

Quarterly Overview of Asylum Case Law





Manuscript completed in December 2023.

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PDF

BZ-AM-23-001-EN-N

ISSN 2811-9606

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





Note

The “EUAA Quarterly Overview of Asylum Case Law” is based on a selection of cases from the [EUAA Case Law Database](#), which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). The database presents more extensive summaries of the cases than what is published in this quarterly overview.

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

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

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List of abbreviations

APD	Asylum Procedures Directive. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
BAMF	Federal Office for Migration and Refugees (Germany)
BFA	Federal Office for Immigration and Asylum Bundesamt für Fremdenwesen und Asyl (Austria)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CoE	Council of Europe
COI	Country of origin information
CNDA	National Court of Asylum Cour Nationale du Droit d'Asile (France)
CRC	United Nations Convention on the Rights of the Child
Dublin III Regulation	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Agency for Asylum
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
FAC	Swiss Federal Administrative Court
EU+ countries	Member States of the European Union and associate countries
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
FGM/C	Female genital mutilation/cutting
FIS	Finnish Immigration Service
IPO	International Protection Office (Ireland)





IPAT	International Protection Appeals Tribunal (Ireland)
LVAT	Latvian Supreme Administrative Court
Member States	Member States of the European Union
NGO	Non-governmental organisation
OFPPA	Office for the Protection of Refugees and Stateless Persons Office Français de Protection des Réfugiés et Apatrides (France)
QD	Qualification Directive. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
RCD	Reception Conditions Directive. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
Refugee Convention	The 1951 Convention relating to the status of refugees and its 1967 Protocol
RIC	Reception and Identification Center (Greece)
SAR	State Agency for Refugees (Bulgaria)
SEM	State Secretariat for Migration (Switzerland)
THB	Trafficking in human beings
TPD	Temporary Protection Directive. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
VAAT	Vilnius Administrative District Court
UAM	Unaccompanied minor
UN	United Nations
UNRWA	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 4/2023” were pronounced from September to November 2023.

Court of Justice of the European Union (CJEU)

In [*DG, PP, GE v CZA and Ministero dell'Interno*](#), the CJEU interpreted the Dublin III Regulation and the EU Charter with regard to procedural requirements on information provision, the personal interview, the oral hearing, the assessment of appeals and the principle of *non-refoulement*.

In [*Staatssecretaris van Justitie en Veiligheid v SE*](#), the CJEU interpreted Article 2(l) of the Dublin III Regulation and clarified that a diplomatic card issued under the Vienna Convention on Diplomatic Relations constitutes a residence permit for the purposes of the Dublin procedure.

The CJEU ruled in [*French Office for the Protection of Refugees and Stateless Persons \(OFPRA\) v SW*](#) that UNRWA protection must be deemed to have ceased where an applicant does not have access to medical treatment without which the person is exposed to “imminent death or to a real risk of suffering a serious, rapid and irreversible decline in his or her state of health or a significant reduction in life expectancy”.

In [*S, A v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)*](#), the CJEU interpreted Articles 10(1e) and (2) of the recast Qualification Directive (QD) in cases where applicants for asylum claim persecution based on political opinions developed in the host Member State.

In [*X, Y and their six children v Staatssecretaris van Justitie en Veiligheid*](#), the CJEU interpreted Articles 15(c) and (b) of the recast QD and ruled that, when examining the conditions for granting subsidiary protection, national asylum authorities must take into account all relevant factors relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin before identifying the type of serious harm that those factors may substantiate.

In [*Y.N. v Slovenian Republic*](#), the CJEU ruled on the time limits for an appeal in an accelerated procedure.

In [*Association Avocats pour la défense des droits des étrangers \(ADDE\) and others v Ministry of the Interior \(France\)*](#), the CJEU ruled that the Returns Directive applies to any third-country national who has entered the territory of a Member State without fulfilling the conditions of entry, stay or residence, even when a Member State decides to temporarily reintroduce internal border controls and adopt a decision to refuse entry solely based on the Schengen Borders Code.

In [*CD v Ministry of the Interior of the Czech Republic*](#), the CJEU held that Articles 2(1) and 3(2) of the Returns Directive, read in light of Recital 9 and in conjunction with Article 9(1) of the recast Asylum Procedures Directive (APD), preclude the adoption of a return decision under





Article 6(1) of the Returns Directive, after the submission of an application for international protection, but before the adoption of a first instance decision on that application, irrespective of the period of residence to which that return decision refers.

European Court of Human Rights (ECtHR)

In [M.B. v Greece](#) and [M.L. v Greece](#), the ECtHR found Greece in violation of Article 3 of the ECHR for inadequate living conditions provided to pregnant women in the Samos Reception and Identification Centre (RIC) in 2020.

In [Sadio v Italy](#), the ECtHR found Italy in breach of Articles 3 and 13 of the ECHR in the case of an applicant from Mali who was held in the Cona reception centre in inadequate living conditions from 29 May 2016 to 27 January 2017.

In [M.A. v Italy](#) and [A.B. v Italy](#), the ECtHR found Italy in violation of Articles 3 and 5 of the ECHR due to the poor conditions and the arbitrary detention in which Tunisian applicants were held in a hotspot in Lampedusa.

In [A.E. and Others v Italy](#), the ECtHR held that Italy breached Articles 3 and 5 due to inadequate conditions in which Sudanese nationals were held during arrest and transfer, ill treatment of one of the applicants and the lack of a clear and accessible legal basis for the applicants' detention in the Ventimiglia hotspot in Italy.

In [M.N. and A.A. v Hungary](#), the ECtHR found a violation of Article 5(1) of the ECHR due to the detention of an applicant pending the examination of the asylum application.

In [E.F. v Greece](#), the Court found a violation of Article 3 due to the Greek authorities' failure to provide prompt access to and medical treatment to an applicant who was HIV positive and no remedies were available, thus entailing a violation of Article 13 of the Refugee Convention.

In [A.M.A. v the Netherlands](#), the Court found a violation of Article 3 in conjunction with Article 13 of the ECHR on grounds that the applicant did not have access to procedural safeguards and the Dutch authorities failed to carefully assess a last-minute application and the risk of *refoulement*.

In [W.A. and Others v Italy](#), the ECtHR ruled that Italy did not breach its duty to offer effective guarantees to protect the applicant against arbitrary *refoulement* to Sudan.

In [S.S. and others v Hungary](#), the ECtHR found a violation of Article 3 of the ECHR due to the national authorities' failure to assess the case in line with the principle of *non-refoulement* and a violation of Article 4 of Protocol No 4 because the applicants were removed to Serbia without having the possibility to provide their arguments against the removal.



National courts

Dublin transfers

Several judgments were issued by national courts which analysed reception conditions, access to the asylum procedure in Croatia, Denmark, Italy, France and Latvia.

First instance procedures

In the Netherlands, the Council of State [referred](#) questions to the CJEU for a preliminary ruling on the interpretation of Article 31(3b) of the recast APD. This concerns a national authority extending the 6-month time limit to decide on asylum applications when there is a large number of applications over a certain period of time.

In Germany, the Higher Administrative Court of Munich [ruled](#) on the duty to cooperate. In Cyprus, the Administrative Court for International Protection [annulled](#) a negative decision due to procedural deficiencies and a lack of proper interpretation services.

Persecution based on religious beliefs

In Austria, the Supreme Administrative Court [ruled](#) on cases of Iranian applicants who converted to Christianity.

Reception conditions

In Belgium, the Labour Tribunal [ruled](#) on reception conditions adapted to the medical situation of the asylum applicants.

Temporary protection

The Regional Administrative Court in Germany [ruled](#) on the eligibility for temporary protection of unmarried partners fleeing Ukraine. The Higher Administrative Court [assessed](#) whether a Lebanese applicant who studied in Ukraine was eligible for temporary protection.



Dublin procedure

Member States' obligations in the Dublin procedure

CJEU, [DG \(C-254/21\), XXX.XX \(C-297/21\), PP \(C-315/21\), GE \(C-328/21\) v CZA \(C-228/21\), Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino \(C-254/21, C-297/21, C-315/21 and C-328/21\)](#), 30 November 2023.

The CJEU ruled on the requirement to provide information, the common leaflet and a personal interview in the Dublin procedure and on the examination by national courts on the application of the non-refoulement principle.

The CJEU clarified several procedural aspects for the application of the Dublin procedure. Namely, the CJEU ruled that the obligation to provide information with the common leaflet and the obligation to hold an interview applies both in the context of a first application for international protection and a take charge procedure, under Articles 20(1) and 21(1) of the Dublin III Regulation, as well as in the context of a subsequent application for international protection and a situation which could result in a take back procedure as provided under Articles 17(1), 23(1) and 24(1).

With regard to an appeal, the CJEU clarified that the transfer decision must be annulled in the absence of an interview as mentioned above, unless during the appeal the applicant can present all arguments against the decision during an oral hearing, which complies with all

safeguards and conditions provided by Article 27 of the Dublin III Regulation.

The court stated that, when the personal interview took place but the common leaflet was not provided, the court deciding on the appeal can annul the transfer decision only if it considers, in view of all factual and legal circumstances, that the failure to provide the common leaflet deprived the person of presenting arguments that could have led to a different outcome of the administrative procedure. The court further clarified that “differences of opinion between the authorities and courts in the requesting Member State, on the one hand, and those of the requested Member State, on the other hand, as regards the interpretation of the material conditions for international protection do not establish the existence of systemic deficiencies”. The CJEU stated that it is not required for the court or tribunal of the requesting Member State to declare itself responsible “when it disagrees with the assessment of the requested Member State during the transfer or thereafter, nor can the court or tribunal of the requesting Member State compel the latter to examine itself an application for international protection on the basis of Article 17(1) of the Dublin III Regulation on the ground that there is, according to that court or tribunal, a risk of infringement of the principle of non-refoulement in the requested Member State”.

Interpretation of Article 2(l) of the Dublin III Regulation

CJEU, [State Secretary for Justice and Security v E., S., C-568/21](#), 21 September 2023.

The CJEU held that diplomatic cards issued under the Vienna Convention on Diplomatic Relations can be regarded as residence documents for the purposes of Article 2(l) of the Dublin III Regulation.

The CJEU clarified that a diplomatic card issued under the Vienna Convention on Diplomatic Relations constitutes a 'residence document' within the meaning of Article 2(l) of the Dublin III Regulation. It mentioned that this card represents the Member State's acceptance of the stay of a member of a diplomatic mission. This interpretation of a residence document, including a diplomatic card, is in line with the provisions of Articles 12-14 of the Dublin III Regulation.

The CJEU agreed with the Advocate General's conclusions that the Dublin III Regulation does not exclude persons staying legally with a status governed by the Vienna Convention and does not contain derogation rules.

Unaccompanied minor becoming an adult

Ireland, High Court, [AS v Minister for Justice](#), [2023] IEHC 580, 20 October 2023.

The High Court upheld the Minister of Justice's decision that the applicant should not be permitted to remain in Ireland with his sister, even though he was an unaccompanied minor when Ireland assumed responsibility for the applicant's asylum application, under Article 21 of the Dublin III Regulation.

Ireland assumed responsibility under the Dublin III Regulation for the asylum application of a national from Bangladesh who was an unaccompanied minor at the time, had first applied for international protection in Greece and his sister is an Irish citizen.

The applicant's transfer to Ireland was delayed due to COVID-19 travel restrictions and, thus, he was an adult when arriving in Ireland. The Minister for Justice rejected the applicant's request to remain in Ireland.

The High Court rejected the appeal and stated that acceptance of responsibility

under Article 8 of the Dublin III Regulation does not impose a humanitarian duty on any Member State to treat an adult as a child, even if they crossed the EU external border as a minor. Moreover, the court found no legal errors in the contested decision.

Time limits for Dublin transfers

Denmark, Refugee Appeals Board [[Flygtningenævnet](#)], [Applicant v Immigration Service](#), 8 September 2023.

The Refugee Appeals Board referred a question on the Dublin procedure for a preliminary ruling before the CJEU.

The Refugee Appeals Board submitted a preliminary question to the CJEU seeking clarifications on the impact of the 6-month time limit under Article 29 of the Dublin III Regulation of a Member State's decision to temporarily suspend transfers. The case concerned a Dublin transfer to Italy.

Netherlands, Council of State [[Afdeling Bestuursrechtspraak van de Raad van State](#)], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), No 202302386/1/V2, 28 September 2023.

The Council of State clarified the documents to be considered to decide the starting point of the Dublin transfer time limit.

A Yemeni family was given a 'walking in letter' (*zogenoemde loopbrief*) upon return to the Netherlands on 6 September 2022 before formally applying for asylum on 9 September 2022. Germany was then found to be the Member State responsible to examine the asylum application.

In the appeal against the decision on the Dublin transfer, the Council of State ruled that it must be assumed that an application



for international protection within the meaning of Article 20(2) of the Dublin III Regulation has been lodged at the time when a walking letter was issued, and that is therefore the starting point of the Dublin time limit.

Legal capacity in proceedings on urgent legal protection

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichte), Immigration Office (Ausländerbehörde, ABH) v Applicant, No 11 S 884/23, 5 October 2023.

The Higher Administrative Court of Baden-Württemberg decided that in exceptional cases the need for urgent legal protection could be directed against the Immigration Office instead of BAMF.

An Iranian national, whose asylum application was rejected as inadmissible under the Dublin III Regulation and who received a transfer decision to Croatia, lodged an urgent application for a suspensive effect pursuant to Section 123 of the Administrative Procedure Act before the Administrative Court of Karlsruhe. The applicant sued the Immigration Office, but the latter invoked a lack of competence to stand in the proceedings.

The Higher Administrative Court of Baden-Württemberg decided that generally BAMF was the responsible authority for ordering and carrying out Dublin transfers and therefore the defendant in an application for a suspensive effect. However, pursuant to Article 19(4) of German Basic Law, the right to effective legal protection meant that the Immigration Office could exceptionally be a party if the application for urgent legal protection related to a transfer where the immigration authority provides administrative assistance or if it could not ensure urgent legal protection in good time.

The Higher Administrative Court of Baden-Württemberg held that the legal requirements to order a suspensive effect were not fulfilled at the time of the appeal decision and therefore rejected the application for a suspensive effect.

Dublin transfers to Croatia

Slovenia, Supreme Court [Vrhovno sodišče], Ministry of the Interior v Applicant, VS00069932, 6 September 2023.

The Supreme Court reversed the Administrative Court decision and ruled that, in accordance with the Dublin III Regulation, the applicant would be considered as an applicant for international protection upon a transfer to Croatia.

Due to several concerns about the applicant's access to the asylum procedure in Croatia, the Administrative Court upheld the applicant's appeal against a Dublin transfer and referred the case back to the Ministry of the Interior for re-examination.

The Ministry of the Interior appealed the decision to the Supreme Court, which allowed it on grounds that Croatia's acceptance and processing of the application for international protection in this case was not flawed, despite findings that may indicate systemic deficiencies in the asylum procedure. The court stated that despite some findings that may indicate deficiencies in the asylum procedure, however the applicant did not adduce substantial evidence to prove systemic deficiencies and a real and personal risk of inhuman or degrading treatment.



Slovenia, Supreme Court [Vrhovno sodišče], Applicant v Ministry of the Interior, VS00070338, 21 September 2023.

The Supreme Court dismissed the applicant's appeal against a decision on a Dublin transfer to Croatia on the grounds that Croatia had fulfilled the requirements for readmission.

In an appeal against the lower court decision confirming a decision on a Dublin transfer to Croatia, the Supreme Administrative Court also confirmed the contested transfer.

The Supreme Administrative Court took into account that the applicant had already been involved in the international protection procedure in Croatia as his fingerprints were in the Eurodac database. Also, the applicant was considered an asylum seeker and had been informed about the procedure in a language that he understood, and he had received an invitation for an interview.

The Supreme Administrative Court concluded that it could not therefore be refuted that Croatia had fulfilled the requirements for readmission.

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichte), Federal Office for Migration and Refugees (BAMF) v Applicants, No 10 LB 18/23, 11 October 2023.

The Higher Administrative Court of Lower Saxony decided that, despite information on pushbacks in Croatia, there are no systemic deficiencies in the asylum system regarding Dublin returnees.

BAMF lodged an onward appeal against a decision of the Regional Administrative Court of Hanover to cancel the Dublin transfer of several family members of Afghan nationals to Croatia on grounds that the asylum system in Croatia had

systemic weaknesses due to violent pushbacks and illegal chain deportations.

The Higher Administrative Court of Lower Saxony overturned the decision and held that, even though country information on the situation in Croatia showed that there were allegations of repeated pushbacks from Croatia to Serbia or Bosnia-Herzegovina, there was insufficient evidence that these violations occurred for Dublin returnees.

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], Austrian Federal Office for Aliens and Asylum (BFA) v Applicant, No Ra 2023/18/0222, 26 September 2023.

The Supreme Administrative Court decided that the BFA was not required to examine ex officio the granting of a 'residence permit for special protection' in the admission procedure pursuant to the Dublin III Regulation.

The case concerned a Cameroonian national who was a victim of human trafficking, forced into prostitution in Croatia and suffered from post-traumatic stress disorder (PTSD). The asylum application was rejected as inadmissible because Croatia was responsible under the Dublin III Regulation. The Federal Administrative Court upheld the appeal and considered that, because the applicant was a trafficking victim, the BFA was required to examine the granting of a 'residence permit for special protection', pursuant to Section 57(1), No 2 of the Asylum Act 2005 ex officio in the admission procedure.

Based on previous case law, the Supreme Administrative Court rejected the lower court's arguments and ruled that the lower court had failed to indicate the specific deficiencies and to remedy them in the court proceedings.



Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant, 202303599/1/V3, 13 September 2023.

The Council of State ruled that the interstate principle of mutual trust can be applied to a Dublin transfer to Croatia.

An Iranian national contested a decision on a Dublin transfer to Croatia, and the Court of the Hague ruled that the State Secretary wrongly relied on the principle of interstate mutual trust and mentioned the assessment made by the Council of State in the ruling of [13 April 2022](#). Upon an onward appeal by the State Secretary, the Council of State clarified that the interpretation of the previous ruling was important for the assessment of information submitted by the Croatian authorities and that in the ruling from [13 April 2022](#) the Council of State referred the case back for further investigation.

The Council of State noted that the investigations conducted by the State Secretary led to the conclusion that the principle of mutual trust can be applied with regard to Croatia and the Dublin transfer would not entail a violation of the EU Charter and the ECHR.

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), No NL23.16212, 19 September 2023.

The Court of the Hague seated in Roermond rejected an appeal against a Dublin transfer to Denmark and stated that, despite different protection policies for Syrian applicants, the applicant can present arguments in the asylum

procedure and complain before the ECtHR.

A Syrian applicant appealed against a decision on a Dublin transfer to Denmark. The Court of the Hague seated in Roermond considered that Denmark had a substantially different protection policy than the Netherlands, but this difference did not prohibit the transfer because the applicant had the possibility to present his case during the asylum procedure and submit an application before the ECtHR. The court considered that it was not the task of the Dutch jurisdictions to assess judgments delivered by courts of other Member States and to take the outcome of that procedure into account in the assessment of the legality of the Dublin transfer decision.

Dublin transfers to France

Netherlands, Court of The Hague [Rechtbank Den Haag], Applicants v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), Nos NL23.18109 and NL23.18110, 15 September 2023.

The Court of The Hague seated in Amsterdam annulled a transfer decision based on the Dublin III Regulation because there was a real risk for the applicant and her 9-month-old baby to become homeless upon a return to France.

The case concerned the legality of a decision on a Dublin transfer of a Sudanese national to France. The District Court of the Hague seated in Amsterdam allowed the applicant's appeal and decided that the country information on France showed that many Dublin returnees were homeless due to a lack of reception capacity and therefore there was a real risk for the applicant and her 9-month-old baby to be homeless upon a transfer to France.



Dublin transfers to Italy

Germany, Regional Administrative Court [Verwaltungsgerichte], Applicant v Federal Office for Migration and Refugees (BAMF), No W 6 S 23.50348, 7 September 2023.

The Regional Administrative Court of Würzburg rejected an appeal against a Dublin decision and decided that non-vulnerable applicants were not threatened with inhuman or degrading treatment upon a return to Italy.

An Ivorian national appealed against a Dublin decision by BAMF. The Regional Administrative Court of Würzburg decided that, according to current country information on the situation in Italy, healthy and employable people were able to support themselves through legal work and satisfy their most basic needs. The court decided that it could not be assumed that the Italian asylum system and reception conditions suffered from systemic deficiencies, and therefore, returned asylum seekers would not be threatened with inhuman or degrading treatment pursuant to Article 4 of the EU Charter.

requested a suspensive effect of the appeal. The Regional Administrative Court of Braunschweig granted a suspensive effect and held that there were systemic deficiencies in the Latvian asylum system since asylum seekers, including Dublin returnees, are detained in closed facilities for the duration of the asylum procedure. Their health and wellbeing are not adequately safeguarded and there is no individualised examination of the grounds for detention.

The Regional Administrative Court of Braunschweig decided that the conditions and circumstances of detention in Latvia were not in line with EU law, in particular Article 8 of the recast Reception Conditions Directive (RCD), and constituted inhuman or degrading treatment within the meaning of Article 3 of the ECHR and Article 4 of the EU Charter.

Dublin transfers to Latvia

Germany, Regional Administrative Court [Verwaltungsgerichte], Applicants v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF), No 2 B 217/23, 6 October 2023.

The Regional Administrative Court of Braunschweig granted an interim measure against a Dublin transfer due to systemic deficiencies and a threat of detention in Latvia.

A family of Iranian nationality, including two children, appealed against a Dublin decision to transfer them to Latvia and



First instance procedures

Extension of the time limit to decide on asylum applications

The Council of State submitted questions before the CJEU on the interpretation of Article 31(3b) of the recast APD.

A Turkish applicant complained about the length of the determination of his asylum application before the State Secretary. The latter argued that the delay was due to a large number of asylum applications and that the maximum of 15 months for decision-making was not exceeded.

The Council of State decided to stay the proceedings and referred the following questions before the CJEU on the interpretation of Article 31 (3b) of the recast APD:

- 1a. Can the determining authority use its power to extend the decision period from 6 months in the case of a large number of applications for international protection submitted simultaneously within the meaning of Article 31 (3b) of the recast APD, if the increase in the large number of applications for international protection occurs gradually over a certain period of time and as a result it is very difficult in practice to complete the procedure within the 6-month period? How should "at the same time" be interpreted in this context?
- 1b. Which are the criteria to be used to assess whether there is a 'large number' of applications for

international protection, as referred to in Article 31(3b) of the recast APD?

- 2. Is there a time limit on the period in which an increase in the number of applications for international protection must occur in order to still fall within the scope of Article 31(3b) of the recast APD? And, if so, how long can this period last?
- 3. When assessing whether it is very difficult in practice to complete the procedure within the 6-month period referred to in Article 31(3b) of the recast APD - also in light of Article 4(1) of the recast APD – circumstances that cannot be traced back to the increase in the number of applications for international protection, such as the fact that the determining authority is faced with backlogs that already existed before the increase in the number of applications for international protection or with a lack of human capacity?

Notification of an oral hearing

Ireland, High Court, [GR & Ors v International Protection Appeals Tribunal & Ors](#), 2023/1147/JR, [2023] IEHC 638, 27 October 2023.

The High Court quashed the decision of the International Protection Appeals Tribunal (IPAT) as the Georgian applicants were not notified in advance that an oral hearing would not be held because Georgia was deemed to be a safe country of origin.

The asylum applications of a Georgian family were rejected by the International Protection Office (IPO) and the IPAT. The appeal was resolved by a written procedure rather than an oral hearing as Ireland had determined Georgia to be a safe country of origin.

The applicants filed an appeal before the High Court, which partly overturned the IPAT decision on grounds that the parties should have been notified by the IPO in advance of the refusal of an oral hearing.

Duty to cooperate

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), Immigration Office (Ausländerbehörde) v Applicant, No 10 ZB 23.1344, 22 September 2023.

The Higher Administrative Court of Munich decided that a degree of tolerance pending an expulsion for persons with an unclear identity ("Duldung light") may not be issued in cases of subsequent asylum applications before a legally-binding decision was adopted by a court.

The Higher Administrative Court of Munich decided on an application for leave to appeal lodged by the Immigration Office against a decision of the Augsburg Administrative Court. The lower court had overruled the decision to issue a tolerance pending an expulsion for persons with an unclear identity pursuant to Section 60b(1), sentence 1 of the Residence Act ("Duldung light") due to a lack of cooperation in obtaining a passport while a court case on a subsequent asylum application was still pending.

The Higher Administrative Court of Munich rejected the application for leave to appeal and decided that a degree of tolerance pending an expulsion for persons with an unclear identity ("Duldung light") due to a lack of cooperation in obtaining a passport was inadmissible in cases of subsequent asylum applications, if a legally-binding decision on the subsequent asylum application was not yet adopted by the court.

Safeguards in the age assessment procedure

ECtHR, Diakité v Italy, No 44646/17, 14 September 2023.

The ECtHR found Italy in violation of Article 8 of the ECHR for not acting with reasonable diligence in providing adequate safeguards in relation to the age assessment of a minor.

An Ivorian national declared he was a minor and submitted a birth certificate as evidence. After his first medical examination for an age assessment, he was considered an adult and transferred to the relevant reception centre. Following multiple requests, he underwent another age assessment, during which he was deemed to be a minor and he was transferred to a centre for minors. Later, a guardian was appointed for him, and he was granted asylum.

Before the ECtHR, he invoked a violation of Article 8 of the ECHR due to the failure of the national authorities to recognise his status of an unaccompanied minor (UAM) and to promptly appoint a legal guardian.

The court found that national authorities had violated Article 8 by not acting with reasonable diligence nor by complying with their positive obligation to ensure the right to respect for private life. Highlighting that the principle of presumption of minor age is an inherent element of the protection afforded to a foreign unaccompanied individual declaring to be a minor and recalling its judgment in Darboe and Camara v Italy, the court held that the applicant was not provided with the minimum procedural guarantees in light of presenting his birth certificate and that a guardian should have been appointed sooner.



Suspensive effect for a negative decision

Italy, Civil Court [Tribunali], [Applicant v Ministry of the Interior](#), R.g. 11699-1/2023, 18 September 2023.

The Tribunal of Bologna ruled that an analysis on the merits may result in the appeal having a suspensive effect on the enforceability of the negative decision.

A Tunisian national appealed before the Tribunal of Bologna against a negative decision on his application for international protection, which was rejected as manifestly unfounded on grounds that Tunisia is included in the national list of safe countries of origin.

The Tribunal of Bologna noted that the Territorial Commission rejected the application after having conducted a thorough substantive assessment of the credibility, which meant that the application could have not been rejected as manifestly unfounded. The fact that the case was analysed on the merits results in the appeal having a suspensive effect on the enforceability of the contested decision.

The Tribunal of Bologna assessed the degree of integration of the applicant in the host country, the current situation in Tunisia according to updated country of origin information (COI) and concluded that an expulsion order would cause a violation of the right to private life as enshrined in Article 8 of ECHR and the loss of the integration effort.

Interpretation

Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], [S.A.A. v Republic of Cyprus, through Asylum Service](#), 1061/2022, 11 September 2023.

The Administrative Court of International Protection (IPAC) annulled a negative decision due to procedural deficiencies and a lack of adequate interpretation.

A Nigerian applicant was rejected international protection in Cyprus. In the appeal, the applicant argued that the personal interview was conducted in English with the asylum officer (interviewer) and a proficient interpreter was not present, leading to deficiencies in interpretation during his personal interview with the Asylum Service. In particular, the applicant claimed that the asylum officer acted as an interpreter without fulfilling the legal requirements.

IPAC extensively referred to EUAA guidelines and ECtHR jurisprudence to annul the Asylum Service decision because of deficiencies in procedural safeguards relating to the quality of interpretation during the interview. Therefore, the court could not verify the accurate and complete recording of the applicant's claims during the interview.





Assessment of applications

Persecution based on political opinion

CJEU, *S. A v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, C-151/22, 21 September 2023.

The CJEU interpreted Articles 10(1e) and (2) of the recast QD when asylum applicants claim persecution based on political opinions developed in the host Member State.

The proceedings at the national level concerned two applicants from Sudan, S and A, whose requests for refugee status based on persecution due to political opinions expressed in the host country about the political situation in Sudan were dismissed by the State Secretary for Security and Justice in the Netherlands.

The CJEU ruled that under Articles 10(1e) and (2) of the recast QD it is sufficient for an applicant to claim that he/she has or expresses political opinions, thoughts or beliefs to fall within the concept of political opinion or characteristic even though those opinions have not attracted the negative interest of the potential actor of persecution in the country of origin.

The CJEU also held that, under Articles 4(3)-(5) of the recast QD, to assess whether a fear of persecution on account of political opinions is well founded, Member States must take into account the fact that the political opinions could have attracted or may attract the negative

interest of the actors of potential persecution in the country of origin. However, the opinions do not have to be so deeply rooted in the applicant that he/she could not refrain, if returned, from manifesting them.

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicants v Federal Office for Migration and Refugees (BAMF)*, No 5 K 1193/22.A, 7 September 2023.

The Regional Administrative Court of Chemnitz recognised refugee status for a couple from Venezuela due to their political activities.

A married couple of Venezuelan nationality applied unsuccessfully for asylum in Germany and claimed to have been active members of the political opposition party Encuentros Ciudadano and that the husband had been the victim of two violent attacks by members of the party Patriotes Cooperantes, which was in favour of the government.

The Administrative Court of Chemnitz was convinced of the credibility of the applicant's submission and ruled that the attacks on the husband by members of the Patriotes Cooperantes established a considerable probability of persecution on the grounds of his political activities.

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), *Applicants v Federal Office for Migration and Refugees (BAMF)*, No 13a ZB 23.30618, 11 September 2023.

The Higher Administrative Court of Munich rejected a leave to appeal because the applicant failed to sufficiently substantiate the risk of a group persecution of persons of Alevi faith in Turkey and of a prosecution for insulting the president.

The Higher Administrative Court of Munich rejected an application for leave to appeal



of a Turkish national of Alevi faith and an active member of the Republican People's Party (CHP) who had been prosecuted for insulting the president and persecuted on the basis of her religious beliefs.

The Higher Administrative Court of Munich held that the applicant had failed to sufficiently substantiate the risk of a group persecution of persons of Alevi faith in Turkey and a prosecution for insulting the president. The court stated that the applicant's submissions were not admissible for general clarification.

Persecution based on forced military service

Netherlands, Court of The Hague [Rechtbank Den Haag], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), No NL23.22353, 28 September 2023.

The Court of The Hague seated in Groningen found it plausible that the risk of a female applicant with a minor child to be forced to military or civil service upon return to Eritrea would constitute a violation of Articles 3 and 4(2) of the ECHR.

An Eritrean national feared to be forced to military or civil national service upon a return to Eritrea but was rejected asylum in the Netherlands. Upon an appeal, the Court of the Hague seated in Groningen held that, even for the applicant as a woman with a child, there was a real risk to be obliged to perform military national service which could amount in a violation of Article 3 of the ECHR. The Court of the Hague further stated that the civil service and previous military training applied to women (with children), and due to its indefinite duration and the lack of freedom of choice, the civil service constituted a violation of Articles 3 and 4(2) of the ECHR.

Persecution based on membership in a particular social group

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), No ZB 23.30633, 12 September 2023.

The Higher Administrative Court of Munich rejected a leave to appeal because it considered that there was no group persecution for Tigrinya in Ethiopia.

The Higher Administrative Court of Munich ruled on an application for leave to appeal of an applicant of Ethiopian nationality and member of the Tigrinya ethnic group whose appeal against a negative BAMF decision was rejected by the Regional Administrative Court of Regensburg. The applicant questioned whether there was a group persecution for Tigrinya in Ethiopia due to the deep-rooted ethnic conflicts that still existed in Ethiopia.

The Higher Administrative Court of Munich stated that, due to the peace-keeping measures and the end of the Tigray conflict in November 2022, there was no significant risk of persecution for the applicant and the applicant did not sufficiently substantiate the existence of a group persecution due to the special circumstances in Ethiopia.

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [Mme K. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 23019157 C, 31 October 2023.

The CNDA ruled that non-mutilated girls, teenagers and women constitute a particular social group in Sierra Leone in the sense of Article 1.A.2. of the 1951 Refugee Convention and granted the applicant refugee protection.



A minor national of Sierra Leone, born in France to parents from Sierra Leone, applied for international protection on grounds of her well-founded fear of persecution under the form of female genital mutilation/cutting (FGM/C) upon a return to her country of origin. Based on available COI, the court ruled that non-mutilated women and girls constituted a particular social group in the sense of the 1951 Refugee Convention in Sierra Leone, as the practice of FGM/C was prevalent and still considered an initiation rite in feminine secret societies, without which they could face exclusion from the community. The CNDA noted the precise declarations of the applicant's parents which, corroborated with COI findings, had allowed to establish her well-founded fear of persecution on these grounds and granted her refugee protection.

Italy, Civil Court [Tribunali], [Applicant v Ministry of the Interior](#), R.G. 19087/2019, 21 September 2023.

The Tribunal of Naples granted refugee status to a Senegalese minor for a risk of persecution due to membership of a particular social group of abandoned minors.

A minor Senegalese national applied for international protection and claimed to have been abandoned from his biological parents and to have been raised by a woman and her husband who never accepted him as a son. He was subject to abuse, domestic violence and persecution by the adoptive father, who also used him as a slave. For these reasons, he was forced to flee his country because he was afraid to be killed.

The tribunal found that the statements of the applicant on his personal conditions, such as the exclusion from school and the psychological, social and family impairment in which he spent his first 20 years, to be a deprivation of fundamental human rights

and exposure to a forced migration journey due to the history of family abandonment.

Based on updated COI and UNHCR Guidelines on International Protection, the Tribunal of Naples granted the applicant refugee status on ground of membership of a particular social group, consisting of abandoned children who are victims of persecution in their country of origin because of their personal condition.

Persecution based on religious beliefs

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], 26 September 2023:

- [Applicant v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), No Ra 2022/19/0164.
- [Applicant \(2\) v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), No Ra 2022/19/0202.

The Supreme Administrative Court overruled decisions of the Federal Administrative Court on cases of Iranian applicants who converted to Christianity.

The cases concerned onward appeals of Iranian nationals who converted to Christianity after entry into Austria and whose asylum applications were rejected on the grounds that their conversion was not out of inner conviction but for the purpose of obtaining international protection.

The Supreme Administrative Court overruled the Federal Administrative Court's decisions because the lower court deviated from existing case law on the assessment of evidence in cases of religious conversion and did not consider sufficiently that the applicants had participated actively in parish life and services. The Supreme Administrative Court further held that the lower court



established unclear standards for the expected behaviour of convertites without explaining how it had established the applied principles.

State protection in a safe country of origin

Ireland, High Court, [MZ v International Protection Appeals Tribunal & Ors](#), 2022/34JR, [2023] IEHC 637, 25 September 2023.

The High Court rejected the appeal of a Georgian national as the applicant did not challenge the tribunal's ruling for any legal errors and found that the Georgian state would adequately protect the applicant from persecution.

IPAT found that the applicant had a well-founded fear of persecution if he was to be returned to Georgia. However, IPAT considered that the applicant had state protection available and based its finding on COI and Ireland's assessment of Georgia as a safe country of origin.

The applicant appealed before the High Court, which dismissed it on grounds that the tribunal had reached a reasonable conclusion and the applicant had not produced any evidence to support the claim that the Georgian state would not provide sufficient protection.

Ireland, High Court, [N.G. v The International Protection Appeals Tribunal & Ors](#), 2022 915 JR, [2023] IEHC 535, 29 September 2023.

The High Court found that IPAT had legally determined that an Albanian national was at risk of serious harm in Albania but rejected subsidiary protection on the grounds that state protection was available.

The IPO rejected the Albanian applicant's request for refugee status and subsidiary

protection as it did not believe that the applicant had a well-founded fear of persecution and Albania was declared as a safe country of origin. The negative decision was upheld by IPAT.

The applicant appealed before the High Court and argued that IPAT had made a legal mistake in determining that state protection was available, while the applicant was in danger of suffering serious harm in Albania.

The High Court rejected the appeal and ruled that the tribunal had fairly evaluated the applicant's story and the evidence that was available before determining whether the applicant was eligible for state protection in Albania.

Interpretation of Article 1D of the Refugee Convention and threshold to assess cessation of UNRWA protection

CJEU, [French Office for the Protection of Refugees and Stateless Persons v SW](#), C-294/22, 5 October 2023.

The CJEU ruled on the cessation of UNRWA assistance when a lack of access to medical care and treatment results in the applicant running a real risk of imminent death or of being exposed to a serious, rapid and irreversible decline of their state of health or a significant reduction in their life expectancy.

Following a [referral](#) made by the French Council of State on 22 March 2022 with questions on the assessment of cessation of UNRWA for Palestinian applicants with a serious medical condition, the CJEU clarified that UNRWA assistance and protection have ceased when a lack of access to medical care and treatment results in the applicant running a real risk of imminent death or of being exposed to a serious, rapid and irreversible decline of



their state of health or a significant reduction in their life expectancy. National authorities have the obligation to assess the existence of such a risk based on all individual and relevant elements of the case.

The CJEU noted that UNRWA is mandated to providing care and medicine to meet essential needs for people requesting assistance from UNRWA, regardless of the quality of care or medicine and this mission does not depend on operational capacity. As stated in *El Kott*, the CJEU reiterated that UNRWA assistance is considered to have ceased when an applicant is in a personal state of serious insecurity and the agency is unable to provide that person with services and living conditions consistent with its mission, and therefore the person is forced to leave the area of operations.

Family unity

Sweden, Migration Court of Appeal [Migrationsöverdomstolen], *S.N. v Migration Agency (Migrationsverket)*, MIG 2023:12, UM1579-23, 28 September 2023.

The Migration Court of Appeal held that the principle of family unity does not entail any separate right to refugee status.

S.N., an Afghan national, requested asylum in Sweden together with his mother and sister. Their applications were rejected at first instance, but the mother and sister received refugee protection following an appeal to the Gothenburg Migration Court on persecution based on gender grounds. The same court rejected the appeal lodged by S.N. and held that the principle of family unity does not confer a separate right to refugee status.

S.N. appealed against the judgment of the Migration Court. The Migration Court of Appeal rejected the appeal and

considered that S.N. had not made it probable that he was at risk of persecution because of his relationship with his mother and sister or for other individual reasons. The court highlighted that the principle of family unity does not confer a separate right to refugee status.

Refusal to grant a derived right to international protection from a child to the parent

CJEU, 23 November 2023:

- [*XXX v Commissaire général aux réfugiés et aux apatrides \(CGRS\)*, No C-614/22.](#)
- [*XXX \(2\) v Commissaire général aux réfugiés et aux apatrides \(CGRS\)*, No C-374/22.](#)

The CJEU ruled that Articles 20 and 23 of the recast QD must not be interpreted as obliging Member States to grant international protection to the parent of a child who is a status holder in that Member State, as a derived right.

The CJEU interpreted Articles 20 and 23 of the recast QD in two cases where the applicants for asylum claimed a derived right to international protection as parents of children who were status holders in that Member State.

The cases concerned the appeals lodged by Guinean nationals against the rejection of an application for international protection by the CGRS. The applicants were parents of children who were granted international protection in Belgium.

In the first case, family ties already existed in the country of origin; while in the second case, the children were born in Belgium. The CJEU ruled that, regardless of whether Article 23 of the recast QD was correctly transposed and despite the wording of Article 23(2) in conjunction with Article 2(j)



of the recast QD, these provisions did not provide for a derogation of refugee or subsidiary protection to family members who themselves did not meet the conditions for such a status.

Safe country of origin

Italy, Civil Court [Tribunali], [Applicant v Ministry of the Interior](#), R.G. 9787/2023, 20 September 2023.

The Tribunal of Florence disapplied the Ministerial Decree of 17 March 2023, because it assessed that Tunisia can no longer be considered a safe country of origin.

A Tunisian national appealed before the Tribunal of Florence against a negative decision on his application for international protection and argued that Tunisia cannot be considered to be safe as included in the Ministerial Decree of 17 March 2023 because of the situation in the country.

The Tribunal of Florence reconsidered the presumption of safety based on updated COI and ruled that, due to the increasing socio-political crisis and a significant change in the human rights situation, Tunisia can no longer be designated as safe. It concluded that the Ministerial Decree of 17 March 2023 must be disapplied since it does not comply with the legislative criteria set in the recast APD.

Subsidiary protection - Interpretation of Articles 15(c) and (b) of the recast QD

CJEU, [X, Y and their six children v Staatssecretaris van Justitie en Veiligheid](#), C-125/22, 9 November 2023.

The CJEU interpreted Articles 15(c) and (b) of the recast QD, detailing the aspects to be considered by national authorities

when examining the conditions for granting subsidiary protection.

The CJEU interpreted Articles 15(c) and (b) of the recast QD and ruled that, when examining the conditions for granting subsidiary protection, national asylum authorities must take into account all relevant factors relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, before identifying the type of serious harm that those factors may substantiate. The application of Article 15(c) of the recast QD cannot be limited to the assessment of the 'mere presence' but it has to take into account individual circumstances in situations of less indiscriminate violence.

Subsidiary protection for applicants from India

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicants v Federal Office for Migration and Refugees \(Bundesamt für Migration und Flüchtlinge, BAMF\)](#), No 5 A 40/22 MD, 9 October 2023.

The Regional Administrative Court of Magdeburg granted subsidiary protection to a single woman with two children from India.

The case concerned an appeal of a divorced mother and her two children of Indian nationality whose asylum applications were rejected. The Regional Administrative Court of Magdeburg overruled the decision and held that there was a real risk that the applicants would be exposed to degrading treatment by the ex-husband's family members upon a return to India because the separation was seen as a violation of family honour.

As a single mother, the first applicant could not expect protection due to deeply-rooted social traditions that were characterised by



systematic disadvantage and discrimination against single women. For the same reason, it was not expected that the first applicant would be able to build even a modest existence for herself and her children. Based on this, the Regional Administrative Court of Magdeburg granted subsidiary protection.

Subsidiary protection for applicants from Somalia

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)],
20 September 2023 :

- [Mme M. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\), No 22040462 C+](#)
- [M. D. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\), No 22040929 C+](#)

The CNDA applied EUAA's Country Guidance on Somalia (August 2023) to the regions of Middle Shabelle and Benadir.

The two cases concerned Somali applicants from the region of Middle Shabelle for whom refugee protection was rejected, but in appeal, the CNDA assessed the cases for subsidiary protection. The CNDA applied the EUAA's [Country Guidance on Somalia](#) from August 2023 and noted that a lower threshold of elements of individualisation is required, although the security situation in Benadir, which the applicants would have to cross, and Middle Shabelle did not reach the level of indiscriminate violence prescribed by Article 15(c) of the recast QD to establish that a person faces a serious and individual threat to their life or person from their mere presence there.

The CNDA concluded that the applicants' circumstances justified the application of subsidiary protection. The first applicant was the isolated mother of a young daughter born in France and was no longer in contact with her family, who had moved to a different region of Somalia.

The second applicant was a young person lacking family links in Somalia since his mother's disappearance and thus granting subsidiary protection was justified.

Subsidiary protection for an Uzbek national

Latvia, District Administrative Court [Administratīvā rajona tiesa], [A v Office of Citizenship and Migration Affairs of the Republic of Latvia](#), No A42-01858-23/21, 11 October 2023.

The District Administrative Court upheld the appeal of an Uzbek citizen and granted subsidiary protection on the grounds that the applicant would face serious harm in Uzbekistan from authorities who will not protect him.

The Office of Citizenship and Migration Affairs in Latvia rejected the application for international protection by an Uzbek national due to credibility issues, concluding that even if his political activities attracted the attention of Uzbek law enforcement, the applicant is not a well-known political activist.

The District Administrative Court upheld the appeal of the applicant and granted subsidiary protection. The court determined that the applicant may experience substantial harm in Uzbekistan and it is reasonable to conclude that the Uzbek authorities would not provide him with state protection.



Exclusion from refugee / subsidiary protection

France, Council of State [Conseil d'Etat], *M. B. A. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 463489, 21 September 2023.

The Council of State ruled that participating in a criminal organisation to prepare a terrorist act and finance a terrorist undertaking amounted to acts contrary to the purposes and principles of the United Nations under Article 1 F of the 1951 Refugee Convention.

A Turkish national was granted refugee status in France in 2009. Later, he was found guilty of financing and participating in a terrorist project, which led OFPRA to revoke his protection on the grounds that he was convicted of acts contrary to the purposes and principles of the UN. In first appeal, the CNDA annulled OFPRA's decision and maintained the applicant's refugee status, but OFPRA contested this decision before the Council of State.

The Council of State recalled that OFPRA was competent to revoke an applicant's protection when the conditions for exclusion set in Article 1D, E or F of the 1951 Refugee Convention were met. Focusing on Article 1F, the Council of State noted that terrorist acts, due to their severity, impact and major consequences on international peace and security, did amount to acts contrary to the purposes and principles of the UN. Thus, the Council of State annulled the contested decision and sent the case back before to the CNDA.

Finland, Helsinki Regional Administrative Court [fi. hallinto-oikeus], *Applicant v Finnish Immigration Service*, No 871/2023, 25 October 2023.

The Administrative Court of Helsinki annulled a negative decision based on

exclusion grounds for drug-related offences.

The case concerned the application of the exclusion clause for subsidiary protection when the applicant was suspected of serious crimes related to drug offences. The Administrative Court of Helsinki mentioned that, although drug crimes pose a serious threat to citizens' health, safety and quality of life, the exclusion assessment should take into account the quality and the circumstances of the commission of the crimes.

The court found that the crimes the applicant was involved in should not be considered serious crimes, either individually or as a whole, taking into account their dangerousness. It noted particularly that the narcotics had not ended up being distributed and that the applicant had a minor role in the smuggling of foreigners. The court partly annulled the contested decision and referred the case back for re-examination by the FIS.

Secondary movements after receiving international protection

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicants*, No 202206277/1/V2, 1 November 2023.

The Council of State allowed appeals against a return to Bulgaria because the inadmissibility decision concerning the minor applicant was wrong since she was born in the Netherlands and did not have protection in Bulgaria.

The asylum application of a Syrian family was found to be inadmissible because they, except the youngest daughter born in the Netherlands, received international protection in Bulgaria. In the onward



appeal submitted by the State Secretary before the Council of State, the latter decided that for family members who are status holders in Bulgaria the amendment of Article 42(5) of the Law on Asylum and Refugees (LAR) was not to be interpreted in the sense that a failure to timely renew the Bulgarian residence permits would automatically lead to the termination of international protection, but merely to the initiation of a procedure in which all facts and circumstances were taken into account before a decision on withdrawal was taken. Based on this, the Council of State decided that the Secretary of State may continue to assume that status holders in Bulgaria receive international protection despite the new provisions.

The Council of State overturned the interim measures and lower court judgment with regard to the youngest daughter who, because she was born in the Netherlands, did not have a protection status in Bulgaria and her asylum application could not have been rejected as inadmissible.

Consequently, the case was referred back to the State Secretary who had to reassess the Member State responsible for the youngest daughter's asylum application and had to take this assessment into account when examining the applications of the other family members.

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], [A and B v Finnish Immigration Service](#), KHO:2023:96, 24 October 2023.

The Supreme Administrative Court overturned a negative decision given to a minor applicant born in Finland and whose parent was rejected asylum because of international protection granted in France.

An Eritrean national received international protection in France and further applied for asylum in Finland. His son was born in Finland and both asylum applications were rejected by the FIS and the Administrative

Court. The Supreme Administrative Court allowed the appeal of B, the minor for whom there was no indication of protection in France. In light of the CJEU judgment [RO v Bundesrepublik Deutschland](#), the court ruled that the application for international protection of a minor could not be dismissed solely on grounds that a family member of the minor had received international protection in another EU country.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicant v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202206466/1/V3, 6 September 2023.

The Council of State ruled that there was no longer an obvious and fundamental difference in protection policy for Syrian nationals and the applicant was not at risk of indirect refoulement if returned to Denmark.

A Syrian national had his asylum application rejected as inadmissible because the State Secretary considered that the applicant receives international protection in Denmark since 12 December 2016. In the appeal, the applicant argued that he would be at risk of indirect *refoulement* due to significantly differences in policies between the Netherlands and Denmark for Syrian status holders.

The case reached the Council of State which changed its previous jurisprudence in the ruling of 6 July 2022, [Applicants v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202105784/1/V3. The Council of State mentioned that the Danish authorities had changed their assessment of the general security situation in the Damascus region and they were only reassessing a granted residence status for Syrians from the Damascus region if it had been granted on general grounds. Thus,



residence statuses on individual grounds would not be reassessed and there were no forced deportations to Syria.

Since the Danish first and second instance authorities conduct an assessment for status determination based on the general situation and individual circumstances, the Council of State considered that this approach is similar to the examination conducted in the Netherlands and essential differences were not noted in the way the Dutch authorities assess the security situation in Syria.

The Council of State found that the applicant failed to submit any information from public sources showing that there was an obvious and fundamental difference between the Danish and the Dutch protection policy for Syrians from the Tartous region.

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF), No 4 LB 102/20, 28 September 2023.

The Higher Administrative Court of Lower Saxony decided that a second application within the meaning of Section 71a of the Asylum Act was only applicable if an asylum procedure carried out in another Member State had been concluded at the time the application was submitted in Germany.

A Sudanese national applied for asylum in Germany after having previously applied for asylum in France. His application in France was finally dismissed after the application in Germany and his application in Germany was dismissed as inadmissible.

In an onward appeal, the Higher Administrative Court of Lower Saxony had to decide whether BAMF's inadmissibility decision on grounds of a second application, as provided by Section 71a of

the Asylum Act, was lawful. According to Section 71a of the Asylum Act, a second application can be dismissed as inadmissible "after the unsuccessful conclusion of an asylum procedure in a safe third country".

The Higher Administrative Court of Lower Saxony decided that a second application within the meaning of Section 71a of the Asylum Act was only applicable if an asylum procedure carried out in another Member State had been legally concluded at the time the asylum application was filed in Germany (and not at the time of the BAMF decision or the time of the transfer of responsibility to Germany). The court concluded that Section 71a(1) of the Asylum Act was therefore not applicable as a legal basis for the inadmissibility decision.

Germany, Regional Administrative Court [Verwaltungsgerichte], Applicant v Federal Office for Migration and Refugees (BAMF), No 2 V 1604/23, 10 October 2023.

The Regional Administrative Court of Bremen confirmed a BAMF inadmissibility decision and transfer to Bulgaria of an applicant who was previously granted subsidiary protection there.

A Syrian national requested an interim measure against an inadmissible decision and removal order on grounds that he was a beneficiary of subsidiary protection in Bulgaria. The Regional Administrative Court of Bremen upheld the BAMF decision and decided that, despite the effects of the COVID-19 pandemic and a large number of Ukrainian nationals admitted in Bulgaria, healthy status holders were not at significant risk of inhuman or degrading treatment in the form of homelessness upon a return to Bulgaria, within the meaning of Article 4 of the EU Charter.



Country of origin information

Ireland, High Court, [*BD & ORs v The International Protection Appeals Tribunal & Ors*](#), 2021 395 JR, [2023] IEHC 589, 24 October 2023.

The High Court upheld the appeal of a South African-Albanian family, citing racial persecution and granted certiorari in the entry decision, rejecting the applicants request for a partial order of certiorari.

Based on COI, which detailed high levels of xenophobic attacks, IPAT concluded that the applicants had a legitimate fear of persecution if they returned to South Africa because of the children's mixed race. IPAT also concluded that the state authorities would provide the applicants with protection.

The applicants filed an appeal with the High Court, arguing that the tribunal ruling on state protection was erroneous and should be overturned. The High Court determined it had jurisdiction to make a partial order of certiorari in asylum cases. However, given the circumstances of the case, certiorari was granted in full.

The High Court considered the CJEU's jurisprudence on the recast APD, particularly the most recent ruling in [*X v IPAT*](#), as well as the International Protection Act, which requires the assessment to be made on an *ex nunc* basis using the most recent COI.



Reception

Inadequate conditions for pregnant women

ECtHR, [*M.B. v Greece*](#) (No 8389/20) and [*M.L. v Greece*](#) (No 8386/20), 23 November 2023.

The ECtHR found Greece in violation of Article 3 of the ECHR for inadequate living conditions provided to pregnant women in the Samos RIC in 2020.

The cases concerned two pregnant women from Cameroon and Sierra Leone, who arrived at the Samos RIC in 2019 and 2020, respectively. After lodging requests for interim measures with the ECtHR, they were transferred to guesthouses and subsequently to the mainland. They complained about the poor living conditions to which they were submitted while in a vulnerable situation in the Samos RIC for approximately 4 months and more than 3 months, respectively.

The ECtHR noted that the Council of Europe's Commissioner for Human Rights had characterised the situation in Samos as "a struggle for survival" and requested practical measures with immediate impact. The court further considered the findings of the Greek National Commission for Human Rights, after a monitoring visit in Samos, and the UNHCR's third-party observations on overcrowding, inadequate shelter, medical support and sanitation.

Based on this evidence, the court found that the applicants were subjected to ill treatment in violation of Article 3 of the ECHR.



Inadequate living conditions

ECtHR, *Sadio v Italy*, No 357/17, 16 November 2023.

The ECtHR found Italy in breach of Articles 3 and 13 of the ECHR in the case of an applicant from Mali who was held in the Cona reception centre in inadequate living conditions.

An applicant from Mali was accommodated in the Cona reception centre in Venice from 29 May 2016 until 27 January 2017.

Before the ECtHR, the applicant complained under Articles 3 and 13 of the ECHR about the inadequate living conditions, namely overcrowding and a lack of basic facilities, such as heating, hot water, access to medical care, and access to legal and psychological assistance. He further submitted that there were insufficient staff and interpreters. Under Article 13, the applicant complained that a domestic effective remedy was not available to complain about the inadequate living conditions.

Considering the length and the conditions of the applicant's accommodations in the Cona adult reception centre, the court concluded that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the ECHR.

Reception conditions adapted to medical conditions

ECtHR, *E.F. v Greece*, No 16127/20, 5 October 2023.

The ECtHR held that Greece violated Article 3 of the ECHR for failure to provide adequate medical treatment to a Cameroonian national who was HIV-positive and did not provide effective remedies under Article 13 to challenge the lack of adequate treatment.

A Cameroonian applicant left her country to escape sexual exploitation and arrived in Greece, where she was registered at the Reception and Identification Centre (RIC) in Lesbos but did not receive any medical treatment for her health condition (HIV-positive diagnosed). She applied for asylum and stayed in the RIC in poor conditions, lacking freedom of movement and adequate medical treatment and afterwards in another camp. After fainting on 24 May 2020, she was transferred to a hospital where she stayed until 24 June 2020. Medical certificates from the hospital confirmed that she was HIV-positive and that she had non-Hodgkin lymphoma. She was provided treatment for the conditions in the hospital.

The court noted that the HIV infection progressed, and although a mere deterioration of the state of health is not sufficient to constitute a violation of Article 3 of the ECHR, it was necessary to examine whether the domestic authorities had made use of reasonable medical measures to prevent the progression of the applicant's illness. The court highlighted that, although the Greek authorities were informed about the applicant's HIV infection upon her arrival at the Moria camp, she received medical treatment for the first time on 23 June 2020 when she presented with serious symptoms, 6 months after her registration at Moria.

The court highlighted that the authorities should have ensured the rapid transfer of the applicant to carry out her medical examinations and considered that the delay in administering the antiretroviral treatment was entirely attributable to the authorities, which did not act with due diligence to protect the applicant's health. For these reasons, the ECtHR found a violation of Articles 3 and 13 of the ECHR.



Belgium, Labour Tribunal [Tribunal du travail/Arbeidsrechtbanken], [Applicant v Federal Agency for the Reception of Asylum Seekers \(Fedasil\)](#), 23/1656/A, 24 October 2023.

The Labour Court of Liège annulled a decision of Fedasil and ordered it to provide individual accommodation with access to sanitary facilities for an applicant who had several medical conditions.

A Palestinian applicant with several medical conditions appealed against Fedasil's refusal to provide another accommodation place. The court noted that Fedasil was under the legal obligation to take into account the medical profile of the applicant before designating an adapted reception centre, which was not done. The court held that the conditions in which the applicant was accommodated were not in line with respect for human dignity, as the applicant could not easily access sanitary facilities during the night, especially considering his urinary problems. The court ordered Fedasil to provide the applicant an individual accommodation with access to sanitary facilities in Brussels or at a maximum of 1 hour away in order to be able to follow-up on his medical treatments in Brussels.

Right to work

Netherlands, Council of State [[Afdeling Bestuursrechtspraak van de Raad van State](#)], 29 November 2023.

- [The Board of Directors of the Employee Insurance Implementation Institute v MPeople HR BV](#), 202303122/1/V6.
- [The Board of Directors of the Employee Insurance Implementation Institute v Applicant](#), 202305065/1/V6.

The Council of State ruled that the 24-week requirement prevents asylum seekers from accessing the labour market.

The Council of State clarified that the national requirement, according to which an asylum seeker can work for a maximum of 24 weeks per calendar year, is not in line with the recast RCD. The case concerned appeals submitted by the employers of two asylum seekers whose working period would exceed the 24 weeks.

The Council of State considered that the limitation of access to the labour market for 24 weeks within a period of 52 weeks is contrary to the objectives of the recast RCD. The Council of State based its conclusion on a report drawn for the Ministry of Social Affairs and Employment, which mentioned that the 24-week requirement prevents effective access to the labour market. The Council of State reiterated that the recast RCD, Article 15(2) sets as one of the minimum standards for the reception of asylum seekers that Member States must provide effective access to the labour market. As such, the 24-week requirement does not meet this minimum standard because no exception is enshrined in the recast RCD from the Member State's obligation to ensure that asylum seekers have effective access to the labour market.

The Council of State thoroughly analysed EU law and consulted CJEU jurisprudence, including the judgments [K.S., M.H.K. v The International Protection Appeals Tribunal, The Minister for Justice and Equality, Ireland, The Attorney General, and R.A.T., D.S. v Minister for Justice and Equality](#), C-322/19 and C-385/19, 14 January 2021 and [IA v Federal Office for Foreign Affairs and Asylum, Austria](#), C-231/21, 31 March 2022.



Slovenia, Supreme Court [Vrhovno sodišče], [Applicant v Ministry of the Interior](#), VS00070330, 19 September 2023.

The Supreme Court rejected an appeal against the Ministry of the Interior's decision to restrict the applicant's freedom of movement because the applicant's health condition was not disclosed throughout the appeal procedure.

The Administrative Court confirmed the decision to restrict the freedom of movement of an applicant within the Centre for Foreigners on grounds of preservation of public order, property, personal safety and security, because he had violated the house rules.

Upon an onward appeal before the Supreme Administrative Court, the applicant claimed that doctors and other responsible authorities had failed to notice that he suffered from a mental disorder, which caused his actions.

The Supreme Administrative Court rejected the appeal and stated that the applicant's health status had not previously been brought up during the proceedings. Moreover, the applicant's lawyer was present throughout the appeal procedure and no objections were raised.

Excluding a category of persons from reception conditions

Belgium, Council of State [Raad van State - Conseil d'État], [Ordre des Barreaux Francophones et Germanophone v Belgian State \(represented by the State Secretary for Asylum and Migration\)](#), No 257 300, 13 September 2023.

The Council of State suspended the decision of the Secretary of State for Asylum and Migration to no longer provide reception measures for single men who requested asylum.

The Council of State suspended the decision of the Secretary of State for Asylum and Migration to exclude single men who requested asylum from receiving accommodation. It held that the decision did not respect the right to reception conferred on all asylum applicants by the law of 12 January 2007 on the reception of asylum applicants and risks leaving this category of persons homeless.





Detention

Poor conditions in a hotspot

ECtHR, [M.A. v Italy](#) (No 13110/18) and [A.B. v Italy](#) (No 13755/18), 19 October 2023.

The ECtHR found Italy in violation of Articles 3 and 5 of the ECHR due to poor conditions and the arbitrary detention in which Tunisian applicants were held in a hotspot in Lampedusa.

The two cases concerned Tunisian applicants who were held for more than 2 months in 2018 in the Early Reception and Aid Centre (*Centro di Soccorso e Prima Accoglienza – CSPA*) on the island of Lampedusa.

The ECtHR found a violation of Article 3 of the ECHR on grounds that the conditions in the centre were unhygienic and inadequate due to insufficient bathrooms, a lack of a place to sleep inside and the fact that persons spent several days or weeks at the centre, instead of the necessary time to confirm their identity.

Under Article 5 of the ECHR, the ECtHR also found that the applicants were arbitrarily deprived of their liberty and they were not informed of the legal reasons for the deprivation of liberty or provided with sufficient information to enable them to challenge the grounds for the *de facto* detention before a court.

Arbitrary detention in a hotspot

ECtHR, [A.E. and Others v Italy](#), Nos 18911/17, 18941/17, 18959/17, 16 November 2023.

The ECtHR held that Italy breached Articles 3 and 5 of the ECHR due to inadequate material conditions in which Sudanese nationals were held during arrest and transfer, ill treatment of one of the applicants and the lack of a clear and accessible legal basis for the applicants' detention.

The ECtHR found a violation of Article 3 of the ECHR due to conditions in which the Sudanese nationals were arrested, left naked together with other migrants, without privacy and guarded by police, which must have caused considerable distress and feelings of humiliation that amounted to degrading treatment. Furthermore, the court observed that their bus transfers were long, taking 15 hours, and took place at a very hot time of the year without sufficient food or water and without them being informed about where they were going or why. The court also found a violation of Article 3 concerning one of the applicants (T.B.) who was beaten during an attempt to remove him.

Under Articles 5(1f), 5(2) and 5(4) of the ECHR, the court noted that three applicants had been arrested and transferred without documentation and without being able to leave the Taranto hotspot, which amounted to an arbitrary deprivation of liberty, without the opportunity to challenge the grounds for their *de facto* detention.



Detention pending the examination of an asylum application

ECtHR, 14 September 2023:

- [M.N. v Hungary](#), No 48139/16.
- [A.A. v Hungary](#), No 7077/15.

The ECtHR found Hungary in violation of Article 5(1) of the ECHR for the detention of applicants pending the examination of their asylum application.

In two cases concerning Hungary, the ECtHR found violations of Article 5(1) of the ECHR because detention could not be ordered, according to the Asylum Act, solely on the fact that the person submitted an application for international protection. On the contrary, detention could be ordered only based on an individual assessment for the purpose of conducting the asylum procedure or securing a Dublin transfer when other measures could not ensure the person's availability.

The cases concerned an Afghan national and an Algerian national, who were placed in detention upon arriving in Hungary in order to allegedly clarify their identity and due to a potential risk of absconding.

The court found in both cases that there were no indications that the applicants did not cooperate with the national authorities and stated that the unlawful arrival in Hungary could not in itself justify the detention.

Detention of third-country nationals

Italy, Civil Court [Tribunali], [Applicant v Questura di Ragusa](#), R.g. 10797/2023, 9 October 2023.

The Tribunal of Catania found that the detention measure provided by the new law was contrary to the recast APD.

A Tunisian national arrived at Lampedusa where he expressed his willingness to apply for international protection; he was transferred to Ragusa where he formalised his application. The applicant was detained based on an order issued by the Questura of Ragusa on grounds that the applicant came from a country included in the national list of safe countries of origin as provided by Ministerial Decree of 17 March 2023.

The Tribunal of Catania annulled the detention measure and stated that the application could not be decided on an accelerated procedure within the meaning of Article 28bis of Legislative Decree No 25/2008 because, although the applicant formalised his application for international protection in Ragusa, he expressed his intention to apply for international protection at the border in Lampedusa.

The tribunal also referred to Article 13 of the Constitution and the CJEU judgment in [C, B and X v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), [Joined cases C-704/20 and C-39/21](#) to state that the detention measure for asylum seekers introduced in the national legal framework by Legislative Decree No 20/2023, then converted into Law No 50/2023, was against the recast APD which provides that the detention of asylum applicants may be ordered unless alternative less coercive measures are effectively applicable and available.



The Tribunal of Catania also recalled [its previous judgments](#) on applicants from Tunisia to substantiate that Article 6bis of Legislative Decree No 142/2015, which provides for a financial guarantee, was an administrative requirement imposed on the applicant and not an alternative to detention. It also stated that Article 14 of Legislative Decree No 286/1998 provides some alternative measures that do not include the provision of a financial guarantee.

**Italy, Civil Court [Tribunali],
29 September 2023:**

- [Applicant \(3\) v Questura di Ragusa](#), R.G. 10459/2023.
- [Applicant \(2\) v Questura di Ragusa](#), R.G. 10460/2023.
- [Applicant v Questura di Ragusa](#), R.G. 10461/2023.

The Tribunal of Catania found that the Ministerial Decree of 14 September 2023 requesting foreigners to secure a financial guarantee to avoid detention was not compatible with Articles 8 and 9 of the recast APD and ruled that detention cannot be imposed in the absence of a reasoned order.

The Tribunal of Catania did not validate the detention of three Tunisian applicants who entered the Italian territory from Lampedusa to Pozzallo, where they lodged an application for international protection in the transit zone of Ragusa. The tribunal considered that they cannot be detained for the sole purpose of examining their application for international protection as provided by Article 6 of the Legislative Decree No 142/2015 and Article 8 of the recast APD and that detention must be regarded as an exceptional measure as provided under Article 13 of the Italian Constitution.

The Tribunal referred to the CJEU judgment of 8 November 2022, [C, B and X v State Secretary for Justice and Security](#),

according to which Articles 8 and 9 of the recast APD must be interpreted as precluding an applicant for international protection from being detained solely on the ground that “he cannot satisfy his own needs, secondly, from such detention taking place without the prior adoption of a reasoned decision ordering detention and without the necessity and proportionality of such a measure being examined”.

Additionally, the tribunal mentioned the CJEU judgment [FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság](#) to substantiate that detention cannot take place in the absence of a reasoned detention order and without having examined the necessity and proportionality of such a measure. In light of the above, the Tribunal of Catania found that the Ministerial Decree of 14 September 2023 was not compatible with Articles 8 and 9 of the recast APD.

The tribunal stated that that, according to Article 10 of the Italian Constitution, the mere provenance of the asylum seeker from a safe country of origin cannot automatically deprive him of the right to enter the Italian territory to apply for international protection. The Tribunal of Catania did not validate the detention measure because the conditions for the detention of the asylum seeker were not met.

Unlawful detention of a minor applicant

**ECtHR, [A.D. v Malta](#), No 12427/22,
17 October 2023.**

The ECtHR found Malta in violation of Article 3 of the ECHR for the conditions of detention of a minor asylum applicant, Article 5 for illegal detention and Article 13 for the lack of effective remedies.



The applicant was a self-declared minor from Côte d'Ivoire. Upon arrival, he was accommodated in a reception centre for about 1 month. Then, the applicant was detained in different sections of a detention centre for about 6 months.

The legal basis for his detention was first a Restriction of Movement for Public Health Reasons Order (RMPO) and then a detention order related to his asylum claim. For certain stages of this process, it was unclear whether the applicant was accommodated with adults or minors.

Before the ECtHR, the applicant invoked violations of Articles 3, 5(1) and 13 of the ECHR, claiming that the conditions of his detention were inadequate and unlawful, and that he had no access to an effective remedy. The court found violations of all the provisions invoked.

Regarding Article 3, the court noted that the duration and conditions of the applicant's detention were inadequate in light of his vulnerabilities, thus constituting inhuman and degrading treatment. Regarding Article 5(1), the court found that the facts of the case did not require the adoption of an RMPO and noted that the applicant was moved by the authorities several times in spite of the order. Concerning the detention order related to the applicant's asylum claim, the court noted that it did not indicate that detention was applied as a last resort measure in the absence of alternatives as it is required for minors.

The court also pointed to the fact that an age assessment was not conducted and the authorities had not found the applicant's claim of being a minor to be manifestly unfounded. Finally, the court found that the absence of an effective remedy violated Article 13 of the ECHR.

Conditions of detention in a Lampedusa hotspot

ECtHR, *A.S. v Italy*, No 20860/20, 19 October 2023.

The ECtHR found a violation of Articles 3 and 5 of the ECHR for overcrowded and poor hygienic conditions in which an applicant was held for 18 days in a hotspot in Lampedusa.

Upon arrival in Lampedusa, the applicant was accommodated in a reception centre where he filed his application for international protection. After it was rejected as manifestly unfounded, the applicant was subjected to expulsion and a detention order and placed in a detention centre. Later, the expulsion order was revoked for procedural issues.

Before the ECtHR, the applicant complained of the poor conditions of detention. The court found that the overcrowding and poor hygienic conditions in the Lampedusa hotspot amounted to violations of Article 3 of the ECHR. In addition, the court ruled that the authorities had breached Article 5 of the ECHR for not giving a clear and accessible legal basis for the applicant's detention and not informing him of such reasons or of how to challenge them before a court.





Second instance procedure

Time limit for an appeal in an accelerated procedure

CJEU, [Y.N. v Slovenian Republic, C-58/23](#), 27 September 2023.

The CJEU ruled on the time limit for an appeal in accelerated procedures and the right to an effective remedy.

The CJEU clarified that the right to an effective remedy precludes a time limit of 3 days, including public holidays and non-working days, for lodging an appeal against a decision rejecting an application as manifestly unfounded under the accelerated procedure. The CJEU ruled that such a deadline constitutes a restriction to the right to an effective remedy.

Extension of the appeal deadline

Lithuania, Supreme Administrative Court of Lithuania [Lietuvos vyriausiosios administracinės teismas], [V.C v Migration Department of the Ministry of Interior of the Republic of Lithuania](#), No e AS- 477 - 1188 /202 3, 13 September 2023.

The LVAT overturned the VAAT's decision not to extend the missed deadline for submitting an appeal.

A rejected applicant missed the deadline to file an appeal because, after receiving the negative decision, she was unable to communicate with the state-guaranteed legal aid representative and coordinate the

grounds for an appeal within the 14-day timeframe.

The VAAT rejected the applicant's request for a deadline extension, noting that the applicant's stated circumstances were abstract in nature. In the onward appeal, the LVAT reiterated that the right to appeal is a fundamental human right acknowledged by both national and international law, including the ECHR and the ICCPR. The LVAT found no indication that the applicant acted dishonestly or violated her rights to due process; rather, she tried to protect them by filing an appeal 1 day after the deadline. The LVAT allowed the applicant's request to extend the deadline.

Procedural deficiencies in interpretation services

Bulgaria, Supreme Administrative Court [Върховен административен съд], [Applicant v State Agency for Refugees](#), No 8945, 29 September 2023.

The Supreme Administrative Court annulled a lower court decision due to a lack of interpretation provided to the applicant and other significant procedural omissions.

A national of Saudi Arabia unsuccessfully appealed against the rejection of his international protection application. In the cassation appeal, the applicant argued that he did not have access to Arabic translation during the proceedings of the first appeal and presented other procedural deficiencies. The Supreme Administrative Court allowed the appeal and found that the lower court violated procedural rules for not providing interpretation services, for insufficient reasoning on the evidence that was not accepted and for accepting documents without adequate translations.



Request for an oral hearing and submitting additional written documents

Ireland, High Court, [CC v International Protection Appeals Tribunal & Anor](#), 2023 1104 JR, [2023] IEHC 636, 27 October 2023.

The High Court rejected an appeal filed by a Kosovan applicant, ruling that the applicant's lawyer had no reason to wait to receive notice of an oral hearing to submit additional material.

An applicant from Kosovo¹ filed an appeal with the High Court claiming that IPAT rendered a decision on his appeal in the absence of the additional written submission that the applicant had indicated he planned to submit when he filed his appeal.

The High Court rejected the appeal, ruling that the applicant's lawyer could submit additional material and was required to submit documents regardless of whether an oral hearing was organised. The High Court stated that the applicant did not present a rationale for the non-submission of information and did not establish compelling grounds for an appeal.

Right to an oral hearing

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], 26 September 2023:

- [Applicant \(3\) v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), No Ra 2022/19/0252.
- [Applicant \(4\) v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), No Ra 2023/19/0015.
- [Applicant \(5\) v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), No Ra 2023/19/0088, 26 September 2023.

The Supreme Administrative Court decided that the Federal Administrative Court had failed to comply with the procedural obligation to hold a hearing and therefore violated Article 6 of the ECHR and Article 47 of the EU Charter.

The cases concerned appeals of Syrian nationals who were granted subsidiary protection and appealed against the refusal to be granted refugee protection. The Federal Administrative Court dismissed the appeals without holding an oral hearing.

In the onward appeals, the Supreme Administrative Court decided that the lower court had the obligation to hold an oral hearing because the applicants had put forward new grounds in the appeal proceedings. The Supreme Administrative Court annulled the contested judgments as unlawful due to violations of Article 6 of the ECHR and Article 47 of the EU Charter.

¹ This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and

the ICJ opinion on the Kosovo declaration of independence.





Content of protection

Refusing to issue a foreign passport

Lithuania, Supreme Administrative Court of Lithuania [Lietuvos vyriausioji administracinis teismas], [Applicant v Migration Department of the Ministry of Interior of the Republic of Lithuania](#), No eA-2230-662/2023, 11 October 2023.

The Supreme Court ordered the Migration Department to re-examine a request for a foreigner's passport made by a Russian applicant who had previously been granted subsidiary protection on humanitarian grounds in Lithuania, based on a ruling of the ECtHR.

The applicant had been granted subsidiary protection on humanitarian grounds in Lithuania and was given a permanent residence permit in Lithuania. Each time the applicant's foreign passport expired between 2004-2013, it was renewed.

The applicant had applied for a foreign passport in 2018, but the Migration Department rejected the request and the decision was upheld by the VAAT and the Supreme Court.

Based on [L.B v Lithuania](#), the ECtHR had ruled that the Lithuanian authorities had breached Article 2 of Protocol 4 of the ECHR when refusing to issue a foreign passport. Following this ruling, the applicant reapplied for a foreign passport, but the Migration Department refused to issue it. The VAAT ruled that the applicant could apply for a passport at the Russian Embassy in Lithuania.

In the appeal before the Supreme Court, the applicant alleged that he may face persecution in Russia if he applied for a foreign passport at the embassy since he had previously been granted subsidiary protection. The Supreme Court noted that the applicant's fear of persecution based on his political beliefs would likely lead to the granting of refugee status and that compelling the applicant to visit the embassy would heighten his risk.

Protection through EU citizenship

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [Mme. R. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), No 23004369, 23004370 and 23004371 C+, 22 September 2023.

The CNDA ruled that the protection ensured through EU citizenship justified not extending subsidiary protection granted to an Angolan woman to her minor Angolan-Portuguese children.

An Angolan woman, her minor Angolan child and her two minor Angolan-Portuguese children applied for international protection based on their fear of persecution due to domestic violence and their inability to avail themselves of the protection of the national authorities upon a return to their country of origin. Based on the applicant's declarations and available COI, the court granted her subsidiary protection and extended it to her Angolan child.

However, concerning the applicant's Angolan-Portuguese children, the CNDA noted that their European citizenship guaranteed their freedom of movement and establishment across the territory of the EU. By highlighting the participation of France and Portugal to the International Convention on the Rights of the Child and recalling the Citizens' Rights Directive and

the fact that their mother was granted subsidiary protection, the court ruled that their Portuguese nationality awarded them greater protection and rights than subsidiary protection, including the right not to be separated from their mother. Thus, the CNDA did not extend subsidiary protection to the applicant's Angolan-Portuguese children.



Temporary protection

Eligibility for temporary protection

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Immigration Office \(Ausländerbehörde\)](#), No M 4 S 23.2442, 1 September 2023.

The Regional Administrative Court of Munich ruled that unmarried partners of Ukrainian nationals are not eligible for temporary protection.

The Regional Administrative Court of Munich rejected an interim decision against a rejection of temporary protection for an Armenian national who was in a relationship with a Ukrainian national but not in a possession of a residence permit in Ukraine.

The Regional Administrative Court of Munich decided that in Germany unmarried partners were not considered family members of Ukrainian nationals pursuant to Article 2(1c) of Council Implementing Decision (EU) 2022/382 of 4 March 2022 and Section 24(1) of the Residence Act, unless they were treated in the same way as married couples under national legislation or the general practices of the Member State pursuant to Article 2(4a) of Council Implementing Decision (EU) 2022/382 of 4 March 2022.

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Applicant v Regional Administration Saxon Switzerland-Eastern Ore Mountains \(Landrat Sächsische Schweiz-Osterzgebirge\)](#), No 3 B 141/23, 6 September 2023.

The Higher Administrative Court of Saxony did not grant interim protection to a Lebanese national who studied in Ukraine and applied for temporary protection.

A Lebanese national who lived and studied dental medicine in Ukraine applied for temporary protection, pursuant to Section 24 of the Residence Act in Germany, but his request was rejected.

In an onward appeal to grant an interim measure against this decision, the Higher Administrative Court held that, even though temporary protection could be granted to non-Ukrainian third-country nationals if they had permanently and legally stayed in Ukraine on 24 February 2022 and could not return safely and permanently to their country or region of origin, there were no indications for such a situation in this case. The Higher Administrative Court decided that, despite the economic crisis in Lebanon, it could be assumed that a person who was able to study abroad and who completed a degree in dental medicine supposedly came from a rather privileged family and had the skills for successful employment upon a return. As such, the Higher Administrative Court of Saxony did not grant interim protection.

Scope of the equivalent to temporary protection in Iceland

Iceland, Immigration Appeals Board (Kærufnd útlendingamála), 24 October 2023:

- [Applicant 1 v Icelandic Immigration Service](#), No 632/2023.

- [Applicant 2 v Icelandic Immigration Service](#), No 634/2023.
- [Applicant 3 v Icelandic Immigration Service](#), No 635/2023.

The Immigration Appeals Board granted temporary protection to Ukrainian citizens who did not reside in Ukraine right before their arrival in Iceland.

The case concerned three Ukrainian nationals who were in the following situation upon arriving in Iceland: two held a valid temporary residence permit based on employment in Poland and Lithuania, respectively, and the third previously lived in Poland. The Immigration Office deemed each of these three cases to fall under the Dublin III Regulation and ordered the applicants' transfers to the relevant country.

Upon appeal against the Dublin transfer decisions, the Immigration Appeals Board noted that, where there are reasons to believe that the applicants qualify for a residence permit on the basis of humanitarian considerations (an equivalent to temporary protection), the authorities should issue a decision on the matter instead of going through the regular international protection procedure. The board added that, in spite of not being published, the government's guidelines on the implementation of the activation of Decision 2022/382 related to protection of persons fleeing the war in Ukraine were binding for the Immigration Office, as prescribed in national law.

However, the board also added that in order to safeguard the principle of legality, these guidelines could not be used to a narrower meaning of the announcement made by the government on its website on 4 March 2022. The board concluded that the vague nature of Decision 2022/382, which did not indicate the groups of persons concerned, did not allow for the



exclusion of the applicants from temporary protection and therefore granted it for each applicant.

Impact of dual citizenship in an EU Member State

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [Applicant v State Secretariat for Migration \(Staatssekretariat für Migration – SEM\)](#), D-2430/2022, 5 September 2023

The Federal Administrative Court decided that temporary protection should not be granted to Ukrainians who have an EU/EFTA+ citizenship and that the rules on the freedom of movement within EU+ countries did not apply.

The Federal Administrative Court ruled on the appeal proceedings of an applicant with both Ukrainian and Bulgarian nationality, whose registration temporary protection was rejected. The Federal Administrative Court held that the rules on temporary protection for Ukrainian nationals did not apply to dual nationals as the applicant was an EU/EFTA+ citizen and could receive protection in his own state.

The Federal Administrative Court further decided that the applicant's permit-free stay for EU residents, which was valid for a period of 90 days within 6 months based on the Agreement on the Free Movement of Persons between the Swiss Confederation and the European Community and its Member States (AFMP), had expired and that he had failed to submit an application for a residence permit, in accordance with Article 18(2) or (3) of the Ordinance on the Free Movement of Persons (OFMP) for the purpose of seeking work. In such circumstances, the removal order from Switzerland was not unlawful.



Return

Request for damages against Frontex on returns from Greece to Türkiye

European Union, General Court, [WS and Others v European Border and Coast Guard Agency \(Frontex\)](#), T-600/21, 6 September 2023

The General Court rejected the action for damages brought by Syrian refugees against Frontex after they were returned from Greece to Türkiye.

In 2016, following a joint operation by Greece and Frontex, a number of Syrian nationals were transferred to Türkiye from the Greek island of Leros. Following an unsuccessful complaint to Frontex's Fundamental Rights Officer, the applicants presented a recourse to the European Union's General Court, claiming that Frontex had infringed its obligations to protect fundamental rights in the context of return operations. They stated that they would have received international protection had they remained in Greece, and Frontex had infringed the principle of *non-refoulement*, the right to asylum, the prohibition of collective expulsion, the rights of the child, the prohibition of degrading treatment, the right to good administration and to an effective remedy.

The General Court dismissed the complaint and stated that Frontex's alleged conduct cannot have directly caused the damage allegedly suffered. The court emphasised that in the context of return operations, Frontex's task is only to provide technical and operational support to Member States, which are the only



competent authority to assess the merits of return decisions and examine applications for international protection.

Application of the Returns Directive during internal border controls

CJEU, [Association Avocats pour la défense des droits des étrangers \(ADDE\) and others v Ministry of the Interior \(France\)](#), C-143/22, 21 September 2023.

The CJEU ruled that the Returns Directive applies to any third-country national who has entered the territory of a Member State without fulfilling the conditions of entry, stay or residence.

Several associations challenged the legality of an order amending the CESEDA before the French Council of State. The Council of State asked the CJEU whether the provisions of the Returns Directive do not have to be complied with when a Member State decides to temporarily reintroduce internal border controls and adopt a decision to refuse entry solely based on the Schengen Borders Code.

The court held that a decision to refuse entry may be adopted based on the Schengen Borders Code, but the standards and procedures of the Returns Directive must be complied with.

The CJEU noted that the Returns Directive applies as soon as a person is apprehended at a border crossing point on the territory of the Member State and that Member States may exclude third-country nationals from the scope of this directive only exceptionally.

Adoption of a return decision while asylum procedures are pending

CJEU, [CD v Ministry of the Interior of the Czech Republic, Asylum and migration policy service \(Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky\)](#), C-257/22, 9 November 2023.

The CJEU interpreted Articles 2(1), 3(2) and Article 6(1) of the Returns Directive.

The request for a preliminary ruling was done in the context of proceedings between CD, an Algerian national, and the Czech Ministry of the Interior for a return decision adopted by the Directorate of Immigration's policy service.

After citing its previous judgment in the case of *Gnandi*, the court held that Article 9(1) of the recast APD, read in the light of Recital 9 of the Returns Directive, must be interpreted as meaning that the right to remain from the submission of the application until adoption of a first-instance decision prevents the person's stay from being regarded as illegal, and it is irrelevant that the return decision related to the period during which that applicant was staying illegally prior to the submission of the application for international protection.

Thus, the court reiterated that a return decision, under Article 6(1) of the Returns Directive, may not be adopted after the submission of an application for international protection and before the adoption of a first-instance decision, irrespective of the period of residence to which that return decision refers.



Procedural safeguards related to last-minute applications

ECtHR, *A.M.A. v The Netherlands*, No 23048/19, 24 October 2023.

The ECtHR found a violation of Article 3 of the ECHR due to the failure of the Dutch authorities to adequately assess the risk of inhuman or degrading treatment in a last-minute application for asylum in case of a return to Bahrain.

A Bahrain national complained before the ECtHR that he did not have access to an effective remedy to complain against the denial of a leave to remain in the Netherlands pending the examination of his last-minute application. The court noted that the applicant could not effectively take legal action against the denial of the leave to remain because he did not have access to a lawyer and remedies were not available. The court considered that the Dutch authorities had failed to assess the alleged risk of ill treatment upon a return and to carefully examine the new documents submitted by the applicant in the last-minute application.

Non-refoulement to Sudan

ECtHR, *W.A. and Others v Italy*, No 18787/17, 16 November 2023.

The ECtHR ruled that Italy did not breach their duty to offer effective guarantees to protect the applicant against arbitrary refoulement to Sudan.

The ECtHR examined on the merits the complaints raised by one out of five applicants, which were deemed admissible. The court did not find a violation of Article 3 of the ECHR. It noted that there had been inaccuracies in his application form, he had been assisted by a lawyer at different points in the removal procedure, he explicitly stated that he did not wish to ask for international protection

and he invoked persecution by the Sudanese government only after lodging his application with the ECtHR.

Thus, as the Italian authorities did not have that information during the removal procedure, the court concluded that Italy had not breached their duty to provide effective guarantees against arbitrary *refoulement* to Sudan.

Collective expulsion

ECtHR, *S.S. and others v Hungary*, No 56417/19 and No 44245/20, 12 October 2023.

The ECtHR found a violation of Article 3 of the ECHR for failure to assess protection against refoulement and of Article 4 of Protocol No 4 for the collective nature of the removal of the applicants from Hungary to Serbia.

The case concerned the alleged collective expulsion from Hungary to Serbia of seven Yemeni nationals and three Afghan nationals. They complained that upon expulsion to Serbia, they would not have access to the asylum procedure and would risk *refoulement* and ill treatment. The applicants attempted to enter Hungary by using falsified documents.

The ECtHR reiterated that a Member State cannot deny an asylum seeker access to its territory or remove them, even on the assumption that the person may be able to return through other means of entry, without a proper evaluation of the risks that such a denial or removal might have for their rights. The court concluded that there was a violation of Article 3 of the ECHR (procedural aspect) due to the national authority's failure to examine whether the applicants would have access to an adequate asylum procedure in Serbia, in line with the protection requested against *refoulement*.



With regard to Article 4 of Protocol No 4, the court found that the applicants were not provided with an opportunity to present their arguments against the removal to Serbia and explained that the decisive criterion for an expulsion to be characterised as ‘collective’ is the absence of “a reasonable and objective examination of the particular case of each individual foreigner of the group”. The court consulted CEAS and the CJEU judgments, [European Commission v Hungary](#), 17 December 2020 (Grand Chamber) and [Ministerio Fiscal \[Spain\] v V.L.](#), 25 June 2020.

Best interests of the child

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), No Au 9 S 23.30872, 20 September 2023.

The Regional Administrative Court of Augsburg granted urgent legal protection against a rejection of a subsequent application and a threat of deportation on grounds related to the best interests of the child.

An Iraqi national applied for asylum in Germany and stated to have participated in an assassination attempt on the former Iraqi president 20 years ago. The Regional Administrative Court of Augsburg granted an interim measure against a BAMF rejection of a subsequent application as manifestly unfounded and against the order of deportation of the applicant.

The Regional Administrative Court of Augsburg found that there were serious doubts on the legality of the rejection as manifestly unfounded pursuant to Section 30 of the Asylum Act, because it could not be precluded that the Iraqi state's interest in persecution still existed after a period of 20 years. The Regional Administrative Court of Augsburg further

stated that in return decisions the best interests of the child had to be sufficiently considered pursuant to Article 5(a) and (b) of the Return Directive and that this applied also in cases where the deportation threat was not directed against the child but against a parent with whom the child had a personal relationship.

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], [Applicants v Austrian Federal Office for Aliens and Asylum \(BFA\)](#), Nos Ra 2023/20/0125 to 0130, 25 October 2023.

The Supreme Administrative Court decided that the best interests of a child must be considered as part of a return decision and children could be heard in proceedings for the purpose of taking evidence, but not merely for the purpose of obtaining their opinion.

A family from Azerbaijan including their four children who were born in Austria received return decisions by the BFA because of previously unsuccessful asylum applications. After a rejection of their appeal before the Federal Administrative Court, the applicants lodged an onward appeal to the Supreme Administrative Court on grounds that the Federal Administrative Court had failed to consider the best interests of the children and that the minors should have been heard in the proceedings.

Pursuant to Section 9 of the BFA Procedures Act, the Supreme Administrative Court decided that the right to private or family life pursuant to Article 8 of the ECHR had to be considered in the event of a return decision, which includes an assessment of the best interests of the child. However, the court held that in administrative procedures the best interests of the child had to be weighed against the public interest and did not take automatic and absolute precedence and



that the Federal Administrative Court had failed to do so in the current case.

On the question whether children had to be heard in the proceedings against return decision, the Supreme Administrative Court concluded that children could be heard in the proceedings for the purpose of taking evidence or as witnesses, but not merely for the purpose of obtaining their opinion.

Right to private and family life

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], [Applicant v Federal Office for Aliens and Asylum \(BFA\)](#), No Ra 2021/21/0339, 17 October 2023.

The Supreme Administrative Court overruled a decision of the lower court on the grounds that it failed to fully examine a potential violation of the right to private and family life for the applicant and her disabled husband by not holding an oral hearing.

The Supreme Administrative Court decided in a second onward appeal against a return decision against a Russian national of Dagestan by the BFA which was upheld by the Federal Administrative Court. In a first proceeding, the Supreme Administrative Court had annulled the lower court's decision and stated that the court had violated Article 8 of the ECHR because it had failed to consider that the applicant's husband was dependent on her support because of his disability. In the continued proceedings, the Federal Administrative Court again dismissed the appeal as unfounded on the grounds of lacking evidence of the disability without holding an oral hearing on the grounds that a hearing would not help to further clarify the case.

The Supreme Administrative Court annulled the lower court's judgment and

held that it should have held an oral hearing in order to clarify the facts, given that the applicant had not submitted sufficient evidence.

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], [Applicant v Federal Office for Aliens and Asylum \(BFA\)](#), No Ra 2022/21/0104, 10 October 2023.

The Supreme Administrative Court decided that, the public interest in a return decision had to be balanced with the right to private and family life.

A Turkish national who lived in Austria since January 1992 received a return decision to Türkiye due to repeated criminal offences. The return decision was upheld by the Federal Administrative Court.

In the onward appeal, the Supreme Administrative Court decided that when a return decision was adopted, its proportionality had to be assessed in light of the right to private and family life pursuant to Article 8 of the ECHR. The Supreme Administrative Court overruled the lower court's decision because the latter failed to balance the repeated criminal offences with the applicant's personal circumstances, such as lawful residence since the age of 12, education and personal ties.

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], [Federal Office for Aliens and Asylum \(BFA\) v Applicant](#), No Ra 2022/19/0311, 27 September 2023.

The Supreme Administrative Court decided that the Federal Administrative Court had deviated from the established case law of the Supreme Administrative Court on the balancing of interests in return decisions pursuant to Article 8 of the ECHR.



The case concerned a stateless Palestinian from Gaza who received a return decision by the BFA. His appeal before the Federal Administrative Court was partly upheld insofar as he received a 'residence permit plus' pursuant to Section 55(1) of the Asylum Act 2005. The BFA lodged an onward appeal against this decision on the grounds that the Federal Administrative Court had deviated from the established case law of the Supreme Administrative Court in its balancing of interests in return decisions, pursuant to Article 8 of the ECHR in conjunction with Section 9 of the BFA Procedure Act.

The Supreme Administrative Court decided based on its previous case law that a period of residence of less than 5 years did not in itself constitute a decisive factor in the balancing of interests, and in cases of short residence, the level of integration had to be exceptional. The court therefore concluded that the Federal Administrative Court did not weigh the public interest in the termination of residence in accordance with this case law.

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], [Applicant v Finnish Immigration Service \(Maahanmuuttovirasto\)](#), Nos 2596/2022 and 2650/2022, 16 October 2023.

The Supreme Administrative Court stated that a pending application for international protection does not have an impact on the entry and return decision since the FIS has already made a thorough assessment of refoulement.

An Iraqi national was rejected family reunification in Finland and his appeal against the negative decision was pending. The FIS has also ordered the return of the applicant and the latter contested the return and entry ban decisions.

The Supreme Administrative Court clarified that the ongoing appeal in the international

protection procedure could not prevent the FIS from assessing the conditions for deportation and an entry ban in the context of the request for a residence permit on family ties. The court noted that the FIS made an overall assessment of all elements for the return and entry ban decisions.

Return decisions when there is a prohibition of *refoulement*

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], [Austrian Federal Office for Aliens and Asylum \(BFA\) v Applicant](#), No Ra 2021/19/0413, 12 September 2023.

The Supreme Administrative Court decided that according to EU law a revocation of refugee or subsidiary protection, pursuant to Section 9(2), No 2 of the Asylum Act 2005, should not be combined with a return decision, if it was clear that the removal was not permitted due to the prohibition of refoulement.

An Afghan national had his subsidiary protection status withdrawn by the BFA because he had committed a serious crime. The BFA also issued a return decision but found that the removal of the applicant was inadmissible, pursuant to Section 9(2) of the Asylum Act 2005.

Upon an appeal, the Federal Administrative Court upheld the withdrawal decision but rejected the return decision to Afghanistan as permanently inadmissible. Thus, the applicant was granted a residence permit and the BFA lodged an onward appeal against this decision.

Pursuant to case law of the CJEU, the Supreme Administrative Court decided that a revocation of international protection should not be combined with a measure to terminate residence, if it was clear at the time of issuing that decision that the removal was not permitted for an indefinite



period due to the prohibition of *refoulement*. Consequently, any decision that legally depended on the return decision would also have to be omitted. Since the BFA based its withdrawal decision on Section 9(2), sentence 2 of the Asylum Act and recognised that a return to Afghanistan was not admissible, the return decision and any depending decision on it were contrary to EU law. The Supreme Administrative Court referred to the CJEU, [*Bundesamt für Fremdenwesen und Asyl v AA*](#), C-663/21, 6 July 2023.



