

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

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)
BFA	Federal Office for Immigration and Asylum Bundesamt für Fremdenwesen und Asyl (Austria)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CoE	Council of Europe
COI	Country of origin information
CNDA	National Court of Asylum Cour Nationale du Droit d'Asile (France)
CRC	United Nations Convention on the Rights of the Child
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 associate countries
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
FGM/C	Female genital mutilation/cutting
IPAT	International Protection Appeals Tribunal (Ireland)
Member States	Member States of the European Union
NGO	Non-governmental organisation





OFFRA	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
SAR	State Agency for Refugees (Bulgaria)
TPD	Temporary Protection Directive. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof



Main highlights

The interim measures, decisions and judgments presented in this edition of the “EUAA Quarterly Overview of Asylum Case Law, Issue No 2/2023” were pronounced from March 2023 to May 2023.

Court of Justice of the European Union (CJEU)

The CJEU interpreted the Dublin III Regulation in [E.N., S.S., J.Y. v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#). The court stated that after the suspension of a Dublin transfer pursuant to Article 27(3) or (4), a national court may adopt an interim measure so that the authorities do not take a new decision while the outcome of the second appeal is pending and the transfer time limit is suspended until the outcome.

The CJEU interpreted the concept of a subsequent application within the meaning of Article 33(2d) of the recast Asylum Procedures Directive (APD) in [J.B., S.B., F.B. v Bundesrepublik Deutschland \(Federal Republic of Germany\)](#), when an applicant returned to the country of origin after the first application was refused.

In [X,Y, A, B v Belgian State](#), the CJEU ruled that it is contrary to EU law to require, without exception, to submit an application for family reunification in person before a competent diplomatic representation.

European Court of Human Rights (ECtHR)

The ECtHR announced that the judgment in [S.H. v Malta](#) remained final as the request by the government of Malta to refer it to the Grand Chamber was dismissed on 22 May 2023.¹

On 1 June 2023, the ECtHR also announced that it has decided to lift the interim measures indicated to Belgium in 1,350 cases and to strike the applications out of its list as the applicants had not submitted application forms.²

Access to the territory of Member States

In the case [R.N. v Hungary](#), the ECtHR found a breach of Article 4 of Protocol No 4 and Article 13 of the European Convention on Human Rights (ECHR), because an unaccompanied minor was subjected to a collective and violent expulsion to Serbia, did not have access to the asylum procedure and lacked an effective remedy.

In [J.A. and Others v Italy](#), the ECtHR found violations of the European Convention for the illegal detention of Tunisian nationals in Lampedusa, their inhuman treatment due to inadequate detention conditions and their collective expulsion.

¹ ECtHR, [Press Release](#), 23 May 2023.

² ECtHR, [Press Release](#), 1 June 2023.



Inadequate reception facilities

In [A.D. v Greece](#), the ECtHR concluded to a violation of Article 3 of the ECHR due to inadequate reception conditions for a pregnant woman in the Samos Reception and Identification Centre.

Use of detention while an asylum procedure is pending

The ECtHR ruled in two judgments that Hungary violated Article 5(1) of the European Convention for unlawfully detaining applicants while the examination of their asylum requests were pending ([H.N. v Hungary](#), and [M.M. v Hungary](#)).

Use of detention pending a Dublin transfer

In [AC and MC v France](#), the ECtHR found violations of Article 3 of the European Convention for inadequate conditions of detention for a mother and her child pending a Dublin transfer and of Article 5(1) and (4) regarding the baby.

Use of detention while awaiting a return

In [N.M. v Belgium](#), the ECtHR found no violation of Articles 3 and 5 in a case concerning the expulsion of an Algerian national, detained for 31 months in a closed centre in Belgium pending his removal on the grounds of being a risk to public order and national security.

The United Nations

The UN Human Rights Committee rejected a claim as unsubstantiated which was made by a woman who risked being subjected to an honour killing by her family, for having a child out of wedlock, if returned from Denmark to Morocco.

National courts

Referrals to the CJEU for a preliminary ruling

In Austria, the Supreme Administrative Court [referred](#) questions to the CJEU for a preliminary ruling on Article 10 of the recast Qualification Directive (QD) on whether 'family' in the context of a blood feud may be considered a 'particular social group'.

Access to the asylum procedure

The Tribunal of Milan and the Tribunal of Rome [found](#) significant delays in registering the asylum applications of two third-country nationals, and ordered the competent police office to register the applications so that the persons could benefit from reception conditions and other rights.





Dublin transfers

Several judgments were issued by national courts which analysed reception conditions, access to the asylum procedure and/or the use of detention in [Belgium](#), [Bulgaria](#), [Croatia](#), [Hungary](#), [Italy](#), [Lithuania](#), [Malta](#) and [Poland](#).

Legal assistance and counselling

In Germany, the Federal Administrative Court [clarified](#) the right of NGOs to access reception facilities for counselling purposes.

Use of detention

In Greece, the Athens Administrative Court of First Instance [clarified](#) that it is illegal to detain a person who submitted a scheduling application for the registration of an asylum application on the online platform operated by the Ministry of Migration and Asylum because the electronic submission establishes a person's status as an asylum applicant.

Military service by Russian nationals

In Bulgaria, the Supreme Administrative Court [rejected](#) the appeal of a Russian national who claimed asylum due to a fear of conscription.

In Latvia, the District Administrative Court [upheld](#) the appeal of a Russian national who fled Russia to evade military conscription as he opposed the war in Ukraine.

Female applicants from Afghanistan

In Luxembourg, the administrative court [provided](#) refugee protection in three cases concerning women from Afghanistan on account of the general situation for women in the country, which had gradually worsened since the Taliban took power in August 2021.

In Slovakia, the Košice Regional Court [requested](#) the administrative authorities to investigate separately the treatment of Afghan women who refuse to comply with the newly-imposed restrictions on their rights.

Climate change

The Italian Court of Cassation [ruled](#) that the consequences of climate change were relevant in the assessment of an application for international protection submitted by an applicant from Pakistan.

Subsidiary protection for applicants from Somalia, Syria and Ukraine

In France, the National Court of Asylum (CNDA) [ruled](#) that the Somali region of Hiran was experiencing a situation of indiscriminate violence of exceptional intensity.

In Iceland, the Immigration Appeals Board [granted](#) protection to a Somali national belonging to the Marehan tribe, a minority in Central Shabelle.





In Denmark, the Refugee Appeals Board [assessed](#) the security situation in the Syrian province of Latakia.

In France, the CNDA [examined](#) the security situation in the Oblasts of Khmelnytskyi, Vinnytsia and Volhynia in cases concerning Ukrainian nationals.

Secondary movements of beneficiaries of international protection

In France, the CNDA [interpreted](#) the elements required to confirm the existence of international protection which was obtained in another EU Member State and examined the living conditions of an Afghan national who was provided international protection in Hungary.

In Germany, the Regional Administrative Court of Oldenburg [found](#) a risk of inhuman or degrading treatment for a single and healthy man if returned to Bulgaria, where he was a beneficiary of international protection.

The right to access the labour market

In the Netherlands, the Court of the Hague seated in Arnhem [ruled](#) that asylum applicants can work for more than 24 weeks a year and that such a restriction on the right to work was contrary to EU law.

Availability of effective remedies

In Malta, the First Hall of the Civil Court [confirmed](#) that no ordinary remedy is available against a negative decision issued by the International Protection Agency in an accelerated procedure, which is then confirmed by the International Protection Appeals Tribunal.

Temporary protection

In Spain, the Supreme Court [ruled](#) that temporary protection cannot be granted to beneficiaries of another form of international protection.





Access to the asylum procedure

ECtHR judgment on collective expulsion to Serbia

ECtHR, [R.N. v Hungary](#), No 71/18, 4 May 2023.

The ECtHR ruled that Hungary subjected an unaccompanied minor to a collective expulsion to Serbia in violation of Article 4 Protocol No 4 to the Convention and did not provide effective remedies in violation of Article 13 of the Convention read in conjunction with Article 4 of Protocol No 4.

A 14-year-old, unaccompanied Pakistani national was allegedly assaulted by members of the “field guards” when crossing the border into Hungary on 21 June 2017, then apprehended by police officers and taken to the border where he was forced to walk in the direction of Serbia, without being provided with the opportunity to claim asylum. In Serbia, he was examined by *Médecins Sans Frontières*, which confirmed that he had suffered a head wound.

The court noted its previous findings in [Shahzad v Hungary](#) (2021) and held that the applicant’s removal was collective in nature, carried out without any decision or examination of the individual situation, and in the absence of any realistic chance of entering the transit zone to apply asylum. The court highlighted that the applicant was an unaccompanied minor and in a situation of extreme vulnerability, factors which should take precedence over considerations relating to the status of

irregular migrants. Thus, the court concluded that there had been a violation of Article 4 of Protocol No 4 and Article 13 of the ECHR.

Delays in the registration of applications

Italy, Civil Court [Tribunali], [Applicant v Rome Police Headquarters](#), R.G. 7365/2023, 31 March 2023.

The Tribunal of Rome upheld an appeal on grounds that a Georgian applicant could not register his application within the time limit prescribed by law and ordered the police to register it within 6 days (extended to 16 days).

A Georgian national had made repeated attempts to apply for asylum at the Police Office in Milan, even spending the night in front of the entrance and going to the office in the presence of a lawyer. In March 2023, an appointment was offered for 18 September 2023 and noted in his passport to prevent a removal from Italy.

Upon appeal, the Tribunal of Rome ruled that the appointment given greatly surpassed the statutory deadlines, resulting in a prolonged lack of access to the reception system and the benefits given to asylum applicants.

Italy, Civil Court [Tribunali], [Applicant v Rome Police Headquarters](#), R.G. 8764/2023, 9 May 2023.

The Tribunal of Milan upheld an appeal by an Egyptian national who had been unable to make an appointment to register an application for international protection and ordered the Police Office of Milan to proceed with the receipt of the application.

An Egyptian applicant who arrived in Italy in August 2022 encountered difficulties in getting an appointment to register an

asylum application through the "Easy Booking" system, despite multiple attempts.

The Tribunal of Milan allowed the applicant's appeal and found the failure to formalise his application to be in breach of his right to asylum. Consequently, the applicant stayed irregularly in Italy and was at risk of deportation. The applicant did not have access to material reception conditions or integration programmes.

Examination of evidence concerning pushbacks at the border with Belarus

Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny], *M. v Border Guard*, II SA/Bk 145/23, 13 April 2023.

The Voivodeship Administrative Court in Białystok allowed an appeal by a Yemeni national against the Border Guard after he was returned to Belarus. The court noted that the lack of evidence in the case was a consequence of the actions of the Border Guard.

A Yemeni national complained against the Border Guard on grounds that the lack of evidence of pushbacks at the border with Belarus and his presence on the territory was due to the actions of the Border Guard. The administrative court of Białystok allowed the appeal and considered that, in the context of pushbacks, the applicant's statements constituted the main evidence and stated that the practice of returning foreigners to the state border was contrary to the Constitution, the EU Charter, the ECHR and the Geneva Convention.



Dublin procedure

CJEU judgment on adopting interim orders on transfer decisions which are contested before the second appeal instance

CJEU, *E.N., S.S., J.Y. v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, C-556/21, 30 March 2023.

The CJEU held that after the suspension of a Dublin transfer pursuant to Article 27(3) or (4) of the Dublin III Regulation, a national court may adopt an interim measure so that the authorities do not take a new decision while the outcome of the second appeal is pending and the transfer time limit is suspended until the outcome.

The State Secretary appealed before the Council of State to request interim orders after Dublin transfer decisions were annulled in first instance appeals, so that it would not be required to take a new decision before the outcome of the second appeal stage and that the transfer time limit is suspended. The Council of State suspended the procedure and referred a question to the CJEU for a preliminary ruling.

The CJEU noted that Dublin transfers must be implemented as soon as practically possible, in accordance with Article 29(1) of the Dublin III Regulation, and applicants must have effective remedies that can suspend the implementation of a transfer decision, in accordance with Article 27(3).



The CJEU clarified that where the suspension of the implementation of the transfer decision results from Article 27(3) or (4), the transfer time limit runs from the final decision on the appeal against the transfer decision and not from the acceptance of the take charge or take back request.

The CJEU further added that Article 27(3) governs exclusively interim measures which may result, automatically or upon request by the applicant, from the lodging of an appeal or a request for a review brought at first instance against a transfer decision and not interim measures in the context of an appeal at second instance brought by the national authorities.

The court concluded that Article 27(4) cannot be applied in the case referred by the Council of State as the transfer decision was annulled at first instance, and thus, at second instance there no longer was a transfer decision that could be suspended.

In accordance with the principle of procedural autonomy, the court added that national legislation may provide that a court hearing an appeal at second instance may order interim measures at the request of the authorities without derogating from Article 29(1).

Dublin transfers to Belgium

Denmark, Refugee Appeals Board [Flygtningenævnet], [Applicants v Immigration Service](#), Dub-belg/2022/9, April 2023.

The Refugee Appeals Board overturned three decisions which initially allowed Dublin transfers to Belgium, after the Belgian authorities refused to provide guarantees for adequate living conditions, specifically accommodation, for Dublin transferees due to pressure on the reception system.

The Refugee Appeals Board examined three reopened cases in which it had previously confirmed Dublin transfers to Belgium under the condition that the Belgian authorities provide guarantees on adequate accommodation for the applicants.

In February 2023, the Belgian authorities informed the Danish Immigration Service that they cannot guarantee that accommodation can be offered shortly after arrival as the reception system was under great pressure. As a result, the Refugee Appeals Board overturned the Immigration Service's decisions on the Dublin transfer.

Dublin transfers to Bulgaria

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL22.20076, 2 March 2023.

The Court of the Hague seated in Arnhem held that the State Secretary must investigate further the situation in Bulgaria prior to concluding that a Dublin transfer can take place, considering indications that pushbacks take place after re-admission.

Taking into account AIDA reports on Bulgaria, the court considered that the applicant made it sufficiently plausible that the situation for Dublin transferees has deteriorated in Bulgaria. The court noted that AIDA reported on serious indications that pushbacks also took place for third-country nationals who were re-admitted by Bulgaria from other EU Member States. The court considered that the State Secretary should have conducted further research into the risk of Dublin transferees being returned without access to the asylum procedure or during the processing of their asylum applications, a fundamental





systemic deficiency which reached the particularly high threshold of severity.

Dublin transfers to Croatia

Denmark, Refugee Appeals Board [Flygtningenævnet], [Applicants v Immigration Service, Dub-Kroa/2023/1, March 2023.](#)

The Refugee Appeals Board confirmed two Dublin transfers to Croatia on the condition of guarantees of being provided access to the asylum procedure.

The Refugee Appeals Board upheld the Danish Immigration Service's decision to transfer an applicant to Croatia on the condition of the Immigration Service obtaining a guarantee from the Croatian authorities that the applicants' asylum case would be admissible in Croatia.

With regard to the reception conditions for asylum applicants, the board considered that there were no grounds to believe that there were general systemic flaws which would result in a risk of inhuman or degrading treatment as defined in Article 4 of the EU Charter.

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A. v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\), E-1488/2020, 22 March 2023.](#)

The Federal Administrative Court rejected an appeal against a Dublin transfer to Croatia, considering that Dublin transferees have access to the asylum procedure in Croatia.

Despite reports of pushbacks and several issues related to access to the asylum procedure in Croatia, the Federal Administrative Court ruled that the situation for Dublin transferees is different.

It noted that asylum seekers may face difficulties in reaching Croatia, but this is not applicable to Dublin transferees, especially when the Croatian authorities have agreed to a take back request. The court relied on AIDA reports and jurisprudence from other Member States to conclude that there was no indication that Dublin returnees would not be granted access to the asylum procedure.

Dublin transfers to Hungary

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Asylum \(BAMF\), 5 K 2643/22.A, 1 March 2023.](#)

The regional administrative court annulled a Dublin transfer to Hungary as the applicants, a family of four, would have difficulties in accessing the asylum procedure and to secure a minimum livelihood.

A four-member family from Azerbaijan contested an inadmissibility decision and a Dublin transfer to Hungary. The regional administrative court allowed their request and considered that they would be exposed to treatment contrary to Article 4 of the EU Charter due to difficulties in accessing the asylum procedure and the possibility to secure a minimum livelihood. The court based its examination on information available in the EUAA [Asylum Report 2022](#) and reports by civil society organisations.





Dublin transfers to Italy

Denmark, Refugee Appeals Board, [Applicant v Danish Immigration Service](#), Dub-Ital/2022/4/DH, and [Applicants v Danish Immigration Service](#), Dub-Ital/2023/3/DH, April 2023.

The Refugee Appeals Board referred two cases back to the Immigration Service for an additional examination of the situation of Dublin transfers to Italy.

The Refugee Appeals Board referred two cases back for an examination by the Immigration Service on the possibility of Dublin transfers to Italy despite an acceptance by the Member State. The board reaffirmed that Italy declared a state of emergency on 11 April 2023 and informed on 2 January 2023 to extend the temporary suspension of incoming Dublin transfers due to insufficient reception capacity and pressure at the border.

In the second case, the board also emphasised that the applicants were vulnerable and their personal circumstances should be taken into account when deciding on the Dublin transfer.

Denmark, Refugee Appeals Board [Flygtningenævnet], [Applicants v Immigration Service](#), Dub-Ital/2023/3 and Dub-Ital/2023/4, May 2023.

The Refugee Appeals Board referred two cases back to the Immigration Service for a further examination of the consequences of Italy having introduced a state of emergency in December 2022, which suspended incoming Dublin transfers for an indefinite period of time due to high pressure on its borders and insufficient reception capacity.

After Italy temporarily suspended incoming Dublin transfers for an indefinite period of time due to high pressure on its borders

and insufficient reception capacity, the Danish Refugee Appeals Board remitted two cases to the Immigration Service for further investigation into the impact on the reception and accommodation of Dublin transferees.

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Asylum \(BAMF\)](#), 22 K 6528/19.A, 14 March 2023.

The Regional Administrative Court of Cologne annulled a Dublin transfer to Italy, noting that there were far-reaching systemic deficiencies in Italy's asylum system.

The Regional Administrative Court of Cologne annulled a Dublin transfer decision issued by BAMF and held that there were far-reaching systemic deficiencies in Italy's asylum system. The court noted that on 5 and 7 December 2022, the Italian Ministry of the Interior informed Member States about its refusal to take back asylum applicants, citing technical reasons and lack of reception capacity for a limited period, without naming a specific end date. The court concluded that it could not be foreseen when Italy would be willing to meet its obligations under the Dublin III Regulation.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202207368/1/V1, and [Applicant \(2\) v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202300521/1/V1, 26 April 2023.

The Council of State annulled Dublin transfers to Italy because the interstate principle of mutual trust could not be applied in view of the reports on the lack of reception facilities in Italy.



An Eritrean and a Nigerian applicant contested their Dublin transfers to Italy, arguing that they would be subject to inhuman or degrading treatment. The Council of State noted that Italy was facing a lack of available reception places due to a mass influx of migrants. It underlined that, although the Italian authorities were not indifferent to the situation of asylum applicants, a transfer to Italy can result in material deprivation preventing the applicants from securing minimum needs (such as shelter, food and water).

Dublin transfers to Lithuania

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v BAMF](#), A 19 K 391/23, 27 March 2023.

The regional administrative court of Karlsruhe suspended a Dublin transfer to Lithuania due to a potential risk of deprivation of the freedom of movement, equating to detention within the meaning of Article 8 of the recast APD.

The regional administrative court of Karlsruhe suspended a Dublin transfer to Lithuania, considering that the decision was based on outdated information and jurisprudence on the risk of detention. Following legislative changes in July 2021, Lithuanian authorities were placing asylum seekers in centres where the freedom of movement was restricted, thus in breach of Article 6 of the EU Charter and Article 8 of the recast APD. Based on information from civil society organisations, Dublin returnees were reportedly taken to court upon arrival and subjected to an alternative to detention, namely they were placed in centres where the freedom of movement was restricted, which was equivalent to detention.

The court noted that the CJEU ruled on 30 June 2022 in the case [M.A. v State Border Protection Service at the Ministry of the Interior of the Republic of Lithuania](#), C-72/22 PPU, on the detention of asylum applications.³

Dublin transfers to Malta

Italy, Civil Court [Tribunali], [Applicant v Ministry of the Interior \(Ministero dell'interno\) - Department for civil liberties and immigration - Dublin Unit](#), R.G. 9690/2020, 1 April 2023.

The Tribunal of Lecce annulled a Dublin transfer to Malta considering that there was a risk of inhuman treatment for the applicant due to inadequate reception conditions in Malta.

The Court of Lecce annulled a Dublin transfer to Malta, considering that the applicant could be subjected to inhuman and degrading treatment as he would not be provided with adequate reception conditions. The court held that there were indications of systemic deficiencies in Malta's reception conditions, based on multiple reports by AIDA, UNHCR, Amnesty International and ECtHR case law ([Feilazoo v Malta](#)).

Dublin transfers to Poland

Denmark, Refugee Appeals Board [Flygtningenævnet], [Applicant v Immigration Service](#), Dub-Pole/2023/5, May 2023.

The Refugee Appeals Board allowed the Dublin transfer of a family to Poland under the condition of guarantees on access to the asylum procedure and reception conditions.

³ See EUAA, [Quarterly Overview of Asylum Case Law, Issue No 3/2022](#), 15 March 2023.

After examining reports from AIDA, the Association for Legal Intervention and the Polish Ombudsperson on detention and living conditions for asylum applicants and families in Poland, the Refugee Appeals Board concluded that there were no systemic deficiencies that would prevent Dublin transfers to Poland. However, the board highlighted in this specific case that the transfer of the family could be implemented only after individual guarantees were obtained from the Polish authorities that the applicants would be provided access to the asylum procedure and reception conditions in full compliance with CEAS and other international obligations.



First instance procedures

CJEU judgment on the concept of a subsequent application

CJEU, *J.B., S.B., F.B. v Bundesrepublik Deutschland (Federal Republic of Germany)*, C-364/22, 25 May 2023.

The CJEU interpreted the concept of a subsequent application within the meaning of Article 33(2)(d) of the recast APD.

The German Administrative Court of Minden referred questions to the CJEU for a preliminary ruling in a case concerning Lebanese nationals who were refused asylum in Germany and voluntarily returned to Lebanon in 2011. They came back to Germany in 2021, where they lodged applications for asylum, which were deemed to be subsequent applications and were dismissed as inadmissible.

The CJEU held that Article 33(2)(d) of the recast APD allows the rejection of a subsequent application as inadmissible when the applicant returned to the country of origin after the application was refused, irrespective of whether that return was voluntary or forced, and when the decision on the previous application did not concern the granting of subsidiary protection status, if the examination of grounds prohibiting removal was comparable to the examination carried out with a view to granting subsidiary protection status.



NGO access to reception facilities to provide legal assistance or counselling

Germany, Federal Administrative Court, [Non-governmental organisation v BAMF](#), BVerwG 1 C 40.21, 28 March 2023.

The Federal Administrative Court clarified the right of NGOs to access reception facilities for counselling purposes.

The Federal Administrative Court ruled that NGOs cannot be granted access to reception facilities unless specifically mandated by asylum applicants. The court clarified that neither national law nor the recast APD provide for unrestricted access to reception facilities. The court ruled that access with the purpose of providing legal counselling is conditioned by the explicit request by an asylum applicant in order to ensure the safety and security of the applicant within the accommodation premises.



Assessment of applications

Fear of military recruitment in Syria

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], [BF v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), W139 2261089-1, 21 April 2023.

The Federal Administrative Court granted refugee status to a Syrian applicant on the

grounds of a risk of persecution and military conscription.

The Federal Administrative Court overturned a negative decision on asylum and granted refugee protection to a Syrian applicant on the basis of a risk of persecution and military recruitment in Syria. Syrian legislation provides an obligation of 2 years of military service for those between 18-42 years old, and the applicant was listed as a reservist on the website of the Syrian Defence Ministry.

The court consulted updated country of origin reports, including the EUAA [Country Guidance Syria](#) of February 2023 and [COI report: Syria – Security situation](#) of July 2021 on the security situation and military services. It found that the only legal entry into the country was through Damascus Airport and the route to the applicant's region of origin would expose him to the risk of persecution by Syrian authorities due to recruitment to military service. There was no possibility for a legal conscientious objection or civilian alternative, and all conscripts could potentially be sent to the frontline, thus being forced to undertake military acts contrary to international law.

Fear of military service in the Russian war on Ukraine

Bulgaria, Supreme Administrative Court [Върховен административен съд], [Applicant v State Agency for Refugees \(SAR\)](#), No 1356/2023, 29 May 2023.

The Supreme Administrative Court refused a request for international protection lodged by a Russian national who fled conscription for the war in Ukraine.

The Supreme Administrative Court rejected the appeal lodged by a Russian national who fled his country of origin after





receiving a conscription letter. The court held that the existence of persecution was not proven and that there was no reason to believe that the Russian authorities were carrying out massive repression against citizens who protested against the president's policy. The court further reasoned that there was no particular danger of being detained and repressed if he returned to his country of origin. The court also added that there were no grounds for the application of the principle of refugee *sur place*.

Latvia, District Administrative Court [Administratīvā rajona tiesa], [A v Office of Citizenship and Migration Affairs of the Republic of Latvia](#), No A42-01257-23/26, 6 April 2023.

The District Administrative Court upheld the appeal of a Russian national who fled Russia to evade military conscription as he opposed the war in Ukraine.

The District Administrative Court found that refusing to serve in the military constituted a criminal offence punishable by imprisonment and that it would not be feasible and realistic for the applicant to obtain a decision in court to replace military service with an alternative civil service. Moreover, the Russian authorities may consider such refusal as political opposition.

The court consulted the EUAA COI report: [The Russian Federation – Military Service](#), December 2022. The court ordered the Office of Citizenship and Migration Affairs to grant refugee status within 1 month from the date of the decision.

Persecution based on membership in a particular social group

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], [Applicant v Federal Office for Aliens and Asylum \(BFA\)](#), Ra 2022/20/0289, 28 March 2023.

The Supreme Administrative Court referred questions to the CJEU for a preliminary ruling on Article 10 of the recast QD on the meaning of particular social group.

An Afghan national requested asylum in Austria claiming that he had a land dispute with his father and cousins, which resulted in the death of his father and a brother. The applicant claimed that the state does not offer protection for blood feuds and that he risked persecution from his family which constitutes a particular social group.

The Supreme Administrative Court submitted a preliminary ruling request before the CJEU on the interpretation of Article 10(1)(d) of the recast QD, seeking clarifications on the nature of a particular group and whether a distinct identity is required in the country of origin and whether the group must be perceived as different by the society in that country.

International protection for victims of human trafficking

Italy, Court of Appeal [Corte di Appello], [Applicant v Territorial Commission of Trapani](#), TRIP PA 21032023, 21 March 2023.

The Court of Appeal of Palermo upheld the appeal of a Nigerian woman from the Delta State for whom multiple indicators confirmed that she was a victim of trafficking in human beings.





A Nigerian woman from the Delta State unsuccessfully claimed asylum in Italy. In the appeal, the court overturned the negative decision and granted the applicant refugee status because it found several indicators of her being a victim of human trafficking. The court noted the applicant's fragmented statement as indicating her reluctance to retell the story, and further took into consideration her age, socioeconomic background and family marginalisation. Other indicators were her journey, being handed from person to person, and the non-return of her passport.

The court consulted the [EUAA COI report: Nigeria – Trafficking in Human Beings](#), 2021, which mentioned that women from the Delta State constitute a key profile of trafficking victims, and between 2017-2018, women from Nigeria made up 92% of trafficking victims in the EU.

Fear of persecution based on sexual orientation

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], [Applicant v BFA, W191 2182401-2](#), 2 May 2023.

The Federal Administrative Court overturned a negative decision on asylum for an Afghan national who claimed persecution based on sexual orientation.

The Federal Administrative Court overturned a negative decision on asylum in a case concerning a subsequent application lodged by an Afghan national on the basis of sexual orientation. By relying on updated country of origin information, including an EUAA COI report, the court noted that homosexuals were targeted by family members, neighbours or former partners and were subjected to threats and violence even before the Taliban took power in August 2021.

The court relied on the CJEU judgment, [Minister voor Immigratie en Asiel v X, Y and Z v Minister voor Immigratie en Asiel](#), C-199/12, C-200/12, C-201/12, of 7 November 2013 in assessing that an asylum applicant cannot be expected to hide his homosexuality to avoid persecution in his country of origin where there are legal provisions that punish homosexual acts. The court considered that the applicant must be granted refugee status.

Treatment of women in Afghanistan

Luxembourg, Administrative Court [Cour Administrative]:

✚ [A. v Ministry of Foreign and European Affairs, Directorate of Immigration, No 48022C](#), 16 March 2023.

✚ [and B. v Ministry of Foreign and European Affairs, Directorate of Immigration, No 48073C](#), 23 March 2023.

✚ [A., B., C. and D. v Ministry of Foreign and European Affairs, Directorate of Immigration, 48052C](#), 25 April 2023.

The Administrative Court granted refugee protection to women from Afghanistan on account of the general situation for women in the country, which had gradually worsened since the Taliban took power in August 2021.

The court held that women in Afghanistan were being subjected to the oppression of the Taliban on a daily basis, they were banned from most jobs in the civil service and many other sectors, and there was a regression of their civil, political, economic, social and cultural rights. The situation was illustrated by the abolition of the right of





girls to access secondary education, the compulsory wearing of hijab in public and the prohibition for women to travel without being accompanied by a man from their immediate family.

Slovakia, County (Regional) Court in Bratislava [sk. Košice], [E.I. v Ministry of Interior \(Ministerstvo vnútra\)](#), 7SaZ/1/2023, 22 March 2023.

The Košice Regional Court requested the authorities to investigate the treatment of Afghan women who refused to comply with the newly-imposed restrictions on their rights.

An Afghan woman argued that she would face persecution as a member of a particular social group because the Taliban regime unequally discriminates against and violates women's rights. It indicated that females who grew in more liberal cities were exposed to a greater risk of persecution than women in rural areas who always lived according to the Taliban rules. The Slovak Ministry of the Interior disagreed and rejected the claim for asylum.

In the appeal, the Košice Regional Court considered that the authorities must further investigate and consult updated country of origin information to understand whether there is a different treatment of women who refuse to comply with the newly-imposed restriction of their rights.

Security and humanitarian situation in Venezuela

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicants v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202107586/1/V2, 22 March 2023.

The Council of State confirmed a negative decision concerning asylum applications from Venezuelan nationals who based their claims on the general security and humanitarian situation.

A Venezuelan mother and minor child applied for asylum in the Netherlands as she feared being returned to Venezuela as her son refused to serve in the National Guard during his military service and is thus registered as a deserter.

The applicant also claimed that she was threatened by the colectivo (far-left armed paramilitary group) Ali Primera as she protested against the Maduro government and went to Plaza de Bolivar to listen to demonstrators. Although participation in demonstrations was deemed credible, the Council of State found no indication that she had been mistreated by colectivos or that she was a member of an opposition party.

The applicant further stated that they cannot return to Venezuela due to the general security and humanitarian situation. The Council of State noted that the security situation in some parts of Venezuela was concerning, but it cannot be classified as a widespread internal conflict. The court found that there was no risk of breaching Article 3 of the ECHR in the case of a return and confirmed the negative decision.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicants \(2\) v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202108141/1/V2, 22 March 2023.

The Council of State confirmed a negative decision for Venezuelan applicants who claimed to be in the negative interest of the authorities for not having the 'Carnet de la Patria'.





A married Venezuelan couple applied for asylum due to the general security situation and the risk of being accused of political opposition by Venezuelan authorities as they refused to apply for the *Carnet de la Patria* (homeland card). In the absence of proof that not having the card would attract the negative attention of Venezuelan authorities, the Council of State confirmed the negative decision.

On the security and humanitarian situation, the court referred to its findings in the ruling made on the same day where it found that the security situation does not warrant the need for protection.

Climate change in the context of international protection

Italy, Supreme Court of Cassation - Civil section [Corte Supreme di Cassazione], *Applicant v Ministry of the Interior (Ministero dell'interno)*, No 14168/2021, 11 April 2023.

The Court of Cassation upheld an appeal by a Pakistan national from the Punjab region, ruling that climate change in the country of origin was relevant for international protection.

The Italian Court of Cassation allowed an appeal lodged by a national from Pakistan and ruled that the consequences of climate change in the country of origin were relevant in the assessment of the need for international protection. The court relied on updated country of origin information which highlighted environmental disasters due to floods and the fact that Pakistan “is the seventh country in the world most affected by the effects of climate change”. The court considered that the contested decision was insufficiently reasoned and that the lower court failed to assess all relevant elements related to climate change.

Subsidiary protection: Applicant from Pakistan (Kashmir region)

Italy, Court of Appeal [Corte di Appello], *Applicant v Territorial Commission of Catania*, R.G 2182/2019, 2 March 2023.

The Court of Appeal of Catania overturned a negative decision and granted subsidiary protection to a Pakistani national from the Kashmir region on the ground of internal conflict in the region.

A Pakistani national claimed in an appeal before the Court of Appeal of Catania that the Territorial Commission of Catania had not assessed his application in light of the current situation in Pakistan. The applicant submitted updated COI from the EUAA and UNHCR to support his statements that the Kashmir region was experiencing internal conflict.

The Court of Appeal of Catania upheld the appeal and concluded that the region is characterised by intense violence due to the presence of paramilitary groups which fight for the autonomy of Kashmir.

Subsidiary protection: Applicants from Somalia

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.A. v Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20045459 C+, 6 April 2023.

The CNDA ruled that the Somali region of Hiran was experiencing a situation of indiscriminate violence of exceptional intensity.

The CNDA provided subsidiary protection to a Somali applicant from the city of Beledweyne. The court considered that, if returned to the country of origin, the applicant would run, solely by mere





presence in his region of origin, a real risk of suffering a serious threat to his life without being able to obtain protection from the authorities of his country. According to the court findings, this threat was the consequence of a situation of violence resulting from an internal armed conflict, likely to spread indiscriminately to civilians.

The court mentioned in its assessment the security incidents, the number of civilian victims and the displacement of populations generated by armed conflict which mainly opposed the forces of the Somali federal government, assisted by the African Union Transition Mission in Somalia (ATMIS) and Islamist militiamen.

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), [X v Directorate of Immigration](#), No 138/2023, 16 March 2023.

The Immigration Appeals Board granted international protection to a Somali national belonging to the Marehan tribe who constitutes a minority in Central Shabelle, his region of origin.

Both the first instance authority and the Immigration Appeals Board found that the discrimination and harassment the applicant was exposed to by Al-Shabaab on the basis of his belonging to a minority tribe in Central Shabelle, Somalia, did not amount to persecution. However, after consulting COI on the security situation in his region of origin and internal flight alternatives, the applicants were granted a form of protection similar to subsidiary protection, as provided by Article 15(c) of the recast QD.

Subsidiary protection: Applicants from Syria (Latakia province)

Denmark, Refugee Appeals Board [Flygtningenævnet], [Applicants v Immigration Service](#), 17 March 2023.

The Refugee Appeals Board assessed the security situation in the Syrian province of Latakia.

The Refugee Appeals Board confirmed the decisions of the Danish Immigration Service not to extend residence permits based on subsidiary protection because the general situation in the province of Latakia had significantly changed.

The board cited the EUAA [Country Guidance: Syria](#) (February 2023) and noted that, although there was still indiscriminate violence in the Latakia province, the level was not high and the province was thus not characterised as an area where anyone would be at a real risk of being subjected to ill treatment solely as a result of their mere presence.

However, based on individual circumstances, the applicants were granted refugee protection.

Subsidiary protection: Ukrainian applicants from western oblasts

France, National Court of Asylum, [S. and S. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), Nos 22007730 and 22006590 C+, [P. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 21016856 C+ and [L. and R. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 21057060 C+, 8 March 2023.

The CNDA held that the situation of indiscriminate violence resulting from the



armed conflict in the oblasts of Volhynia, Vinnytsia and Khmelnytskyi in Ukraine may justify the granting of subsidiary protection under Article L. 512-1 (3) of CESEDA, but rejected the requests in these cases for the lack of elements of individualisation to demonstrate a risk of serious harm to the applicants.

The three cases concerned applicants from the oblasts of Volhynia, Vinnytsia and Khmelnytskyi who claimed international protection on grounds related to the war and the security situation in Ukraine. The French CNDA ruled that the situation in the southern and eastern regions of Ukraine may be reaching the threshold of indiscriminate violence enabling the application of Article 15(c) of the QD, but in the respective oblasts of origin of the applicants, the number of security incidents was reduced, and they did not demonstrate that their mere presence in these regions would expose them to a real risk for their lives.

In the absence of sufficient proof to substantiate individual circumstances, the court found no risk and subsidiary protection was not granted.

Assessment of exclusion on grounds of serious non-political crime

Ireland, High Court, [T. v International Protection Appeals Tribunal and Anor](#), [2023] IEHC 271, 25 May 2023.

The High Court overturned a decision based on exclusion grounds because the IPAT failed to assess the case individually and adequately.

A Russian national contested the IPAT decision to exclude him from international protection on grounds that there were reasons to consider that he committed a serious non-political crime. The High Court

found that the lower court failed to identify the nature of the crime and did not conduct an individualised examination of the case. The court underlined the importance of a correct assessment since the consequence of finding an exclusion ground can constitute a severe prejudice for the applicant. The High Court consulted the CJEU judgment [Germany v B and D](#), C-57/09 and C-101/09, EU:C:2010:661, 9 November 2010 and the [EASO Practical Guide on Exclusion for Serious \(Non-Political\) Crimes](#) (December 2021).

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

Return of beneficiaries of international protection to Bulgaria

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 12 A 849/22, 2 March 2023.

The Regional Administrative Court of Oldenburg annulled an inadmissibility decision as it found a risk of inhuman or degrading treatment for the return to Bulgaria of a single and healthy beneficiary of international protection.

A beneficiary of international protection in Bulgaria reapplied for protection in Germany and BAMF adopted an inadmissibility decision.

The Regional Administrative Court of Oldenburg annulled BAMF's decision as it found, based on various reports from civil society organisations, that although the applicant is a young and healthy person, he will not be able to secure a minimum livelihood in Bulgaria, thus he was at risk of not finding accommodation and not

accessing housing, social rights and employment.

The court noted that due to a mass influx of displaced persons from Ukraine, it was practically impossible for beneficiaries of international protection to access basic needs, and the state and NGOs were not able to offer adequate support. The court concluded that the applicant would be subjected to inhuman or degrading treatment upon return and annulled the decision.

Return of beneficiaries of international protection to Hungary

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M.M. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 20031552 C+, 28 March 2023.

The CNDA interpreted the elements required to confirm international protection that was obtained in another EU Member State and examined the living conditions for an Afghan national who was provided international protection in Hungary.

In the absence of an official document as proof from the authorities of the Member State which granted protection, the CNDA ruled that the authorities could ascertain the status on the basis of consistent evidence and indications from the case file, relying also on comparisons of the fingerprints taken from the applicant at the time of submitting his application in France, in accordance with Article 9(1) of the Dublin III Regulation with those taken previously in another Member State. The court further added that the applicant's statements on the granting of international protection must also be considered.

The CNDA further examined the effectiveness of protection provided in Hungary and the general conditions. The

court concluded that there were no systematic and general deficiencies in Hungary that would reach the particularly high level of severity of ill treatment in the reception of asylum applicants and beneficiaries of international protection, although there were difficulties with the integration of refugees due to language barriers, lack of interpreters, access to accommodation, lack of integration programmes for employment and lack of coordination between state authorities.

The court noted that the applicant had not approached the Hungarian authorities to request medical and social benefits, but he merely invoked general considerations unrelated to his own living conditions in Hungary to contest the transfer decision. The CNDA rejected the appeal.



Reception

ECtHR judgment on inadequate reception conditions for a pregnant woman

Council of Europe, European Court of Human Rights [ECtHR], [A.D. v Greece](#), No 55363/19, ECLI:CE:ECHR:2023:0404JUD005536319, 4 April 2023.

The ECtHR found a violation by Greece of Article 3 of the ECHR due to inadequate living conditions in the Samos Reception and Identification Centre for a pregnant woman.

In a case concerning a pregnant woman accommodated in the Samos Reception and Identification Centre, the ECtHR found a violation of Article 3 of the ECHR due to inadequate living conditions. It found that the woman did not have access to sanitary facilities and her tent was destroyed in the fires in 2019. The court noted the third-party intervention by UNHCR, the statement of the Council of Europe's Commissioner for Human Rights and its previous jurisprudence⁴ to conclude that the living conditions for 2.5 months in an advanced stage of pregnancy and when in need of specialised care resulted in an inhuman or degrading treatment.

Accommodation for minors

Ireland, High Court, [S.Y. v The Minister for Children, Equality, Disability, Integration and Youth](#), [2023] IEHC 187, 21 April 2023.

The High Court allowed a judicial review for the lack of access to accommodation and material reception conditions for a minor Afghan applicant.

An Afghan asylum applicant claimed before the High Court that he was not provided access to reception conditions as provided by the recast Reception Conditions Directive (RCD). Since he was considered to be an adult, the International Protection Office social workers informed him that no accommodation was available. The applicant was provided with a voucher worth EUR 28 for Dunnes Stores to buy bedding and was provided with the address of a private charity. Between 7-28 February 2022, he slept on the streets and had food only occasionally.

The High Court allowed the request for a judicial review and referred to the CJEU judgment in [Haqbin](#) (C-233/18, 12 November 2019) to note that, even in situations of overcrowded accommodation facilities, alternative measures must be adopted by the authorities. Moreover, even if the ministry was making considerable efforts to secure accommodation, this did not absolve it of the obligation to provide material reception conditions.

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Restrictions on the right to work

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v Management Board of the Employee Insurance Agency \(de Raad van bestuur van het Uitvoeringsinstituut Werknemersverzekeringen\)](#), AWB 23/4216 and 23/4222, 18 April 2023.

The Court of the Hague seated in Arnhem ruled that asylum applicants can work for more than 24 weeks a year and that such a restriction on the right to work was contrary to EU law.

The Dutch law provides for a limit of 24 working weeks for asylum applicants, and the applicant was rejected a new permit after reaching the maximum permitted 24 weeks. The request to extend it beyond the limit was rejected and the applicant contested it.

The Court of the Hague allowed the appeal as well-founded and ruled that the 24-week limit restricts effective access to the labour market and is in breach of Article 15(1) and (2) of the recast RCD. Consequently, the court concluded that the 24-week requirement is not binding.

Revocation of material reception conditions

Belgium, Labour Court [Cour du travail/Arbeidshof], [Applicant v Fedasil](#), 22/1120/A, 17 March 2023.

The Ghent Labour Court annulled Fedasil's decision to stop providing the applicant with accommodation, although his situation could justify the abolition of material assistance.

On the basis that the applicant had been employed in Belgium for over 6 months and had income superior to the minimum living wage, Fedasil decided to no longer

provide accommodation to the applicant. On appeal, the Labour Court ruled that, although the ground for Fedasil's decision was valid, the contested decision was unlawful and disproportionate because it failed to account for the applicant's difficulties to secure regular accommodation, which could result in homelessness and living an undignified life.



Detention

ECtHR judgment on the use of detention in Lampedusa

ECtHR, *J.A. and Others v Italy*, No 21329/18, 30 March 2023.

The ECtHR found violations of the European Convention due to the illegal detention of Tunisian nationals in Lampedusa, their inhuman treatment due to inadequate conditions in detention and their collective expulsion.

Four Tunisian applicants were rescued by an Italian ship, which brought them to Lampedusa. The applicants were detained for 10 days at a designed hotspot facility, before being taken to the Lampedusa Airport, where they were forced to sign refusal-of-entry orders, their wrists were secured, and their phones confiscated. The Italian authorities forcefully removed the applicants to Tunisia the same day.

The applicants submitted information, including photographs and reports, on the material conditions at the hot spot facility, and the ECtHR found a violation of Article 3 of the Convention.

The ECtHR also ruled that the applicants had been arbitrarily detained, in breach of Article 5(1) of the Convention, as the Italian authorities did not inform the applicants of the legal reasons for their detention, nor did they provide sufficient information to challenge the *de facto* detention.

The ECtHR also found that interviews were not conducted before the signing of the refusal-of-entry order. In addition, the short time between the applicants' signatures

and their removal, the fact they did not understand the content of the order and that they had not been given an opportunity to appeal the decision constituted a collective expulsion of foreigners within the meaning of Article 4 of Protocol No 4 to the Convention.

ECtHR judgments on the use of detention while the asylum procedure is pending

ECtHR, *H.N. v Hungary*, No 26250/15 and *M.M. v Hungary*, No 26819/15, 4 May 2023.

The ECtHR found violations of Article 5(1) of the ECHR for unlawful detention pending the asylum procedure in Hungary.

Two Afghan nationals applied for asylum in Hungary and were immediately placed in detention for a risk of absconding. Both applicants were granted humanitarian residence permits for the duration of their asylum procedure.

The ECtHR found that detention was not meant to prevent unauthorised entry since the applicant was provided with a residence permit on humanitarian grounds for the duration of the asylum procedure, as provided by national law.

The court found a breach of Article 5(1) of the ECHR and noted that detention did not fall under Article 5(1)(f), as the applicants were provided with residence permits, nor under Article 5(1)(b), as there was no indication that they had not complied with their obligations.

ECtHR judgments on detention pending a Dublin transfer

ECtHR, [AC and MC v France](#), No 4289/21, 4 May 2023.

The ECtHR found a violation of Article 3 of the ECHR for inadequate conditions of detention for a mother and her child pending a Dublin transfer and of Article 5(1) and (4) regarding the baby.

A mother and her 7.5-month-old baby, both Guinean nationals, were placed in detention in France pending a Dublin transfer to Spain. They were held there for 48 hours, subsequently extended by the courts to 28 days. They were released after 9 days.

Under Article 3, the ECtHR ruled that there was a violation for the mother and her child. Given the very young age of the child, the reception conditions in the Metz-Queuleu detention centre and the length of the detention which lasted 9 days, the child was subjected to treatment which exceeded the severity threshold required by Article 3 of the Convention. Having regard to the inseparable ties between the mother and her baby, the court held that the same violation took place for the mother.

The court also found that there was a violation of Article 5(1) of the ECHR in respect of the minor applicant, because the authorities failed to verify whether the extension of the detention was a measure of last resort to facilitate the child's departure. In addition, the minor applicant did not benefit from a judicial review under Article 5(4) of the ECHR.

ECtHR judgment on detention based on risk to public order and national security

ECtHR, [N.M. v Belgium](#), 43966/19, 18 April 2023.

The ECtHR found no violation of Articles 3 and 5 in a case concerning the expulsion of an Algerian national.

An Algerian national was detained for 31 months in a closed centre in Belgium pending his removal on the ground of being a risk to public order and national security.

The ECtHR acknowledged that the Belgium authorities had justified the grounds for detention due to his being a danger and to protect public order and national security, as the applicant had been convicted in April 2018 for being a member of a terrorist group.

The ECtHR found that the applicant's detention was within the scope of Article 5 of the Convention, and the length of detention had not exceeded the reasonable time required to return him to Algeria. The ECtHR also found that the Belgian court had conducted a sufficient review of the detention measure and the applicant had not been subject to treatment contrary to Article 3 of the Convention.

Detention awaiting a return

Slovakia, County (Regional) Court in Bratislava [sk. Košice], [S.Z.N. v Mobile unit of the Banská Bystrica Police Force](#), 1Sa/6/2023, 1 March 2023.

The Košice Regional Court ordered a detainee's immediate release due to the Slovak authorities' failure to sufficiently investigate the enforceability of her return



order, including the treatment she would face upon a return to her country of origin.

The Košice Regional Court ruled that the detention of a foreigner residing irregularly in Slovakia was unlawful, as it violated the principle of efficiency because her return could not be enforced. The court highlighted that the authorities had failed to carry out the necessary investigations on the treatment she would face upon a return to her country of origin, including human rights violations as she stated to be at risk of facing persecution and inhuman or degrading treatment.

Slovakia, County (Regional) Court in Bratislava [sk. Košice], [A.B. v Mobile unit of the Banská Bystrica Police Force](#), 4Sa/9/2023, 9 March 2023.

The Košice Regional Court recalled that lawful detention for the purpose of a return requires both an enforceable expulsion decision and the fulfilment of the purpose of detention.

Following a decision of the Supreme Administrative Court, the Košice Regional Court annulled the decision ordering the detention of a rejected asylum applicant for the purpose of his return and ordered his immediate release. The court stated that the detention was unlawful for two reasons: first, it was based on an order of administrative expulsion which was not final and later extended in spite of the Slovak authorities' declarations that the detainee could not be returned to his country of origin due to a risk of *refoulement*. On the basis of Article 5(1) of the ECHR, the court reiterated that lawful detention for the purpose of a return requires both an enforceable expulsion decision and the fulfilment of the purpose of detention.

Detention pending the registration of an asylum application

Greece, Administrative Court [Διοικητικό Πρωτοδικείο], [Applicant v Minister for Citizen Protection](#), AP721/2023, and [Applicant \(No 2\) v Minister for Citizen Protection](#), AP 741/2023, 17 March 2023.

The Athens Administrative Court of First Instance clarified that detaining a person who submitted a scheduling application to register an asylum application on the online platform operated by the Ministry of Migration and Asylum was illegal as the electronic submission establishes a person's status as an asylum applicant.

Two Afghan nationals contested a detention decision and argued that an asylum applicant can be detained only in exceptional circumstances. The court of first instance stated that the third-country nationals submitted their asylum applications through the electronic system of the Ministry of Migration and Asylum, thus having the status of asylum applicants, rendering their stay legal and their detention unlawful.





Second instance procedure

Examining a minor's claim for protection in the appeal decision concerning the father

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M.G. v Office for the Protection of Refugees and Stateless Persons \(OFPR\)](#), No 22040447 C, 23 March 2023.

The CNDA examined in the same appeal a decision concerning the father and the request for protection lodged with the CNDA on behalf of the applicant's minor daughter, born a few days before the first instance decision pronounced by OFPR, and who risked being exposed to female genital mutilation/cutting (FGM/C) in the event of a return to Nigeria.

A Nigerian national whose application was rejected by OFPR claimed on appeal before the CNDA. In addition to his fear of being persecuted, he claimed that his daughter risked being subjected to FGM/C if returned to the country of origin. An individual application had not been lodged with OFPR for the daughter, as she was born a few days before OFPR took the decision on the father's application.

The CNDA ruled that the fears of the minor daughter should be examined as well when specific fears for the child are invoked in support of the appeal of the parent and without a request having been previously filed in the child's name. In this specific case, the court considered that the daughter was exposed to the risk of being

subjected to FGM/C if returned to her country because of her membership in the social group of Nigerian girls of Bini ethnicity who were not previously subjected to circumcision.

Availability of remedies in accelerated procedures

Malta, First Hall Civil Court, [Toufik Boumaaza v International Protection Agency, Minister for the Interior, National Security and Law Enforcement, State Attorney, and International Protection Appeals Tribunal](#), No 786/2021, 8 March 2023.

The First Hall of the Civil Court confirmed that no ordinary remedy is available against a negative decision issued by the International Protection Agency in an accelerated procedure, which is then confirmed by the International Protection Appeals Tribunal.

The applicant received a negative decision in an accelerated procedure and complained of an alleged breach of his right to a fair trial because he lacked an ordinary remedy before civil courts.

The civil court stated that the decision of the International Protection Appeals Tribunal confirming a decision taken by the International Protection Agency in an accelerated procedure within 3 working days is final.

The civil court confirmed that no ordinary remedy was available to applicants against this type of decision and therefore ruled that the appeal was admissible. The case will continue to be examined on the merits.



Content of protection

CJEU judgment on family reunification

CJEU, *X, Y, A, B v Belgian State*, C-1/23 PPU, 18 April 2023.

The CJEU ruled that it is contrary to EU law to require, without exception, to submit an application for family reunification in person before a competent diplomatic representation.

The family of a Syrian beneficiary of international protection in Belgium, who presented a request for family reunification by email and letter, challenged the requirement to submit a request for family reunification in person at a Belgian diplomatic post.

The CJEU highlighted that national authorities must be flexible and allow for derogations to the requirement of submissions of requests in person, enable the submission of family reunification requests by remote means and avoid perpetuating family separation and putting their lives at risk when a conflict takes place in the country of origin.

Moreover, the CJEU noted that a lack of flexibility might lead to non-compliance with legal time limits. Lastly, the CJEU highlighted that the requirement to appear in person could be made at a later stage of the procedure by issuing consular documents or laissez-passers, and reduce the number of appearances to the strict minimum.

ECtHR inadmissibility decision in a case concerning family reunification

Council of Europe, European Court of Human Rights [ECtHR], *M.T. v Ireland*, No 54387/20, ECLI:CE:ECHR:2023:0406DEC00543872 0, 6 April 2023.

The ECtHR dismissed claims as inadmissible which were raised under Article 8 of the Convention by a beneficiary of subsidiary protection who sought family reunification in Ireland.

A national from Cameroon unsuccessfully requested family reunification with his two children, through national provisions on international protection as he was a beneficiary of subsidiary protection. The claim was disputed before the Supreme Court on the interpretation of the International Protection Act and the usage of DNA testing in such a procedure.

Before the ECtHR, the applicant claimed a violation of his family right, but the court rejected it as inadmissible. It found that the applicant could have used another national remedy with more prospects of success for obtaining family reunification and that the merits of the case and the situation of the children was not addressed in the domestic proceedings. Thus the authorities could not be held responsible for an alleged refusal or failure to respect the family life of the applicant and his children.

The court agreed with the Irish Supreme Court on the importance of limiting the recourse to DNA testing to establish paternity in such situations.

Compatibility of national integration programmes with the recast QD

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v The Minister of Social Affairs and Employment](#), 202107906/1/V6, 15 March 2023.

The Council of State referred questions to the CJEU for a preliminary ruling on the compatibility of integration conditions for refugees and the recast QD.

An Eritrean beneficiary of international protection in the Netherlands was fined EUR 500 as he did not pass the civic integration examination within the time limit and he had to repay the EUR 10,000 loan for the integration courses. The Council of State asked the CJEU whether the minister can impose a civic integration obligation on beneficiaries of international protection who are sanctioned with a fine in case of non-compliance.

According to the Council of State, the Dutch legislation follows the recast QD on the right of beneficiaries to access integration facilities. The CJEU was also asked whether the obligation imposed on refugees to pay for their integration costs was in line with the recast QD.

Balancing public and individual interests when revoking international protection

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), [Applicant v Directorate of Immigration](#), No 137/2023, 16 March 2023.

The Immigration Appeals Board annulled the decision revoking the applicant's residence permit on humanitarian grounds

for returning to Iraq to get married and to visit her husband.

The applicant's permit of residence on humanitarian grounds was annulled on the basis that the family ties through which she obtained it dissolved when she turned 18 and that she travelled to her country of origin – Iraq – without encountering any trouble. The authorities concluded that she had voluntarily availed herself of the protection of her country of origin.

The applicant contested this decision, which was annulled by the Immigration Appeals Board. The board noted that the family ties on the basis of which the applicant had been granted international protection still existed despite her turning 18. In addition, it could not be concluded from her trips to Iraq that the applicant had voluntarily availed herself of the protection of her country of origin, since she had done so to get married, thus rightfully enjoying her right to establish family ties in Iceland. The board concluded that the decision failed to reach the necessary balance between society's interests and that of the applicant when revoking the international protection status.



Humanitarian protection

Provision of humanitarian protection in national law

Bulgaria, Administrative Court, City of Sofia [bg. Административен съд - София град], [*K.W.M. v State Agency for Refugees under the Council of Ministers*](#), 9280/2022, 29 May 2023.

The Administrative Court of Sofia-City referred questions to the CJEU for a preliminary ruling on the situation of third-country nationals who were rejected international protection but cannot be returned to their countries of origin.

A complainant residing in Bulgaria for 27 years, with several rejected applications for international protection, requested humanitarian protection to settle his status. The court reasoned that the national legislation does not contain a norm that regulates the residence of the applicant for reasons of a humanitarian nature, within the meaning of Article 6(4) of the Return Directive.

The court referred questions to the CJEU for a preliminary ruling, including:

- Whether Recital 12 of the Preamble and Article 14(2) of the Return Directive, read in conjunction with Articles 1 and 4 of the EU Charter, require a Member State to issue a written confirmation to third-country nationals certifying that they are staying illegally but cannot be removed;

- Whether other types of protection may be provided by Member States, independent of the spirit and logic of the recast QD; and
- Whether the failure to grant protection to a third-country national in the situation of the complainant results in the Member State breaching its obligations under Articles 1, 4 and 7 of the EU Charter.

Renewal of national forms of protection

Malta, Court of Appeal (Lower Competence) [Qorti tal-Appell (Kompetenza Inferjuri)], [*Ecogiawe Johnbull Ibrahim v Identity Malta Agency*](#), No 74/2022, 10 May 2023.

The Court of Appeal (Lower Competence) ruled that the latest policy on Specific Residence Authorisation (SRA), a national form of protection, should only apply to first-time applications and not in the case of a renewal request.

The complainant had been granted a Specific Residence Authorisation (SRA), a national form of protection in Malta, in 2018. Two years later, the Maltese authorities refused to renew his residence permit, arguing that he did not fulfil the criteria laid out in the 2020 SRA policy. The complainant challenged this decision, which was annulled by the International Protection Appeals Tribunal.

On second appeal, the Court of Appeal rejected the authorities' claims, stating that the criteria in the new SRA policy did not apply to renewal requests, which would have been unreasonable.



Temporary protection

Interpretation of the concept of residence to determine entitlement to temporary protection

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], Applicant v Federal Office for Foreign Affairs and Asylum, Austria, E 3249/2022-12, 15 March 2023.

The Constitutional Court annulled a lower court decision concerning a Ukrainian national who was refused temporary protection as he was not considered resident of Ukraine because he was on holiday when Russia invaded Ukraine.

A Ukrainian national was rejected temporary protection on the ground that he did not reside in Ukraine on 24 February 2022 or after, and thus he did not belong to the entitled category as provided by the ordinance on displaced persons from Ukraine. The applicant was on holiday in Georgia when Russia invaded Ukraine. The Constitutional Court overturned the negative decision holding that it infringed the right to the equal treatment of foreigners. The court clarified that the holiday period cannot change the place of residence, opposing the interpretations made by the BFA and the Federal Administrative Court.

Cumulation of international and temporary protection

Spain, Supreme Court [Tribunal Supremo], Don Landelino v National High Court (Audiencia Nacional) [Decision of 11 May 2022], STS 1595/2023, 13 April 2023.

The Supreme Court ruled that temporary protection cannot be granted to beneficiaries of another form of international protection.

A Ukrainian national appealed against a judgment confirming the authorities' decision not to grant him asylum but subsidiary protection instead. He argued that he should also receive temporary protection because he qualifies and fulfils the requirements. The Supreme Court rejected his claim, stating that the statuses of beneficiary of subsidiary protection and of temporary protection could not be cumulated and that the applicant should solely be granted subsidiary protection.



Return

UN Human Rights Committee decision on returns to Morocco and risk of honour killing

United Nations, Human Rights Committee [CCPR], [Z v Denmark](#), No 2795/2016, 22 March 2023.

The UN Human Rights Committee rejected a claim as unsubstantiated which was made by a woman who risked being subjected to an honour killing by her family for having a child out of wedlock if returned from Denmark to Morocco.

The UN Human Rights Committee dismissed as unsubstantiated complaints which were raised under Articles 6 and 7 of the Covenant by a woman who claimed that she would be subjected to an honour killing by her family for having a child out of wedlock. The Committee noted that 8 years had passed since her brother expressed the alleged threats, rendering the risk of harm more temporally remote. The Committee considered that the applicant did not provide sufficient information to substantiate her assertion that she would face a real and personal risk of being subjected by her family members to an honour killing or to treatment contrary to Article 7 of the Covenant.

Expulsion and the best interests of the child

Latvia, District Administrative Court [Administratīvā rajona tiesa], [A v Office of Citizenship and Migration Affairs of the Republic of Latvia](#), No. A42-00871-23/21, 9 March 2023.

The District Administrative Court upheld a Nigerian woman's appeal against an expulsion decision, citing the applicant's separation from her son as a violation of Article 3 of the ECHR, Article 3 of the CRC and Article 5 of the Return Directive.

Upon rejection of her application for international protection in Latvia, an expulsion order was issued against a Nigerian woman and an entry ban of 2 years in the Schengen territory. The Office of Citizenship and Migration Affairs considered that the pregnancy was not a health condition and her unborn son's circumstances were not relevant and could not be an impediment to deportation because the woman was well-educated and the situation in Nigeria would not expose her to a treatment contrary to Article 3 of the ECHR.

In the appeal, the District Administrative Court ruled that the birth of the baby, who was deemed an asylum seeker, has a significant impact on the case because the mother cannot be expelled since this would result in a separation from the newborn child and a breach of Article 3 of the ECHR. The contested decision was annulled, and the mother was granted refugee status, as the court considered it would be in the best interests of the child.

Suspensive effect of asylum procedures on the enforcement of an extradition measure

Spain, Supreme Court [Tribunal Supremo], [Don Silvio v Council of Ministers \(Consejo de Ministros\)](#) [Decision of 17 May 2022], STS 1560/2023, 18 April 2023.

The Supreme Court ruled that international protection proceedings have a suspensive effect on the execution of an extradition decision but no impact on the extradition procedure.

A Kazakh national who applied for international protection in Spain was subjected to an extradition request from Kazakhstan. Both the National High Court and the Council of Ministers before whom he had brought an extraordinary appeal confirmed his extradition.

In proceedings brought subsequently before the Supreme Court, the applicant argued that the examination of his application for international protection should have a suspensive effect in the extradition procedure.

The Supreme Court ruled that both the application for international protection and the appeal brought against a negative decision at first instance did not have a suspensive effect on the extradition procedure itself, but only on the execution of the extradition decision.

Removal during the examination of a subsequent application

Latvia, District Administrative Court [Administratīvā rajona tiesa], [Applicant v Office of Citizenship and Migration Affairs](#), No A42-00395-23/12, 6 April 2023.

The administrative court annulled an expulsion order for a homosexual applicant from Iran whose second subsequent application was accepted for examination in substance.

An Iranian applicant submitted a second subsequent application and argued that due to his sexual orientation he would face persecution in his country of origin. The determining authority was ordered by an administrative court to examine the request on substance. The applicant was subjected to a removal decision after the first negative decision and contested it in the present case, on the basis of the pending examination on the merits of his repeated application.

After an examination of the evidence and consultation of updated country of origin information, the administrative court found that the statements on sexual orientation were credible and concluded that there was a real and objective risk to be exposed to acts contrary to Articles 2 and 3 of the ECHR if removed. Along with annulling the removal order, the court clarified that the implementation of a removal should not be permitted when repeated asylum applications were accepted for an assessment on the merits.

Removal to Afghanistan

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v BAMF](#), A 11 S 3477/21, 28 March 2023.

The Higher Administrative Court ruled on the removal of an Afghan national as not being contrary to Article 3 of the ECHR.

An Afghan national contested a removal decision following the rejection of his asylum application. The Higher Administrative Court ruled that there was no evidence of a real danger based on individual circumstances or on facts related



to his departure from Afghanistan to stay in the western world. The court also noted that the applicant had a gross income of EUR 2,300 per month and assets worth EUR 4,000, thus there was no risk of impoverishment in the event of a return.



