

# Quarterly Overview of Asylum Case Law





Manuscript completed in September 2023.

Neither the European Union Agency for Asylum (EUAA) nor any person acting on behalf of the EUAA is responsible for the use that might be made of the information contained within this publication.

© European Union Agency for Asylum (EUAA), 2023

Cover photo: Stock illustration ID: 1227193799, © iStock (photographer: limeart).

Reproduction is authorised provided the source is acknowledged. For any use or reproduction of photos or other material that is not under the EUAA copyright, permission must be sought directly from the copyright holders.



# Contents

<b>Contents</b> .....	<b>3</b>
<b>Note</b> .....	<b>5</b>
<b>List of abbreviations</b> .....	<b>6</b>
<b>Main highlights</b> .....	<b>8</b>
<b>Access to the asylum procedure</b> .....	<b>11</b>
CJEU judgment on the Hungarian embassy procedure.....	11
Delays in registering applications.....	11
<b>Dublin procedure</b> .....	<b>12</b>
Expiry of the time limit for a Dublin transfer .....	12
Dublin transfers to Bulgaria .....	13
Dublin transfers to Croatia .....	13
Dublin transfers to Denmark .....	15
Dublin transfers to France.....	16
Dublin transfers to Italy .....	16
Dublin transfers to Lithuania.....	17
Dublin transfers to Romania .....	18
Dublin transfers to Spain .....	18
<b>First instance procedures</b> .....	<b>19</b>
CJEU judgment on the duty to cooperate, burden of proof and general credibility of the applicant .....	19
Electronic notification of an appointment for a personal interview .....	19
Participation of an EASO officer in the first instance determination procedure .....	20
Legal capacity of an applicant with mental health issues .....	20
Quality of language determination.....	21
Time limit for first instance decisions.....	21
Credibility and assessment of evidence .....	21
Interpretation in the accelerated procedure.....	22
Special procedures: Application of the safe third country concept to Türkiye .....	23
<b>Assessment of applications</b> .....	<b>24</b>
CJEU judgment on refusal of international protection due to a criminal record .....	24
Interpretation of Article 1(D) of the Refugee Convention (protection provided by UNRWA).....	24
Fear of military recruitment in Russia.....	25
Persecution based on political opinion .....	26
Persecution based on membership in a particular social group.....	26
Treatment of women in Afghanistan.....	27
Internal protection alternative .....	27
Subsidiary protection for applicants from the region of Khartoum in Sudan.....	28
Subsidiary protection for applicants from West Oromia in Ethiopia.....	28
Exclusion from subsidiary protection .....	29



Secondary movements when international protection has been granted in another EU+ country.....	29
<b>Reception .....</b>	<b>30</b>
ECtHR judgment on inhuman living conditions in the hotspot of Moria .....	30
ECtHR judgment on systemic failures to enforce domestic court decisions on reception conditions in Belgium.....	31
Access to surgery covered by national authorities.....	32
Clarification on the meaning of ‘search’ in an initial reception centre.....	32
<b>Detention and limitations on freedom of movement .....</b>	<b>33</b>
Temporary accommodation in designated places in the event of a mass influx of persons.....	33
Detention of minors pending asylum procedures and pending a return.....	33
Lawfulness of detention for an applicant with a serious medical condition .....	34
Access to mobile phones and the internet .....	35
Detention pending a return .....	35
<b>Second instance procedure .....</b>	<b>36</b>
Appeals against decisions to join asylum cases.....	36
<b>Content of protection .....</b>	<b>36</b>
CJEU judgment on revocation of international protection .....	36
ECtHR judgment on the refusal to issue a travel document to a beneficiary of international protection.....	37
ECtHR judgment on family reunification .....	37
Issuance of a passport to a family member of a beneficiary of international protection .....	38
Issuance of travel documents for Afghan nationals lacking identity documents .....	38
<b>Humanitarian protection .....</b>	<b>39</b>
Best interests of the child.....	39
<b>Temporary protection .....</b>	<b>39</b>
Concept of family member .....	39
Interplay between international protection and temporary protection .....	40
Reception of displaced persons from Ukraine.....	40
Termination of temporary protection for third-country nationals.....	41
<b>Return.....</b>	<b>41</b>
ECtHR judgment on returns to Libya .....	41
Time period for a voluntary return.....	42

**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](#).

To reproduce or translate all or part of this quarterly overview in print, online or in any other format, and for any other information, please contact: [caselawdb@euaa.europa.eu](mailto:caselawdb@euaa.europa.eu)

Introductory sessions on the content and functionalities of the database can be offered for interested stakeholders and you may contact us at: [caselawdb@euaa.europa.eu](mailto:caselawdb@euaa.europa.eu)

**To subscribe to the quarterly overview, use this link:**

<https://caselaw.euaa.europa.eu/pages/subscribe.aspx>





## List of abbreviations

<b>APD</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>BFA</b>	Federal Office for Immigration and Asylum   Bundesamt für Fremdenwesen und Asyl (Austria)
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>CoE</b>	Council of Europe
<b>COI</b>	Country of origin information
<b>CNDA</b>	National Court of Asylum   Cour Nationale du Droit d'Asile (France)
<b>CRC</b>	United Nations Convention on the Rights of the Child
<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>FAC</b>	Swiss Federal Administrative Court
<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>FGM/C</b>	Female genital mutilation/cutting
<b>FIS</b>	Finnish Immigration Service
<b>IPAT</b>	International Protection Appeals Tribunal (Ireland)





<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</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</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
<b>SAR</b>	State Agency for Refugees (Bulgaria)
<b>SEM</b>	State Secretariat for Migration (Switzerland)
<b>THB</b>	Trafficking in human beings
<b>TPD</b>	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
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestine Refugees in the Near East



## Main highlights

The interim measures, decisions and judgments presented in this edition of the “EUAA Quarterly Overview of Asylum Case Law, Issue No 3/2023” were pronounced from June 2023 to August 2023.

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

The CJEU [ruled](#) that Hungary failed to fulfil its obligations under Article 6 of the recast APD, limiting effective access to asylum procedures, when it introduced the request for persons seeking international protection to lodge a declaration of intent in person at a Hungarian embassy.

In [X v International Protection Appeals Tribunal, The Minister for Justice and Equality, Ireland, The Attorney General](#), the CJEU interpreted Articles 4(1) and (5e) of the Qualification Directive (2004/83/EC of 29 April 2004) on the applicant’s duty to cooperate with the authorities, the burden of proof and the general credibility of the applicant.

On 6 July 2023, the CJEU ruled in three cases on the refusal or revocation of international protection for committing a crime ([C-402/22](#), [C-663/21](#) and [C-8/22](#)).

### European Court of Human Rights (ECtHR)

On 1 August 2023, the ECtHR ordered interim measures in [A and Others v Greece](#) for an Afghan family suffering from health problems in Greece, whose application was dismissed as inadmissible because Türkiye was considered a safe third country. The court ordered their transfer from the Lesvos Closed Control Access Centre to Athens and access to adequate reception conditions.

The ECtHR ruled in [H.A. and Others v Greece](#) that there was a violation of Article 3 of the European Convention on Human Rights due to inhuman living conditions in the hotspot of Moria and a violation of Article 13 for a lack of an effective remedy to complain about these conditions.

In [Camara v Belgium](#), the ECtHR found a violation of Article 6(1) of the Convention due to systemic failures to enforce domestic court decisions on reception conditions in Belgium.

In [S.E. v Serbia](#), the ECtHR found a violation of Article 2 of Protocol No 4 to the European Convention for the refusal by Serbia to issue a travel document for 7 years to a Syrian beneficiary of international protection.

In [B.F. and Others v Switzerland](#), the ECtHR ruled on the criterion of financial independence in family reunification cases of third-country nationals who have been granted a provisional admission in Switzerland.





In [A.A. v Sweden](#), the ECtHR found no violation of Articles 2 and 3 of the Convention for the return of a Libyan applicant whose asylum claim was rejected.

## National courts

### Dublin transfers

Several judgments were issued by national courts which analysed reception conditions, access to the asylum procedure and the use of detention in Bulgaria, Croatia, Denmark, France, Italy, Lithuania, Romania and Spain.

### First instance procedures

In France, the Council of State [ruled](#) that informing applicants electronically about the notification of an invitation to an interview with the Office for the Protection of Refugees and Stateless Persons (OFPRA) does not violate the principle of personal receipt of the summons.

In Cyprus, the Administrative Court of International Protection [rejected](#) complaints of alleged violations of the procedure by the Asylum Office when an EASO officer was involved in the administrative procedure by providing a recommendation.

In Switzerland, the Federal Administrative Court [clarified](#) the need to determine the ability to act in the proceedings for an applicant who suffers from dementia and the right to be appointed a representative in case of incapacity due to mental health.

### Türkiye as safe third country

In Greece, the Administrative Court of Komotini [annulled](#) the return of an Afghan national due to the suspension of readmissions by Türkiye in 2020. Additional decisions were pronounced by Independent Appeals Committees on the same topic.

### Military service by Russian nationals

In France, the National Court of Asylum (CNDA) [held](#) that Russian nationals who fled conscription for the war in Ukraine or who deserted may obtain refugee status because a Russian national who is summoned for military service is likely to commit war crimes, directly or indirectly.

In Latvia, the District Administrative Court [upheld](#) a Russian national's appeal and ordered the Office of Citizenship and Migration Affairs (OCMA) to examine the merits of the applicant's subsequent applications as his individual circumstances had changed when he was summoned for military service.

### Persecution based on membership in a particular social group

In France, the CNDA [confirmed](#) the existence of a particular social group of children and uncircumcised women of the Mossi community of Burkina Faso.





## Internal protection alternative

In Cyprus, the International Protection Administrative Court (IPAC) [ruled](#) that an applicant from Jordan can safely relocate to the city of Amman without a risk of persecution.

## Reception conditions

In Germany:

- ✦ The Lower Saxony-Bremen Social Court [ruled](#) that a minor applicant who suffers from a serious progressive disease should have the costs of the surgery covered by district authorities as a solution to overcome extreme pains. This was considered as a fundamental right to guarantee a decent subsistence level.
- ✦ The Federal Administrative Court [held](#) that the police merely entering a room in the initial reception centre for refugees to transfer a foreigner who is obliged to leave the country is not a search within the meaning of Article 13(2) of the Basic Law. Even if the entry took place at night, there was no targeted and purposeful search for something hidden and entering the room was necessary to prevent an urgent threat to public safety and order.

## Use of detention

In Estonia, the Supreme Court [declared](#) that a full ban on access to mobile phones and the internet for applicants of international protection in detention centres was unconstitutional.

In Lithuania, the Constitutional Court [concluded](#) that the provisions of the Law on the Legal Status of Foreigners, which provide for the detention of third-country nationals in the event of a mass influx of persons during a declared state of emergency or war, were contrary to the Lithuanian Constitution.

In Poland, the Supreme Court [ruled](#) in a landmark case on the detention of applicants for international protection and detention pending a return, clarifying the rules when minors are involved.

## Temporary protection

The Supreme Administrative Court in Bulgaria [ruled](#) in a cassation appeal on the termination of the procedure for international protection for displaced persons from Ukraine who are eligible for temporary protection.

The Court of The Hague seated in Rotterdam [confirmed](#) the termination of temporary protection for a third-country national who held temporary residence in Ukraine.





## Access to the asylum procedure

### CJEU judgment on the Hungarian embassy procedure

CJEU, [European Commission v Hungary](#), C-823/21, 22 June 2023.

*The CJEU ruled that Hungary failed to fulfil its obligations under Article 6 of the recast APD, limiting effective access to asylum procedures, when it introduced the requirement for persons seeking international protection to lodge a declaration of intent in person at a Hungarian embassy.*

The CJEU examined the introduction of a prior procedure to the asylum procedure in Hungary, namely the requirement to personally present a declaration of intent to apply for international protection at a Hungarian embassy in Serbia or Ukraine.

The CJEU concluded that those who irregularly crossed the Hungarian border and are deprived of liberty cannot submit the declaration in person, so they have no means of seeking asylum in Hungary.

In addition, Hungary did not prove that a derogation from Article 6 of the recast APD was justified on the basis of preventive measures for COVID-19.

### Delays in registering applications

Italy, Civil Court [Tribunali], [Applicant v Ministry of the Interior \(Ministero dell'interno\)](#), R.G. 29968/2023, 29 July 2023.

*The Tribunal of Rome ordered the formalisation of an application for special protection which was presented before the entry into force of the new Law No 50/2023.*

An Albanian national tried to lodge an application for special protection for her and her two minor children (one of them having a disability certified by a medical committee) to the Questura of Rome, before the entry into force of Legislative Decree No 20/2023, currently Law No 50/2023. The Questura of Rome did not formalise the application due to an exhaustion of available slots and then, when the applicant re-submitted the request, she received a negative answer due to the changes in legislation.

Upon appeal, the Tribunal of Rome found violations of the fundamental right to lodge an application for international protection (Article 10 of the Constitution and Article 7 of Law No 50/2023 which provides that the previous rules apply to applications which are submitted before the entry into force of the new legislation).

Referring to the CJEU judgment in [Evelyn Danqua v Minister for Justice and Equality, Ireland, C-429/15](#), the Tribunal of Rome concluded that Member States must regulate the lodging of applications in a manner that does not render difficult or impossible to exercise this right and ordered the formalisation of the application for special protection.



## Dublin procedure

### Expiry of the time limit for a Dublin transfer

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202005113/4/V1, 5 July 2023.

*The Council of State confirmed that the time limit to transfer an applicant to Italy under the Dublin III Regulation had expired, although the applicant had, during the appeals procedure, applied for a temporary residence permit as a victim of human trafficking.*

A Nigerian applicant appealed against a decision on a Dublin transfer and argued that the time limit for the transfer had expired, even if he had applied for the suspension of the transfer pending the outcome of an appeal against the rejection of his application for a residence permit as victim of human trafficking. The Council of State stayed the proceedings and referred questions to the CJEU, which pronounced judgments in similar cases of [S.S., N.Z., S.S. v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), C-338/21,<sup>1</sup> and [E.N., S.S., J.Y. v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), C-556/21.

Based on the interpretation in the first case, the Council of State ruled that the decision not to grant the applicant a

residence permit as victim of human trafficking did not suspend the time limit for the Dublin transfer. The Council of State concluded that, even if it would agree with the State Secretary that the transfer period would have been suspended by the interim relief and the time limit would have been resumed after the withdrawal of the interim request, still the transfer period would have expired and the Netherlands became the Member State responsible to process the application.

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicants v State Secretary for Justice and Security](#), NL23.9364 and NL23.9365, 7 July 2023.

*The Court of The Hague seated in Roermond ruled on the consequences of the time limit for a Dublin transfer expiring and on the starting date for a residence permit based on the initial application for asylum.*

An applicant submitted his first application on 3 October 2018, but the State Secretary decided on 31 January 2019 that Spain was responsible to process the application. The deadline for the Dublin transfer expired. The State Secretary requested the applicant to submit a new application and granted protection as of 23 December 2019.

Upon appeal, the court of the Hague seated in Roermond ruled that requesting the applicant to lodge a new application following the expiry of the time limit to transfer, is, in the opinion of the court, contrary to the wording, scope and principles of the Dublin III Regulation.

The court further noted that the State Secretary should have issued the residence permit with the date of the first application in October 2018.

<sup>1</sup> See the EUAA [Quarterly Overview of Asylum Case Law](#), Issue No 2/2023.

**Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 2 K 2003/22.GI.A, 29 June 2023.**

*The Regional Administrative Court of Giessen ordered BAMF to pay for the costs of the proceedings after finding it responsible for the expiry of the Dublin transfer period.*

An applicant requested international protection in Germany and Italy was found responsible for the examination of the application, but the time limit to transfer the applicant to Italy expired. The Regional Administrative Court of Giessen considered that while BAMF is not responsible in itself to carry out Dublin transfers as this task lies with the aliens' authorities and the police of the federal state, BAMF still had the mandate and the responsibility to control the implementation of a Dublin transfer by way of cooperation with all other partners. The court also noted that according to the provisions concerning voluntary transfers, as described in the Dublin III Regulation and its Implementing regulation, the applicant cannot comply with the measure solely by his/her own will without the national authorities' intervention. In addition, the entry into the responsible Member State is under the control of national authorities, and applicants for international protection without holding a residence permit have no freedom of movement in the Schengen area. The expiry of the time period for the Dublin transfer was considered to be attributable to BAMF, which must then cover the costs of the proceedings.

## Dublin transfers to Bulgaria

**Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v State Secretary for Justice and Security \(Staatssecretaris](#)**

**[van Justitie en Veiligheid\)](#), 202206794/1/V3, 202206794/1/V3, 16 August 2023.**

*The Council of State rejected an appeal against a decision on a Dublin transfer to Bulgaria and considered that the interstate principle of mutual trust can be applied.*

A Syrian national contested the State Secretary's decision to transfer him to Bulgaria under the Dublin III Regulation and alleged a risk of inhuman or degrading treatment contrary to Article 3 of the ECHR and Article 4 of the EU Charter. The Council of State confirmed the decision and found that the reports submitted by the applicant, corroborated with the information provided by the State Secretary, showed that, despite pushbacks happening at the border at a large scale and for a long period in Bulgaria, applicants transferred under the Dublin III Regulation were not affected. Moreover, despite shortcomings in the asylum procedure, the applicant did not prove that there was a real risk of treatment contrary to Article 3 of the ECHR in general or particularly for him if transferred. The Council of State concluded that the interstate principle of mutual trust can be applied in this case.

## Dublin transfers to Croatia

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.7025 and NL23.7026, 6 June 2023.**

*The District Court of the Hague seated in Amsterdam annulled a decision on a Dublin transfer to Croatia, considering that the State Secretary had not sufficiently investigated the situation for Dublin transferees, in light of reports of pushbacks and ill treatment in the Member State.*

A Turkish applicant requested the annulment of a decision to be transferred to Croatia, claiming a risk of human rights violations due to pushbacks and police violence. The Court of the Hague seated in Amsterdam ruled that the State Secretary had insufficiently investigated the risk of violation of Article 3 of the ECHR and had not reasoned adequately that the principle of mutual trust can be relied upon.

The court took into consideration reports that even applicants transferred back under the Dublin III Regulation were pushed back and noted that the State Secretary did not show that every Dublin transferee in Croatia is treated in compliance with the EU Charter and that Croatia fully complies with its international obligations.

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.12018, 2 June 2023.**

*The District Court of the Hague seated in Roermond ordered an interim measure not to implement a Dublin transfer to Croatia and stayed the proceedings, awaiting the judgment of the CJEU in a case concerning questions relevant to the current case.*

A national of Burundi requested international protection in the Netherlands. The State Secretary found that Croatia was the Member State responsible for examining the application. The applicant appealed the decision to be transferred to Croatia, claiming that the principle of mutual trust could no longer be relied upon and that he would need access to health care after the transfer due to his health conditions.

The District Court of The Hague seated in Roermond stated that general country information and ECtHR case law showed that Croatia had carried out pushbacks on

a large scale over a long period of time. The court noted that the information provided by the Croatian authorities was insufficient to determine whether the principle of mutual trust could be relied upon.

The court also stated that questions on the legality of transfers to Poland referred for a preliminary ruling in the case [NL22.6989 \(15 June 2022\)](#) were relevant to this case. The court therefore decided to stay the proceedings until the questions are answered by the CJEU, and to suspend the contested transfer decision until the appeal has been decided.

**Slovenia, Supreme Court [Vrhovno sodišče], [Ministry of the Interior v Applicant](#), VS00067263, 7 June 2023.**

*The Supreme Court upheld the Ministry of the Interior's appeal in the case of a Dublin transfer to Croatia, concluding that there were no procedural shortcomings or systemic deficiencies in Croatia's asylum system.*

An applicant successfully challenged a decision to be transferred to Croatia before the Administrative Court, claiming that he would face torture, inhuman and degrading treatment, and citing incidents at the hands of the Croatian authorities during his failed attempts to apply for asylum there.

The Ministry of the Interior appealed the decision of the Administrative Court to the Supreme Administrative Court, which upheld the appeal of the Ministry and ruled that a transfer can only be stopped if there are systematic violations of the recast APD and recast RCD, which was not the case in Croatia.

In the event of the applicant's transfer to Croatia, the court found no evidence to suggest he might experience inhuman or degrading treatment within the meaning of Article 4 of the EU Charter.

**Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [Applicant v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), E-2694/2023, 7 June 2023.**

*The Federal Administrative Court confirmed a Dublin transfer to Croatia, considering that asylum applicants have access to reception conditions and the asylum procedure.*

After Croatia accepted Switzerland's request to take charge of the applicant, the applicant appealed against this decision, invoking health issues, claiming there were systemic deficiencies in the reception system and the asylum procedure in Croatia, and that she risked facing illegal pushbacks.

The Federal Administrative Court found that the applicant had not demonstrated that she suffered from health issues or that the conditions in Croatia were such that her transfer could lead to a breach of Articles 3 or 4 of the EU Charter or Article 3 of the ECHR.

**Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [Applicant v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), F-3303/2023, 16 June 2023.**

*The Federal Administrative Court rejected an appeal against a decision on a Dublin transfer to Croatia, finding insufficient evidence of a risk for illegal expulsion or inhuman or degrading treatment.*

A Turkish national challenged a decision on a Dublin transfer to Croatia before the FAC, claiming that the Croatian authorities prevented him from applying for asylum, denied him food and water for several hours, and threatened to deport him to

Bosnia and Herzegovina. The applicant submitted a Human Rights Watch report that detailed shortcomings in the asylum system and alleged abuse of asylum seekers by government officials.

The FAC cited a previous judgment, [A. v State Secretariat for Migration](#), in which it concluded that there was insufficient evidence to suggest that those who were transferred under the Dublin procedure would be forcibly removed from Croatia without the opportunity to apply for asylum. Moreover, the court found that there was no evidence to suggest that the applicant would be subjected to cruel or inhuman treatment. As a result, the court found no reason to annul the transfer or apply Article 17(1) of the Dublin III Regulation.

## Dublin transfers to Denmark

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.1047, 8 June 2023.**

*The District Court of The Hague seated in Arnhem rejected the appeal of a Syrian national with two minor children against the decision on a Dublin transfer to Denmark.*

The Court of the Hague seated in Arnhem confirmed a decision to transfer a Syrian woman and her two minor children to Denmark. The applicant did not sufficiently substantiate her claims that she was at risk of indirect *refoulement*, that the Danish authorities were unable or unwilling to help, or that there was an obvious and fundamental difference in protection policies between the two Member States. In reference to her claims about vulnerability, the court noted that medical facilities in Denmark were of comparable quality to those in the Netherlands.



## Dublin transfers to France

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 15 A 3773/23, 24 July 2023.

*The Regional Administrative Court of Hanover annulled a Dublin transfer to France for a 6-month-old applicant and his single mother due to systemic deficiencies in the reception system and the particular vulnerabilities of the child.*

The Regional Administrative Court of Hanover annulled a decision on a Dublin transfer of a 6-month-old child due to systemic deficiencies in the reception system in France. The court based the decision on recent reports where it was highlighted that only 59% of the asylum seekers have access to reception facilities and that a high number are homeless. The court stated that, while in general access to reception facilities for asylum seekers was difficult in France, it is more difficult for particularly vulnerable applicants, such as a 6-month-old child and his single mother.

The court concluded that despite efforts from the national authorities and civil society organisations to support vulnerable applicants, it would be contrary to Article 3 of the ECHR to expose a single mother and her child to the risk of inhuman or degrading treatment following a Dublin transfer. The court also referred to the CJEU judgment of [Abubacarr Jawo v Bundesrepublik Deutschland](#) (C-163/17, 19 March 2019).

## Dublin transfers to Italy

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 2 A 377/23.ZA, 27 July 2023.

*The Higher Administrative Court of Kassel dismissed a leave to appeal against a decision on a Dublin transfer to Italy.*

The Higher Administrative Court of Kassel dismissed the leave to appeal submitted by a Pakistani national against a decision on a Dublin transfer to Italy. The applicant argued that the two letters from the Italian authorities and the lapse of 3 months were proof that there were systemic deficiencies in the reception system in Italy and he cannot be transferred there. The court considered that the applicant was mixing various legal texts, namely the existence of a willingness to take over by the Italian authorities within the meaning of Article 34a (1) of the Asylum Law and on the other hand the existence of systemic deficiencies within the meaning of Article 4 of the EU Charter. The court stated that a lack of willingness to take over does not automatically imply the existence of systemic deficiencies in the reception system in Italy. The court considered that the wording of the letters issued by the Italian authorities in December 2022 do not demonstrate the existence of systemic deficiencies within the meaning of Article 4 of the EU Charter.

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicants v Federal Office for Migration and Refugees \(BAMF\)](#), 11 A 1132/22.A, 16 June 2023.

*The Higher Administrative Court of North Rhine-Westphalia upheld a lower court's decision to annul the Dublin transfer of a family to Italy, stating that there were systemic deficiencies in Italy's reception system.*







The Dublin transfer to Italy of a family was annulled by the Administrative Court on the grounds that the applicants may be at risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter and Article 3 of the ECHR.

BAMF appealed the decision to the Higher Administrative Court of North Rhine-Westphalia, which rejected the appeal and determined that asylum and reception conditions in Italy demonstrated systemic deficiencies in accordance with Article 3(2) of the Dublin III Regulation and the situation constituted a risk of inhuman or degrading treatment under Article 4 of the EU Charter.

**Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 6 V 1704/23, 10 August 2023.**

*The Regional Administrative Court of Bremen suspended a Dublin transfer to Italy.*

A Syrian national contested a decision on a Dublin transfer to Italy, and the Regional Administrative Court of Bremen allowed the suspension of the transfer due to systemic deficiencies in the asylum and reception systems in Italy.

The court assessed that Italy's refusal to accept Dublin transfers was not temporary, that 8 months have passed since the circular was issued in December 2022 and no updated information had been shared since. The court concluded that the principle of interstate mutual trust cannot be relied upon.

## Dublin transfers to Lithuania

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.16901, 6 July 2023.**

*The Court of The Hague seated in Hertogenbosch suspended the implementation of a Dublin transfer to Lithuania and relied on the CJEU judgment in [MA](#) and its reopening at the Supreme Administrative Court of Lithuania on 28 July 2022.*

The applicant challenged a decision on a Dublin transfer to Lithuania, claiming a risk of inhuman or degrading treatment due to shortcomings in the asylum and reception systems. The Court of The Hague seated in Hertogenbosch suspended the Dublin transfer after having examined reports on the recent legislative and policy changes in Lithuania. The court referred to the CJEU judgment of 30 June 2022 in [M.A. v State Border Protection Service at the Ministry of the Interior of the Republic of Lithuania](#).

The Court of The Hague observed that, following the CJEU judgment, the Supreme Administrative Court of Lithuania [ruled](#) on 28 July 2022 that the detention of third-country nationals who illegally cross the border to Lithuania is contrary to EU law and reiterated that every foreigner has the right to apply for asylum in Lithuania. The court noted that the applicant was detained in Lithuania upon arrival on 25 December 2022, and faced strict and difficult conditions. These facts were corroborated with reports from international and civil society organisations.

The court questioned if there were significant changes in Lithuania after the judgment of the Supreme Administrative Court that would affect the questions which were referred to the CJEU for a preliminary ruling on [15 June 2022](#). The



court found that Lithuania had not acted in accordance with EU law and suspended the transfer.

## Dublin transfers to Romania

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant \(II\) v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.10840, 2 June 2023.**

*The District Court of the Hague seated in Middelburg rejected an appeal against a decision on a Dublin transfer to Romania, stating that there was not sufficient evidence that applicants transferred to Romania were at risk of pushbacks.*

A Syrian national requested international protection in the Netherlands. The State Secretary found that Romania was the Member State responsible for examining the application. The applicant appealed the decision and claimed that the principle of interstate trust could no longer be relied upon with Romania due to evidence of pushbacks. The applicant claimed he was at risk of indirect *refoulement* if transferred.

The District Court rejected the appeal and stated that evidence of pushbacks was not sufficient to conclude that Romania was not complying with its international obligations toward Dublin transferees. The District Court also noted that the applicant had not provided concrete evidence to conclude that, as an applicant transferred back to Romania, he would also run a real risk of being deported from Romania to a third country by means of pushbacks.

The District Court also emphasised that in relation to the risk of indirect *refoulement*, applicants must demonstrate that differences in protection policies are so obvious and fundamental that they result in a real risk of *refoulement* following a Dublin transfer.

## Dublin transfers to Spain

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.13954, 20 June 2023.**

*The District Court of The Hague seated in Rotterdam rejected an appeal against a decision on a Dublin transfer to Spain, stating that it had not been demonstrated that the applicant would not have access to the asylum procedure or reception in Spain.*

A Palestinian applicant contested a decision on a Dublin transfer to Spain, alleging that the principle of mutual trust cannot be applied. The Court of The Hague seated in Rotterdam referred to recent case law where the Council of State confirmed that the principle can be relied upon with Spain, so that the burden of proof shifted to the applicant.

The court mentioned various reports concerning the situation in Spain and concluded that there was no evidence of structural shortcomings in accessing asylum procedures and the reception system. Moreover, the court stated that if the applicant was not provided access to the asylum procedure or reception, he could complain by using the available domestic remedies. The court rejected the appeal by concluding that the State Secretary rightly relied on the principle of interstate mutual trust.



## First instance procedures

### CJEU judgment on the duty to cooperate, burden of proof and general credibility of the applicant

**CJEU, *X v International Protection Appeals Tribunal, The Minister for Justice and Equality, Ireland, The Attorney General*, C-756/21, 29 June 2023.**

*The CJEU interpreted Articles 4(1) and (5e) of the Qualification Directive (2004/83/EC of 29 April 2004) on the applicant's duty to cooperate with the authorities, the burden of proof and the general credibility of the applicant.*

The CJEU ruled that Article 4(1) of the Qualification Directive 2004/83/EC requires the determining authority to obtain updated information on the general situation in the country of origin and a medico-legal report on mental health, when there is evidence of mental health problems due to a traumatic event in the country of origin.

The court emphasised that a breach of the applicant's duty to cooperate does not by itself annul a decision.

Furthermore, the CJEU held that Articles 23(2) and 39(4) of Directive 2005/85/EC do not allow delays in the procedure being justified by changes to the legislation during the asylum procedure and that the unreasonableness of a period cannot by itself justify setting

aside the decision of the competent court or tribunal.

The CJEU further held that Article 4(5e) of Directive 2004/83/EC must be interpreted as meaning that a false statement in the initial application, explained and withdrawn by the applicant, cannot by itself prevent the establishment of the applicant's general credibility.

### Electronic notification of an appointment for a personal interview

**France, Council of State [Conseil d'État], *B.C.A. v Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 464768, 6 June 2023.**

*The Council of State ruled that the electronic process for the notification of an invitation to the interview before OFPRA does not violate the principle of personal receipt of the summons.*

The Council of State examined the electronic procedure which was put in place to notify asylum applicants about the OFPRA decision ruling on their asylum application but also for notification of their summons to the interview, required by Article L. 531-12 of CESEDA. In particular, these provisions state that in the absence of consultation by the asylum applicant of the electronic summons in the secure personal digital space to which the person connects, in accordance with the information provided, the person is deemed to have been notified at the end of a period of 15 days from when the notification is made available on the portal.

The Council of State held that by authorising an electronic process for the notification of invitations to the interview before OFPRA, the national legal provisions do not violate the principle of personal receipt by the asylum applicant of the summons.

## Participation of an EASO officer in the first instance determination procedure

Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], [\*B.B.N. v Republic of Cyprus, through the Asylum Service\*](#), 446/2022, 12 June 2023.

*The Administrative Court of International Protection rejected complaints of alleged violations of the procedure by the Asylum Office when an officer of the European Asylum Support Officer (EASO) was involved in the administrative procedure by providing a recommendation.*

An applicant alleged that the participation of an EASO officer in the interview and in the procedure when issuing a recommendation for the Asylum Service was a procedural shortcoming which led to his application being rejected. IPAC reiterated that the refugee law allowed for the temporary involvement of EASO officers in the procedure at first instance. It added that the EASO Regulation and the Operational Plan in force between EASO and Cyprus allowed for such an involvement.

IPAC stated that the applicant from Cameroon had failed to provide sufficient details and substantiate his application for asylum. Based on country of origin information and with reference to the CJEU judgment of [\*Elgafaji\*](#), IPAC confirmed that the applicant was not eligible for subsidiary protection. IPAC concluded that the assessment of the EASO officer was correct.

## Legal capacity of an applicant with mental health issues

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [\*A. v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)\*](#), D-3593/2023, 7 July 2023.

*FAC ruled in the case of an applicant who suffered from dementia and clarified the need to determine the ability to act in the proceedings and the right to be appointed a representative in case of incapacity due to mental health.*

The case concerned a family of three applicants, one of whom was suffering from dementia, a form of Alzheimer's, as documented by medical reports submitted by the legal representative. During the interview, the applicant was confused, and the hearing was waived. SEM rejected the application but granted provisional admission. Upon appeal, the applicant argued that SEM failed to determine the facts and SEM stated that this case did not allow the collection of substitute statements from relatives in a written procedure.

FAC thoroughly examined the fact that the applicant was suffering from Alzheimer's, a disease of the brain which affects mental capacity. This led to doubts about the applicant's ability to judge the facts in a comprehensive way. FAC referred to civil law provisions to state that submitting an application for asylum constitutes a relative personal right, accessible also through representation by a legal entity. Since a legal entity could act for persons who lack mental ability due to illness, FAC considered that SEM insufficiently established the facts of the case. The case was referred back for determination of the applicant's need for representation and the court mandated assistance for acting in the asylum procedure.



## Quality of language determination

**Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A. v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\), D-2337/2021, 5 July 2023.](#)**

*FAC concluded that the language analysis performed by the specialised unit of Lingua was in line with the high standards for working methods and professional competence of the expert used.*

SEM has a specialised unit, Lingua, which conducts language and origin analysis. An applicant had claimed to be from Tibet and contested the Lingua unit report which concluded that he was raised in a Tibetan community exiled outside China, and not in Tibet. The applicant contested the working methods of the Lingua unit.

FAC stated that the Lingua unit works in compliance with the LADO (language analysis for the determination of origin) guidelines and respects the principle of confidentiality. The court found that the expert conclusions were comprehensive and corroborated with the biography of the applicant. FAC ruled that Lingua complied with professional qualifications, the expert was objective and neutral, and the report appeared to be coherent in its analysis and plausibility.

## Time limit for first instance decisions

**Lithuania, Vilnius Regional Administrative Court [Vilniaus apygardos administracinis teismas], [Applicant v Ministry of the Interior, eI3-9170-1161/2023, 27 June 2023.](#)**

*The Vilnius Regional Administrative Court (VAAT) ordered the Migration Department*

*to issue a decision on an asylum application within 1 month of the court ruling, as the Migration Department did not provide the grounds for extending the 6-month time limit to decide.*

The applicant filed an appeal before the VAAT as the Migration Department failed to examine the applicant's asylum application within the legal timeframe.

The applicant was notified in writing that the review would take longer than 6 months and a judgment would 'ideally' be rendered in the third quarter of 2023. The VAAT ruled that the vaguely specified timeframe did not provide legal certainty or sufficient grounds for extending the deadline as permitted under the recast APD.

The VAAT upheld the appeal and ordered the Migration Department to decide on the asylum application within 1 month from the date of the court decision entering into force.

## Credibility and assessment of evidence

**Ireland, High Court, [M.H v International Protection Appeals Tribunal & Anor, \[2023\] IEHC 372, 28 June 2023.](#)**

*The High Court upheld a Pakistani national's appeal and determined that IPAT had erred in law by proceeding under the premise that evidence could not be considered until general credibility was acknowledged.*

A Pakistani national from the Pakistan-occupied Azad Kashmir region had been a member of the political organisation Jammu Kashmir Liberation Front. The applicant's asylum application was denied, along with his subsequent request for subsidiary protection, and IPAT rejected both of his appeals.





The applicant appealed the decision to the High Court which found that the decision was made without considering any potential supporting documentation provided by the applicant because he was deemed not to be credible and the Tribunal failed to recognise that there is a requirement to evaluate documents for their content in addition to credibility. As a result, the case was sent to a different Tribunal member for a new review.

**Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A. v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), 7 June 2023.**

*The Federal Administrative Court ruled on the impact of a PTSD diagnosis in a case concerning an Iraqi national whose request for asylum was rejected.*

An Iraqi national of Kurdish ethnicity applied for asylum claiming a fear of being persecuted for protesting against the authorities. The applicant has been arrested for alleged accusations of cooperation with PKK (Kurdistan Workers' Party). During the asylum procedure, the applicant submitted medical documents proving his diagnosis for post-traumatic stress disorder (PTSD).

After the rejection of the application by SEM, the applicant appealed before FAC, claiming that the impact of the PTSD diagnosis was not taken into consideration in the contested decision. FAC rejected the appeal, arguing that the PTSD diagnosis represented an indication and not evidence that can be considered in the assessment of the application and cannot prove the credibility of the statements. The court noted that the statements of the applicant proved to be extremely poor and contained significant contradictions concerning the main elements of the asylum application, contradictions that

cannot be explained by the diagnosis of PTSD.

## Interpretation in the accelerated procedure

**Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicant v General Commissioner for Refugees and Stateless Persons \(CGRS\)](#), No 290058, 9 June 2023.**

*CALL ruled that the accelerated procedure should not be applied when the applicant could not communicate at a sufficient level in English and the assistance of a sworn translator was required.*

The CGRS rejected the application of a Sri Lankan applicant during an accelerated procedure, arguing that she had solely applied to prevent her expulsion/return. On appeal, the applicant claimed that, when submitting her application, she was unaware that she was subjected to an expulsion or removal decision. CALL found that the applicant barely spoke English and held that the applicant was not aware that she was subjected to an order to leave although it was signed by her.

The council held that this was incompatible with her supposed intention to apply for international protection to postpone or frustrate her expulsion/removal from Belgium. CALL also noticed that the applicant had not been assisted by a sworn interpreter during her personal interview and that the return officer considered statements made by the applicant in Tamil without obtaining a translation in Dutch. Consequently, the council held that the accelerated procedure should not have been applied and annulled the CGRS's decision.





## Special procedures: Application of the safe third country concept to Türkiye

**Greece, Independent Appeal Committee, [Applicant v Regional Asylum Office of Lesbos](#), No 300763/2023, 12 June 2023.**

*The 15<sup>th</sup> Appeals Committee ruled that Türkiye did not qualify as a safe third country for an Afghan father and his child who had not applied for international protection there and thus could not access health care services, education or employment, and where there were no prospects of family reunification.*

The authorities rejected the application for international protection of an Afghan father, who also represented his son, arguing that Türkiye could be considered a safe third country for them. The applicant contested this decision before an Independent Appeals Committee.

The committee observed that the applicant did not have the possibility to apply for international protection in Türkiye, therefore neither him nor his son could access health care services, education or employment. The committee also noted that Türkiye did not offer any opportunity for family reunification and concluded that the applicant's connection to Türkiye was insufficient to justify his return there. The committee ordered the authorities to hear the applicant again.

**Greece, Administrative Court [Διοικητικό Πρωτοδικείο], [Applicant v Police Directorate of Xanthi](#), AP309/2023, 16 June 2023.**

*The Administrative Court of Komotini annulled the return of an Afghan national due to the suspension of readmissions by Türkiye in 2020 and of returns to*

*Afghanistan in 2021 and ordered his release.*

After an Afghan national's request for international protection was rejected by the authorities on the grounds that Türkiye was a safe third country, he was issued a removal order and detained awaiting the return. The applicant appealed for a judicial review of his detention.

The administrative court ruled that he should be released due to the absence of prospects for his removal. The court based its decision on the fact that readmissions to Türkiye and returns to Afghanistan were suspended respectively since 2020 and 2021, and on the police's failure to ensure the applicant's removal.

**Greece, Independent Appeal Committee, [Applicant v Independent Asylum Unit of Xhanti](#), No 312252/2023, 16 June 2023.**

*The 10<sup>th</sup> Appeals Committee ruled that Türkiye could not be considered a safe third country for an Afghan applicant who did not enter Greek territory through the eastern Aegean islands and considering the unilaterally suspended readmissions in 2020 by Türkiye.*

An Afghan applicant, whose request for international protection was rejected on the grounds that Türkiye was a safe third country for him, appealed before an Independent Appeals Committee. The committee recalled that since 2020 Türkiye unilaterally suspended readmissions provided for in the EU-Turkey Statement. It added that this case fell outside of the statement because the applicant had not entered Greece through the eastern Aegean islands. The committee annulled the detention order and requested the authorities to hear the applicant again.





## Assessment of applications

### CJEU judgment on refusal of international protection due to a criminal record

CJEU, [Staatssecretaris van Justitie en Veiligheid v M.A.](#), C-402/22, 6 July 2023.

*The CJEU interpreted Article 14(4b) of the recast QD, clarifying the conditions for a refusal of international protection for third-country nationals who have been convicted of a crime.*

The applicant's request for international protection was rejected in the Netherlands for being considered a threat to society, as he had been convicted by final decision of a Dutch court for three sexual assaults, attempted sexual assault and theft.

The CJEU held that a revocation or a refusal of international protection may be applied only to a person convicted by final judgment of a crime regarded as exceptionally serious, meaning a crime that most seriously undermines the legal order of the community. The court noted that the degree of seriousness cannot be attained by a combination of separate offences, if none of them constitutes *per se* a particularly serious crime.

In addition, the court noted that the degree of seriousness is determined by considering all the specific circumstances of the case, such as the nature and quantum of the penalty provided by law and imposed in the case, the nature of the crime committed, mitigating or aggravating circumstances, whether or not the crime

was intentional, the nature and extent of the harm caused and the nature of the criminal procedure applied.

For additional details on revocation of international protection due to a criminal record, please see the CJEU judgments in cases [C-663/21](#) and [C-8/22](#) of 6 July 2023.

### Interpretation of Article 1(D) of the Refugee Convention (protection provided by UNRWA)

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [State Secretary v Applicant](#), 202103732/1/V3, 27 June 2023.

*The Council of State clarified the application of Article 1(D) of the Refugee Convention when an applicant voluntarily departs from UNRWA's area of operations.*

Based on CJEU case law, the Dutch Council of State ruled that stateless Palestinians who voluntarily leave UNRWA's areas of operations were to be excluded from the application of Article 1(D) of the Refugee Convention. It added that the applicants' former camp being rendered inaccessible did not justify granting refugee status. It also stated that the burden of proof lied with the applicants to establish that they left due to reasons beyond their control and the protection and assistance by UNRWA had ceased. Finally, it clarified that this did not preclude the applicants from qualifying for subsidiary protection.





## Fear of military recruitment in Russia

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 21068674 R, 20 July 2023.

*The CNDA held that Russian nationals who flee conscription for the war in Ukraine or deserted may obtain refugee status, as a Russian national summoned for military service is likely to commit war crimes, directly or indirectly.*

A Russian national claimed fear of persecution by Russian authorities due to his objection to join the mobilisation in the context of the Russian war in Ukraine, and appealed the rejection of his application before the CNDA.

The CNDA ruled that Russian nationals who refuse mobilisation for the war in Ukraine should be granted refugee status based on the recast QD as they would be led to commit war crimes (either directly or indirectly) given the very purpose of the mobilisation, the impossibility of refusing a mobilisation order and the large-scale war crimes committed by the various units of the Russian armed forces.

The CNDA noted that independent reports commissioned by the UN Human Rights Council have established that war crimes have been committed by the Russian army in Ukraine. The court also referenced the [EUAA's Country of Origin Information reports](#) and concluded that the new rules governing military service in Russia have increased the criminal responsibility for deserters. The absence of military service alternatives (e.g. civilian service) was also noted.

The court emphasised, however, that applicants need to provide all the relevant elements to establish the existence of a military obligation (mere membership in

the reserve does not suffice) and rejected the appeal in this specific case.

Latvia, District Administrative Court [Administratīvā rajona tiesa], [A v Office of Citizenship and Migration Affairs of the Republic of Latvia](#), No. A42-01777-23/13, 26 June 2023.

*The District Administrative Court upheld a Russian national's appeal and ordered the Office of Citizenship and Migration Affairs (OCMA) to examine the merits of the applicant's subsequent applications as his individual circumstances had changed when summoned for military service.*

A Russian national submitted a subsequent application for international protection in Latvia, which was left unexamined as he had not provided new evidence that his circumstances had significantly changed.

The applicant submitted a second subsequent application before receiving the contested decision, where he claimed that his circumstances had changed when he had been summoned for military service and was required to appear before the military commissioner in his place of residence, but the OCMA responded that it could not consider the second subsequent application as he still had to file an appeal.

The applicant filed an appeal before the District Administrative Court which upheld the appeal and ordered the office to reexamine the substance of the first and second subsequent applications as the applicant had provided evidence that, if deemed credible, could potentially affect the asylum decision.



## Persecution based on political opinion

Latvia, District Administrative Court [Administratīvā rajona tiesa], [A and B v Office of Citizenship and Migration Affairs of the Republic of Latvia](#), A42-01065-23/12, 13 June 2023.

*The District Administrative Court upheld the appeal of a Russian national with Ukrainian roots who openly criticised the Russian authorities but rejected the appeal of her husband since he had not made his political opinions known in public.*

The applicants, a husband and wife from Russia, applied for international protection in Latvia on the grounds that they had vocally opposed the Russian government's policies.

The OCMA found that the applicants' explanations were credible, devoid of inconsistencies and matched country of origin information. However, it rejected their applications as their exit from Russia was planned and organised, and despite having openly expressed their political opinions, they had not attracted the attention of the Russian authorities.

The applicants filed an appeal before the District Administrative Court, which upheld the appeal of the wife with Ukrainian roots who had publicly expressed her political views. The husband's appeal was rejected as he had not publicly expressed his political views, which would have justified his fear of political persecution in Russia.

The court noted that, since the wife was granted refugee protection, she has the right to family reunification, after which the husband will be entitled to obtain a permanent residence permit in Latvia.

## Persecution based on membership in a particular social group

Estonia Administrative Courts [Halduskohtud], [X v Police and Border Guard Board \(Politsei- ja Piirivalveamet\)](#), No 3-23-656, 6 June 2023.

*The Tallinn Administrative Court annulled a decision of the PBGB concerning a Russian transgender applicant due to numerous procedural flaws.*

The Tallinn Administrative Court annulled a PBGB decision which rejected the application for international protection by a Russian transgender applicant from Crimea. The court ordered the authorities to reconsider the applicant's case after it found they had failed to: indicate the factual and legal basis for their decision, assess the special procedural needs of the applicant, present their reasoning and draw logical conclusions from country of origin information, assess the risk of persecution by private individuals besides the risk of persecution by the state authorities, assess the grounds for the application cumulatively (transgender identity, citizenship and political opinion), and assess the risk of persecution upon a return without downplaying this factor on the basis that the applicant could conceal their political opinions.

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [S. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 22053238 C, 22 June 2023.

*The CNDA confirmed the existence of a social group of children and uncircumcised women of the Mossi community of Burkina Faso.*

A woman from Burkina Faso, whose application was rejected by OFPRA, lodged an appeal before the CNDA. She



claimed that her family wanted to subject her to FGM/C in her country of origin and the authorities cannot offer effective protection. The CNDA annulled OFPRA's decision and provided refugee protection.

The court ruled that young women from the Mossi ethnic group are exposed to FGM/C and cannot benefit from the protection of the authorities of Burkina Faso. Citing civil society organisations and UNICEF reports, the court emphasised the high prevalence of excision among this particular ethnic group and within the Muslim community.

**France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M.A. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 22058695 C+, 26 July 2023.**

*The CNDA held that homosexual persons constitute a particular social group in Iran.*

The applicant applied for international protection on the grounds of his sexual orientation and received a negative decision during an accelerated procedure. The CNDA annulled this decision and granted the applicant refugee status, stating that homosexual persons in Iran constitute a particular social group in the sense of Article 1(A2) of the 1951 Refugee Convention. The court observed that homosexuality was harshly punished under Iranian law, the laws were being enforced notably through executions and there were multiple actors of persecution beside the State, such as individuals and health institutions.

## Treatment of women in Afghanistan

**Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [A. v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), D-1226/2023, 21 June 2023.**

*FAC annulled a negative decision due to insufficient investigation of the case of a woman from Afghanistan.*

An Afghan woman claimed a risk of persecution due to her previous activities as a university lecturer and as a member of the Gender Committee in the University, dealing with claims of human rights allegations in the institution. On appeal, FAC ruled that SEM insufficiently investigated the facts and did not properly examine the evidence that would have been accessible in order to establish the credibility and the risk of persecution. The negative decision was annulled, and the case was referred back for an adequate examination.

## Internal protection alternative

**Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], [J. H. M.G. v The Asylum Service](#), No 4345/21, 13 June 2023.**

*IPAC ruled that an applicant from Jordan can safely relocate to the city of Amman without a risk of persecution.*

An applicant from Jordan alleged a risk of persecution on grounds related to murders and disputes between his family members and the members of a clan. His house and a relative's house were damaged, and he left the country due to the risk of revenge.

The Asylum Service considered that although the statements were credible,





national authorities could offer protection. In the appeal, IPAC amended the contested negative decision as it found that the applicant lived in the city of Amman for 2 months before he left Jordan, and he did not face any difficulty in that location. IPAC found that the applicant left the country legally and that he could safely return to Amman, thus he was not eligible for international protection since there was the possibility of an internal protection alternative.

## Subsidiary protection for applicants from the region of Khartoum in Sudan

**France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M.E. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 23009590, 21 July 2023.**

*The CNDA ruled that the security situation in the region of Khartoum in Sudan was such as to trigger the application of Article 15(c) of the recast QD.*

The applicant, whose request for international protection was rejected, argued that he would face a real risk of serious harm upon return to Sudan due to the security situation in his region of origin. Based on country of origin information, the CNDA found that a new internal armed conflict was taking place in the region of Khartoum since 15 April 2023. The court held that the conflict resulted in thousands of victims among civilians and caused hundreds of thousands to leave the region and the country.

The court held that the level of indiscriminate violence in the region of Khartoum was such that the applicant, by mere presence there, faced a serious and individual threat to his life or person, thus triggering the application of Article 15(c) of the recast QD.

## Subsidiary protection for applicants from West Oromia in Ethiopia

**France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M.B. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 20031224 C+, 12 July 2023.**

*The CNDA ruled that the security situation in the region of West Oromia in Ethiopia was such as to trigger the application of Article 15(c) of the recast Qualification Directive.*

An Ethiopian's request for international protection on the grounds of his political opinions was rejected by OFPRA. On appeal, the CNDA noted that the region of West Oromia had been affected by an internal armed conflict for several months, which led to hundreds of casualties among civilians, who were purposely targeted by pro-government forces. The court added that the humanitarian situation had worsened due to infrastructure destruction and floods following severe drought.

It concluded that the security situation and the level of indiscriminate violence in the West Oromia were such that an individual, by mere presence, faced a serious and individual threat to life or person, thus triggering the application of Article 15(c) of the recast QD. The court rejected the appeal as it could not confirm the origin of the applicant as being from West Oromia.





## Exclusion from subsidiary protection

Latvia, District Administrative Court [Administratīvā rajona tiesa], [Applicant v State Border Guard Service, A42-01232-23/7, 26 June 2023](#).

*The District Administrative Court of Riga concluded that a Ukrainian national must be excluded from subsidiary protection based on the State Security Service's opinion corroborated with its own findings after examining the case ex officio.*

A Ukrainian national applied for international protection in Latvia on 6 August 2022 on grounds related to the ongoing war. The Office of Citizenship and Migration Affairs assessed that the applicant was not at risk of persecution upon return and that he applied for asylum in multiple countries.

The court noted an opinion of the State Security Service that the applicant may pose a threat to public security. The court investigated *ex officio* and obtained additional evidence, finding that the applicant violated on multiple occasions the rules in the reception facility and misbehaved in the relation with the State Border Guard and the courts. The court stated that the applicant's aggressive, provocative and disrespectful behaviour, cannot be accepted in a democratic society. In view of all the elements and the fact that the State Security Service's opinion was not arbitrary, the court concluded that the applicant must be excluded from subsidiary protection.

The court referred to the CJEU judgment of [GM v Országos Idegenrendészeti Főigazgatóság, Alkotmányvédelmi Hivatal, Terrorelhárítási Központ \(C-159/21, 22 September 2022\)](#).

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

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicants v BAMF, 3 L 1057/23, 20 July 2023](#).

*The Regional Administrative Court in Saarland annulled the transfer of a family with five minor children to Bulgaria.*

An appeal against a transfer to Bulgaria was lodged by a family with five minor children. They had received international protection in Bulgaria and alleged that a transfer would expose them to treatment contrary to Article 4 of the EU Charter.

The Regional Administrative Court in Saarland found that, in previous case law, young, healthy and single applicants could return to Bulgaria and overcome the difficulties of securing a minimum livelihood. In this case, it considered that the family with five minor children had vulnerabilities and special protection needs, and they would not be able to secure a minimum livelihood for a long period in the absence of state or other support. Thus, they risked facing extreme material deprivation. Consequently, the court annulled the transfer.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicants v State Secretary for Justice and Security, 202202776/1/V3, 202203031/1/V3 and 202205428/1/V3, 30 August 2023](#).

*The Council of State referred questions to the CJEU for a preliminary ruling on the processing of applications lodged by persons who received international protection in another Member State and who cannot be transferred due to a risk of inhuman or degrading treatment.*



Three beneficiaries of international protection in Greece received negative decisions on asylum in the Netherlands. The State Secretary did not apply Article 33 of the recast APD on grounds of inadmissibility for status holders in another Member State because it considered that they cannot be returned to Greece where they would be at risk of ill treatment.

The Council of State referred questions to the CJEU for a preliminary ruling on whether the Netherlands would have to rely on the grounds of protection as assessed by national authorities in Greece and request documents from them, and whether the status can be revoked, terminated or not renewed in case it is established that the applicants no longer meet the eligibility criteria as initially assessed by the first Member State.<sup>2</sup>



## Reception

### ECtHR judgment on inhuman living conditions in the hotspot of Moria

**[ECtHR, \*H.A and Others v Greece\*, Nos 4892/18 and 4920/18, 13 June 2023.](#)**

*The ECtHR found a violation of Article 3 for inhuman living conditions in Moria and in conjunction with Article 13 for lack of an effective remedy.*

The case concerned the living conditions of 67 applicants at the Moria Migrant Reception and Identification Centre (RIC) on the island of Lesbos between 2017 and 2018.

Before being registered, some of the applicants were put in a cage for several days and some of them had complained of having suffered from medical problems and being in a vulnerable situation. The applicants claimed that it took 1-2 months to express their wish to apply for asylum.

The applicants invoked Article 3 of the ECHR and claimed that the poor living conditions in Moria amounted to inhuman or degrading treatment. Other applicants cited Article 3 in conjunction with Article 13 as they lacked access to effective remedies to complain about being placed in a cage.

In addition, some applicants stated that the authorities violated Article 8 and their right to family life since they did not adhere to

---

<sup>2</sup> See also [Jurisprudence on Secondary Movements by Beneficiaries of International Protection](#), June 2022.



the legal deadline for the asylum procedure, which delayed the family reunification with relatives who resided outside of Greece.

The court determined that the conditions in Moria amounted to inhuman or degrading treatment in light of reports concerning the conditions in Greece and the visit of the CoE Commissioner for Human Rights.

Due to the living conditions and the lack of effective remedies, the ECtHR ruled that Articles 3 and 13 had been violated. It did not find that the delay in the examination of family reunification brought on by the delay in the Greek asylum proceedings violated Article 8.

## **ECtHR judgment on systemic failures to enforce domestic court decisions on reception conditions in Belgium**

**ECtHR, [Camara v Belgium](#), No 49255/22, 18 July 2023.**

*The ECtHR found Belgium in violation of Article 6(1) of the Convention for the non-enforcement of a domestic court decision providing reception conditions to an applicant for international protection and noted systemic failures to enforce such judgments.*

In the context of the saturation of the reception system in Belgium, a Guinean national complained before the ECtHR under Articles 3 and 6(1) of the European Convention about being forced to live on the streets for several months after applying for international protection and about the state's failure to enforce a judgment of 22 July 2022, pronounced by the Labour Court, which ordered the authorities to grant him material assistance and provide accommodation in a reception centre, in a hotel or any other suitable

establishment in the absence of available places.

The ECtHR dismissed the complaint under Article 3 as it considered that the domestic court was seized only to analyse whether the applicant had the right to accommodation and not to analyse the conditions in which the applicant lived from the arrival in Belgium until he was provided with accommodation by Fedasil in November 2022.

The court concluded that there was a violation of Article 6(1) of the ECHR, as the domestic decision became final on 29 August and was enforced on 4 November 2022, following an interim measure indicated by the ECtHR.

The court highlighted that the judgment should have been executed *ex officio*, whereas in this case the enforcement was not spontaneous. The court noted the saturation of reception centres since the summer of 2021, logistical obstacles to increasing the capacity of reception centres and the lack of cooperation from local authorities. The court also looked at the 42% increase of applications for international protection in 2022, compared to 2021, noting that it could not criticise the choice to prioritise reception capacity for the most vulnerable applicants.

However, the court highlighted that the time taken to execute the court decision in the applicant's case was not reasonable even considering the general circumstances in Belgium and that the present case was not isolated but revealed a systemic failure of Belgian authorities to enforce final court decisions on the reception of applicants for international protection.



## Access to surgery covered by national authorities

**Germany, Regional Court [Landgericht], [District authorities v A,B,C](#), L 8 AY 16/23 B ER, 20 June 2023.**

*The Lower Saxony-Bremen Social Court ruled that the district authorities must cover the costs for necessary treatment for an underage asylum applicant under the regular rules, derived from a fundamental right to ensure a decent subsistence level.*

A Georgian minor suffered from a progressive disease causing severe bone growth disorders, a deformation, a pronounced multi-dimensional misalignment of the axis in the knee joints, and permanent, severe pain. The doctors and the health department considered that the applicant needed a surgery which would help him walk without pain and assistance, but the district authorities refused to cover the costs as they considered the surgery not necessary, among others, because the applicant's stay in Germany was considered temporary. His asylum application and return order were pending at second instance.

On appeal, the Braunschweig Social Court ordered the district to bear the costs of the planned operation by way of a temporary injunction and the Lower Saxony-Bremen Social Court confirmed the ruling. The social court noted that, from a medical point of view and considering the individual circumstances of the case, the surgical correction of the deformations was the solution to overcome the extreme pain suffered by the applicant and which would allow him to walk without assistance. The court also noted that the applicant would stay longer in the territory due to ongoing appeal proceedings and highlighted that under the Asylum Seekers Benefits Act and the UN Convention on the Rights of the Child, medical treatment must be

provided under the fundamental right to guarantee a decent subsistence level.

## Clarification on the meaning of 'search' in an initial reception centre

**Germany, Federal Administrative Court [Bundesverwaltungsgericht], [Applicants v Police](#), BVerwG 1 CN 1.22 and BVerwG 1 C 10.22, 15 June 2023.**

*The Federal Administrative Court held that the police merely entering a room of an initial reception centre for refugees to transfer a foreigner who was obliged to leave the country was not a search within the meaning of the Basic Law, Article 13(2).*

The Federal Administrative Court decided two cases concerning claims brought by asylum applicants in initial reception facilities (LEA) in Freiburg. They challenged the house rules regarding room checks by employees of the Freiburg Regional Council and private service providers.

The court held that the police merely entering a room of an initial reception centre for refugees to transfer a foreigner who was obliged to leave the country was not a search within the meaning of Article 13(2) of the Basic Law. The court held that Section 6 of the State Administrative Enforcement Act authorises police officers to enter the room even at night. The court also noted that there was no search in the sense of a targeted and purposeful search for something hidden, beyond simply entering the room and the measure did not require a prior judicial search order under Article 13(2) of the Basic Law. In addition, entering the room was also necessary to prevent an urgent threat to public safety and order under Article 13(7) of the Basic Law, because the person, who was obliged in an enforceable way to leave the country, had to be transferred to Italy on the same day.





## Detention and limitations on freedom of movement

### Temporary accommodation in designated places in the event of a mass influx of persons

**Lithuania, Constitutional Court [Lietuvos Respublikos Konstitucinis Teismas], [Decision of the Constitutional Court on the Law on the Legal Status of Foreigners, 10-A/2022, 7 June 2023.](#)**

*The Constitutional Court concluded that the provisions of the Law on the Legal Status of Foreigners which provide for temporary accommodation in designated places for third-country nationals in the event of a mass influx of persons during a declared state of emergency or war is contrary to the Lithuanian Constitution.*

The Constitutional Court decided in June 2023 that Article 1408 of the Law on the Legal Status of Foreigners in Lithuania violates Article 20 of the Lithuanian Constitution. The article provides that, in the event of a mass influx of foreigners during a declared state of emergency or a state of war, all asylum seekers who have submitted asylum applications at border checkpoints, transit zones or shortly after illegally crossing the state border of the Republic of Lithuania, until a decision is made to admit them to the territory, must be accommodated in designated places without the right to move freely within the territory, for up to 6 months and without

the decision of the competent authority being judicially reviewed by a court.

The court emphasised that necessary limitations of the right to liberty may be provided only by clearly and comprehensibly setting out in the law the grounds and conditions for such a limitation, and the manner and procedure for its application. The court noted that no preconditions were created for an individual assessment of the real threat to values protected by the Constitution, the interests of the state and society, and no preconditions were created for the application of less restrictive alternative measures. The court also highlighted that third-country nationals had their freedom of movement restricted solely because they were in Lithuania and their applications for asylum had not yet been examined on the merits.

The court concluded that, in the absence of any decision of the competent administrative authority restricting the liberty of a person, the legal regulation did not guarantee the right of asylum seekers to have the validity and lawfulness of the measure taken against them verified by a court.

### Detention of minors pending asylum procedures and pending a return

**Poland, Supreme Court [Sąd Najwyższy], [R.Z. and S.Z., II KK 148/22, 20 June 2023.](#)**

*The Supreme Court ruled in a landmark case on the detention of applicants for international protection and detention pending a return, clarifying the rules when minors are involved.*

A mother and her child, Russian nationals, requested compensation for their detention in guarded centres for migrants in Poland for approximately 16.5 months,

initially in connection with the pending asylum procedure and then in connection with the procedure for the return of rejected asylum applicants. After two negative judgments pronounced by lower courts, the Supreme Court ruled in their favour, clarifying the rules for both types of detention involving minors.

The court held that the detention of applicants for international protection does not have a repressive function, nor is its use intended to protect the Polish borders or the EU external borders, or to combat illegal migration. It concluded that guarded centres are not intended to detain third-country nationals for the duration of the examination of an application for international protection or to ensure the effective enforcement of a possible decision to deport.

The court examined the obligation to assess the best interests of the child and recalled that nationality must not play a role in the degree of protection of a child's rights. Considering that the deprivation of liberty of a mother and her child constitutes a threat to the normal development of the child, the court noted that, contrary to the ECtHR judgment in [M.D. and A.D. v France](#) (No 57035/18, 22 July 2021), there was a failure to establish the evidentiary basis for each extension of detention and the lack of risk to the minor's well-being.

## Lawfulness of detention for an applicant with a serious medical condition

**Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretariat for Justice and Security](#), NL23.16367, 14 June 2023.**

*The Court of The Hague seated in Roermond ruled on the lawfulness of detention of an applicant with a serious medical condition.*

An applicant from China appealed against a detention measure covering the period 1-12 June 2023, when he was placed in custody in the Judicial Centre for Somatic Care (JCvSZ) and claimed the measure was contrary to Article 16(1) of the Return Directive. The applicant is HIV-positive, deaf, unable to speak and has a skin disease. He was placed in the centre after he refused to eat.

The Court of The Hague seated in Roermond noted that the applicant received adequate medical treatment in the JCvSZ and this care in the compulsory context of the detention measure does not mean that the measure cannot continue. It also does not mean that the method of implementation would lead to a violation of Article 3 of the ECHR. In addition, the court stated that the mandate of the court is to check only the lawfulness of the detention measure, but it is not competent to impose on the State Secretary the measure to be adopted once the detention measure will be lifted. The court considered that the measure was not unlawful and that the State Secretary can keep the applicant in detention before implementing the expulsion measure.

The court consulted the CJEU judgment in [K v Landkreis Gifhorn](#) (C-519/20, 10 March 2022).



## Access to mobile phones and the internet

**Estonia, Supreme Court [Riigikohtus Poordujale], [Review of constitutionality of the general prohibition of access to mobile phones and the internet in detention centres on referral of the Tallinn Administrative Court](#), No 5-23-16, 20 June 2023.**

*The Supreme Court declared that a full ban on accessing mobile phones and the Internet in detention centres was unconstitutional.*

The Supreme Court of Estonia assessed the constitutionality of denying access to the Internet, mobile phones and other devices capable of transmitting and receiving information to applicants for international protection in detention centres. The Supreme Court recalled that detention centres were fundamentally different from prisons, since applicants are not serving a sentence but are detained to ensure they fulfil their administrative obligations if other supervision measures cannot be applied. Thus, the court stated that the specific security environment of prisons could not automatically be implemented in detention centres.

The court further observed that the general prohibition of access to mobile phones and the Internet in detention centres was contained in internal rules, and not in the Obligation to Leave and Prohibition on Entry Act (OLPEA) which regulates the detention of international protection applicants. The court noted that OLPEA provided restrictions on objects which could endanger the health and safety of detainees or the security of the centre. It refers to the discretionary power of heads of detention centres to take further *ad hoc* restrictions, while safeguarding the balance between the detainees' fundamental rights and the security of the detention centre. The court

noted that OLPEA contains an obligation for the state to ensure the possibility of using public communication channels in detention centres. Thus, the Supreme Court concluded that the ban on mobile phones and the Internet was contradictory with OLPEA.

## Detention pending a return

**Germany, Regional Court [Landgericht], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 21 T 123/21, 30 June 2023.**

*The District Court of Frankfurt ruled that the detention of an applicant, whose wife's medical condition deteriorated due to his detention and his imminent deportation, was unlawful.*

An applicant was placed in detention pending deportation, while his spouse needed his assistance as she suffered from a mental illness. The District Court of Frankfurt ruled that the detention measure was unlawful as it violated Article 6 of the Basic Law (right to marriage). The court took into consideration that the spouse's health deteriorated due to the detention and the imminent deportation of the applicant.





## Second instance procedure

### Appeals against decisions to join asylum cases

France, Council of State [Conseil d'État], [C.A. and D.B. v Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), 19 June 2023.

*The Council of State ruled that the joining of cases decided by the CNDA was not subject to an appeal in cassation and that joining cases does not affect by itself the regularity of the CNDA decision.*

The Council of State held that the CNDA has the power to join two or more cases, including cases not heard in a non-public hearing, on the rights to protection of members of the same family who refer to common or similar elements. The Council of State concluded that the joinder of cases by the CNDA is not subject to an appeal in cassation.



## Content of protection

### CJEU judgment on revocation of international protection

CJEU, [Bundesamt für Fremdenwesen und Asyl v AA \(C-663/21\)](#) and [XXX v Commissaire général aux réfugiés et aux apatrides \(CGRS\) \(C-8/22\)](#), 6 July 2023.

*The CJEU interpreted Article 14(4b) of the recast QD, clarifying the conditions for revocation of international protection for third-country nationals who were convicted of a crime.*

The two cases concerned the revocation of refugee protection by the Austrian Federal Office for Aliens and Asylum (BFA) and respectively by the Belgian Commissioner General for Refugees and Stateless Persons (CGRS) for committing a particularly serious crime constituting a danger to community.

The CJEU held that the danger to the community was not established by the mere fact that the person has been convicted of a particularly serious crime, but there are two conditions to be fulfilled: the conviction was done by a final judgment and it has been established that the person is a danger to the community.

The court clarified that such a measure may be adopted only by the state authorities after taking into account all the circumstances of the case and where the person constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society. In addition, the competent authority must

balance the interests at stake and establish that the measure is proportionate considering the danger posed by the person to the fundamental interest of the society. Furthermore, the court highlighted that the balancing exercise does not have to take into account the extent and nature of the measures to which the person would be exposed if returned to the country of origin.

For additional details on the concept of ‘conviction by a final judgment for a particularly serious crime’, please see the CJEU judgment in case [C-402/22](#) of 6 July 2023.

## ECtHR judgment on the refusal to issue a travel document to a beneficiary of international protection

ECtHR, [S.E. v Serbia](#), No 61365/16, 11 July 2023.

*The ECtHR found a violation of Article 2 of Protocol No 4 for the refusal by Serbia to issue a travel document for 7 years to a Syrian beneficiary of international protection.*

After being granted refugee status in 2015 in Serbia on the grounds of his political activities in Syria, S.E. was refused the issuance of a travel document for refugees with the reasoning that the relevant regulations governing travel documents for refugees had not been enacted by the Minister of the Interior, as required by law.

The ECtHR ruled that the applicant’s statutory right had been interfered with, irrespective of any intention on the part of the authorities to restrict the right to leave Serbia for 7 years. Furthermore, referring the applicant to his state of nationality for the issuance of a passport went against the state’s international obligations after it had provided protection to the applicant,

recognising a well-founded fear of persecution in his country of origin. The court further observed that the legislative inaction was a systemic failure, encroaching on the effective right of refugees to leave Serbian territory and unjustified by a lack of available resources or technical solutions. Thus, for the execution of the judgment, the court required general measures to be adopted to address the structural lack of statutory and operational measures.

## ECtHR judgment on family reunification

ECtHR, [B.F. and Others v Switzerland](#), Nos 13258/18, 15500/18, 57303/18 and others, 4 July 2023.

*The ECtHR ruled on the criterion of financial independence in family reunification cases of third-country nationals who were granted provisional admission in Switzerland.*

The ECtHR found a violation of Article 8 of the Convention in three out of four applications lodged before it, in which beneficiaries of provisional admission were refused family reunification by the Swiss authorities, which deemed that one legal criterion was not met, namely non-reliance on social assistance. The court noted that, under the Swiss domestic law beneficiaries of provisional admission, unlike refugees granted asylum, are not entitled to family reunification, which is discretionary and subject to cumulative conditions. The ECtHR referred to the principles outlined in the Grand Chamber case [M.A. v Denmark](#) (No 6697/18, 9 July 2021).

The court noted that the arrival in Switzerland of the applicants’ family members was the only means by which family life could resume and that the statutory 3-year waiting period made the separation of the family inevitable, with children becoming older in the meantime.

In addition, the court held that the authorities had not struck a fair balance between competing interests when analysing the reliance of the family on social assistance. It noted that in two cases the persons had done everything that was reasonably expected to earn a living, while in another case the domestic court had not analysed whether that criterion needed to be applied more flexibly due to the state of health of the person.

### **Issuance of a passport to a family member of a beneficiary of international protection**

**Lithuania, Vilnius Regional Administrative Court [Vilniaus apygardos administracinis teismas], *S.V.S. v Migration Department of the Ministry of Interior of the Republic of Lithuania*, eI2-8510-931/2023, 12 June 2023.**

*The Vilnius Regional Administrative Court upheld a minor applicant's appeal and instructed the Migration Department to re-examine his request for a foreign passport on the grounds that his father had been granted refugee status in Lithuania, in accordance with the rights outlined in the recast QD.*

The father of the applicant, who was granted international protection, applied to the Migration Department for the issuance of a foreign passport for his minor son, a citizen of Lithuania, as he was unable to obtain a new passport in his home country due to his status as a former political prisoner.

The application was denied by the Migration Department. The VAAT upheld the applicant's appeal and ordered the Migration Department to re-examine the request for a foreigner's passport, citing the Law on the Legal Status of Foreigners, the Lithuanian Constitution, the Refugee

Convention, the recast QD and the recast APD in support of its decision.

### **Issuance of travel documents for Afghan nationals lacking identity documents**

**Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, F-2067/2022, 3 July 2023.**

*FAC ruled on a request to issue a foreign travel document for an Afghan national.*

An Afghan national who was rejected asylum but was granted provisional admission in 2020 requested to be issued a travel document. SEM rejected the request, although it noted that the applicant did not have a passport or any other identity document, and the Afghan representation in Geneva was no longer able to issue documents since August 2021.

After a thorough analysis of the current situation in Afghanistan, FAC ruled that the applicant could not be requested to travel back to his country to obtain a passport and that the applicant must be regarded as deprived of any identity documents. The court referred the case back to SEM to verify whether the other conditions for issuance of a travel document for third-country nationals were met.



## Humanitarian protection

### Best interests of the child

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), [Applicants v Directorate of Immigration](#), No 364/2023, 6 July 2023.

*The Immigration Appeals Board ruled that children whose parents have caused delays in the family's international protection proceedings cannot be held responsible for the delay.*

In a family of five Iraqi nationals, the father and eldest child absconded, leading to the family's Dublin transfer to Sweden being delayed. A year passed without them receiving a final decision on their requests for international protection. The applicants argued that they were not responsible for the delay and that they should be granted residence permits based on humanitarian considerations.

The Immigration Appeals Board rejected the claim regarding the adults and ruled that children could not be held responsible for delays in international protection proceedings. The board ordered the authorities to grant the two children and their mother residence permits based on humanitarian reasons, considering the principle of the best interests of the child.



## Temporary protection

### Concept of family member

Lithuania, Supreme Administrative Court of Lithuania [Lietuvos vyriausioji administracinis teismas], [Migration Department of the Ministry of the Interior of the Republic of Lithuania v GD](#), A- 1713 - 1188 /2023, 14 June 2023.

*The Supreme Administrative Court dismissed the Migration Department's appeal and found that the Vilnius Administrative Court correctly determined that the applicant who had lived with his Ukrainian partner up until 24 February 2022 was a family member in accordance with the Temporary Protection Directive.*

After a request for temporary protection was rejected by the Migration Department, the applicant filed an appeal before the VAAT on the grounds that he was a family member of his Ukrainian partner, in accordance with national law, the Council Implementation Decision 2022/382 and Article 8 of the ECHR.

The VAAT upheld the applicant's appeal and determined that the applicant was a family member as he had cohabited with his Ukrainian partner up until 24 February 2022 and may be entitled to temporary protection under national law and the Temporary Protection Directive.

The Migration Department filed an appeal before the Supreme Administrative Court, which dismissed the action and ruled that the VAAT had rendered a judgment that was both lawful and reasonable.

## Interplay between international protection and temporary protection

**Bulgaria, Supreme Administrative Court [Върховен административен съд]. [State Agency for Refugees v Applicants](#), 1992/2023, 14 July 2023.**

*The Supreme Administrative Court ruled in a cassation appeal on the termination of international protection procedures for applicants from Ukraine and the application of temporary protection.*

The case concerned a cassation appeal lodged by the State Agency for Refugees (SAR) against a judgment of the Administrative Court of Sofia City in December 2022.<sup>3</sup> The Supreme Administrative Court overturned the lower court decision as it considered that the President of SAR can terminate the proceedings for international protection initiated after 14 March 2022 by displaced persons from Ukraine.

The Supreme Administrative Court stated that temporary protection is an exceptional measure and that Article 68(1)(2) of LAR (Law on Asylum and Refugees) provides that proceedings for international protection are initiated by a third-country national by registering an application after the termination or withdrawal of temporary protection.

According to the Supreme Administrative Court's interpretation, Article 16 of the Council Implementing Decision 2022/382 of 4 March 2022 provides that temporary protection is an exceptional measure for a mass influx of displaced persons, and thus, the President of SAR is allowed to ensure a uniform application of the measure as a solution for all displaced persons from Ukraine. The appeal of SAR was allowed

and its initial decision maintained, whereas the lower court judgment was annulled.

## Reception of displaced persons from Ukraine

**Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Opinion on Temporary Act on the Reception of Displaced Persons from Ukraine](#), W16.23.00078/II, 7 June 2023.**

*The Council of State adopted an advisory opinion on the proposed government bill on the reception of displaced persons from Ukraine, noting that the government should further substantiate the need for the bill in relation to its proposed act which assigns reception for all asylum applicants to municipalities.*

A bill on the reception of displaced persons from Ukraine was proposed by the Dutch government to replace the law on the state of emergency with a temporary law, placing the responsibility for the reception and care of displaced persons from Ukraine on councils instead of mayors.

The Council of State agreed that the law on the state of emergency should be used with restraint. However, it noted that the government did not explain why it no longer considers that there is an '(acute) emergency' although the war in Ukraine is still ongoing and the Central Agency for the Reception of Asylum Seekers (COA) is still unable to receive displaced persons from Ukraine.

Thus, the Council advised the government to further substantiate the need to replace the emergency law with a temporary law that would be in force until March 2026 and to clarify how the bill relates to the proposal for the Distribution Act, which

<sup>3</sup> See the Quarterly Overview of Asylum Case Law, Issue No 1/2023, 15 March 2023.



assigns the task of finding reception places to municipalities for all asylum applicants, including displaced persons from Ukraine.

## Termination of temporary protection for third-country nationals

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), NL23.19504, 10 August 2023.

*The Court of The Hague seated in Rotterdam ruled on the termination of temporary protection for third-country nationals who had a temporary residence permit in Ukraine.*

The Court of The Hague seated in Rotterdam confirmed the State Secretary's decision to terminate temporary protection for a national of Tanzania who had received temporary protection due to the war in Ukraine.

The court noted that the State Secretary had amended the Aliens Act and duly informed the House of Representatives about each decision on the implementation of the optional provisions of the Implementing Decree of the Council of the EU decision on the application of temporary protection. The State Secretary initially decided to terminate temporary protection on 4 March 2023 and later extended it until 4 September 2023 for third-country nationals who had a temporary residence permit in Ukraine.

The court stated that the decision was well reasoned and it did not violate the principles of certainty and proportionality. It also added that more space will become available in municipal reception facilities when the third-country nationals return.



## Return

### ECtHR judgment on returns to Libya

ECtHR, [A.A. v Sweden](#), No 4677/20, 13 July 2023.

*The ECtHR found no violation of Articles 2 and 3 of the European Convention concerning the return of a Libyan applicant whose asylum claim was rejected.*

A Libyan national claimed before the ECtHR that his removal to Libya would breach Articles 2 and 3 of the Convention because of the general security situation and the fact that he personally was at risk of prosecution and ill treatment as he had worked for the Gaddafi regime.

The court noted that there had been general improvements since October 2020, since the ceasefire agreement was signed in Libya, including a significant reduction in civilian casualties. Many displaced Libyans have been able to return to their areas of origin. The court agreed with the Swedish authorities that, despite a fragile situation, not all Libyan nationals seeking asylum needed international protection. The court stated that it had no reason to doubt the authorities' conclusions regarding the applicant's personal circumstances, which were reached after a detailed examination of the file.

The court concluded that the applicant's removal would not be contrary to Articles 2 and 3 of the ECHR as the latter failed to substantiate the risk to life or being subjected to ill treatment upon a return.



## Time period for a voluntary return

**Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), Applicants v Directorate of Immigration, No 407/2023, 11 July 2023.**

*The Immigration Appeals Board ruled that rejected applicants should be given a period of time for a voluntary return before their removal, in line with the latest amendments to the Border Act.*

The Immigration Appeals Board partly annulled the decisions of the Directorate of Immigration, which rejected the request for international protection lodged by Balkan Egyptian applicants. It held that the applicants' removal lacked a legal basis, as they had not been granted a period of time for a voluntary return, despite the latest amendments to the Border Act adopted in December 2022. The board recalled that the amendments were made to align with the Return Directive and thus interpreted the relevant provisions as requiring the authorities to grant some time to rejected applicants to return voluntarily to their country of origin.



