 1 C 3.21, ECLI:EN:BVerwG:2021:070921U1C3.21.0, 7 September 2021.

Afghan applicants with subsidiary protection in Hungary had their application rejected as inadmissible in Germany. On appeal, they alleged a risk of inhuman or degrading treatment if returned to Hungary. The Federal Administrative Court confirmed the inadmissibility decision and stated that the higher administrative court determined without legal error that beneficiaries of international protection in Hungary have the same rights as nationals and young healthy men can access work and make a livelihood without difficulties.

Moreover, the Federal Administrative Court considered that support services provided by civil society organisations must be taken into account when assessing if there is a serious risk of inhuman or degrading treatment. Specifically, the applicants could rely, if necessary, on the assistance of the services of CSOs operating in Hungary. The absence of state integration measures for recognised beneficiaries of protection in Hungary would not constitute by itself a violation of the EU Charter, Article 4 or the ECHR, Article 3, either in general or in view of the special circumstances for beneficiaries of international protection.





2. Minors and the right to family life

2.1. Best interests of the child

🇺🇦 CJEU, [XXXX v Commissaire général aux réfugiés et aux apatrides](#), C-483/20, ECLI:EU:C:2022:103, 22 February 2022.

The Belgian Council of State¹⁵ sought interpretation of the recast APD, Article 33(2), applied in conjunction with the EU Charter, Articles 18 and 24, in a case where an unaccompanied minor was granted protection in a different country than his father. The father had refugee status in Austria, is the sole nuclear family of the child, lives with him and has been conferred parental responsibility for the child by the host Member State. The minor held subsidiary protection in Belgium. The father's application for asylum in Belgium was rejected as inadmissible because he received international protection in Austria. The applicant appealed based on family unity and best interests of the child. The court sought information on if the father should be granted protection by the country where his child has been granted protection, based on the principle of family unity and the best interests of the child.

The Grand Chamber of the CJEU ruled that the recast APD, read in conjunction with the EU Charter, Articles 7 and 24(2), does not preclude a Member State from rejecting an application as inadmissible on the ground that the applicant has already been granted refugee status by another Member State, even if the applicant's minor child has subsidiary protection in another Member State and taking into account the recast QD, Article 23(2) on maintaining family unity. However, Member States are called to refrain from declaring an application as inadmissible when there are systemic deficiencies in the first Member State and the living conditions amount to a risk of treatment contrary to the EU Charter, Article 4.

According to the CJEU, Member States are not obliged to verify if the applicant is eligible to claim international protection under the recast QD, where such protection is already provided in another Member State. However, under the recast QD, Member States are required to ensure that family unity is maintained, and certain benefits should be given in favour of family members of a beneficiary of international protection. The benefits described in the recast QD, Articles 24-35 include a right of residence, which requires three conditions to be met: i) the person is a family member within the meaning of the recast QD, Article 2(j); ii) the family member does not individually qualify for international protection; and iii) it is compatible with the personal legal status of the family member.

🇺🇦 Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security](#), NL21.14874, ECLI:NL:RBDHA:2021:12774, 22 November 2021.

The Court of the Hague in the Netherlands adopted interim measures in a similar case and stayed the proceedings pending the pronouncement of the judgment by the CJEU in the Belgian [case](#), No C-483/20. The case also assessed the best interests of the child and the right to family life when assessing if an application can be declared inadmissible, because the applicant had already obtained international protection in a Member State other than the Member State where the family member resides.

¹⁵ See Belgium, Council of State [Raad van State - Conseil d'État], [XXXX v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 30 June 2020.





- United Nations, Committee on the Rights of the Child [CRC], [M.K.A.H. v Switzerland](#), Communication No 95/2019, 22 September 2021.

The UN Committee on the Rights of the Child (UNCRC) analysed the situation of a minor who did not have a hearing when his application was rejected in Switzerland for holding subsidiary protection in Bulgaria. Her mother alleged a violation by Switzerland of the Convention on the Rights of the Child, Article 3, because a transfer to Bulgaria, based on a readmission agreement, would expose her and the child to poor living conditions, including a lack of access to adequate medical treatment for psychological issues.

The UNCRC concluded that Switzerland failed to consider the best interests of the child along with the severe mental condition of the mother when deciding on the return to Bulgaria. The Swiss authorities were urged to re-examine the decision to return the minor applicant to Bulgaria and to comply with the obligation to hear the minor, take into account the child's best interests and offer qualified psychological assistance to both applicants.

- Luxembourg, Administrative Tribunal [Tribunal administratif], [Applicant v Ministry of Immigration and Asylum \(Ministere de l'Immigration et de l'Asile\)](#), No 44189, 4 May 2020.

The application of a Syrian father and his minor son was declared inadmissible in Luxembourg because they had obtained refugee status in Germany. On appeal, the father alleged that the Minister should have taken into account the principle of the best interests of the child within the meaning of the International Convention of Rights of the Child, Article 3.

The Administrative Tribunal rejected the appeal and stated that the best interests of the child were maintained by preserving family unity. The inadmissibility decision implies that the applicant will return with his son to Germany and nothing in the applicant's statement indicated that his son's protection will not be guaranteed in Germany. In addition, a general and abstract mention of the Convention and the son not wanting to go back to Germany, without any concrete reasoning, were not sufficient to counter the contested decision.

- Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant \(Syria\) v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), ECLI:NL:RVS:2019:1612, 22 May 2019.

The Council of State in the Netherlands allowed an appeal against an inadmissible decision because the determining authority assessed the transfer to Hungary only with regard to a risk of treatment contrary to the ECHR, Article 3 and omitted to take into account the best interests of the child as provided by the EU Charter, Article 24. In fact, the applicant was a minor Syrian national of 16 years old who had received subsidiary protection in Hungary, but due to difficulties for status holders in Hungary, a lack of support from national authorities and a guardian not being assigned to the applicant, the Council of State requested a new examination of the case.





2.2. The status of minors born in the second Member State

- ✚ Luxembourg, Administrative Tribunal [Tribunal administratif], [A, B and C v Ministry of Migration and Asylum \(Ministère de l'Immigration et de l'Asile\)](#), No 45437, 1 March 2021.

The Administrative Tribunal in Luxembourg rejected an asylum application as inadmissible because refugee protection had been granted in Greece for all family members, except a newborn born in Luxembourg. The Greek authorities gave assurances that the minors would be offered the same level of benefits as their parents, brothers and sisters.

However, the Administrative Tribunal stayed the proceedings and referred the case for a preliminary ruling, asking whether an application can be declared inadmissible when the country which granted international protection to the parents have guaranteed that, on arrival of the child and return of the other family members, the child will be granted a residence permit, allowing him to have the same benefits as those granted to his parents as beneficiaries of international protection, though without stating that he will be personally granted international protection.

- ✚ Germany, Regional Administrative Court of Cottbus [Verwaltungsgerichte], [RO v Federal Republic of Germany](#), 14 December 2020.

Similar questions were raised by the Regional Administrative Court of Cottbus on the interpretation of the Dublin III Regulation and the recast APD. The question concerned the determination of the state responsible to process the application for international protection of a minor who lodged an application in the Member State where he was born, whereas his parents had been granted protection in another EU+ country.

The case was referred for a preliminary ruling before the CJEU (Case C-720/20, still pending) on the application of the Dublin III Regulation, Article 20(3) in a situation when a minor child and the parents lodge applications for international protection in the same Member State where the child was born, but the parents are already recognised refugees in another Member State.

- ✚ Germany, Federal Administrative Court [Bundesverwaltungsgericht], [The Federal Republic of Germany, represented by the Federal Office for Migration and Refugees v Applicant](#), 1 C 2.20, ECLI:DE:BVerwG:2021:250521U1C2.20.0, 25 May 2021.
- ✚ Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), BVerwG 1 C 37.19, ECLI:DE:BVerwG:2020:230620U1C37.19.0, 23 June 2020.

The situation of children born in Germany to parents with international protection in another EU+ country (Italy in these cases) was carefully reviewed by the Federal Administrative Court to determine the state responsible to process the asylum application of the minor. The parents also applied for asylum in Germany. In these two cases, the Federal Administrative Court ruled that the Dublin III Regulation, Article 20(3)¹⁶ cannot be applied so that there is no

¹⁶ The Dublin III Regulation, Article 20(3): “For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for





need to initiate separate jurisdictional proceedings for the child in accordance with Article 20(3), sentence 2.

The Federal Administrative Court ruled that “it does not follow from the Dublin III Regulation that Italy is responsible for carrying out the asylum procedure of the minor applicant, a child born in Germany. The Dublin III Regulation, Article 20(3) does not confer jurisdiction on Italy either in direct application, in an extended interpretation or by analogy. Moreover, even if applied by analogy under Articles 20(1) and 21(1), jurisdiction would have been transferred to Germany because BAMF had failed to submit an application for admission to Italy within 3 months of the applicant's application for asylum”.

Based on the recast APD, Article 33(2a), its transposition into the national legislation and the CJEU case law, the Federal Administrative Court underlined that an inadmissibility decision can be adopted in an exhaustive list of situations, but this situation was not included in the list. Consequently, the Federal Administrative Court confirmed the Higher Administrative Court findings that the inadmissibility decision is unlawful.

2.3. Derived rights and the preservation of family unity

- ✚ Luxembourg, Administrative Tribunal [Tribunal administratif], [Applicant v Ministre de l'Immigration et de l'Asile](#), No 45988, 5 July 2021.

A single mother who obtained refugee status in Spain in 2018 and had a 6-month-old baby who was born in Spain in 2020 applied for asylum in Luxembourg both for herself and the child. Her application was rejected as inadmissible on grounds related to the status in Spain and a return was ordered. The mother was informed that the child's application would be decided separately on merits. The mother contested the decision since she was ordered to leave the country while her child's application was pending and argued that the Minister did not respect family unity and the best interests of the child.

The Administrative Tribunal stated that the Minister must consider the best interests of the child when deciding on the mother's application. The Administrative Tribunal also mentioned that the authorities must respect family unity and not to order the mother to leave the territory when the application of the dependent child was still pending.

- ✚ Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), ECLI:DE:BVerwG:2020:171120U1C8.19.0, 17 November 2020.

A Somali national had three children who were granted international protection in Germany, but his own application was initially rejected as inadmissible on grounds that he had been granted international protection in Italy. In appeal, the court noted that the applicant submitted the claim for asylum under family reunification, as a derived right from the right of

examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The same treatment shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them”.



the children.¹⁷ The Federal Administrative Court established that an effective nuclear family life is possible only in one Member State, and despite the fact that EU and national laws are intended to limit the secondary movements of asylum applicants or beneficiaries of international protection between Member States, the primary purpose of the Asylum Law, Section 29(1), No 2 (preventing secondary movements) and the recast QD, Article 3 do not preclude more favorable standards and derived rights to protection family members who have received protection in different Member States.

The Federal Administrative Court concluded that, unless there is a ground for exclusion, a family member of a recognised refugee can be granted protection in another Member State for the purpose of maintaining family unity. In this case, granting international protection to one family member does not result in a secondary movement which is undesirable under EU law and should be prevented by a return to the first Member State.

3. Procedural aspects

3.1. Omission of the personal interview in an inadmissibility procedure

🚩 CJEU, [Milkiyas Addis v Bundesrepublik Deutschland \[Federal Republic of Germany\]](#), C-517/17, ECLI:EU:C:2020:579, 16 July 2020.

An Eritrean applicant¹⁸ had been granted refugee status in Italy and received a residence permit and travel documents. He applied for asylum again in 2013 in Germany, but his application was rejected by BAMF as inadmissible on grounds that he received protection in a safe third country.

The applicant contested the decision, and the German Federal Administrative Court sought clarification from the CJEU on two aspects. First, the court inquired if an application can be considered inadmissible without finding a violation of the ECHR, Article 3 when the living conditions for recognised refugees in another Member State do not meet the requirements of the recast QD, Articles 20. The referring court specifically asked whether certain benefits and access to associated services, also through family or civil society organisations, can substitute or supplement state services and be in compliance with the recast QD, Articles 20. Second, the court referred to procedural safeguards and asked about the legal consequences of a hearing that was omitted in the administrative and lower court proceedings and if such a situation would be compliant with the provisions of the recast APD. Specifically, the question was whether EU legislation, the recast RCD and the RD preclude a Member State from applying a national provision according to which the personal interview can be omitted for an inadmissible application. In addition, the court wanted to know if the omission of the interview would lead to the annulment of the inadmissibility decision when the applicant had the possibility to present all the circumstances in the appeal procedure, but no other decision can be taken on the merits.

¹⁷ According to the German legislation, the granting of international protection by another EU+ country does not prevent the granting of international family protection derived from a family member entitled to protection. AsylG, Section 29(1), No 2 does not apply in cases covered by Section 26(5), sentences 1 and 2 in conjunction with paragraphs 1 to 3.

¹⁸ The national case referred to the CJEU is accessible here: Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicant \(Eritrea\) v Federal Office for Migration and Refugees \(BAMF\)](#), 1 C 26.16, 27 June 2017.



The CJEU noted that the recast APD unequivocally sets up the obligation to give an applicant for international protection the opportunity of a personal interview before a decision is adopted, and special rules on an admissibility interview are defined by the recast APD, Article 34. The purpose of the admissibility interview before the determining authority is to allow applicants to present their views about the application on the grounds referred to in the recast APD, Article 33. When the determining authority deems to apply the recast APD, Article 33(3a), the personal interview on the admissibility of the application has the purpose of giving the applicant the opportunity not only to state whether international protection has in fact already been granted in another Member State, but in particular to present all the factors which differentiate the specific situation in order to enable the determining authority to rule out the risk for the applicant to being exposed to a substantial risk of suffering inhuman or degrading treatment if transferred to that other Member State.

The CJEU reiterated that the recast APD, Article 33(2a) precludes a Member State from rejecting an application as inadmissible when the applicant has been granted international protection by another Member State where the living conditions could cause a substantial risk of suffering inhuman or degrading treatment within the meaning of the EU Charter, Article 4 and clarified the threshold of a particularly high level of severity in the *Ibrahim* and *Hamed* cases. The authorities must establish the existence of a risk and assess it in the Member State which granted international protection, and the examination must be based on information that is objective, reliable, specific and updated, while considering the standard of protection of fundamental rights. To properly conduct such an assessment, applicants must be given the opportunity to demonstrate the existence of exceptional circumstances which are unique to them. Those circumstances mean that being sent back to the Member State would expose them to a risk of treatment contrary to the EU Charter, Article 4 due to a particular vulnerability.

The CJEU concluded that the personal interview on the admissibility of the application, provided for in the recast APD, Articles 14(1) and 34(1), is fundamental to ensure that Article 33(2a) is in fact applied in full compliance with the EU Charter, Article 4. The CJEU ruled that the recast APD, Articles 14 and 34 must be interpreted as precluding national legislation, under which a failure to comply with the obligation of a personal interview before an inadmissibility decision does not lead to the decision being annulled and the case being remitted to the determining authority – unless during the appeal procedure the legislation allows the applicant to state in person the arguments against the decision in a hearing which is compliant with Article 15.

🇩🇪 Germany, Federal Administrative Court [Bundesverwaltungsgericht], [*Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees*](#), 1 C 41.20, ECLI:DE:BVerwG:2021:300321U1C41.20.0, 30 March 2021.

This case is the reopening of the referred case (No 1 C 26.16 of 27 June 2017) before the Federal Administrative Court in Germany following the CJEU judgment. The Federal Administrative Court allowed the appeal and annulled the contested decision on the ground that national legislation is compatible with the recast APD, Articles 14 and 34 only when the applicant has been given the opportunity to be heard in a personal interview, thus in compliance with procedural safeguards enshrined in the recast APD, Article 15.

The court also clarified that a court has the discretion to decide whether to carry out a personal interview or to annul the decision. When a personal interview is conducted before the court, the latter has to ensure compliance with confidentiality and expressly mention in



the transcript of the meeting or the hearing that a separate interview was conducted and all guarantees provided by the recast APD, Article 15 were observed.

3.2. Analogous application of the recast APD

✚ CJEU, [M.S., M.W., G.S. v Minister for Justice and Equality \[Ireland\]](#), ECLI:EU:C:2020:1010, Case C-616/19, 10 December 2020.

Beneficiaries of international protection in Italy moved to Ireland where they re-applied for asylum, but national authorities rejected their applications as inadmissible because they held refugee status in another EU+ country. Under appeal, the High Court stayed the proceedings and asked the CJEU whether Ireland, which is bound by the Dublin III Regulation and the recast QD but did not adopt and apply the recast APD, can reject an application as inadmissible analogously as provided in the recast APD, Article 33(2a). The question related to the application of the recast QD, Article 25(2a), which limits the rejection of an application to situations when the applicant was granted refugee protection in another Member State but subsidiary status is not expressly mentioned.

The CJEU clarified that the recast QD, Article 25(2) does not preclude Member States, which are bound by the Dublin III Regulation but not by the recast APD, to reject an application as inadmissible from an applicant who was already granted protection in another Member State, irrespective of whether the protection provided was refugee status or subsidiary protection.

3.3. Inapplicability of the Return Directive in the removal of beneficiaries of international protection

✚ CJEU, [M. and others v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), ECLI:EU:C:2021:127, C-673/19, 24 February 2021.

Three beneficiaries of protection re-applied for asylum in the Netherlands. Following the rejection of their application, an immediate return was ordered, and they were detained due to their illegal stay and refusal to leave the Netherlands. In the appeal, the Council of State referred questions to the CJEU on the application of the Return Directive, in particular if the Return Directive precludes a Member State from placing an illegally-staying third-country national in detention in order to carry out the forced return to the country where they have refugee status.

The CJEU stated that the return of an illegally-staying third-country national who was granted protection in another Member State is not governed by the Return Directive but constitutes a sole competence of the Member State concerned and the decision on a transfer must be taken after a careful examination of the *non-refoulement* principle.



3.4. Other aspects in assessing a resubmission of an asylum application

3.4.1. Excessive and unjustified delays in processing asylum applications

- Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), No 12 A 3583/21, 29 June 2021.

The German Regional Administrative Court in Hanover ruled that a 1-year procedural delay was not justified to await specific assurances from Greek authorities for an applicant who had received international protection in Greece. The Regional Administrative Court clarified that, in the absence of a reply from the Greek authorities within a reasonable deadline – namely 6 months, the determining authority should have processed the application and relied on the various up-to-date reports on the situation of beneficiaries of international protection in Greece, including the impact of the COVID-19 pandemic.

- Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v The Federal Republic of Germany, represented by Federal Office for Migration and Refugees](#), 9 K 3512/21.TR, 15 December 2021.

In a case concerning an Afghan family holding international protection in Greece, BAMF exceeded the legal 6-month timeline for processing their asylum application. The Regional Administrative Court in Trier considered that the determining authority failed to comply with its obligation to determine facts and legal aspects in a first instance procedure and to ensure legal protection and safeguards as guaranteed under the asylum procedure. The Regional Administrative Court noted that BAMF cannot justify a delay in processing an application by the fact that the authority was awaiting a decision in a pending case on the treatment of applications from beneficiaries of protection in Greece.

In addition, the separation of powers and obligations between different authorities was reiterated. While a determining authority has the obligation to establish the facts, collect evidence and deal with the content of an application, the courts are called to scrutinise the findings of the determining authority and cover factual and procedural gaps. The case was referred to BAMF for processing within 3 months, while noting that a personal interview was already conducted.

3.4.2. Assessing the need for protection when refugee status has been given in another EU+ country

- Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 252.141, 2 April 2021.

An Iraqi national was granted refugee status in Romania and further applied for international protection in Belgium. The application was rejected as inadmissible due to the status previously granted in Romania, but under appeal, the decision was annulled and referred back to the CGRS for a new assessment. Under re-examination, the CGRS found that the applicant did not meet the eligibility criteria for international protection and his statements lacked credibility.



In the appeal, CALL reiterated that a recognition of international protection in another EU+ country will not automatically lead to a recognition in Belgium. CALL stated that national authorities are obliged to conduct a new individual assessment, along with an analysis of updated information on the country of origin, all elements being necessary to establish whether the eligibility criteria are met. Since the investigation may lead to a different conclusion, CALL clarified that the CGRS is not bound by the fact that the applicant was previously granted refugee status in another Member State.

- ✚ France, Council of State [Conseil d'État], [A.C. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), ECLI:FR:CECHR:2021:436759.20210205, 5 February 2021.

The French Council of State ruled that the lower court should have considered official documents submitted by the first instance authority and by the Italian authorities which proved that the applicant was granted subsidiary protection in Italy. According to the Council of State, a court must investigate all evidence before dismissing decisive elements, although the document was not provided in French, but in Italian and English. The council annulled the contested decision.

3.4.3. Secondary movement to another EU+ country after withdrawal of protection in the first country

- ✚ Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Security and Justice Netherlands \(Staatssecretaris Van Veiligheid en Justitie\)](#), NL21.11372 and NL21.11373, ECLI:NL:RBDHA:2021:8610, 6 August 2021.
- ✚ Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Security and Justice Netherlands \(Staatssecretaris Van Veiligheid en Justitie\)](#), ECLI:NL:RBDHA:2021:11847, 15 October 2021.

Based on updated country of origin information, the Danish Refugee Appeals Board, an independent, quasi-judicial body, has assessed that the general security situation in Damascus and Rif Damascus has improved so a person is no longer at risk simply by being present in these areas.¹⁹ Currently, residence permits are being revoked and extensions denied for applicants from Damascus and Rif Damascus with a temporary residence permit which was granted on the grounds of general conditions. All cases are assessed by the Danish Immigration Service in first instance and automatically referred to the Refugee Appeals Board, which is the second and final instance.

Some Syrian nationals whose residence permits were revoked in Denmark have moved to the Netherlands, for example, to seek international protection. The Court of the Hague assessed two such situations where the State Secretary applied the Dublin III Regulation in order for the applicants to be transferred back to Denmark. The applicants contested the Dublin transfer and alleged a risk of indirect *refoulement* if returned to Denmark, as deportations to Damascus and possibly other regions in Syria were being implemented.

In the first case, the Court of the Hague noted that the Netherlands can rely on the principle of mutual trust and return the applicant because the Danish authorities gave assurances that the applicant would have access to the asylum procedure, with all safeguards ensured,

¹⁹ Danish Refugee Appeals Board, February 2021, [Flygtningenævnet stadfæster afgørelser vedrørende syriske statsborgere fra Rif Damaskus-området - FlN](#)



including the right to appeal. A case-by-case assessment is being conducted, even if Danish authorities revoke the permit.

In the second case, the Court of the Hague found that the applicant was from a different region than Damascus, and there was no evidence that they could not rely on the principle of mutual trust with Denmark, which would need to adhere to the principle of *non-refoulement* when assessing a return to Syria.

3.4.4. Validity of international protection in Poland

- ✚ France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [Applicants v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), Nos 20038554, 20038555, 20038557 and 20038553, 7 December 2021.
- ✚ Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v State Secretary for Security and Justice \(Staatssecretaris van Justitie en Veiligheid\)](#), 202200020/1/V3, ECLI:NL:RVS:2022:669, 7 March 2022.

Russian applicants of Chechen origin were granted international protection in Poland, but they moved on to France or to the Netherlands where they re-applied for asylum. In the first case, the French CNDA confirmed the rejection of the application in France because the applicant's refugee status was still valid in Poland as indicated by the Polish Office for Foreigners. Two investigations were carried out in order to confirm that the Polish authorities did not intend to open any proceedings to revoke the applicant's status.

Similarly, the Dutch Council of State confirmed an inadmissible decision on the basis of protection in Poland, finding that the applicant held a valid residence permit and there was no evidence that the Polish authorities would revoke the subsidiary protection granted.



