

Quarterly Overview of Asylum Case Law





Manuscript completed in September 2022

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Disclaimer: The summaries cover the main elements of the court's decision. The full judgment is the only authoritative, original and accurate document. Please refer to the original source for the authentic text.



Note

The “EUAA Quarterly Overview of Asylum Case Law” is based on a selection of cases from the [EUAA Case Law Database](#), which 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 database presents more extensive summaries of the cases than what is published in this quarterly overview.

The summaries are reviewed by the EUAA Information and Analysis Sector and are drafted in English with the support of translation software.

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

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List of abbreviations

APD (recast)	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
CJEU	Court of Justice of the European Union
COI	Country of origin information
CNDA	National Court of Asylum Cour Nationale du Droit d'Asile (France)
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)
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)
FRD	Family Reunification Directive
FIS	Finnish Immigration Service
Member States	Member States of the European Union
OFPR	Office for the Protection of Refugees and Stateless Persons Office Français de Protection des Réfugiés et Apatrides (France)



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)
UNHCR	United Nations High Commissioner for Refugees





Main highlights

The interim measures, decisions and judgments presented in this issue of the “EUAA Quarterly Overview of Asylum Case Law, Issue No 3” were pronounced from June to August 2022.

Court of Justice of the European Union (CJEU)

Interpretation of the recast Asylum Procedure Directive (APD) and the Reception Conditions Directive (RCD)

On 30 June 2022, the CJEU ruled in [M.A. v State Border Protection Service at the Ministry of the Interior of the Republic of Lithuania](#) on access to the asylum procedure when an emergency situation has been declared throughout the entire territory of a Member State. The court ruled that the recast APD precludes national legislation that prevents access to the international protection procedure to illegally-staying third-country nationals in the event of a declaration of a state of war, a state of emergency or a declaration of an emergency situation due to a mass influx of foreigners. It also ruled that the recast RCD precludes legislation under which, in the case of such a declaration or proclamation, an asylum seeker is detained on the sole ground that they are staying illegally.

Following this judgment, the Supreme Administrative Court in Lithuania [reopened](#) the case and ruled that formal deficiencies in submitting the application does not prevent the person to be considered an asylum seeker on the basis of EU law. It also found the detention to be unlawful as an emergency declaration does not mean that an illegally-staying foreigner is a threat to national security or public order.

Interpretation of the Dublin III Regulation

On 1 August 2022, the CJEU ruled in [I, S v Staatssecretaris van Justitie en Veiligheid](#) that the Dublin III Regulation, read in conjunction with the EU Charter, provides a right to appeal for an unaccompanied minor against the decision to take charge by a Member State where his relative resides.

Interpretation of the Dublin III Regulation and the recast APD

On 1 August 2022, the CJEU ruled in [RO v Bundesrepublik Deutschland](#) that, when the family members of a minor applicant are beneficiaries of international protection in another Member State, this Member State can be responsible for the minor applicant based on the Dublin III Regulation, if this request is expressed in writing. Moreover, the application for international protection lodged by the minor cannot be rejected as inadmissible on the basis that the parents receive protection in another Member State, unless the minor applicant was also previously granted protection in that Member State.

Interpretation of the Family Reunification Directive (FRD)

In two judgments of 1 August 2022, the CJEU ruled on the interpretation of the FRD and determination of the age of the applicant or the sponsor in order to allow family reunification. The first case [Bundesrepublik Deutschland v XC, joined by Landkreis Cloppenburg](#) focused on determining the referral date when assessing whether the child of a beneficiary of international protection, is a minor for the purposes of family reunification.



In the second case [SW \(C-273/20\), BL, BC v Stadt Darmstadt \(C-273/20\), Stadt Chemnitz \(C-355/20\)](#), the court ruled that it is contrary to the objectives of the FRD and the EU Charter to refer to the date when national authorities decide on a case in order to determine whether that person is still a minor on the date of decision on the application for entry and residence for the purpose of family reunification.

European Court of Human Rights (ECtHR)

Access to the asylum procedure

In [A.I. and Others v Poland](#) and [A.B. and Others v Poland](#), the ECtHR ruled on collective expulsions from Poland to Belarus. The court held that there had been a violation of Articles 3 and 4 of Protocol No 4 to the Convention and Article 13, in conjunction, for the removal of Russian families from Chechnya. They had presented themselves several times at the border between Poland and Belarus, however, they were refused entry into Poland and lacked effective remedies to complain about their situation.

Reception conditions for a family in a transit zone

In [H.M. and Others v Hungary](#), the ECtHR concluded to a violation of Article 5 of the ECHR for the placement in the Tompa transit zone of a family including a pregnant mother and four children, for more than four months. The reception conditions for the mother and the children, along with the handcuffing of the husband, were found in breach of the prohibition of inhuman or degrading treatment, as provided by Article 3 ECHR.

Placement of minors in an adult reception centre

In [Darboe and Camara v Italy](#), the ECtHR found a violation of Article 3, and Article 8 of the ECHR alone and taken in conjunction with Article 13 when minor applicants were placed in an adult reception centre, where the facility was overcrowded and the conditions inadequate. The court also concluded that national authorities failed to ensure the minimum procedural safeguards in the age assessment procedure.

Refusal to issue a travel document

In [L.B. v Lithuania](#), the ECtHR found a violation of Article 2 of Protocol No 4 of the ECHR for the refusal of the Lithuanian authorities to issue a passport to a third-country national, on a formalistic ground and without a proper investigation into the particular situation of the applicant,

Expulsion after refugee status revoked

In [R. v France](#) and [W. v France](#), the ECtHR found a violation of Article 3 of the ECHR because national authorities did not sufficiently assess the fact that the applicants were refugees and risked inhuman or degrading treatment if returned to Russia.

National courts

Referrals for a preliminary ruling

The Council of State in the Netherlands referred [questions to the CJEU for a preliminary ruling](#) on the interpretation of Article 14(4) and Article 17 of the recast QD in a case concerning a



Libyan applicant who had been refused refugee status on grounds related to a conviction for a particularly serious crime. The national court sought clarifications on the term 'danger to society' and the burden of proof related to the actual threat to society.

The Administrative Court of Sofia City referred [questions to the CJEU for a preliminary ruling](#) on the interpretation of the recast QD in a case concerning a subsequent application lodged by a stateless person of Palestinian origin and who is registered with UNRWA.

The Czech Regional Administrative Court referred [questions to the CJEU for a preliminary ruling](#) on the designation of a third country as a safe country of origin. This was in the context of temporarily refraining from international obligations under ECHR in a time of emergency and for a country which was designated safe only in part, with certain territorial exceptions.

The Court of the Hague [referred questions to the CJEU for a preliminary ruling](#) on the principle of mutual trust in the Dublin procedure for a transfer to Poland.

The German Federal Administrative Court referred [questions to the CJEU for a preliminary ruling](#) on the interpretation of Article 5 (1)(a) and (b) of the Return Directive on the weight to be given to the best interests of the child and family ties when issuing a return decision for a minor applicant.

Age assessment procedure

The Administrative Court of International protection in Cyprus [ruled](#) on deficiencies identified in the procedure for an age assessment and clarified that the authorities should have referred to the applicant's age at the time of submitting his application and not at the time of the medical examination.

Transfers from the Netherlands to Denmark and Sweden

In the Netherlands, the Council of State [analysed](#) applications [submitted](#) by Syrian nationals and found a risk of indirect *refoulement* in the event of a transfer to Denmark due to significant differences in the asylum policy between the two Member States. In contrast, the Council of State [found](#) no evidence of a risk of indirect *refoulement* or ill treatment for Syrian applicants being transferred to Sweden.

Temporary protection

The Bulgarian Supreme Administrative Court [repealed](#) two decisions of the Council of Ministers which provided that displaced persons from Ukraine can receive temporary protection even without their express declaration of will and without registration, while non-Ukrainian third-country nationals and stateless persons had a deadline of 15 April 2022 to register for temporary protection.

In Iceland, the Immigration Appeals Board [ruled](#) that the determining authority should conduct a proper assessment in order to set aside applications for international protection lodged by Ukrainian nationals and prior to granting temporary protection.

Family reunification

In the Netherlands, the Council of State [changed](#) the approach on the assessment of the concept of more than normal emotional ties in family reunification cases by also taking into account other facts and circumstances to better weigh interests prior to decision-making.



Return of minors and best interests of the child

After CJEU clarified in [TQ v State Secretary for Justice and Security](#) that national authorities have to conduct an in-depth investigation into the availability of adequate reception facilities for the unaccompanied minor in the country of return, irrespective of their age, the Dutch Council of State applied this principle in three cases of 8 June 2022. It found that the State Secretary should have diligently assess whether the unaccompanied minors, no matter their age, have access to adequate reception conditions in the country of return.

The UN Committee on the Rights of the Child (UN CRC) concluded in [H.K on behalf of S.K. v Denmark](#) that national authorities failed to consider the best interests of the child in asylum and return procedure in view of the risk of violence and neglect of minors and a real risk of irreparable harm if returned to India.



Access to the asylum procedure

Access to international protection during a state of emergency due to a mass influx of migrants

European Union, Court of Justice of the European Union [CJEU], [M.A. v State Border Protection Service at the Ministry of the Interior of the Republic of Lithuania, C-72/22 PPU](#), ECLI:EU:C:2022:505, 30 June 2022

The CJEU held that EU law precludes legislation which makes it impossible in practice to apply for international protection and under which, in the event of a mass influx of third-country nationals, an asylum seeker may be detained on the sole ground that he/she is staying illegally.

The case concerned an applicant who arrived in Lithuania with a group of migrants when an emergency declaration was issued due to a mass influx of migrants. The applicant was detained, and his asylum application was rejected as inadmissible for failing to comply with national requirements for submitting the application. The Supreme Administrative Court sought interpretation of the recast APD concerning access to the asylum procedure and the legality of detention under the recast RCD.

In the urgent preliminary procedure, the CJEU clarified that the recast APD precludes national legislation that prevents access to the procedure during a declared state of war, state of emergency or an

emergency situation due to a mass influx of foreigners.

The court underlined that the submission, registration and lodging of an application must comply with the objectives of the recast APD of guaranteeing effective access to the asylum procedure. Any national requirements that prevent third-country nationals from submitting an application as soon as possible are contrary to EU law.

The CJEU further ruled that the recast RCD precludes national legislation under which an asylum seeker may be detained on the sole ground that they are staying illegally during such declared emergency. The court underlined that the applicants do not constitute a threat to national security or public order solely for staying illegally, unless there are specific circumstances which demonstrate a danger to the society.

Lithuania, Supreme Administrative Court of Lithuania [*Lietuvos vyriausioji administracinis teismas*], [M.A. v State Border Protection Service at the Ministry of the Interior of the Republic of Lithuania, A-1091-822/2022](#), 28 July 2022.

The Supreme Administrative Court annulled a detention decision as contrary to EU law and national legislation, following the CJEU's preliminary ruling on the compatibility of national law with CEAS.

The Supreme Administrative Court reassessed the case based on the CJEU findings in the judgment of 30 June 2022 and stated that no administrative formalities are required under the recast APD to request international protection, whereas such formalities may be carried out when submitting an application. Although the third-country national submitted an application with formal deficiencies according to national legislation, the person should be

considered as an asylum applicant. National legislation that prevents in practice an applicant from submitting an asylum application as soon as possible is contrary to the recast APD.

The Supreme Administrative Court further assessed that the detention decision was unlawful, because the emergency declaration due to a mass influx of migrants does not allow for an automatic detention of a third-country national on the sole ground of illegal stay.

The court reiterated that a threat to national security or public order can justify the detention of an applicant only if the individual conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the Member State. The court found that no such circumstance was identified to justify the detention of the applicant on the grounds that his behaviour poses a threat.

Prohibition of collective expulsion

Council of Europe, European Court of Human Rights [ECtHR], 30 June 2022.

- [*A.I. and Others v Poland*](#),
No 39028/17,
ECLI:CE:ECHR:2022:0630JUD003902817
- [*A.B. and Others v Poland*](#),
No 42907/17,
ECLI:CE:ECHR:2022:0630JUD004290717

The ECtHR ruled on collective expulsions, lack of access to the asylum procedure and to an effective remedy in connection with summary removals from Poland to Belarus.

The ECtHR ruled in two cases that Polish border guards' refusal to receive asylum applications from Russian nationals from Chechnya at the border with Belarus and

their summary removals constituted violations of Article 3 and Article 4 of Protocol No 4 to the Convention. In addition, Article 13, in conjunction was breached in the absence of an effective remedy with a suspensive effect to lodge a complaint about the situation.

In the second case, the court also found that the Polish government failed to comply with the ECtHR interim measure when it was requested that the expulsion of the applicants to Belarus be postponed.



Dublin procedure

Interpretation of the Dublin III Regulation and the recast APD

European Union, Court of Justice of the European Union [CJEU], [RO v Bundesrepublik Deutschland](#), C-720/20, ECLI:EU:C:2022:603, 1 August 2022

The CJEU held that a request for international protection lodged by a minor cannot be rejected as inadmissible because the parents received protection in another Member State.

The application for international protection lodged by a Russian minor born in Germany was rejected as inadmissible because her parents and siblings had already been granted protection in Poland before her birth. The German authorities argued that Poland should be responsible for examining this request.

When family members of an applicant already receive protection in another Member State, the CJEU held that according to the Dublin III Regulation, the other Member State is not responsible for examining the application, unless the interested parties have expressed their will in writing. This condition cannot be set aside because the family has left the Member State which granted international protection and travelled irregularly to the Member State where the minor submitted the asylum application. Where no such will has been expressed in writing, and provided that no other Member State can be designated responsible based on the criteria listed in the Dublin III Regulation, it is the first Member State in which the application for international protection was

submitted which is responsible for examining the request.

The CJEU also noted that under the recast APD the application for international protection lodged by a minor may not be declared inadmissible due to the fact that the parents receive protection in another Member State, but the applicant has not been granted this protection.

Unaccompanied minors in the Dublin procedure

European Union, Court of Justice of the European Union [CJEU], [I, S v Staatssecretaris van Justitie en Veiligheid](#), C-19/21, ECLI:EU:C:2022:605, 1 August 2022

The CJEU ruled that unaccompanied minors have the right to appeal against a refusal to take charge by a Member State in which family relatives reside.

An Egyptian national who applied for international protection in Greece when he was still a minor expressed the wish to be reunited with his uncle who resides in the Netherlands. In 2020, the Greek authorities unsuccessfully requested the Dutch authorities to take charge of the applicant under the Dublin III Regulation. Both the minor and his uncle lodged a complaint with the Secretary of State against the refusal to take charge.

The CJEU held that the Dublin III Regulation, read in conjunction with the EU Charter, provides the right to appeal for an unaccompanied minor against a decision to take charge. On the other hand, the relative of this minor does not have the right to appeal.

The court observed that even if, based on a literal interpretation, the Dublin III Regulation does appear to grant a right to appeal to the asylum applicant solely to contest a decision on a transfer, it does not exclude the right is granted to an

unaccompanied minor applicant for the purpose of contesting a decision to refuse to accept a take charge request.

The court highlighted that the judicial protection of an unaccompanied minor applicant cannot vary according to whether this applicant is subject to a transfer decision by the requesting Member State or of a decision by which the requested Member State rejects the take charge request of the applicant.

Questions referred to the CJEU for a preliminary ruling

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary](#), NL22.6989 REFERRAL ORDER, ECLI:NL:RBDHA:2022:5724, 15 June 2022

The Court of the Hague referred questions for a preliminary ruling on the application of the principle of mutual trust in the Dublin procedure.

The Court of the Hague referred for the third time questions for a preliminary ruling to the CJEU on whether serious and systemic violations of CEAS and EU law in the potentially responsible Member State under the Dublin III Regulation preclude the transfer to that Member State. The referring court sought to clarify also the type of evidence the applicant must adduce to substantiate the allegations of a risk contrary to Article 4 of the EU Charter upon transfer to that Member State.

The same questions were previously submitted by the court on [4 October 2021](#) in the case of a Dublin transfer to Malta and on [18 March 2022](#) in the case of a Dublin transfer to Croatia.¹ In the second case, the court asked a specific question related to the consequences of the

impossibility to complain in Croatia to the (higher) authorities and courts. Both cases were withdrawn by the Netherlands from the CJEU.

Federal subsidies removed for unjustified non-execution of Dublin transfers

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC]

- [République et Canton de Neuchâtel, v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), F-1724/2019, 27 June 2022
- [République et Canton de Neuchâtel, v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), F-1752/2019, 29 June 2022

The FAC confirmed the SEM decisions to remove lump sum subsidies from a canton for an unjustified non-execution of a Dublin transfer.

The Swiss Confederation pays a lump sum to the cantons which are responsible to implement Dublin transfers ordered by the SEM. In two cases concerning a Dublin transfer of an Eritrean national to Italy and a Turkish national to Bulgaria, the SEM removed subsidies from the canton of Neuchâtel for failing to implement the transfers within the deadline.

Contrary to the canton's argument that it has flexibility in implementing a Dublin transfer, the FAC reiterated that the federal legislator did not provide such a flexibility and it does not have the right to rediscuss a decision or a judgment in force outside of a judicial framework.

¹ See also [EUAA Quarterly Overview of Asylum Case Law, Issue 2/2022](#), 15 June 2022.



The FAC noted that in the first case the canton of Neuchâtel had not taken any concrete measures during the six-month transfer period. In the second case, 14 months had passed without the canton undertaking measures to update the medical aspects of the file. In the absence of any objective argument for the non-execution of the transfers, the FAC therefore ruled that the SEM did not violate federal law by removing the federal subsidies in these two cases.

No impediments for Dublin transfers to Italy

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL22.14199, ECLI:NL:RBDHA:2022:8048, 5 August 2022

The Court of the Hague confirmed a Dublin transfer to Italy and found it was not contrary to Article 3 of the ECHR.

The case concerned a Dublin transfer to Italy where the applicant claimed a risk of inhuman or degrading treatment on the basis of his continuous need for medication. The Court of the Hague rejected the appeal and considered that the State Secretary can rely on the principle of mutual trust between Member States because asylum applicants have adequate access to medical treatment in Italy, as mentioned by the AIDA country report.

Dublin transfer to Lithuania confirmed in the absence of a risk of inhuman or degrading treatment

Estonia, Courts of Appeal (Circuit Courts) [Ringkonnakohtud], Applicant v Police and Border Guard Board, 3-22-450, ECLI:EE:TLRK:2022:3.22.450.12645, 30 June 2022

The Circuit Court confirmed that a Dublin transfer is possible to Lithuania as there are no indications of systemic deficiencies or human rights violations for applicants for international protection.

A Belarusian applicant contested the Dublin transfer to Lithuania and alleged that asylum applicants are detained, suffer ill treatment and there is a lack effective remedies.

The Circuit Court confirmed the administrative and lower court decisions, since Lithuania fulfils its international obligations. Despite shortcomings in the accommodation system due to a mass influx of applicants in 2021, there were no indications of systemic deficiencies. Moreover, the court noted that the applicant left Lithuania for economic reasons and his situation is not comparable to those who arrived in Lithuania in 2021. Consequently, there were no reasons to conclude an infringement of rights in the international protection procedure in the context of a potential Dublin transfer.





First instance procedures

Special procedures

Preliminary questions to the CJEU on the safe country of origin concept

Czech Republic, Regional Court [Krajský soud], *CV v Ministerstvo vnitra České republiky (Ministry of the Interior of the Czech Republic)*, 21 June 2022

The Regional Administrative court stayed the proceedings and referred questions to the CJEU for a preliminary ruling on the designation of safe country of origin according to the recast APD.

The Administrative Court in Brně suspended proceedings in a case concerning a Moldavian national who claimed persecution from other non-state actors and challenged a negative decision which was based on the fact that Moldova was designated as a safe country of origin by Czechia:

1. Should the criterion for the designation of safe countries of origin for the purposes of Article 37(1) of the recast APD in Annex I(b) to the Directive – i.e. that the country concerned provides protection against persecution and ill-treatment through observance of the rights and freedoms laid down in the ECHR, in particular the rights from which derogation cannot be made under Article 15(2) of that convention – be interpreted as meaning that, if the country withdraws from its commitments under the ECHR in time of emergency under Article 15 of the Convention, it no longer meets the criterion for being designated as a safe country of origin?

2. Should Articles 36 and 37 of the recast APD be interpreted as meaning that they prevent a Member State from designating a

country as a safe country of origin only in part, with certain territorial exceptions, to which the assumption that that part of the country is safe for the applicant will not apply, and if the Member State does designate a country with such territorial exceptions as safe, then the country concerned as a whole cannot be deemed a safe country of origin for the purpose of the Directive?

3. If the reply to either of these two questions referred is affirmative, should Article 46(3) of the recast APD, in conjunction with Article 47 of the EU Charter, be interpreted as meaning that a court deciding about an appeal challenging the decision on the manifestly unfounded nature of the application, pursuant to Article 32(2) of the recast APD, issued in proceedings conducted pursuant to Article 31(8)(b) of the recast APD, must take into account ex officio that the designation of the country as safe is contrary to EU law, due to the reasons stated above, without requiring an objection on the part of the applicant?

First country of asylum

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *Applicant v Icelandic Immigration Service*, No KNU22050010 and KNU22050011, 6 July 2022

The Immigration Appeals Board confirmed the determining authority's decision not to process an application for international protection on the basis of the first country of asylum concept.

Two Venezuelan applicants who have spent a few years in Chile and hold an indefinite residence permit there applied for international protection in Iceland. The Immigration Service did not process their application based on the first country of asylum concept.

The Immigration Appeals Board confirmed the decision after having analysed that the applicants' basic human rights will be respected in Chile in accordance with international obligations, the applicants can seek assistance or complain before competent authorities if they fear for their safety, the applicants have an indefinite





residence permit and therefore have an authorisation to stay and to work, and the applicants are not at risk of *refoulement* since Chile is party to the Cartagena Declaration and the American Convention on Human Rights.

Subsequent applications

Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], [L.N. v Republic of Cyprus, Minister of the Interior through the Asylum Service, Case No 3979/21, ECLI:CY:DDDP:2022:823, 6 July 2022](#)

The Administrative Court of International Protection rejected an appeal against an inadmissible decision after consulting CJEU case law on subsequent applications and subsidiary protection.

A subsequent application lodged by a national from Cameroon was rejected as inadmissible. The applicant claimed that both his first and subsequent applications were wrongly rejected, the decisions were not duly reasoned and he was not invited for an interview to clarify his claim.

The Administrative Court of International Protection ruled that the extent of an investigation, the methods and the procedures to be followed depend on the circumstances of a case and it is at the discretion of the determining authority.

The court analysed the concept of new evidence and findings in subsequent applications, based on the CJEU judgment of [XY](#), C-18/20 (2021). It noted that, although given the opportunity to openly present facts during the procedure for the first two applications, the applicant submitted new elements on his third application. The court also examined the credibility, available country of origin information and the risk of serious harm upon return and concluded that the [Elgafaji](#)

criterion set out by the CJEU were not met in his case.

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\), NL22.13628, ECLI:NL:RBDHA:2022:8109, 10 August 2022](#)

The Court of the Hague confirmed an inadmissibility decision in a subsequent application based on the same grounds related to sexual orientation.

An applicant from Trinidad and Tobago submitted a subsequent application claiming asylum for fear of persecution due to his sexual orientation. The Court of the Hague confirmed the inadmissibility decision and applied the principles derived from the CJEU judgment [LH v Staatssecretaris van Justitie en Veiligheid](#). It stated that the documents submitted by the applicant did not constitute new elements or findings and that the UNHCR guidelines along with other country of origin reports do not demonstrate an actual and real threat for the applicant on the basis of his homosexuality if returned.

The length of the asylum procedure

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\), No 202102128/1/V1, ECLI:NL:RVS:2022:1810, 6 July 2022](#)

The Council of State declared the Temporary Law on the Suspension of Incremental Penalty Payments as non-binding.

The applicant lodged an appeal against failure to take a decision on his application within the time limit to grant him a



temporary asylum residence permit, as the decision pronounced by the State Secretary for Justice and Security processed the application without determining that a penalty was owed to the applicant because the decision was taken after the legal time limit.

The Temporary Act on the Suspension of Incremental Penalty Payments (applied between 11 July 2020 and 11 July 2021) excluded the possibility of lodging an appeal with the administrative court for asylum applications which were not processed within the foreseen deadlines.

The Council of State found that this legislative amendment made it extremely difficult for applicants to have access to an effective guarantee of their right to a timely decision, and as such, the law did not offer an effective legal remedy. It declared the law to be non-binding, meaning that the administrative court is competent to hear appeals on time limits during the period of the temporary act.

The right to be heard in the context of COVID-19

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v BAMF, A 9 S 696/22, 25 July 2022](#)

The High Administrative Court allowed an appeal for an infringement of the right to be heard when the lower court did not reschedule a hearing when the applicant had COVID-19 and was in compulsory quarantine.

An appeal was brought by an applicant when the administrative court ruled in the case without a personal hearing when the applicant was in quarantine due to COVID-19. The High Administrative Court considered that the right to a fair hearing guaranteed that a person can have a say before a court decision. The court noted that a judicial decision may only be based

on facts and evidence on which the applicant had the opportunity to comment. In principle, however, there is no entitlement to an oral hearing, but in this case the court found that the letters and evidence submitted by the applicant and his lawyers were sufficient to demonstrate the legal impossibility of attending the hearing.

Assessment of applications

Country of origin information

Changes in the situation in Afghanistan

Netherlands, Council of State [[Afdeling Bestuursrechtspraak van de Raad van State](#)], [Applicant v State Secretary, 202007098/1/V2, ECLI:NL:RVS:2022:2046, 19 July 2022](#)

The Council of State overturned an inadmissible decision because the change in the situation in Afghanistan required a new examination before revoking the applicant's international protection.

An Afghan national obtained refugee status in the Netherlands in 2020 which was subsequently withdrawn. The applicant contested the withdrawal. Based on general news and reports, the Council of State referred the case back to the State Secretary for a new decision, in which the changed situation in Afghanistan and its consequences should be examined. It noted that a major change of regime took place in the summer of 2021 after the Taliban takeover in Afghanistan. In view of the radical change of the regime, it was yet unclear what consequences this could have for the applicant if he returned to his country, which the Secretary of State must investigate further.



The risk of indirect *refoulement* for applicants from Syria

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicants v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202105784/1/V3, ECLI:NL:RVS:2022:1864, 6 July 2022

The Council of State found "obvious and fundamental differences" in asylum policies between Denmark and the Netherlands related to Syrian applicants.

The applicants, Syrian nationals, argued that their transfer to Denmark would entail a violation of Article 3 of the ECHR and Article 4 of the EU Charter, due to the risk of being returned to Syria. The Council of State annulled the contested decision and clarified the principles to be applied when an applicant may indirectly run a real risk of *refoulement* if transferred to another Member State.

The court noted that the State Secretary may assume that effective and equivalent protection against *refoulement* is offered in the Member State responsible, even if protection policies differ between Member States. The applicant has the burden of proof to refute this presumption by providing concrete elements from which it appears that the administrative authority and the courts in the Member State responsible will not protect him/her against *refoulement*.

In this case, the Council of State held that the applicants met the burden of proof by providing evidence that the policy of the determining authority in Denmark is to return Syrian applicants and this was endorsed by the Danish Refugees Appeals Board. The Council of State noted that the State Secretary did not conduct a further investigation to eliminate any doubts about a possible real risk of *refoulement*.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicants 2 v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202105784/1/V3, ECLI:NL:RVS:2022:1863, 6 July 2022

*The Council of State ruled that the difference in policies towards Syrian applicants in Denmark may lead to indirect *refoulement* and requires further investigation by the State Secretary.*

The case concerned applicants from Syria whose asylum applications were not considered by the State Secretary because they had previously applied for asylum in Denmark. Based on the conclusions of a similar case decided on the same day ([Applicants v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 6 July 2022) the Council of State considered that there was a real risk of indirect *refoulement*, in violation of Article 3 of the ECHR and Article 4 of the EU Charter if the applicants were to be transferred to Denmark.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid v Applicant 2\)](#), 202105270/1/V3, ECLI:NL:RVS:2022:1862, 6 July 2022

*The Council of State ruled that no further investigation was necessary on indirect *refoulement* when transferring Syrian applicants to Sweden.*

The applicant contested a Dublin transfer to Sweden and argued that the Swedish authorities would return him to Syria, thus in violation of the principle of *non-refoulement*.

According to Dutch policy, Syrian nationals who are not active supporters of the political regime run a real risk of serious ill



treatment when returning from abroad and thus are eligible for asylum in the Netherlands. The Council of State noted the CJEU judgment of [Abubacarr Jawo v Bundesrepublik Deutschland](#), when considering differences in policies in another Member State. However, the Council of State ruled that the applicant did not show a plausible risk of inhuman treatment if transferred to Sweden and he did not submit any proof that the highest Swedish court considered that Syrian applicants can in principle be returned.

Persecution for reasons of nationality and/or race

Alleged discriminatory acts in Cameroon

Estonia, Administrative Courts [[Halduskohtud](#)], [Applicant v Police and Border Guard Board, 3-22-1098](#), [ECLI:EE:TLHK:2022:3.22.1098.11579](#), **16 June 2022**

The Administrative Court of Tallinn confirmed a negative decision as the applicant was not eligible for international protection and Cameroon is considered as a safe country of origin.

A national from Cameroon was not granted international protection because the alleged fears based on his origins from the anglophone parts of the country and the discriminatory acts invoked did not constitute persecution and do not relate to any other grounds for being granted international protection. The Administrative Court of Tallin confirmed the decision after having consulted various country of origin reports and the fact that Cameroon is considered to be a safe country of origin.

Persecution for reasons of political opinion

Military service conditions in Eritrea

Netherlands, Council of State [[Afdeling Bestuursrechtspraak van de Raad van State](#)], [Applicant 1 v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), [202101479/1/V2](#), [ECLI:NL:RVS:2022:2017](#), **20 July 2022**

The Council of State concluded that Eritrean applicants run a real risk of inhuman treatment when performing military service.

An Eritrean national who lived in a refugee camp in Sudan from birth until his departure to the Netherlands claimed asylum due to a fear of being subjected to ill treatment upon return because anyone who has to perform military service in Eritrea runs the risk of treatment contrary to Article 3 of the ECHR. The applicant has never lived in Eritrea.

Based on publicly available sources, the Council of State concluded that Eritrean men who are poorly educated and do not have a good connections in Eritrea have an increased risk of having to perform national service in the military branch rather than in the civilian services. The Council of State consulted EUAA reports, including [Eritrea: National service, exit and return](#), September 2019.



Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [State Secretary v Applicant](#), 202102948/1/V2, ECLI:NL:RVS:2022:2018, 20 July 2022

The Council of State ruled that Eritrean nationals who do not have a social network and are poorly educated run the risk of performing military service in conditions contrary to Article 3 of the ECHR.

An Eritrean national who never resided in Eritrea and whose application for asylum was rejected by the Dutch authorities claimed that, if returned to Eritrea, he would be exposed to treatment contrary to Article 3 of the ECHR because he would have to perform military service. The appeal lodged by the applicant was allowed by the Court of the Hague and confirmed by the Council of State.

The Council of State reached the same conclusion as in another judgment pronounced on 20 July 2022 ([Applicant 1 v State Secretary for Justice and Security](#)) that Eritrean nationals who have to perform national military service run a real risk of ill treatment contrary to Article 3 of the ECHR.

Conscientious objection to military service

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [C. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 21042074, 7 June 2022

The CNDA provided a definition of conscientious objection to military service as a ground for recognition of refugee status.

A Turkish applicant of Kurdish origin lodged an application in France on grounds related to his refusal to perform military service. The CNDA first defined the

conscientious objection to military service as "a real personal conviction, having a proven degree of force or importance, consistency and seriousness for the person concerned to oppose any fight, motivated by a serious and insurmountable conflict between the obligation of service in the army and its own conscience or its own sincere and profound convictions, in particular of a political, religious, moral or other nature".

When applying the definition and the provisions of the recast QD, the CNDA found that the applicant did not justify a conviction that would characterise a conscientious objection to military service or a risk of any measures (legal, administrative prosecution or discrimination) for the refusal to serve in the military service, within the meaning of Article 9 of the recast QD. Moreover, based on public documentation, the CNDA noted that a conscript is unlikely to participate directly or indirectly in the commission of crimes or acts referred to in Article 12(2) of the recast QD. The CNDA concluded that the applicant was not eligible for refugee status or subsidiary protection.

Membership of a particular social group

Iraqi women fleeing forced marriage

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [S v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 20002635, 21 June 2022

The CNDA granted refugee status to an Iraqi woman of Sunni faith who fled from a forced marriage.

The CNDA granted international protection to an Iraqi woman who fled from a forced marriage in her country of origin and feared persecution if she returned. For the first time, the CNDA recognised the



existence of a particular social group of Iraqi women wishing to escape forced marriage in a society where this constitutes the social norm.

Even though Iraqi national legislation provides for a minimum age of marriage of 18 years, the criminal law does not punish rape if the aggressor marries the victim. Thus, in practice, early marriages have increased, particularly after the fall of Saddam Hussein's regime.

The CNDA consulted the EUAA Country of Origin Information Report, [Iraq – Targeting of Individuals](#), February 2022.

Gender orientation

Italy, Court of Appeal [Corte di Appello], [Applicant v Territorial Commission for the Recognition of International Protection \(Verona\)](#), R.G. 1998/2021 - Sentenza No 1272/2022, 1 June 2022

The Court of Appeal of Venice granted refugee status to a Gambian national as he was at risk of persecution based on belonging to the particular social group of homosexual people.

The case concerned a Gambian national whose international protection application was rejected for lack of credibility. The Court of Appeal considered that the credibility alone is not a decisive factor in the assessment and that the actual risk of persecution should be considered. In Gambia, homosexuality is a crime punishable by imprisonment. The Court of Appeal overturned the negative decision and granted refugee status on grounds of membership to a particular social group.

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [Applicant v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 21050501, 8 June 2022

The CNDA recognised the refugee status of an Afghan national due to his well-founded fear of persecution because of his belonging to the social group of homosexual people in Afghanistan.

The CNDA granted refugee protection to an Afghan national on the basis of a well-founded fear of being stigmatised and persecuted as he suffered sexual abuses in the past and has been identified by inhabitants as homosexual. The court concluded that he belongs to a particular social group. The court consulted EUAA, [Country of Origin Information Report – Afghanistan: Individuals targeted under societal and legal norms](#), December 2017 and the [Afghanistan – Country focus: Country of Origin Information Report](#), January 2022.

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M.M.A. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 21067657, 29 June 2022

The CNDA granted refugee status to a national from Chad because of a well-founded fear of persecution based on the particular social group of homosexual people in Chad.

A national of Chad was granted refugee status by the CNDA based on recent country of origin information reports, which stated that homosexuals in Chad face criminal prosecution, intense social and professional discrimination and acts of violence, harassment and bullying, both from society and the authorities. Thus, homosexual persons in Chad form a particular social group.



Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v BAMF, A 13 S 733/21](#), 6 July 2022

The High Administrative Court granted refugee protection to a homosexual applicant from Gambia.

The High Administrative Court of Baden-Württemberg allowed an appeal lodged by a Gambian national who claimed persecution upon return due to his sexual orientation. The court ruled that men in Gambia for whom homosexuality is a significant part of their sexual identity are at risk of nationwide persecution in the form of a combination of different measures, which are so serious that, taken together, they amount to a serious violation of human rights. It found that in the event of a hypothetical return to Gambia, the applicant would be exposed to a large number of different forms of discrimination on the part of non-state actors, which would lead to comprehensive exclusion and humiliation.

In addition to the various discriminatory measures and violent attacks, which are extremely likely, there is a continued threat of punishment by the Gambian state and a denial of participation in social life in Gambia. The High Administrative Court referred to CJEU case law which mentioned that a person's sexual orientation is an unchangeable characteristic that is so significant for identity that the person should not be forced to renounce it or to keep it a secret ([Minister voor Immigratie en Asiel v X, and Y, and Z v Minister voor Immigratie en Asiel](#), C-199/12, C-200/12, C-201/12, 7 November 2013).

The court also consulted the [EASO Country of Origin Information Report – The Gambia: Country Focus](#) from 2 December 2017.

Vulnerable groups

Deficiencies in age assessment procedures

Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], [S.A. v Republic of Cyprus, through the Asylum Service, Case No.: 698/19](#), ECLI:CY:DDDP:2022:824, 7 July 2022

The Administrative Court of International Protection annulled a decision of the Asylum Service for deficiencies identified in the age assessment procedure and failures to observe required safeguards and the best interests of the child.

A Somali national who applied for international protection as an unaccompanied minor claimed before the Administrative Court of International Protection that the age assessment procedure was not duly conducted due to deficiencies in adequately informing the applicant about the consequences of the age assessment and family reunification procedures.

The court referred to the CJEU judgment, [A. and S. v Secretary of State for Security and Justice \(Staatssecretaris van Veiligheid en Justitie\)](#) and explained that the date of filing the application for international protection is the decisive one to assess the person's age for family reunification, and the authorities should have referred to the applicant's age at the time of submitting/filing his application and not at the time of the medical examinations.



Risk of being again victim of trafficking in human beings in Nigeria

Italy, Civil Court [Tribunali], [Applicant v Territorial Commission for the Recognition of International Protection \(Salerno\)](#), 29 June 2022

The Tribunal of Campobasso granted subsidiary protection to an applicant from Nigeria due to the high risk of being re-trafficked upon return to her country of origin.

An applicant from Nigeria who was a victim of human trafficking was granted special protection on grounds of her integration in Italy.

Under appeal, the Tribunal of Campobasso decided to grant the applicant subsidiary protection, because the facts and circumstances of the case presented the common elements of human trafficking. The court considered that the applicant would be at risk of being re-trafficked and inhuman or degrading treatment in the eventuality of return to her community.

Subsidiary protection

The situation in Mali

Italy, Civil Court [Tribunali], [Applicant v Ministry of Interior \(Territorial Commission Crotone\)](#), R.G. 2955/2019, 13 June 2022

The Tribunal of Catanzaro granted subsidiary protection to a national of Mali due to the indiscriminate violence and general situation of insecurity in the country of origin and particularly in the region of Segou.

A national of Mali, from the region of Segou, was granted subsidiary protection in the appeal procedure before the Tribunal of Catanzaro which assessed that the general situation of insecurity in the country and the indiscriminate violence

from an armed conflict would expose anyone, especially in the region of the applicant, to a risk of serious harm.

The situation in Burkina Faso

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [K. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 22006018, 19 July 2022

The CNDA held that the region of Boucle du Mohoun in Burkina Faso is experiencing a situation of indiscriminate violence.

The CNDA provided subsidiary protection under Article L.512-1 3 of the CESEDA to a national of Burkina Faso, in view of the situation of armed conflict in the region of Boucle du Mohoun. Although the court did not consider that the situation of indiscriminate violence would expose anyone only by their mere presence in the region to a risk of serious harm, the CNDA noted that two individual characteristics of the applicant (his profession as a musician and his state of health) would likely expose him to a serious threat to his life or person. The court cited the EUAA [Judicial practical guide on country-of-origin information](#) (2018).

Updated assessment of indiscriminate violence in Somalia

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [A. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 22000965, 22 July 2022

The CNDA updated its assessment of indiscriminate violence resulting from a situation of armed conflict which prevails in 12 regions of Somalia.

To examine the situation in Somalia, the CNDA referred particularly to the EUAA [Country Guidance: Somalia](#) from June



2022, the reports of the UN Secretary General of 8 February and 13 May 2022, and the EUAA [COI Report – Somalia: Targeted profiles](#) from September 2021. The court noted that the conflict between the armed group Al-Shabaab, which controls rural areas in the centre, south and west of the country, and the security forces and those of the African Union Mission in Somalia (AMISOM), replaced by the African Union Transitional Mission in Somalia (ATMIS) since 1 April 2022, remains the main source of armed conflict. It also noted that clan rivalries and their resources constitute an important factor of clashes within Somali society.

The court concluded that indiscriminate violence is taking place in the regions of Bay, Benadir and Lower Shabelle, however the intensity of this violence is not such that there are serious and proven reasons to believe that every civilian would face a real risk of serious harm simply because of their presence in these regions.

Temporary protection

Proper assessments of applications for international protection

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), [Applicants v Icelandic Immigration Service](#), no. KNU22050042 and KNU22050045, 30 June 2022

The Immigration Appeals Board annulled a decision due to a lack of reasoning and assessment when setting aside applications for international protection and granting temporary protection instead.

Ukrainian applicants, a family and their children, arrived in Iceland on 5 March 2022 and applied for international protection. The Immigration Service decided on 19 March 2022 to set aside their applications for international protection and granted them temporary protection based on Article 44 of the Act

on Foreigners. The applicants were not appointed a representative during the administrative procedure and lodged a late appeal.

In the absence of instructions and a legal representative, the Immigration Appeals Board considered that the applicants did not understand the outcome of the proceedings and their late appeal was allowed.

On the merits, the Appeals Board ruled that the Immigration Service failed to conduct a material assessment of whether conditions exist to set aside the applications for international protection and the case was referred for re-examination.

Bulgaria, Supreme Administrative Court [Върховен административен съд], [Foundation for Access to Rights – PHAR v Council of Ministers of the Republic of Bulgaria](#), No 6819, 7 July 2022.

The Supreme Administrative Court repealed the Decision No 180 of 30 March 2022 of the Council of Ministers, amending Decision No 144 of the Council of Ministers of 2022 on granting temporary protection to displaced persons from Ukraine.

The Supreme Administrative Court repealed Decision No 180 of 30 March 2022 of the Council of Ministers, amending Decision No 144 of the Council of Ministers of 2022 on granting temporary protection to displaced persons from Ukraine and amending the National Action Plan for Temporary Protection. The contested Decision No 180 of 30 March 2022 provided that displaced persons from Ukraine can receive temporary protection even without their express declaration of will, while third-country nationals who are not Ukrainian citizens and stateless persons had until 15 April 2022 to register for temporary protection.



The court found the decision contrary to the Temporary Protection Directive and the national legislation, namely the Law on Asylum and Refugee, as the time limit provided in the decision is a restrictive condition and less favourable than those defined in the Temporary Protection Directive as it cannot meet the need to ensure the safe passage of persons with a view for them to return to their country or region of origin. The court also stated that the contested decision is contrary to national asylum law, which does not provide for displaced persons to receive protection without registration and to be limited to a certain deadline. In addition, the court found that the decision lacked clarity on eligible persons.

This decision can be further appealed before a five-member panel of the Supreme Administrative Court within 14 days of notification to the parties.

Humanitarian protection

Italy, Civil Court [Tribunali], [Applicant v Territorial Commission for the Recognition of International Protection \(Foggia\)](#), R.G. 2744/2019, 4 July 2022

The Tribunal of Bari granted humanitarian protection to a Pakistani national due to his medical condition.

The case concerned a national from Pakistan, for whom the Tribunal of Bari assessed that the return cannot be allowed due to several mental or physical disorders. The court found that the applicant would be unable to access the necessary treatment in his country of origin and this would entail a violation of the right to health as recognised in Article 32 of the Italian Constitution and in Article 35 of the EU Charter. Therefore, the applicant was granted humanitarian protection on medical grounds.

Exclusion

Preliminary questions referred to the CJEU on interpretation of Article 14(4) and Article 17 of the recast QD

Netherlands, Council of State [[Afdeling Bestuursrechtspraak van de Raad van State](#)], [State Secretary v Applicant](#), 202003984/1/V2, ECLI:NL:RVS:2022:1703, 15 June 2022

The Council of State referred questions to the CJEU for a preliminary ruling on the interpretation of Articles 14(4) and 17 of the recast QD.

The Council of State suspended proceedings and referred four questions to the CJEU to determine the definition of ‘danger to society’ and the burden of proof when an applicant has been convicted of a ‘particular serious crime’:

1a. When is a crime so ‘particularly serious’ within the meaning of Article 14(4)(b) of recast QD that a Member State may refuse to grant refugee status to a person in need of international protection?

1.b. Are the criteria for a ‘serious crime’ in Article 17(1)(b) of the recast QD, as set out in paragraph 56 of the judgment of the CJEU of 13 September 2018, [Ahmed](#), relevant for the purposes of assessing whether a ‘particularly serious crime’ has been committed? If so, are there further criteria which render a crime ‘particularly’ serious?

2. Must Article 14(4)(b) of the recast QD be interpreted as providing that danger to the community is established by the mere fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime or must it be interpreted as providing that a conviction by a final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community?

3. If a conviction by final judgment for a particularly serious crime is not, on its own, sufficient to establish the existence of a danger to the community, must Article 14(4)(b) of the recast QD be interpreted as requiring





the Member State to establish that, since his or her conviction, the applicant continues to constitute a danger to the community? Must the Member State establish that the danger is genuine and present or is the existence of a potential threat sufficient? Must Article 14(4)(b), taken alone or in conjunction with the principle of proportionality, be interpreted as allowing revocation of refugee status only if that revocation is proportionate and the danger represented by the beneficiary of that status sufficiently serious to justify that revocation?

4. If the Member State does not have to establish that, since his or her conviction, the applicant continues to constitute a danger to the community and that the threat is genuine, present and sufficiently serious to justify the revocation of refugee status, must Article 14(4)(b) of the recast QD be interpreted as meaning that danger to the community is established, in principle, by the fact that the beneficiary of refugee status has been convicted by a final judgment of a particularly serious crime, but that he or she may establish that he or she does not constitute, or no longer constitutes, such a danger?

The Council of State also referred two similar cases with preliminary questions to the CJEU: [C-663/21](#) and [C-8/22](#).

Preliminary questions on interpretation of Article 12(1)(a) and (b) of the recast QD

Bulgaria, Administrative Court, City of Sofia [bg. Софийски градски съд], [D.R.S. and D.I.S. v Chairman of the State Agency for Refugees](#), No. 6232, 8 August 2022.

The Administrative Court of Sofia City has referred questions to the CJEU for preliminary ruling on interpretation of the recast QD concerning a subsequent application lodged by a stateless Palestinian applicant registered with UNRWA

The Administrative Court of the City of Sofia suspended proceedings in a case concerning a subsequent application lodged by a stateless person of Palestinian origin, who is registered with

UNRWA in Gaza. The court referred multiple questions to the CJEU for a preliminary ruling:

1. Does it follow from Article 40(1) of the recast QD that, where a subsequent application for international protection submitted by an applicant of Palestinian origin, stateless and on the basis of his registration by UNRWA is admitted for consideration, in the circumstances of the case, the obligation of the competent authorities referred to in the provision to take into account and examine all the elements supporting the new information in the subsequent application, interpreted in conjunction with Article 12(1)(a) of the recast QD, also includes an obligation to examine the reasons why the person left UNRWA's area of operations, together with the new elements or circumstances which are the subject of the subsequent application? Does compliance with that obligation depend on the fact that the reasons for which the person has left the UNRWA area of operations have already been examined in the context of the procedure relating to the first application for protection which resulted in a final refusal decision, but the applicant has not put forward and provided evidence of his registration with UNRWA?

2. Does it follow from the second sentence of Article 12(1)(a) of the QD that the provision 'when such protection or assistance ceases for any reason' is applicable to a stateless person of Palestinian origin, registered and receiving UNRWA assistance in a [locality] for food, health and education, without evidence of personal threats against the person who has left the territory of his or her own volition and legal [locality], in the information in the case file:

- the general situation at the time of departure has been identified as an unprecedented humanitarian crisis related to shortages of food, drinking water, health services, medicines, water and electricity problems, destruction of buildings and infrastructure, unemployment,
- the difficulties experienced by UNRWA in maintaining the provision of assistance and services in Gaza, including for food and health services, due to a significant shortfall in UNRWA's budget and a steady increase in those dependent on its assistance, the general situation in Gaza undermines UNRWA's activities?



Is a different answer to this question necessary on the sole ground that the applicant is a vulnerable person within the meaning of Article 20(3) of that directive, a minor child?

3. Is the second sentence of Article 12(1)(a) of the recast QD to be interpreted as meaning that an applicant for international protection, a Palestinian refugee registered with UNRWA, may return to the UNRWA area of operations which he has left, in particular [a locality], where, at the time of the examination of his appeal against a refusal decision before the court:

- there is no reliable indication that this person will be able to receive from UNRWA the assistance he needs from food, health services, medicines and medical supplies, education,
- data on the general situation in [locality] and UNRWA, according to Bulgaria's position on the return to Gaza as of March 2022, were considered to be derived from UNRWA's area of operations and a ground for non-refoulement;

including on return, the applicant will stay in decent living conditions?

In the light of the situation in the Gaza Strip at that time, and in so far as the applicant for international protection is dependent on UNRWA's assistance for food, health services, medicines and medical supplies, is his personal situation covered by the interpretation of extreme damage under Article 4 of the EU Charter given by the judgment [Abubacarr Jawo v Bundesrepublik Deutschland](#), C-163/17, 19 March 2019, item 4 of the operative part, for the purposes of applying and complying with the prohibition of refoulement under Article 21(1) of Directive 2011/95/EU, read in conjunction with Article 19 of the EU Charter, to that applicant?

In the light of data on the general situation in [locality] and UNRWA, should the question of return to Gaza be answered differently on the sole ground that the applicant for protection is a minor child, in order to respect the best interests of the child and to ensure the child's well-being and social development, security and safety?

4. Depending on the answer to Question 3:

Is the second sentence of Article 12(1)(a) of the recast QD and the specific provision that 'such persons are

ipso facto entitled to the benefits of this Directive' to be interpreted in the present case as meaning:

(A) the applicant for protection, a stateless Palestinian registered with UNRWA, is subject to the prohibition of refoulement under Article 21(1) of Directive 2011/95/EU, read in conjunction with Article 19 of the Charter, on the grounds that, when returned to [a locality], the person concerned will be exposed to the risk of inhuman and degrading treatment due to the possibility of falling into extreme poverty, falls within the scope of Article 15(2) of the recast QD granting subsidiary protection;

or

(B) as regards an applicant for protection who is a stateless Palestinian registered with UNRWA, it presupposes recognition by that Member State of being a refugee within the meaning of Article 2(c) of that directive and conferring refugee status on that person, in so far as that person does not fall within the scope of Article 12(1)(b) or (2) and (3) of that directive, by analogy in point 2 of the operative part of the judgment of 19 December 2012, [Mostafa Abed El Karem El Kott, Chadi Amin A. Radi and Hazem Kamel Ismail v Bevándorlási és Állampolgársági Hivatal \(Hungarian Immigration and Asylum Office\)](#), C-364/11, without taking into account the circumstances of that person which are relevant to Article 15(2) of the recast QD on subsidiary protection?

Political acts outweigh ordinary law

France, Council of State [Conseil d'État], [D.B.A. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 447538, ECLI:FR:CECHR:2022:447538.20220621, 21 June 2022

The Council of State ruled in an exclusion case on whether the acts of the applicants fall under Article 1F(b) or Article 1F(c) of the Geneva Convention.

An Angolan national was excluded from international protection by OFPRA because it was considered that there were sufficient reasons to consider that he was guilty of acts contrary to the purposes and principles of the UN. The CNDA overturned the decision, and the applicant was granted refugee status. The court analysed the case in view of two exclusion grounds: serious non-political crime and acts contrary to the UN purposes and



principles. It ruled, after further investigation on whether the acts of the applicant could be considered to have a predominantly non-political motivation, that the crime was committed for political purposes, and it outweighed the character of ordinary law.

Moreover, the CNDA found that the facts imputable to the applicant happened in a context of armed struggle led by the applicant's movement targeting armed forces and not the civilians who were victims. Thus, the acts did not fall under Article 1F(b) or Article 1F(c) of the Geneva Convention, because the acts did not involve any international elements, such as affecting international peace or security. The Council of State confirmed the CNDA judgment.

Secondary movements when international protection has been granted in another EU+ country

Non-examination of an asylum application

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], [Applicant v Finnish Immigration Service](#), 21878/2021, ECLI:FI:KHO:2022:97, 22 August 2022

The Supreme Administrative Court confirmed that the FIS can decide not to examine an application from a third-country national who had been granted refugee status in Germany and who can be returned.

The applicant's request for international protection was not examined as he had already been granted international protection in Germany. The court clarified that having the status of a beneficiary of international protection and a residence permit in the country of protection are two separate issues, and for the revocation or

termination of a status, specific procedures are in place according to the recast APD.

The Supreme Administrative Court underlined that the CJEU clarified in a recent judgment [XXXX v Commissaire général aux réfugiés et aux apatrides](#) (Grand Chamber) of 22 February 2022 that the application of Article 33(2) of the recast APD is not precluded by the fact that the applicant is the father of an unaccompanied minor who was granted refugee protection in the first Member State, without prejudice to Article 23(2) of the recast QD.

The Supreme Administrative Court also mentioned that the international protection system in Germany does not present deficiencies that would amount to a treatment contrary to Article 3 of the ECHR, as found in CJEU case law.

No impediments for a transfer to Cyprus

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL22.12663, ECLI:NL:RBDHA:2022:7881, 29 July 2022

The court of the Hague validated an inadmissibility decision concerning a Syrian national who had been granted international protection in Cyprus.

A Syrian national who had been granted international protection in Cyprus had his asylum application in the Netherlands rejected as inadmissible. The Court of the Hague rejected his allegations that conditions in Cyprus would amount to a violation of Article 3 of the ECHR due to the absence of proof of a risk of material deprivation. A temporary employment contract and an alleged lack of connection with Cyprus cannot overturn the decision since the fact of being granted refugee status or subsidiary protection is already



considered to constitute a connection with the Member State which granted it.

Revocation of protection

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [A. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 21040677, 1 June 2022

The CNDA confirmed OFPRA's decision to revoke the refugee status of a person who was sentenced for participating in a network of smugglers.

Following the conviction of a beneficiary of international protection to a crime punishable by a 10-year imprisonment, OFPRA decided to revoke his status. The CNDA confirmed the decision and found that the applicant still constituted a danger to society and the revocation of the status is not prevented by the fact that the conviction was not known at the time of the decision.



Reception

Improper conditions in transit zones

Council of Europe, European Court of Human Rights [ECtHR], [H.M. and Others v Hungary](#), No 38967/17, ECLI:CE:ECHR:2022:0602JUD003896717, 2 June 2022

The ECtHR held that the use of handcuffs and a leash on an asylum applicant amounted to inhuman and degrading treatment.

An Iraqi family with four children submitted their asylum request at the transit zone between Hungary and Serbia, in the Tompa transit zone, and were housed for four months in a container in the family section, with limited freedom of movement, restricted only to attend medical or other appointments. The mother had a complicated pregnancy and requested the proceedings to be accelerated. Her husband went with her to hospital visits and once he was handcuffed and attached to a leash in full view of their children.

The ECtHR found a violation of Article 3 of the ECHR because, despite medical care provided to the mother, due to her particular vulnerability and advanced stage of pregnancy, she had suffered anxiety and mental issues which amounted to inhuman or degrading treatment. For the husband, although the conditions in the transit zone were not found unsuitable, the humiliating situation of being handcuffed and publicly attached to a leash amounted to a violation of Article 3. Similarly, for the children, the court considered that the conditions they faced for more than four





months in the transit zone were not appropriate.

In addition, the stay of the family for over four months was assessed as an unlawful deprivation of liberty, contrary to Article 5 of the ECHR.

Immediate access to reception conditions for applicants for international protection

Italy, Civil Court [Tribunali], [Applicant v Ministry of Interior \(Ministero dell'Interno\)](#), R.G. 508/2022, 16 June 2022

The Regional Administrative Tribunal of Veneto ruled that reception measures should be provided immediately after the applicant expressed the will to apply for international protection.

A national of Mali applied for international protection in February 2022. expressly mentioned he is unable to secure a minimum livelihood and requested access to the reception system. His request remained unaddressed until May 2022. The Regional Administrative Tribunal of Veneto ruled that the administration's failure to act was unlawful and ordered the authorities to take an express decision within 30 days.

Placement of minors in adult reception centres

Council of Europe, European Court of Human Rights [ECtHR], [Darboe and Camara v Italy](#), 5797/17, ECLI:CE:ECHR:2022:0721JUD000579717, 21 July 2022

The ECtHR found a violation of Article 3, Article 8 and Article 13 of the ECHR concerning an unaccompanied minor placed in an adult reception centre and not provided with minimum procedural guarantees in the age assessment procedure.

An unaccompanied minor from Guinea who sought asylum in Italy was placed in a centre for foreign unaccompanied minors and transferred to an adult reception centre, where he stayed for more than four months.

Under Article 8 of the ECHR, the court analysed whether the national authorities had ensured the procedural rights of an unaccompanied minor who requested international protection (such as the appointment of a legal representative or guardian, access to a lawyer and informed participation in the age assessment procedure).

The court concluded that there had been a violation of Article 8 of the ECHR, as the national authorities had failed to promptly provide the applicant with a legal guardian or representative and the medical examination was carried out without informing the applicant about the type of age assessment procedure he was undergoing and its possible consequences. The authorities also failed to apply the principle of presumption of minor age, and the placement in an adult reception centre must have affected his right to personal development and to establish and develop relationships with others.

The court also found a violation of Article 3 of the ECHR due to the overcrowded and inadequate conditions in which the applicant was held in the adult reception centre, and a violation of Article 13 in conjunction with Article 3 and Article 8 due to the lack of effective remedies in the national law.





Detention

New grounds required for a detention order following a return

Sweden, Migration Court of Appeal [Migrationsöverdomstolen], [Police Authority \(Polismyndigheten\) v Migration Court \(Migrationsdomstolen\)](#), UM11840-21 MIG 2022:5, 21 June 2022

If an applicant returns to the country after a removal and a new detention order is issued, the Migration Court of Appeal ruled that it cannot be considered as a review of a previous detention order.

The case concerned an applicant who had been detained due to an expulsion order of August 2021. In appeal, the detention order was annulled because the detention measure was not reviewed within the 2-month time limit. The police appealed against that judgment, noting that the applicant left Sweden in October 2021.

A new detention order was issued when the applicant returned to Sweden, and the Migration Court of Appeal requested a re-examination of the case because new grounds for detention must be established for a new detention decision and because a new detention order cannot be considered as a review of the previous order.



Content of protection

Family reunification

Determining minority for the purpose of family reunification

European Union, Court of Justice of the European Union [CJEU], [Bundesrepublik Deutschland v XC, joined by Landkreis Cloppenburg](#), C-279/20, ECLI:EU:C:2022:618, 1 August 2022

The CJEU analysed the date which national authorities must use when determining whether the child of a beneficiary of refugee status is a minor child for the purpose of family reunification.

A Syrian national living in Turkey who reached the age of majority age requested family reunification with her father, a refugee in Germany. Her request was rejected as she was no longer considered a minor.

The CJEU ruled that the reference date to determine the minority of a sponsor's child, where the child attained majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, is the date on which the parent sponsor submitted the asylum application with a view to obtaining refugee status, if an application for family reunification was submitted within three months of the recognition of refugee status.

To establish the existence of a real family relationship, the court added that the legal parent/child relationship is not sufficient on its own and the two are not required to





support each other financially. It is also not necessary for them to cohabit in a single household or under the same roof for that child to qualify for family reunification. Occasional visits and regular contact may be sufficient to establish the existence of a real family relationship.

European Union, Court of Justice of the European Union [CJEU], [SW \(C-273/20\)](#), [BL, BC v Stadt Darmstadt \(C-273/20\)](#), [Stadt Chemnitz \(C-355/20\)](#), Joined Cases C-273/20 and C-355/20, ECLI:EU:C:2022:617, 1 August 2022

The CJEU ruled on family reunification with an unaccompanied minor.

Syrian nationals requested family reunification with their sons who had obtained refugee status in Germany. Their requests were rejected because the sons had reached the age of majority at the time of deciding on the request for a visa on family reunification grounds.

The CJEU considered that it was contrary to the objectives of the FRD and the EU Charter to use the date when the competent authority of the Member State ruled on the request to enter and reside for family reunification as the date to determine the age of the applicant or the sponsor.

For family reunification of parents with an unaccompanied minor refugee, the CJEU ruled that the fact that the refugee is still a minor on the date of the decision on the application for entry and residence for the purpose of family reunification submitted by the sponsor's parents does not constitute a 'condition' within the meaning of Article 16(1)(a) of the FRD. In addition, the right of residence of the parents does not end as soon as the child reaches the age of majority.

The right to be heard in the family reunification procedure

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [State Secretary v Applicant](#), 202106513/1/V2, ECLI:NL:RVS:2022:1918, 6 July 2022

The Council of State ruled on the right to be heard in an objection procedure related to family reunification requests when individual circumstances reveal a great interest for a hearing.

A Syrian woman whose application for family reunification was rejected claimed that the State Secretary should have heard the applicant and the sponsor in the objection phase, according to Article 7:3 of the General Administrative Law act.

The Council of State noted that Article 7:3 provides for several exceptions from a hearing if the State Secretary deems an objection to be manifestly unfounded, and that in practice, the working method described and applied by the State Secretary appears to be in accordance with the legal framework. In addition, it is to the responsibility of a third-country national to explain in concrete terms in objection why he/she cannot agree with the primary decision, and failure to do so, may provide the State Secretary with reasonable grounds to reject the objection as manifestly unfounded.

The more efforts and essential information which are provided by an applicant to the State Secretary, the more reasonable it is to invite the person to a hearing. If all circumstances to be taken into account point to a doubtful case, an applicant must be heard. In addition, the administrative court may review the reason to refrain from the hearing in objection when this is raised on appeal.



In this case, the Council of State considered that it was not self-evident that the objection was manifestly unfounded, since the applicants put forward concrete circumstances that indicated a great interest to be heard. Consequently, the State Secretary wrongly failed to hear the applicant about the objection.

Refusal to issue a travel document

Council of Europe, European Court of Human Rights [ECtHR], [L.B. v Lithuania](#), No 38121/20, ECLI:CE:ECHR:2022:0614JUD003812120, 14 June 2022

The ECtHR unanimously concluded that there was a violation of Article 2(2) of Protocol No 4 for the refusal to issue a travel document to a foreigner.

The case concerned a Russian applicant, previously a beneficiary of subsidiary protection and a permanent resident, who was refused a travel document by Lithuanian authorities. The ECtHR found a violation of Article 2 of Protocol No 4 to the Convention because the refusal to issue a travel document was based on formalistic grounds, namely that the applicant did not demonstrate a personal risk of persecution and that he was not considered a beneficiary of asylum at that time. The ECtHR stated that national authorities did not conduct an adequate examination of the situation in his country of origin, as well as on the purported possibility of obtaining a Russian passport.

In light of the reasons for granting subsidiary protection and changes in the practice of Russian authorities on the issuance of passports to Russian nationals living abroad, the ECtHR ruled that the Lithuanian authorities should have conducted an assessment of whether the applicant had the possibility in practice, and it was accessible for him, to obtain a

Russian passport in view of his particular circumstances.

Italy, Council of State [[Consiglio di Stato](#)], [Applicant v Ministry of Interior, Trento Police \(Ministero dell'Interno, Questura di Trento\)](#), No 05947/2022 REG.PROV.COLL. No 09122/2017 REG.RIC, 13 July 2022

The Council of State ruled that for beneficiaries of humanitarian and subsidiary protection to be granted a travel document it is not necessary to prove the impossibility of obtaining a passport from the country of origin.

The police of Trento refused to issue a travel document to a beneficiary of humanitarian protection, because he had not proven to be unable to obtain a passport from his country of origin. The Council of State noted that the category of people to whom a travel document is granted recently changed from “people to which Italian authorities consider it appropriate to grant the document” to “people that benefit from subsidiary and humanitarian protection”. Therefore, it is no longer required to demonstrate the impossibility of obtaining a travel document from the country of origin.

Additionally, this impossibility should include cases when authorities in the country of origin make it impossible for the beneficiary to be granted the document.



Return

Expulsion to Russia after withdrawal of refugee protection

Council of Europe, European Court of Human Rights [ECtHR], [R. v France](#), 49857/20, ECLI:CE:ECHR:2022:0830JUD004985720, 30 August 2022

The ECtHR concluded to a violation of Article 3 for the expulsion of a Russian national of Chechen origin after revoking his refugee status.

The case concerned the expulsion of a Russian national of Chechen origin after his refugee status was revoked due to criminal offences and his constituting a serious threat to national security. The court considered that national authorities should have properly taken into account the fact that the applicant was a refugee prior to issuing and implementing an expulsion order and should have adequately and timely assessed a potential risk in the event of an expulsion.

Council of Europe, European Court of Human Rights [ECtHR], [W. v France](#), 1348/21, ECLI:CE:ECHR:2022:0830JUD000134821, 30 August 2022

The ECtHR found an inadequate assessment of the risks of a potential expulsion of a Russian national of Chechen origin to Russia.

The French authorities withdrew the refugee status of a Russian national of Chechen origin on account of having availed himself to the protection of Russian authorities. The applicant argued that being suspected by the French authorities

of radicalisation and belonging to the Chechen armed resistance, suspicions that had been notified to the Russian authorities, he risked being arrested and tortured in the event of his return to Russia. The ECtHR considered that national authorities, in preparation for the deportation, had been in direct contact with the Russian authorities and had sent them a copy of the file on the applicant.

The court concluded that the applicant had demonstrated that there were serious reasons to believe that, if he were deported to Russia, he would be exposed to a real risk of treatment in breach of Article 3 of the ECHR.

Violation of Article 3 of the ECHR for returns to Syria

Council of Europe, European Court of Human Rights [ECtHR], [Akkad v Turkey](#), No 1557/19, 21 June 2022

The ECtHR concluded that there was a violation of the European Convention concerning the removal of an applicant to Syria.

A Syrian applicant complained that Turkish authorities forcibly and unlawfully expelled him to Syria. The applicant, holder of a valid residence permit in Turkey, was arrested while attempting to enter Greece and was handcuffed with other single men on a 20-hour bus journey. The removal to Syria and the handcuffing of the applicant were considered contrary to Article 3 of the ECHR, taken alone and in conjunction with Article 13, because the applicant was deprived of his right to challenge the removal decision.

In addition, the court found that the applicant had been deprived of his right to liberty due to two days of detention prior to his removal to Syria, in breach of Article 5 of the ECHR.

No violation of Article 3 of the ECHR for possible returns of Tajik nationals

Council of Europe, European Court of Human Rights [ECtHR], [M.N. v Turkey](#), No 40462/16, ECLI:CE:ECHR:2022:0621JUD004046216, 21 June 2022

The ECtHR concluded that there was no violation of Article 3 in the event of an expulsion of the applicant to Tajikistan.

The case concerned the potential return of a Tajik national because he did not have a valid visa and presented a threat to public safety due to his participation in unregistered Qur'anic classes in Turkey. The ECtHR concluded that there was no violation of Article 3 of the ECHR in the absence of proof by the applicant of a real risk of persecution or ill treatment.

Proportionate expulsion of a Djiboutian national

Council of Europe, European Court of Human Rights [ECtHR], [Alleleh and Others v Norway](#), No 569/20, ECLI:CE:ECHR:2022:0623JUD000056920, 23 June 2022

The ECtHR found no violation of Article 8 in an expulsion case against a Djiboutian national, finding the measure proportionate.

The case concerned a family of a national of Djibouti married with a Norwegian with whom she had four children, Norwegian nationals. She had provided false information about her country of origin and grounds when she applied for international protection in Norway, thus the authorities adopted an expulsion decision with a two 2-year entry ban.

The ECtHR assessed the measures as proportionate and not in breach of Article 8 of the ECHR in the absence of exceptional circumstances and in view of balancing public interest to sanction the behaviour of the Djiboutian national.

Referral for a preliminary ruling before the CJEU on Article 5(1)(a) and (b) of the Return Directive

Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 1 C 24.21, ECLI:DE:BVerwG:2022:080622B1C24.21.0, 8 June 2022

The Federal Administrative Court referred a question to the CJEU for a preliminary ruling on taking the best interests of the child and family ties into account when issuing a return decision.

The Federal Administrative Court stayed the proceedings and referred questions to the CJEU on whether Article 5(1)(a) and (b) of the Return Directive precludes the issuance of a return decision against a minor third-country national, jointly with the rejection of the asylum application and setting a departure deadline of 30 days, without exception, if, for legal reasons, neither parent can be returned to the country specified in Article 3(3) of the Return Directive for an indefinite period of time. The Federal Administrative Court also sought to know whether it is sufficient, when the minor cannot leave the Member State because of his/her family ties, to take into consideration the best interests of the child and the family ties on the basis of national law after the issuance of the return decision by suspending the removal.



Reception conditions for unaccompanied minors in the return country

In three cases referred to the Council of State in the Netherlands, unaccompanied minors complained that the State Secretary did not comply with its obligation to investigate whether there are adequate reception facilities in the country of return, after rejecting their asylum applications. According to national rules, an investigation into reception conditions for unaccompanied minors in the return country must be conducted for applicants younger than 14 years, while for those over 15 years, an assessment is not carried out and the Dutch authorities await until the minor reaches majority to implement the return.

The CJEU clarified in the [TQ v State Secretary for Justice and Security](#) judgment that an in-depth assessment must be carried out on the situation of a minor while considering the best interests of the child. The Member State must ensure that adequate reception facilities are available for the unaccompanied minor in the country of return, no matter their age.

The Council of State ruled that the State Secretary is not obliged to complete such an assessment during the asylum procedure when the investigation would take longer than the asylum procedure. It further clarified that the State Secretary can reject an application, but it must continue the investigation and keep it as short as possible for the minor third-country national not to be in uncertainty over his residence permit for a long period. Also, the Council of State clarified that the State Secretary cannot justify a lack of investigation on the fact that an applicant has reached majority.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\) v Applicant 1](#), 202101991/1, ECLI:NL:RVS:2022:1530, 8 June 2022

The Council of State decided on the need for an earlier examination of adequate reception conditions for unaccompanied children in the return country, following the CJEU TQ judgment.

The case was reopened following the CJEU preliminary ruling in [TQ v State Secretary for Justice and Security](#). It concerned a Guinean unaccompanied minor whose application was rejected by the State Secretary on 23 March 2018, a return was ordered but no assessment on reception conditions was carried.

The Council of State applied the principle from the CJEU judgment and ruled that the State Secretary must act expeditiously in investigating reception conditions in the return country and has to reason and provide an estimate of the investigation in the negative decision. The fact that the applicant reached the age of majority is not sufficient for the State Secretary not to conduct further investigation.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\) v Applicant 2](#), 202103934/1, ECLI:NL:RVS:2022:1531, 8 June 2022

The Council of State reiterated the need for an earlier examination of adequate reception conditions for unaccompanied children in the return country.

A Moroccan unaccompanied minor at the age of 15 on the date of the application was not granted asylum because the State Secretary considered Morocco a safe country of origin. The Council of State validated the negative decision on asylum,



but it reiterated that an assessment on reception conditions for unaccompanied minors in the return country must start as soon as possible, in addition to tracing family members and relatives.

Although the determining authority has the option to disapply a national provision on the simultaneous adoption of a negative and return decision, it must speedily act in order to assess reception conditions in the country of return. The Council of State ruled that a period of 3 years to determine the residence application was too long and the State Secretary failed to justify its delay in the investigation.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicants*, 202104665/1/V3, ECLI:NL:RVS:2022:1532, 8 June 2022

The Council of State ruled that the State Secretary must reason a negative and return decision on the non-completion of an investigation of reception facilities for unaccompanied minors in the return country.

The case concerned three unaccompanied minors from Chechnya, whose asylum applications for the first and second applicants were rejected, and the State Secretary did not conduct an investigation into reception conditions in the country of return because the two applicants reached the age of majority. For the third applicant, it stated that the negative decision did not constitute a return order until the investigation into the availability of adequate reception conditions in the country of return was completed.

The Council of State confirmed the lower court decision to refer the cases back for re-examination because the State Secretary failed to provide reasoning on the delay in the investigation into adequate reception conditions in the country of

return. A new decision must be taken on the application after an analysis of whether there are adequate reception facilities has been conducted, even if the third-country national became of age. Also, a complete investigation is needed to assess the eligibility and the right of residence on regular grounds in the Netherlands.

Best interests of the child in a return decision

United Nations, Committee on the Rights of the Child [CRC], *H.Kon behalf of S.K. v Denmark*, CRC/C/90/D/99/2019, 1 June 2022

The UN CRC found that Denmark violated the Convention by not considering the best interests of the applicant's daughter in a return decision to India.

The mother of an Indian minor submitted a communication against Denmark for alleged violation of Article 3 and Article 22 of the UN Convention for the Rights of the Child. Denmark had rejected the applicant's and her daughter's applications for asylum, and she claimed that a return would place her daughter in imminent danger due to previous domestic violence by her spouse and the lack of state protection in India.

The Danish authorities considered that the daughter and her mother would have access in India to state protection in centres for victims of domestic violence and rejected the asylum claim.

In contrast, the UN CRC concluded, in light of various reports highlighting concerns of widespread violence, abuse and neglect of children, that Denmark had failed to primarily and effectively consider the best interests of the child in the assessment of the asylum application and also failed to protect the daughter against a current and real risk of irreparable harm if returned to India.

