

# Quarterly Overview of Asylum Case Law





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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) and the European Court of Human Rights (ECtHR). 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

<b>APD (recast)</b>	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)
<b>BAMF</b>	Federal Office for Migration and Refugees (Germany)
<b>BBU</b>	Federal Agency for Reception and Support Services (Austria)
<b>BFA</b>	Federal Office for Immigration and Asylum   Bundesamt für Fremdenwesen und Asyl (Austria)
<b>BMI</b>	Federal Ministry of the Interior and Homeland (Germany)
<b>CALL</b>	Council for Alien Law Litigation (Belgium)
<b>CEAS</b>	Common European Asylum System
<b>CGRS</b>	Office of the Commissioner General for Refugees and Stateless Persons   Commissaire général aux réfugiés et aux apatrides (Belgium)
<b>CJEU</b>	Court of Justice of the European Union
<b>COA</b>	Central Agency for Reception of Asylum Seekers (the Netherlands)
<b>COI</b>	country of origin information
<b>CNDA</b>	National Court of Asylum   Cour Nationale du Droit d'Asile (France)
<b>Dublin III Regulation</b>	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)
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EUAA</b>	European Union Agency for Asylum
<b>EU</b>	European Union
<b>EU Charter</b>	Charter of Fundamental Rights of the European Union
<b>EU+ countries</b>	Member States of the European Union and associate countries
<b>Fedasil</b>	Federal Agency for the Reception of Asylum Seekers (Belgium)





<b>FIS</b>	Finnish Immigration Service
<b>IPA</b>	International Protection Agency (Malta)
<b>Member States</b>	Member States of the European Union
<b>NGO</b>	non-governmental organisation
<b>OFPRA</b>	Office for the Protection of Refugees and Stateless Persons   Office Français de Protection des Réfugiés et Apatrides (France)
<b>QD (recast)</b>	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)
<b>RCD (recast)</b>	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)
<b>Refugee Convention</b>	The 1951 Convention relating to the status of refugees and its 1967 Protocol



## Main highlights

The interim measures, decisions and judgments presented in this edition of the “EUAA Quarterly Overview of Asylum Case Law, Issue No 1/2023” were pronounced from December 2022 to February 2023.

### Court of Justice of the European Union (CJEU)

The CJEU interpreted the Dublin III Regulation in two cases:

- ✚ In [B, F and K](#), the court interpreted Articles 29 and 27(1) to determine the Member State responsible for examining an application for international protection when the deadline for a transfer following a take back request has expired.
- ✚ In [L.G.](#), the court interpreted the concept of a ‘dependent person’ under Article 16(1) of the Dublin III Regulation.

Regarding first instance asylum procedures:

- ✚ In [BU](#), the CJEU ruled on the right of the applicant to access a copy of the administrative file and on the meaning of communication ‘in writing’ of the administrative decision.
- ✚ In [P.I.](#), the CJEU held that the concept of political opinion must be interpreted broadly, to include attempts by an applicant to legally defend his/her interests against non-state actors acting illegally, where those actors may exploit the criminal justice system of the country of origin through corruption.

Lastly, on 15 February 2023, in [G.S.](#), the CJEU interpreted Article 5(a) and (b) of the Return Directive as requiring that the best interests of the child and family life be protected in proceedings leading to the adoption of a return decision.

### European Court of Human Rights (ECtHR)

#### Access to the territory of Member States

On 2 February 2023, in [Alhowais v Hungary](#), the ECtHR found that the Hungarian authorities failed to protect the life of a migrant during a river disembarkation from Serbia to Hungary and to conduct an effective investigation into the events.

#### Effectiveness of the asylum procedure and use of detention in Malta

On 20 December 2022, the ECtHR ruled on the effectiveness of the asylum procedure in Malta in the case of [S.H.](#) The ECtHR found a violation of Articles 3 and 13 of the European Convention due to the lack of access to legal counsel, delays in the asylum procedure, failure to examine the merits of the case and a lack of an effective domestic remedy.

In another case, on 11 January 2023, the ECtHR [ordered](#) interim measures under Rule 39 of the Rules of the Court to the government of Malta. It asked the authorities “to ensure that the





applicants' conditions are compatible with Article 3 of the Convention and with their status as unaccompanied minors".

### Reception conditions for applicants for international protection

Following interim measures ordered to the government of Belgium on 31 October 2022 in [Camara v Belgium](#) and on 15 November 2022 in [Msallem and 147 Others v Belgium](#), the ECtHR indicated another interim measure more recently in [Al-Shujaa and Others v Belgium](#), concerning 143 homeless asylum applicants in Belgium who were not provided with accommodation although they had obtained domestic decisions from the Brussels Labour Court, directing Fedasil to assign them a place of accommodation, which had become final. The ECtHR published its statistics concerning Rule 39 requests for 2022, which showed that there were 3,106 requests for interim measures in 2022, compared to 1,925 in 2021, an increase visibly due to Rule 39 requests lodged by asylum applicants against Belgium.<sup>1</sup>

On 8 December 2023, in [M.K. and Others v France](#), the ECtHR found a violation of Article 6 of the Convention for the refusal of national authorities to implement an interim measure of providing emergency accommodation to asylum applicants.

### Use of detention for asylum applicants and rejected applicants

On 17 January 2023, in [Daraibou v Croatia](#), the ECtHR found a violation of Article 2 of the European Convention, under both substantive and procedural aspects, due to the failure of Croatian authorities to protect the life of a Moroccan applicant. He was held at a police station where a fire had broken out, in which he sustained severe injuries and other people died. The court found a lack of an effective investigation of the incident.

In February 2023, the ECtHR found in [Dshijri v Hungary](#), a violation of Article 5(1) of the European Convention for unlawful detention of an applicant pending his asylum procedure in Hungary, while in [R.M. and Others v Poland](#), it ruled that the detention of a mother and her three children was unlawful following a Dublin transfer from Germany to Poland and pending a return to Russia.

## National courts

### Dublin transfers

The Refugee Appeals Board in Denmark and the Dutch Court of The Hague [ruled](#) on Dublin transfers to Belgium, in the context of the interim measures ordered by the ECtHR to the government of Belgium. In addition, the Dutch Council of State [upheld](#) a Syrian national's appeal against a Dublin transfer to Denmark because the applicant ran the risk of indirect *refoulement*.

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<sup>1</sup> European Court of Human Rights, *Rule 39 requests listed by respondent state, granted and refused by the Court in 2020, 2021 and 2022*. [https://echr.coe.int/Documents/Stats\\_art\\_39\\_01\\_ENG.pdf](https://echr.coe.int/Documents/Stats_art_39_01_ENG.pdf), accessed on 27 February 2023.





### **Data protection in the asylum procedure**

In Belgium, the Council for Alien Law Litigation [ruled](#), in a case in which the personal interview took place through a videoconference on Microsoft Teams, that more information was needed on the reliability of Microsoft Teams and its compliance with data protection.

In Germany, the Federal Administrative Court [ruled](#) that BAMF's use of mobile data to determine the identity and nationality of an asylum applicant was not lawful in the absence of sufficient consideration of other available documents. This was only permitted if the purpose of the measure, based on the time it was ordered, could not be achieved by less severe means.

### **Referral to the CJEU for a preliminary ruling on the concept of a safe third country**

In Greece, the Council of State [referred](#) questions to the CJEU for a preliminary ruling on the interpretation of Article 38 of the recast Asylum Procedures Directive (APD), in the context of the inclusion of Türkiye on the Greek list of safe third countries. For a long period of time (in this case exceeding 20 months), Türkiye has refused readmissions and a change in this practice is not foreseen in the near future.

### **Women and girls from Afghanistan**

In Denmark, the Refugee Appeals Board [granted](#) international protection to an Afghan woman and her daughter, following a change of practice in Denmark regarding Afghan applicants for international protection.

### **Subsidiary protection for Ukrainians from the Oblasts of Odesa, Zaporizhia, Kharkiv, Donetsk and Luhansk**

In France, the CNDA [ruled](#) that the situation of indiscriminate violence in the Oblast of Odesa does not entail that a mere presence would be enough to justify granting subsidiary protection. It held that the situation of indiscriminate violence in the Oblasts of Zaporizhia, Kharkiv, Donetsk and Luhansk justified the granting of subsidiary protection by mere presence in those areas.

### **Reception conditions**

The Court of Appeal of The Hague [found](#) that the reception conditions for asylum applicants violated the recast Reception Conditions Directive (RCD) and demanded equal treatment for Ukrainian and other third-country asylum applicants.

### **Family reunification**

The Council of State in the Netherlands [ruled](#) in several judgments that the additional waiting period for family reunification, introduced due to the pressure on the reception system, was contrary to the Family Reunification Directive.





## Access to the asylum procedure

### Failure to protect the life of a migrant during disembarkation

ECtHR, [Alhowais v Hungary](#),  
No 59435/17, 2 February 2023.

*The ECtHR found violations of Articles 2 and 3 of the European Convention by the Hungarian authorities who failed to protect the life of a migrant during a river disembarkation from Serbia to Hungary and failed to conduct an effective investigation into the events.*

A Syrian national complained before the ECtHR under Article 2 and Article 3 of the European Convention that his brother, F., had died as a result of a border control operation conducted by the Hungarian authorities. He alleged that the conduct of the police when he was returned to Serbia failed to comply with the obligation to protect his brother's right to life and that there was a lack of an effective investigation into these allegations. The court found that overall, the response of the domestic authorities was in violation of their procedural obligations under Articles 2 and 3 of the Convention.

The court noted that, although it could not find that the applicant's brother was subjected to the use of force and harm by the police officers, the authorities were aware of the real and imminent risk to the life of migrants trying to cross the river and

the necessity to safeguard their lives. The court noted that it was known to the authorities that the Tisza River was a dangerous crossing point and that there had been at least one incident. The court further noted the vulnerable condition of the people who were smuggled and left in the water, with some of them placed in critical condition in hospital after being rescued.

The court accepted that the high influx of people at the border represented a challenge to the authorities trying to prevent migrants from circumventing border protection in Hungary. However, the court noted that the circumstances of the present case were not exceptional, but rather a routine border control operation, so the Hungarian authorities had sufficient knowledge to evaluate the risk and carefully organise their border operations.





## Dublin procedure

### The CJEU interpreted the concept of a ‘dependent person’ under Article 16(1) of the Dublin III Regulation

**CJEU, [L.G. v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), C-745/21, 16 February 2023.**

*The CJEU interpreted the concept of a ‘dependent person’ under Article 16(1) of the Dublin III Regulation and the application of the discretionary clause under Article 17(1).*

The CJEU ruled that Article 16(1) of the Dublin III Regulation does not apply to a dependency link between an applicant for international protection and the spouse who is legally a resident in the Member State where the application was lodged, nor between the unborn child of that applicant and the spouse who is the father of the child. It further held that national legislation may require national authorities to examine an application lodged by a pregnant third-country national on the sole ground of the best interests of the child.

### The CJEU interpreted Articles 29 and 27(1) of the Dublin III Regulation

**CJEU, [B, F and K v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), Joined Cases C-323/21, C-324/21 and C-325/21, 12 January 2023.**

*The CJEU ruled on the determination of the Member State responsible for examining an application for international protection when the deadline for a transfer following a take back request has expired.*

The CJEU ruled that where the 6-month time limit for a Dublin transfer has begun, responsibility for examining the application for international protection is transferred to the requesting Member State at the expiry of that time limit. This is the case even if the applicant has since lodged a new application for international protection in a third Member State, which resulted in the acceptance of a take back request, provided that the responsibility has not been transferred to that third Member State due to the expiry of one of the time limits provided in Article 23.

Additionally, when the responsibility has been transferred, the Member State where that person is present is not permitted to transfer them to any other Member State but may, within the time limit specified in Article 23(2), file a take back request to the latter Member State.

Furthermore, the CJEU held that third-country nationals who lodge successive applications for international protection in three Member States, must have, in the third Member State, an effective remedy, enabling the person to rely on the fact that responsibility was transferred to the



second of the Member States by reason of the expiry of the time limit for a transfer provided by Article 29(1) and (2).

## Dublin transfers to Belgium

**Denmark, Refugee Appeals Board [Flygtningenævnet], [Applicant v Immigration Service](#), 2022/7, 26 January 2023.**

*The Refugee Appeals Board confirmed a Dublin transfer to Belgium and noted that prior to the transfer the authorities must receive guarantees that the person will be offered reception and accommodation arrangements, in accordance with national law and international obligations.*

The Refugee Appeals Board upheld the Immigration Service's decision for a Dublin transfer to Belgium of a man who applied for asylum in Belgium but claimed that there were serious shortcomings in the asylum procedure and in the reception and accommodation conditions.

The Refugee Appeals Board noted the existence of shortcomings in the Belgian reception system, the interim measures ordered by the ECtHR to the government of Belgium and considered that there were no significant grounds to indicate that there were general systemic flaws in the asylum procedure and in the reception and accommodation conditions in Belgium that any Dublin transfer to Belgium would entail a risk of inhuman or degrading treatment.

However, the Refugee Appeals Board noted that there was information available on serious deficiencies in the reception and accommodation conditions in Belgium, in particular for accommodating single men. Therefore, prior to a Dublin transfer, a guarantee must be obtained from Belgium

that the person will be offered reception and accommodation arrangements in accordance with the national legislation in Belgium and the country's EU and international obligations.

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.382, 20 February 2023.**

*The Court of The Hague annulled a Dublin transfer to Belgium because the burden of proof on the applicability of the interstate principle of mutual trust shifted to the national authorities in view of ECtHR interim measures ordered to the government of Belgium.*

The Court of the Hague annulled a Dublin transfer to Belgium and referred the case back for re-examination to the State Secretary. It found that the applicant's submissions about the poor conditions in the reception system in Belgium, based on the multitude of interim measures and cases before the ECtHR (concerning approximately 600 persons), along with civil society reports, as sufficient to shift the burden of proof from the applicant to the State Secretary on the application of the principle of mutual trust in the present case.

The court noted that the State Secretary must further substantiate that the interstate principle of trust can still be assumed with regard to Belgium, and it can do this, for example, by showing that it is plausible that a different treatment applies to Dublin returnees in Belgium than to other asylum seekers and that the applicant will receive reception.





## Dublin transfers to Croatia

Slovenia, Supreme Court [Vrhovno sodišče], [Applicant v Ministry of the Interior, VS00062538, 7 December 2022](#).

*The Supreme Court ruled that the applicant failed to provide evidence that transferring him to Croatia under the Dublin III Regulation would violate Article 4 of the EU Charter, the APD and the RCD.*

The Slovenian Supreme Court ruled that there were no systemic deficiencies in the asylum procedure and reception conditions in Croatia that would result in the risk of inhuman or degrading treatment if the applicant were transferred there under the Dublin III Regulation. The applicant's claims of mistreatment in Croatia were not considered proof of a pattern of mistreatment of applicants and he failed to provide any evidence from European bodies or the UNHCR to support claims of systematic deficiencies.

## Dublin transfers to Denmark

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\), 202106573/1/V3, 6 December 2022](#).

*The Council of State upheld a Syrian national's appeal against a Dublin transfer to Denmark because the applicant ran the risk of indirect refoulement.*

As the Danish authorities did not renew the residence permit of a Syrian applicant from the Damascus region, the person applied for international protection in the Netherlands. The Dutch State Secretary for Justice and Security rejected her request, considering that Denmark was responsible for the asylum application under the Dublin III Regulation.

The applicant appealed against this decision, claiming that she ran a serious risk of indirect *refoulement*. The court rejected the appeal, stating that the applicant failed to prove that Denmark would not fulfil its legal obligations; it recalled case law showing that Denmark did not forcibly deport nationals to Syria and added that the Danish and Dutch authorities pursued similar protection policies for Syrians from the Damascus region.

The applicant appealed before the Council of State. The Council ruled in the applicant's favour, noting that although the Secretary of State could assume that equivalent protection was provided by different Member States, the applicant had proven that the Danish authorities and courts would not protect her against *refoulement*.





## First instance procedures

### CJEU judgment on an applicant's right to access the administrative file and to be communicated the decision 'in writing'

**CJEU, [BU v Bundesrepublik Deutschland \(Federal Republic of Germany\)](#), C-564/21, 1 December 2023.**

*The CJEU ruled on the right of the applicant to access a copy of the administrative file and on the meaning of communication 'in writing' of the administrative decision.*

In this case, the original administrative decision was signed, saved in the applicant's electronic file and destroyed. When he requested his file as a single PDF, the applicant received a copy with separate files not consecutively paginated.

The CJEU ruled that, under Article 46(3) of the recast APD, the transferred file must include all material at the authority's disposal, which may entail metadata and links to proceedings concerning family members. In addition, Article 23(1) and Article 46(1) and (3) do not contain any specific rules on the format and structure, so the practice of providing a file without consecutive page numbering does not contravene EU law.

Finally, it was observed that Article 11(1) of the recast APD does not require a signature and that the expression 'in writing' means that the communication of the decision should not be implied or in an oral form.

### Reliability of Microsoft Teams and compliance with data protection in personal interviews carried out by videoconference

**Belgium, Council for Alien Law Litigation [[Conseil du Contentieux des Étrangers - CALL](#)], [X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#), No 283 208, 19 January 2023.**

*The Council for Alien Law Litigation ruled that more information was needed on the reliability of Microsoft Teams and its compliance with data protection in a case in which the personal interview took place by videoconference.*

An Albanian asylum applicant challenged a first instance decision, arguing that his personal interview, carried out by videoconference through Microsoft Teams, lacked confidentiality.

The Council for Alien Law Litigation annulled the decision of the Commissioner General for Refugees and Stateless Persons, indicating aspects that should be further considered, such as the reliability of Microsoft Teams with regard to the transfer of personal data.

## Use of mobile data to determine the identity and nationality of an asylum applicant

Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Federal Office for Migration and Refugees \(BAMF\) v Applicant](#), 1 C 19.21, 16 February 2023.

*The Federal Administrative Court ruled that BAMF's use of mobile data to determine the identity and nationality of an asylum applicant was not lawful in the absence of sufficient consideration of other available documents. It was only permitted if the purpose of the measure, based on the time it was ordered, could not be achieved by less severe means.*

The Federal Administrative Court dismissed BAMF's appeal and confirmed the lower court's [judgment](#). It held that the evaluation of digital data from mobile carriers to determine the identity and nationality of an asylum applicant is not lawful without considering other available knowledge and documents. It was only permitted if the purpose of the measure, based on the time it was ordered, cannot be achieved by less severe means. It noted that according to the findings of the administrative court, more lenient means were available to be used by the Federal Office (such as a marriage certificate or register comparisons and inquiries about linguistic abnormalities) to obtain further evidence to determine the identity and nationality.

According to the court, this proved that the request addressed to the applicant to share their access data for the evaluation of their mobile phone was disproportionate and therefore illegal.

## Provision of legal assistance

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], [Applicants v Federal Office for Aliens and Asylum \(BFA\)](#), E 3608/2021-28, 13 December 2022.

*The Constitutional Court ruled on legal assistance provided by the Federal Agency for Reception and Support Services (BBU).*

The Constitutional Court examined the BBU Establishment Act, the structure, organisation, mandate and tasks of the BBU regarding legal assistance and representation of asylum applicants. The Constitutional Court raised concern about provisions related to the implementation of legal advice and representation and their compatibility with Article 20 of the Constitution, which provides that the administration is carried out by bodies which follow instructions under the direction of supreme bodies of the federal and state governments.

The Constitutional Court also raised concern about the rule of law and the right to effective judicial protection, as the current establishment of the BBU might not offer the required minimum level of effectiveness since legal advisors need to perform tasks independently and with confidentiality, while the BBU is subordinated to the Ministry of the Interior.

In addition, the court noted that a professional legal representative, whether a law firm or a legal advisory organisation, must organise its activities in a way that eliminates the omission of deadlines and to ensure standards of diligence which include the establishment of a control mechanism for business and registry processing.



## Assessment of applications

### ECtHR judgment on the lack of an adequate assessment of asylum applications in Malta, the lack of legal assistance and lack of an effective remedy

ECtHR, [S.H. v Malta](#), No 37241/21, 20 December 2022.

*The ECtHR found violations of Articles 3 and 13 of the European Convention due to the lack of an adequate assessment of an asylum application lodged by a Bangladeshi national in Malta, the lack of legal assistance and the lack of an effective remedy.*

A Bangladeshi national was immediately placed in detention upon arrival in Malta. His request for international protection was rejected and his removal to Bangladesh was suspended when the ECtHR ordered an urgent interim measure.

The court found violations of Articles 3 and 13 of the ECHR due to the lack of effective guarantees against an arbitrary removal, including access to legal counsel, delays in the asylum procedure and failure to examine the merits of the case in an accelerated procedure. The court notably denounced the International Protection Tribunal's immediate confirmation of the administrative decision which deprived the applicant of the right to a judicial review. It also deplored the delays of several months

in communicating the decision, while the removal order was issued a few days after the decision.

The ECtHR did not examine the procedure before the Refugee Appeals Board, noting the government had accepted that the board cannot alter the IPA's assessment. Finally, the court ruled that, without an automatic suspensive effect, constitutional redress proceedings in Malta do not qualify as an effective remedy.

### Referral to the CJEU on whether Türkiye is a safe third country

Greece, Council of State [Συμβούλιο της Επικρατείας], [Applicant v Asylum Service](#), No 177/2023, 3 February 2023.

*The Council of State referred questions to the CJEU for a preliminary ruling on the interpretation of Article 38 of the recast APD, in the context of the inclusion of Türkiye on the Greek list of safe third countries.*

The Greek Council of State referred questions to the CJEU for preliminary ruling, asking whether Article 38 of the recast APD, interpreted in conjunction with Article 18 of the EU Charter, precludes national legislation from classifying a third country as generally safe for certain categories of applicants when the third country is under a legal obligation to allow the applicants to be readmitted to its territory. However, for a long period of time (in this case exceeding 20 months) the country has refused readmissions and a change in practices is not foreseen in the near future.

The Council of State also asked whether Article 38 of the recast APD is to be interpreted as meaning that a readmission

to the third country is not a cumulative condition for the adoption of the national law declaring a third country as safe for certain categories of applicants for international protection, but is a cumulative condition for the adoption of the individual act rejecting a specific application for international protection as inadmissible on the ground of the safe third country concept; or whether readmission to the safe third country must be verified only at the time of the execution of the decision.

### **CJEU judgment on attributed political opinion on account of actions undertaken by an applicant to legally protect personal interests**

**CJEU, *P.I. v Migration Department under the Ministry of the Interior of the Republic of Lithuania*, C-280/21, 12 January 2023.**

*The CJEU ruled that the concept of political opinion must be interpreted broadly, to include attempts by an applicant to legally defend his/her interests against non-state actors acting illegally, where those actors may exploit the criminal justice system of the country of origin through corruption.*

The Supreme Administrative Court of Lithuania referred a question to the CJEU for a preliminary ruling on whether actions undertaken to legally defend personal interests against an influential group in the country of origin, which exploits the criminal justice system through corruption may amount to attributed political opinion.

The CJEU noted that Article 10(1)(e) of the recast Qualification Directive (QD), the relevant UNHCR Handbook, Article 11 of the EU Charter and the ECtHR's case law

on Article 10 of the ECHR all recommend that the concept of political opinion be interpreted broadly. The court added that, when determining the existence of political opinions and the causal link with persecution, Member States must consider the context of the country of origin from a political, legal, judicial, historical and sociocultural perspective, but assess the facts on a case-by-case basis.

In this case, the court concluded that the applicant's claims were covered by the concept of political opinion.

### **Persecution due to imputed political opinion in Afghanistan**

**France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M. v Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 21034662 C+, 20 January 2023.**

*The CNDA ruled that Tajiks are at a real risk of persecution from the Taliban in the Panjshir province and the Andarab district of Afghanistan.*

The CNDA granted refugee protection to a Tajik applicant from Afghanistan. Based on several publicly-available sources (including the EUAA's [COI Reports](#)), the CNDA held that the Andarab district of Afghanistan was one of the main strongholds of the National Resistance Front (NRF) and the Taliban's actions in this area seem to indicate that the NRF was perceived as a real threat. The Taliban specifically target the Tajik population, accusing them of supporting the resistance.

The court stated that several human rights violations (including extrajudicial killings, torture and arbitrary arrests) against



people accused of supporting the resistance have been documented. The court concluded that persons of Tajik ethnicity from the Panjshir province and the Andarab district are to be considered as exposed to a serious and proven risk of persecution by the Taliban, due to imputed political opinion in favour of the NRF.

## Fear of military recruitment in Syria

**Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicants v Federal Office for Migration and Refugees \(BAMF\)](#), 1 C 1.22 and other cases, 19 January 2023.**

*The Federal Administrative Court ruled in several cases concerning military draft evasion and the benefit of refugee protection for beneficiaries of subsidiary protection from Syria.*

The Federal Administrative Court ruled on the consideration of refugee protection for beneficiaries of subsidiary protection who evade Syrian military service. The court held that competent national authorities and courts should assess the plausibility for the strong presumption that the refusal to perform military service is related to a reason for persecution.

The Federal Administrative Court overturned the appealed judgments and referred the proceedings back to the Higher Administrative Court.

## Fear of military recruitment in Russia

**Bulgaria, Administrative Court, City of Sofia [вг. Административен съд - София град], [A.A. v State Agency for Refugees](#), No 7376, 9 December 2022.**

*The Administrative Court of Sofia city confirmed a negative decision concerning a Russian applicant who claimed a risk of persecution due to an alleged refusal to perform military service and opposition to the political regime.*

A Russian applicant claimed that he risked persecution upon return due to his alleged refusal to follow a summons for military service and having protested against the political regime and the war in Ukraine. The Bulgarian determining authority issued a negative decision which was confirmed by the Administrative Court of Sofia City for lack of credibility and lack of evidence that the reasons invoked could constitute a real danger that forced the applicant to leave his country of origin.

## Women and girls from Afghanistan

**Denmark, Refugee Appeals Board [Flygtningenævnet], [Applicants v Immigration Service](#), 2023/10, 3 February 2023.**

*The Refugee Appeals Board granted international protection to an Afghan woman and her daughter following a change of practice in Denmark regarding Afghan applicants for international protection.*

The Refugee Appeals Board granted international protection to an Afghan





woman and her minor daughter, considering the situation of women and girls in Afghanistan since the Taliban took power in mid-August 2021.

The Refugee Appeals Board referred to reports of the Danish Refugee Council, the Human Rights Watch and the [EUAA Country Guidance: Afghanistan](#), published on 24 January 2023, which noted that the accumulation of various measures introduced by the Taliban, which affect the rights and freedoms of women and girls in Afghanistan, amount to persecution and that for women and girls in Afghanistan, well-founded fear of persecution would in general be substantiated.

### **Non-application of the principle of family unity for applicants who can avail themselves of the protection of a country for which they hold the nationality**

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [K., N. and M. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), Nos 20029566, 200229567 and 20029589 R, 22 December 2022.

*The Grand Chamber of the CNDA ruled that a refugee's family members who hold a different nationality and can avail themselves of the protection of their country of origin cannot benefit from the principle of family unity to be provided refugee protection within the meaning of the 1951 Refugee Convention.*

The applicants, a Kyrgyz woman and her two minor daughters, contested OFPRA's rejection of their asylum applications by arguing that the authorities did not respect the principle of family unity with the

woman's second husband, a national of Türkiye, who had refugee protection in France due to a well-founded fear of political persecution. They argued that they would face persecution upon return to Kyrgyzstan or Türkiye, where they had resided previously.

The CNDA rejected their appeal, stating that the principle of family unity had not been violated, that the recast QD only requires the authorities to issue a residence permit for the family members of a refugee as opposed to granting them refugee status or subsidiary protection and the 1951 Refugee Convention requires protection to be extended to a refugee's relatives of the same nationality but not to relatives who hold another nationality and can avail themselves of the protection of their country of origin.

### **Ex nunc assessment of applications for international protection with due consideration to the best interests of the child**

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], [Applicants v Federal Office for Immigration and Asylum \(Bundesamt für Fremdenwesen und Asyl- BFA\)](#), E 1487-1489/2022-17, 14 December 2022.

*The Constitutional Court annulled a Federal Administrative Court decision confirming the deportation of Kazakh children and their mother to their country of origin after it insufficiently investigated the best interests of the children.*

The Administrative Court rejected applications for international protection by a mother and her two children in 2017. The





court had noted that their right to private and family life under Article 8 of the ECHR would not be violated because their integration in Austria was limited while they had strong ties with their country of origin.

In 2022, the Federal Administrative Court based its confirmation decision on the same assessment of the situation, bringing the applicants to appeal against it for failing to reflect the developments in the children's integration in Austria.

The Constitutional Court ruled in favour of the applicants, noting that the investigations of the court had been superficial and insufficient to safeguard the best interests of the children and prevent violations of Article 8 of the ECHR.

## Subsidiary protection for Ukrainians from the Oblasts of Odesa, Zaporizhia, Kharkiv, Donetsk and Luhansk

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)]

- ✚ [\*K. v Office for the Protection of Refugees and Stateless Persons \(OFPPRA\), No 21041482 C+, 6 January 2023 – examination of the situation in the Oblast of Odesa\*](#)

*The CNDA ruled that the situation of indiscriminate violence in the Oblast of Odesa does not entail that mere presence would be enough to justify granting subsidiary protection.*

Based on information provided by several organisations, the court noted that almost 91% of all registered security incidents took place in the eastern and southern macro-

regions of Ukraine, where the Odesa Oblast is located. However, the court added that, while Odesa had been impacted by multiple attacks which targeted both military structures and civilian homes, the number of registered security incidents and civilian victims had been relatively low, setting it apart from the rest of the southern macro-region.

The court concluded that a situation of indiscriminate violence prevailed in the Oblast of Odesa, but that its intensity did not lead to establish that a mere presence there would entail a real risk of serious harm. However, in the particular case, considering the individual circumstances of the applicant, her gender, age, medical conditions and a lack of family support in Odesa, which would put her at risk of serious harm, the court provided subsidiary protection.

- ✚ [\*M. v Office for the Protection of Refugees and Stateless Persons \(OFPPRA\), No 21048216 C+, 30 December 2022 – examination of the situation in the Oblast of Zaporizhia\*](#)
- ✚ [\*C. v Office for the Protection of Refugees and Stateless Persons \(OFPPRA\), No 21060196 C+, 30 December 2022 – examination of the situation in the Oblast of Kharkiv\*](#)
- ✚ [\*T. v Office for the Protection of Refugees and Stateless Persons \(OFPPRA\), No 22001393 C+, 30 December 2022 – examination of the situation in the Oblast of Donetsk\*](#)
- ✚ [\*A. v Office for the Protection of Refugees and Stateless Persons \(OFPPRA\), No 22001393 and 22002736 C+, 30 December 2022 – examination of the situation in the Oblast of Luhansk\*](#)



*The CNDA ruled that the situation of indiscriminate violence in the Oblasts of Zaporizhia, Kharkiv, Donetsk and Luhansk justified the granting of subsidiary protection by mere presence in those areas.*

The court stated that almost 91% of all registered security incidents took place in the southern and eastern macro-regions of Ukraine, where the Zaporizhia Oblast is located, and 11% of all internally displaced persons originated from this region. The court also noted that many security incidents had been registered in Zaporizhia alone, and that it ranked third among the most impacted regions and fifth in terms of the number of fatal victims.

Concerning the Oblast of Kharkiv, the court noted that between April and July 2022 intense combat was observed in the region and 21% of internally displaced persons originated from Kharkiv, which can be considered one of the areas most impacted by the war.

Regarding the Donetsk and Luhansk regions, the court noted that they were among the most impacted areas by military aggression, with significant damage observed in residential areas and 55% of all civilian victims were registered in these two regions as of November 2022. In addition, 23% of all internally displaced persons originated from the Donetsk region.

## **Subsidiary protection for applicants from Gao (Mali)**

**France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M.D. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 22025498 C+, 7 February 2023.**

*The CNDA ruled that the situation in the region of Gao in Mali reached the high level of indiscriminate violence required under the recast Qualification Directive, Article 15(c), therefore lowering the threshold of personal circumstances for applicants to be granted subsidiary protection.*

The applicant appealed against OFPRA's decision to reject his asylum application and requested the CNDA to grant him refugee or subsidiary protection. The court stated that the applicant could not be granted refugee status because he did not bring sufficient proof that his personal circumstances could qualify under any grounds in the 1951 Refugee Convention.

However, based on the [EUAA Judicial practical guide on country of origin information](#) (2018) and other organisations' country of origin information, the court established that the situation in the applicant's region of origin, Gao, reached the threshold of 'high level of indiscriminate violence' under Article 15(c) of the Qualification Directive.

Consequently, the court noted that the applicant's mere presence in the area would not be sufficient to establish a real risk of serious harm, but his individual circumstances reached the lower threshold and showed substantial grounds that he would face a risk upon a return. The CNDA granted subsidiary protection to the applicant.



## Exclusion from international protection for the commission of serious non-political crimes

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [G. and V. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 21036880 and 21036879 C+, 18 January 2023.

*The CNDA granted subsidiary protection to the wife and children of a Mongolian applicant but applied an exclusion clause to the latter.*

The CNDA granted subsidiary protection to the wife and children of a bodyguard and henchman of the chairman of the board of directors of a Mongolian business conglomerate. The father had bribed, intimidated and brutalised opponents of projects of his employer and had settled the employer's private disputes. The CNDA excluded him from international protection.



## Reception

### ECtHR judgment on the lack of enforcement of a decision ordering the French authorities to provide emergency reception accommodation to asylum applicants

ECtHR, [M.K. and Others v France](#), 34349/18, 34638/18, 35047/18, 8 December 2022.

*The ECtHR found a violation of Article 6(1) of the Convention when national authorities refused to implement an interim measure of providing emergency accommodation to asylum applicants.*

The French state was ordered by an administrative court to find emergency accommodation for asylum applicants from the Democratic Republic of the Congo. The case was brought before the ECtHR, as the French authorities had not enforced the judicial order.

The ECtHR ruled that the decision to grant or refuse emergency accommodation constituted a civil right and its lack of enforcement in this case violated Article 6(1) of the European Convention. The court observed that while the applicants had been proactive in their efforts to enforce the order, the competent authorities had a passive attitude, only providing emergency accommodation after the ECtHR indicated interim measures.



## **ECtHR interim measures ordered to the government of Belgium for reception conditions of applicants for international protection**

**ECtHR, *Al-Shujaa and Others v Belgium*, No 52208/22 and 142 others, 13 December 2022.**

The ECtHR indicated an interim measure to the government of Belgium concerning 143 homeless asylum applicants in Belgium who were not provided with accommodation although they had obtained domestic decisions from the Brussels Labour Court, which directed Fedasil to assign them a place of accommodation, which had become final.

## **ECtHR interim measures ordered to the government of Malta for reception conditions of unaccompanied minors**

**ECtHR, *J.B. and Others v Malta*, No 1766/23, 11 January 2023.**

The ECtHR ordered interim measures under Rule 39 of the Rules of the Court to the Government of Malta. It asked the authorities “to ensure that the applicants’ conditions are compatible with Article 3 of the Convention and with their status as unaccompanied minors”.

## **Reception conditions in the Netherlands**

**Netherlands, Court of Appeal of The Hague [Gerechtshof Den Haag], *State of the Netherlands (Ministry of Justice and Security) and Central Agency for the***

***Reception of Asylum Seekers v Refugee Work Netherlands Foundation (VluchtelingenWerk Nederland)*, 200.317.231/01, 20 December 2022.**

*The Court of Appeal of The Hague found that the reception conditions for asylum applicants violated the recast RCD and demanded equal treatment for Ukrainian and other third-country asylum applicants.*

The Court of Appeal of the Hague noted that the Netherlands was facing various challenges in ensuring that reception conditions for asylum applicants meet the requirements set in the recast RCD. Namely, the court noted that after the maximum occupancy rate for regular accommodation was reached, crisis emergency shelters had to be built, in which, as in over-crowded regular accommodation, the basic needs, health and safety of asylum applicants cannot be safeguarded. This includes a lack of a place to sleep and privacy, limited access to drinking water, sanitation facilities, food, health care and education for children.

The court further observed that these poor reception conditions, acknowledged by all parties to the case, affected unaccompanied minors and vulnerable persons in particular.

With regard to the allegation presented by the Refugee Work Netherlands Foundation (VWN) that there was discrimination between Ukrainian applicants and other third-country applicants, the court ruled that, although they were not legally entitled to better conditions by the relevant Dutch regulation, in practice Ukrainians received better reception conditions stemming from the fact that municipalities were responsible for their accommodation rather than the Central Agency for the Reception of Asylum Seekers.



The court ruled that the state acted unlawfully towards asylum applicants from countries other than Ukraine, who cannot access reception conditions of the same quality, without an objective justification for it, and referred to the rest of its decision on changes to implement to meet the standards of the recast RCD.

### **Organisation of emergency reception in the municipality of Jabbeke in Belgium on a site affected by environmental pollution**

**Belgium, Council of State [Raad van State - Conseil d'État], [The Belgian State and Fedasil v The Municipality of Jabbeke](#), No 255.206, 7 December 2022.**

*The Council of State overturned a ban of 3 months on the organisation of emergency reception for asylum applicants in the municipality of Jabbeke (Flanders).*

In an urgent procedure, the Council of State suspended the decision of the Mayor of Jabbeke of 19 November 2022 which prohibited, for a period of 3 months, the organisation of emergency reception places for asylum seekers on the former civil protection site in Jabbeke. It argued that the site was contaminated with PFAS chemicals and there was no clear plan to ensure that children would not access these areas.

The Council of State considered *prima facie* that the Mayor of Jabbeke wrongly considered that it was necessary, for reasons of public safety and health, to prohibit the organisation of emergency reception for 3 months. The council noted that the Secretary of State for Asylum and

Migration had undertaken to implement measures to manage the two issues raised by the Mayor of Jabbeke.

### **Reduction or withdrawal of financial allowance**

**Sweden, Supreme Administrative Court [Högsta förvaltningsdomstolen], [Applicant v Migration Agency \(Migrationsverket\)](#), 6933-20, 13 January 2023.**

*The Supreme Administrative Court ruled that the Migration Agency can revoke a decision on daily allowance or reduce the allowance when it is proven that the applicant has personal financial resources.*

According to the Supreme Administrative Court, the law governing the reception of asylum seekers makes a lack of personal funds a prerequisite for assistance. Other clauses and declarations specify that the rulings should stand as long as the conditions for receiving help do.

The court determined it was evident from the rules that the decision to give a daily allowance had been made considering the need and it could be revoked if circumstances necessitating assistance changed.





## Detention

### ECtHR judgment on the state's failure to protect the life of applicants for international protection placed in detention

ECtHR, [\*Daraibou v Croatia\*](#), No 84523/17, 17 January 2023.

*The ECtHR found a violation of Article 2 of the European Convention under both substantive and procedural aspects, due to the failure of Croatian authorities to protect the life of a Moroccan applicant held at a police station where a fire had broken out, leading to his severe injury and the death of other people, and due to the lack of an effective investigation of the incident.*

A Moroccan applicant brought a case before the ECtHR claiming he had suffered life-threatening injuries due to neglect by police officers in a police detention centre in Croatia when a fire had broken out. Under the substantive aspect of Article 2 of the Convention, the ECtHR found that Croatian authorities failed to provide the applicant with sufficient and reasonable protection of his life, and under the procedural aspects of Article 2 of the Convention, the ECtHR held that Croatia failed to implement the provisions of domestic law guaranteeing respect for the right to life and deter similar life-endangering conduct in the future.

### ECtHR judgment on the unlawfulness of detention when the asylum procedure is pending

ECtHR, [\*Dshijri v Hungary\*](#), No 21325/16, 23 February 2023.

*The ECtHR found a violation of Article 5(1) of the European Convention for the unlawful detention of an applicant pending his asylum procedure in Hungary.*

An Iraqi national who requested asylum in Hungary was placed in detention pending his asylum proceedings, from 25 September until 23 December 2015, when he was granted subsidiary protection. The court found a violation of Article 5(1) of the ECHR and did not accept that the applicant's detention was meant to prevent unauthorised entry to the country, as he was provided with a residence permit on humanitarian grounds pending the outcome of the asylum application.

Also, detention did not fall under Article 5(1)(b) for non-compliance with the lawful order of a court or to secure the fulfilment of an obligation prescribed by law. In addition, there was no indication of the applicant's failure to cooperate. Finally, the court noted that the fact that the applicant left Hungary after his release does not affect the court's conclusion.

### ECtHR judgment on the detention of a family with minor children pending a return from Poland to Russia

ECtHR, [\*R.M. and Others v Poland\*](#), No 11247/18, 9 February 2023.

*The ECtHR ruled that the detention of a mother and her three children following a*

*Dublin transfer from Germany to Poland and pending a return to Russia was unlawful.*

A mother and her three children were detained in Poland after a Dublin transfer from Germany. The Polish authorities started procedures to expel the applicants from the territory and a district tribunal ordered their detention in a foreigners' centre.

The court found a violation of Article 5(1) of the ECHR with regard to the children and Article 5(4) of the ECHR with regard to all applicants. Considering the length of detention for the children, the court noted that the measure was not of last resort and there was a lack of due diligence to limit the detention to the strict minimum.

The court also noted that the applicants were only orally informed about the Border Guard's applications for an extension of the detention measure, so the legal basis and the reasons for detention were not sufficiently explained to the applicants, who did not have a fair opportunity to challenge the legality of detention before a court.

### **Follow-up to the CJEU judgment of M.A. ([C-72/22 PPU](#)) on the detention of asylum applicants on the sole ground that they were staying illegally during a mass influx**

**Lithuania, Supreme Administrative Court [Lietuvos vyriausybės administracinis teismas], [Centre for the Registration of Foreigners of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania v T.A., E.S.](#)**

**[and their minor children K.A., K.A., S.A., A-1289-602/2023, 19 January 2023.](#)**

*The Supreme Administrative Court adopted the CJEU's interpretation on the detention of asylum applicants on the sole ground that they were staying illegally during a mass influx of third-country nationals (M.A. v State Border Protection Service, [C-72/22 PPU](#)).*

The Supreme Administrative Court noted that, according to Article 2(h) of the recast RCD, accommodation with restricted freedom of movement amounts to detention and as such should be applied only as a last resort, in accordance with Lithuanian law and jurisprudence of the Constitutional Court. It also reaffirmed that restrictions on the freedom of movement amount to a separation from the rest of the population, which constitutes detention, therefore enabling a review of the legality of the detention.

The court also questioned the application of an accommodation regime that has been qualified as detention in its own jurisprudence and in CJEU judgments (*M.A. v State Border Protection Service*, [C-72/22 PPU](#), 30 June 2022). The court concluded that refusing entry to the national territory and detaining asylum applicants despite filing an application at the border and establishing their identity means that the authorities regard all asylum applicants as having entered illegally, which confirms that there is no assessment of individual circumstances when applying the accelerated procedure and resolving accommodation issues. The court also recalled that according to previous case law, vulnerable persons and children cannot be detained, except in exceptional circumstances.

The court asserted that, considering Lithuanian law interpreted according to the relevant Directives as well as its own and CJEU case law, there was no lack of legal basis for the application of an alternative measure to detention. Therefore, it dismissed the appeal of the Centre for the Registration of Foreigners.



## Content of protection

### Unlawfulness of additional waiting periods for family reunification in the Netherlands

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], 8 February 2023.

- ✚ [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\), 202207360/1/V1, NL22.25050](#)
- ✚ [Applicant \(No 2\) v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\), 202207400/1/V1, No 22/7709](#)
- ✚ [Applicant \(No 3\) v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\), 202207496/1/V1, NL22.20578](#)

*The Council of State ruled that the State Secretary for Justice and Security cannot apply the family reunification measure (a waiting period of 6 months) as it is contrary to Dutch and EU laws.*

The Council of State noted that the reception system was under great pressure and agreed with the State Secretary that the situation needed to be





rectified quickly. However, the Council of State ruled that there was no legal basis in Dutch law for the family reunification measure which imposes a waiting period of 6 months. It further noted that even if the family reunification measure would have had a legal basis, the implementation of that measure must remain within the limits of Dutch law, which was not the case, as the Aliens Act 2000 states that family members have 3 months to collect a provisional residence permit and the State Secretary may not ignore or postpone that deadline.

Regarding EU law compliance, the council noted that the measure was also contrary to the Family Reunification Directive, as the shortcomings in the asylum reception system did not meet the particularly high threshold required for an exception and the facts submitted by the parties did not show that the family reunification measure was a necessary and suitable solution for the problems in asylum reception.

## Determination of age in family reunification following a CJEU ruling

**Finland, Supreme Administrative Court [Korkein hallinto-oikeus], [Applicant v Finnish Immigration Service](#), KHO:2023:13, 7 February 2023.**

*The Supreme Administrative Court annulled a final decision following a judgment of the CJEU on the determination of a minor's age in a family reunification procedure.*

An Iraqi minor had a family reunification application rejected because he became of age by the time the Finnish Immigration Service took the decision. After the

negative decision became final, the CJEU ruled in [B.M.M. and Others v Belgium](#), on 16 July 2020, that the determination of the age of a minor in the family reunification procedure is made based on the date of the application and not the date of decision.

The Supreme Administrative Court annulled the negative decision and referred the case back for reassessment by the FIS, which must consider the applicant as minor. The court also stated that a new application would not be effective for the applicant.

## Opening a bank account

**Bulgaria, Supreme Administrative Court [Върховен административен съд], [Unicredit Bank v Applicant](#), No 11117, 5 December 2022.**

*The Supreme Administrative Court ruled on access to payment and the right to open a bank account for a beneficiary of international protection.*

The Supreme Administrative Court ruled in a case concerning an Afghan beneficiary of subsidiary protection that a national bank can refuse to open a bank account for basic operations under the Law on Payment Services and Payment Systems only in written format and through a reasoned decision.



## Revocation of protection for a beneficiary entails revocation of protection for his/her family members

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [S. and S. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), Nos 22025037 and 22024535 R, 22 December 2022.

*The CNDA ruled that the revocation of refugee protection for reasons of public security ends protection for the family members who received protection based on that of the former beneficiary of protection.*

In two decisions, the CNDA noted that, while the revocation of refugee protection for reasons of public security does not imply that the person does not qualify as a refugee and does not exempt the state from offering protection against *refoulement*, it effectively ends the protection granted to the family unit, as it entails a change in the circumstances that justified the recognition of protection of the family members. The court also specified that persons who had obtained refugee protection through the application of the principle of family unit could obtain a residence card if they had regularly resided in France for 5 years. With regard to the two applicants, the court stated that both could access either Kosovar or Serbian citizenship and highlighted that both Kosovo\* and Serbia were considered safe countries of origin.

*Kosovo\** - This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ opinion on the Kosovo declaration of independence.



## Temporary protection

### Benefiting from temporary protection without the need to submit a formal request

Spain, Supreme Court [Tribunal Supremo], [Don Pelayo v Government Delegation in Madrid \(Delegación de Gobierno en Madrid\)](#), No 4625/2022, 12 December 2022.

*The Supreme Court interpreted the Council Implementing Decision 2022/382 of 4 March 2022 as not requiring applicants to submit a formal application to receive temporary protection.*

A Ukrainian had been issued an expulsion order since 2019, following multiple robbery convictions. Before the Supreme Court, he argued that his expulsion order should be annulled in light of the Temporary Protection Directive, Council Implementation Decision (EU) 2022/382, and Spanish government order PCM/170/2022 extending the decision.

The Supreme Court held that the Temporary Protection Directive did not exclude people with an expulsion order, nor required applicants to initiate a procedure, but only to prove their identity and residence status. It added that order PCM/170/2022 extended temporary protection to people “who were in an irregular situation in Spain [and who] are unable to return to Ukraine” and that the



applicant's crimes do not justify an exception to the Directive.

**Spain, Supreme Court [Tribunal Supremo], [Doña Angustia v Public Administration \(Administracion General del Estado\)](#), STS 4822/2022, 21 December 2022.**

*The Supreme Court reaffirmed the automatic application of temporary protection to all potential beneficiaries who proved their identity and expressed their will to receive the protection.*

The Supreme Court confirmed its decision of 12 December 2022 by reaffirming that subject to Council Implementation Directive (EU) 2022/382 of 4 March 2022 and Spanish government order PCM/170/2022 of 9 March 2022 temporary protection shall be granted automatically to every person who proved their identity and expressed their will to receive protection. The court noted that, contrary to subsidiary protection, temporary protection does not require beneficiaries to establish that, should they return to their country of origin, they would face a real risk of suffering or serious harm.

## **The impact of registering for temporary protection on proceedings for international protection**

**Bulgaria, Administrative Court, City of Sofia [bg. Административен съд - София град], [The Foundation for Access to Rights v State Agency for Refugees](#), 3462, 21 December 2022.**

*The Administrative Court of Sofia-City ruled on the suspension of registrations for international protection by Ukrainian*

*citizens and their compulsory registration for temporary protection.*

Through an order, the State Agency for Refugees suspended the registration of Ukrainians for international protection, terminated proceedings already initiated to examine applications for international protection, and registered them for temporary protection. The Foundation for Access to Rights brought the case before the Administrative Court, arguing that under Article 17 of the Temporary Protection Directive, beneficiaries of international protection have the right to access the international protection procedure at any time.

The Administrative Court ruled that, in accordance with the Temporary Protection Directive and Operational Guidelines of the European Commission, the existence of temporary protection does not exclude the examination of the application for international protection and the regime for temporary protection must not obstruct an applicant's chances of receiving refugee status.

**Bulgaria, Administrative Court, City of Sofia [bg. Административен съд - София град], [O.V. and M. V. v State Agency for Refugees](#), No 7901, 21 December 2022.**

*The Administrative Court of Sofia City partially annulled an order of the Chairman of the State Agency for Refugees, according to which registration and proceedings for international protection from displaced persons from Ukraine were terminated due to being granted temporary protection.*

The case concerned appeals submitted by two Ukrainian nationals whose applications for international protection were



terminated on the basis of Order No 263/8 of April 2022 of the Chairman of the State Agency for Refugees under the Council of Ministers. The court examined *ex officio* the legality of the order and found that the Law on Asylum and Refugees does not confer competence to the Chairman of the State Agency for Asylum to issue administrative acts which concern the grounds for terminating proceedings for international protection.

In addition, the court noted that the grounds for termination of international protection, as provided in the Law on Asylum and Refugees, does not include the granting of temporary protection. The provisions of Order No 263/8 of April 2022 were declared null and void. The case can be further appealed before the Supreme Administrative Court.

## Food provision for persons displaced from Ukraine

**Bulgaria, Supreme Administrative Court [Върховен административен съд], [The Foundation for Access to Rights v Council of Ministers](#), No 11310/2022, 20 December 2022.**

*The Supreme Administrative Court ordered an interim measure to suspend a decision by the Council of Ministers which ended food provision for persons displaced from Ukraine.*

The Foundation for Access to Rights (FAR) asked the Supreme Administrative Court to suspend Decision No 908 of the Bulgarian Council of Ministers which ended the provision of food to displaced Ukrainian nationals.

The court ruled that the cancellation of food provisions would cause significant

harm and would endanger life and health. The court held that the public interest in limiting the cost of implementing the general administrative act and feeding persons displaced from Ukraine was outweighed by the risk of significant and irreparable harm to vulnerable persons, the humanitarian interest of society as a whole in empathising with the fate of displaced persons and by the private interest of the persons themselves in securing normal living conditions in a country in which they have chosen to seek protection.

As a result, the court suspended the implementation of the decision of the Council of Ministers.

**Bulgaria, Supreme Administrative Court [Върховен административен съд], [Foundation for Access to Rights \(PHAR\) v Council of Ministers of the Republic of Bulgaria](#), No 1516, 13 February 2023.**

*The Supreme Administrative Court confirmed to end the implementation of the decision of the Council of Ministers to stop food provision for displaced Ukrainian nationals.*

The Supreme Administrative Court confirmed the ending of the implementation of the Council of Ministers' decision No 908/16.11.2022 which ended the provision of food to displaced Ukrainian nationals. After balancing the interests at stake, the court stated that the humanitarian situation prevails, as a lack of food would entail a real danger and could cause an irreparable harm to displaced Ukrainian nationals.



## Statelessness

### Persons born in Western Sahara

France, Council of State [Conseil d'État], [M.D.A. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 457625 B, 27 December 2022.

*The Council of State held that the recognition of the status of a stateless person implies establishing that the state likely to regard a person as its national does not consider him/her as such.*

An applicant from Western Sahara challenged a decision by which OFPRA refused to recognise him as stateless, based on his refusal to address Moroccan authorities to obtain identity documents although his nationality appeared as Moroccan in his birth certificate. The Council of State recalled that the status of a stateless person is recognised for any person meeting the definition in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons. The council added that recognising the status of a stateless person implies establishing that the state likely to regard a person as its national does not consider him/her as such. The council considered that the applicant did not seriously dispute the mention of Moroccan nationality in his birth certificate and that Western Sahara's inclusion in the list of non-self-governing territories under Article 73 of the UN Charter is not sufficient to consider persons of Sahrawi origin who received Moroccan nationality as stateless.



## Return

### CJEU judgment on the best interests of a minor in return proceedings

CJEU, [Federal Republic of Germany v G.S.](#), C-484/22, 15 February 2023.

*The CJEU ruled that Article 5(a) and (b) of the Return Directive requires that the best interests of the child and family life must be protected in proceedings leading to the adoption of a return decision.*

G.S., a minor born in Germany and a national of Nigeria, was issued a decision refusing international protection and a notice of intention to deport by BAMF. Earlier, the applicant's father and one sister were issued decisions granting residence permits on humanitarian grounds, while the applications made by the mother and another sister were refused but their presence in Germany was tolerated.

The CJEU held that Article 5(a) and (b) of the Return Directive is to be interpreted as requiring that the best interests of the child and the family life of that child be protected in proceedings leading to the adoption of a return decision in respect of a minor, and it is not sufficient for that minor to rely on the interests in subsequent proceedings relating to the enforcement of the return decision. It further added that Member States must carry out an in-depth assessment of the situation of the minor, taking due account of the best interests of the child and his/her family life.

