

# Quarterly Overview of Asylum Case Law





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





## Note

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

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

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

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## List of abbreviations

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





<b>IPAT</b>	International Protection Appeals Tribunal (Malta)
<b>Ltd.</b>	Limited liability company
<b>Member States</b>	Member States of the European Union
<b>NGO</b>	non-governmental organisation
<b>OFPRA</b>	Office for the Protection of Refugees and Stateless Persons   Office Français de Protection des Réfugiés et Apatrides (France)
<b>QD</b>	Qualification Directive. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
<b>PBGB</b>	Police and Border Guard Board (Estonia)
<b>RCD</b>	Reception Conditions Directive. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
<b>Refugee Convention</b>	The 1951 Convention relating to the status of refugees and its 1967 Protocol
<b>RIC</b>	Reception and Identification Centre (Greece)
<b>RSF</b>	Rapid Support Forces (RSF)
<b>SAR</b>	State Agency for Refugees (Bulgaria)
<b>TPD</b>	Temporary Protection Directive. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
<b>UN</b>	United Nations
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestine Refugees in the Near East





## Main highlights

The decisions and judgments presented in this edition of the “EUAA Quarterly Overview of Asylum Case Law, Issue No 1/2024” were pronounced from December 2023 to February 2024.

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

In [X v State Secretary for Justice and Security](#), the CJEU ruled that a Dublin transfer must not take place if there are substantial grounds to believe that the applicant would, during or after the transfer, face a real risk of being subjected to pushbacks or detention that would place the person in a situation of extreme material poverty which would amount to inhuman or degrading treatment.

In [A.A. v Federal Republic of Germany](#), the CJEU interpreted the concept of ‘new elements or findings’ in a subsequent application. It ruled that its judgments, which significantly add to the likelihood of an asylum seeker qualifying as a beneficiary of refugee status or subsidiary protection, can constitute a new element justifying a fresh examination of the substance of the asylum application.

In [WS v State Agency for Refugees under the Council of Ministers \(SAR\)](#), the CJEU ruled that women as a whole may be regarded as belonging to a social group within the meaning of recast Qualification Directive (QD) and may qualify for refugee status if they are exposed to physical or mental violence, including sexual violence and domestic violence, in their country of origin on account of their gender.

In [CR, GF, TY v Landeshauptmann von Wien](#), the CJEU ruled that an unaccompanied minor refugee has the right to family reunification with the parents, and exceptionally with a vulnerable sibling in need of permanent assistance from the parents due to a serious illness, even if the unaccompanied minor reached the age of majority during the family reunification procedure.

### European Court of Human Rights (ECtHR)

In [Alkhatib and others v Greece](#), the ECtHR ruled that Greece violated Article 2 of the European Convention of Human Rights (ECHR) when the coastguard used force that was not ‘absolutely necessary’, firing several times at a motorboat which illegally transported people towards Greece.

In [O.R. v Greece](#) and [T.K. v Greece](#), the ECtHR found violations of Article 3 of the ECHR for inadequate living conditions in reception camps and the failure of the authorities to appoint a legal guardian to unaccompanied minors.

In [Dabo v Sweden](#), the ECtHR ruled that Sweden did not violate Article 8 of the ECHR when refusing to grant family reunification to a Syrian applicant, as the national authorities struck a







fair balance between the applicant's interests and those of the state in controlling immigration.

In [M.H. and S.B. v Hungary](#), the ECtHR found that Hungary violated Article 5(1) of the ECHR, as the national authorities arbitrarily detained two Afghan minors, did not act expeditiously in ordering their age assessments, did not consider alternative measures to detention and did not take into account the best interests of the children.

In [U. v France](#), the ECtHR ruled that France would not violate Article 3 of the ECHR if an applicant was removed to the Russian Federation after his refugee protection was revoked due to a criminal conviction for condoning terrorism, considering that all the conditions required for an updated assessment of the individual situation were met.

## National courts

### Dublin procedure

The Finnish Supreme Administrative Court [referred](#) a question to the CJEU on the meaning of 'rejected application' under Article 18(1)(d) of the Dublin III Regulation in a case concerning the transfer of a Syrian applicant back to Denmark.

The German Regional Administrative Court of Dresden [decided](#) that absconding pursuant to Article 29(2), Sentence 2 of the Dublin III Regulation required more than just a temporary, brief unreachability of the applicant, while the Regional Administrative Court of Gelsenkirchen decided that, in order to extend a Dublin transfer period, the applicant must still be absconding at the time of the extension.

Several national judgments analysed reception conditions and access to the asylum procedure in Croatia, Romania, Slovenia and Spain in view of a potential Dublin transfer.

### First instance procedures

The Belgian Council for Alien Law Litigation (CALL) [referred](#) questions to the CJEU for a preliminary ruling on Article 43(2) of the recast Asylum Procedures Directive (APD), specifically on the qualification of a procedure as a border procedure and the right to an effective remedy.

In France, the Constitutional Council [reviewed](#) the Law to Control Immigration and Improve Integration and held that 32 out of 86 articles were not constitutional due to procedural irregularities and declared 10 articles to be partially or totally in line with the Constitution, including Article 46 on the foreigner's commitment to respect the principles of the Republic, including freedom of expression, gender equality and human dignity.

### Second instance procedures

In Austria, the Federal Constitutional Court [ruled](#) on 14 December 2023 that legal assistance provided by the BBU was not sufficiently independent and therefore unconstitutional. However, the legal organisation of the agency as ltd. was considered constitutional.





In France, the Grand Chamber formation of the CNDA [ruled](#) that the father of a minor child cannot lodge an appeal as third-party intervener against the decision by which the child had been granted international protection and noted that allowing such an appeal would be contrary to the principle of confidentiality of an asylum application.

### **Subsidiary protection for applicants from the Gaza Strip, Haiti and Northern Darfur**

On 12 February 2024, the French National Court of Asylum (CDNA) [provided](#) subsidiary protection to a Palestinian applicant from Khan Younis, ruling that there was a situation of indiscriminate violence of exceptional intensity in the Gaza Strip.

In December 2023, the CNDA [provided](#) subsidiary protection to an applicant from Haiti, ruling that the security situation in Port-au-Prince and in the Ouest and Artibonite departments was such that mere presence in these areas would expose the applicant to a real risk of serious harm.

The CNDA also [provided](#) subsidiary protection to a Sudanese applicant from North Darfur, noting that the indiscriminate violence in that region was of an exceptional intensity.

### **Exclusion from international protection**

On 12 December 2023, the Norwegian Supreme Court [ruled](#) on the exclusion from international protection of a former conscripted soldier from Syria due to complicity under Article 1F(b) of the Refugee Convention in the arrest and surrender of opposition members to the security forces who were then subjected to torture and homicide.

### **Reception conditions**

The High Court in Ireland [referred](#) questions for a preliminary ruling to the CJEU on whether the state is liable for *Francovich* damages when the state violated the recast Reception Conditions Directive (RCD) by not providing mandatory material reception conditions.

The District Court of Northern Netherlands in Groningen [ruled](#) that the Central Agency for the Reception of Asylum Seekers must adhere to the maximum occupancy of 2,000 asylum seekers at the Ter Apel location as agreed with the municipality of Westerwolde and that failure to do so carries a penalty of EUR 15,000 per day with a maximum of EUR 1.5 million.

### **Detention**

The Italian Court of Cassation [referred](#) a question to the CJEU for a preliminary ruling on the requirement that asylum applicants from countries considered as safe pay bail as an alternative to detention while awaiting the outcome of their application for international protection.

In Malta, the First Hall Civil Court [allowed](#) access to the Corradino Correctional Facility (prison) and to administrative immigration detention centres to a journalist to investigate and report on allegations of mistreatment.





## Temporary protection

The Dutch Council of State [clarified](#) that temporary protection granted to third-country nationals who had a temporary residence in Ukraine prior to the war would end on 4 March 2024. Temporary protection was prolonged until 4 March 2025 for Ukrainians, stateless persons and people of other nationalities who had asylum or a permanent residence permit in Ukraine, in line with the decision of the Council of the European Union of October 2023.





## Access to the asylum procedure

### ECtHR judgment on the use of force by the Greek coastguard

ECtHR, [Alkhatib and others v Greece](#), No 3566/16, 16 January 2024.

*The ECtHR ruled that Greece violated Article 2 of the ECHR when the coastguard used force that was not “absolutely necessary” when firing several times at a motorboat which illegally transported people towards Greece.*

Relying on Article 2 of the ECHR, the applicants complained that a family member was seriously wounded by a gunshot and the action was not authorised by law and was not absolutely necessary nor strictly proportional to the aim pursued.

The court reiterated its well-established case law, holding that Article 2 of the ECHR applies even in situations when the victim survived if the use of force was potentially fatal.

The ECtHR ruled that the coastguards could have presumed that there were people on the vessel being monitored and the coastguard had not exercised the level of caution necessary to minimise any risk of endangering lives.

### Judgment of the General Court rejecting a request for damages for alleged pushbacks by Frontex

General Court, [Hamoudi v Frontex](#), T-136/22, 13 December 2023.

*The General Court rejected the action for damages brought by a Syrian national against Frontex for allegedly being sent back out to sea from Greece in the direction of Türkiye.*

A Syrian national requested EUR 500,000 in damages before the General Court of the EU, claiming that he arrived in Greece from Türkiye to seek asylum. On that day, he was sent back out to sea, during which a private surveillance aeroplane operated by Frontex flew over the scene several times. The applicant also claimed that after arriving back in Türkiye, he did not have access to asylum and lived as a clandestine under threat of *refoulement* to Syria.

After assessing the evidence, the General Court dismissed the action as manifestly lacking any foundation in law, since the applicant did not demonstrate that he was present at and involved in the alleged incident. An appeal before the CJEU is currently pending for this case (C-136/24 P).

### ECtHR judgment on collective expulsion from Hungary to Serbia

ECtHR, [K.P. v Hungary](#), No 82479/17, 18 January 2024.

*The ECtHR found that an unaccompanied minor was subjected to a collective expulsion from Hungary to Serbia in June 2017 and that his status of a person in a*

*situation of extreme vulnerability should have taken precedence over that of an irregular migrant.*

The applicant, 16 years old at the time, entered irregularly from Romania to Hungary on 1 June 2017, then to Austria, where the police handed him to the Hungarian authorities who detained him along with two adult men. During the interview, he expressed the wish to apply for asylum. On 5 June 2017, together with the two men, the applicant was transported to the border fence by Hungarian officers and forced to go towards Serbia.

The court found a violation of Article 4 of Protocol No 4 (prohibition of collective expulsion) and stated that the removal of the applicant was carried out by means of the same procedure as in the [Shahzad](#) case, without any decision or an examination of his situation. The court added that the applicant was an unaccompanied minor at the time of the events and therefore in a situation of extreme vulnerability, a factor which takes precedence over the status of an irregular migrant.



## Dublin procedure

### CJEU judgment on the principle of mutual trust

**CJEU, [X v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), C-392/22, 29 February 2024.**

*The CJEU ruled that a Dublin transfer must not take place if there are substantial grounds to believe that the applicant would, during or after the transfer, face a real risk of being subjected to pushbacks or detention that would place the person in a situation of extreme material poverty which would amount to inhuman or degrading treatment.*

A Syrian national challenged a decision on a Dublin transfer from the Netherlands to Poland, claiming that he risked a violation of his fundamental rights after such a transfer, considering that he had already been subjected to pushbacks to Belarus on three occasions by Polish authorities and that he was detained for 1 week in the border guard centre, without food and medical checks.

The CJEU ruled that the fact that the Member State responsible for examining an asylum application under the Dublin III Regulation has carried out pushbacks of third-country nationals seeking to make applications at its border and has detained them at its border check posts does not in itself preclude a Dublin transfer to that Member State. The court also added that the Dublin transfer must be ruled out if there are substantial grounds to believe that the applicant would, during or after the

transfer, face a real risk of being subjected to pushbacks or detention that would place the person in a situation of extreme material poverty which would amount to inhuman or degrading treatment.

The court also ruled that the Member State which has sought to have an applicant taken back by the Member State responsible and wishes to transfer that applicant to the latter Member State must, before carrying out the transfer:

- consider all the information provided by the applicant, particularly concerning the possible existence of a real risk of inhuman or degrading treatment at the time of or after that transfer; and
- cooperate in establishing the facts and verify the truth of those facts.

The court highlighted that the Member State may seek individual guarantees from the responsible Member State and, if such guarantees are provided and they appear to be credible and sufficient to rule out any real risk of inhuman or degrading treatment, the Member State may carry out that transfer.

### **Referral to the CJEU on interpretation of Article 18(1)(d) of the Dublin III Regulation**

**Finland, Supreme Administrative Court [Korkein hallinto-oikeus], [Applicant v Finnish Immigration Service](#), KHO:2023:120, 18 December 2023.**

*The Supreme Administrative Court requested the CJEU to interpret the meaning of a rejected application under Article 18(1)(d) of the Dublin III Regulation.*

A Syrian applicant, who was previously granted international protection in

Denmark and whose status was not renewed due to a policy decision taken by the determining authority, applied for international protection in Finland in 2021. The Finnish Immigration Service considered that Denmark was responsible to examine the application.

The Supreme Administrative Court noted that Denmark was bound by the Dublin III Regulation but not by the recast APD and recast QD. It suspended the proceedings and asked the CJEU whether a rejection of an application as provided under Article 18(1)(d) of the Dublin III Regulation would extend to a situation where the validity of a residence permit based on previously-granted protection was not extended on the basis of a decision taken by the determining authorities, as opposed to a request made by the applicant.

### **The impact of requests of the UN Committee on the Rights of the Child (UNCRC) to take interim measures on a Dublin transfer deadline**

**Finland, Supreme Administrative Court [Korkein hallinto-oikeus], [Applicant \(No 2\) v Finnish Immigration Service](#), KHO:2023:121, 18 December 2023.**

*The Supreme Administrative Court clarified that a request from the UNCRC to take interim measures was not binding, has no impact on the deadline for a Dublin transfer and cannot suspend the implementation of the transfer.*

The Finnish Immigration Service considered that Denmark was responsible to process the application for asylum of a Syrian family and took the decision to transfer them under the Dublin III Regulation. The applicants complained before the UNCRC, which requested



Finland to refrain from the transfer pending the examination of the case.

The administrative court considered that such a request cannot suspend the transfer time limit but noted that the deadline expired and Finland became responsible to process the application. The ruling was confirmed by the Supreme Administrative Court, which held that only an appeal against the transfer decision, as noted in Article 27(1) or (3) of the Dublin III Regulation, has a suspensive effect.

The Supreme Administrative Court referred to the CJEU judgments in [Migrationsverket v Edgar Petrosian and Others](#) (C-19/08), [Mohammad Khir Amayry v Migration Board, Sweden](#) (C-60/16) and [E.N., S.S., J.Y. v State Secretary for Justice and Security](#) (C-556/21).

## Suspensive effect of a constitutional review

Malta, First Hall Civil Court, [Applicants v International Protection Agency \(IPA\) and International Protection Appeals Tribunal \(IPAT\)](#), No 321/2023, 9 January 2024.

*The First Hall Civil Court ruled that IPAT decisions could not be considered as final to carry out Dublin transfers when applicants have submitted an appeal for a constitutional review of the international protection proceedings they had initiated.*

A group of applicants requested the First Hall Civil Court seating in its constitutional formation to take interim measures against the execution of their Dublin transfer to Austria. They alleged that their international protection proceedings had infringed Articles 4, 5 and 17 of the Dublin III Regulation. The IPA and the IPAT argued that the applicants' appeal could

not be granted a suspensive effect because a final decision had already been reached in their cases and their transfer should take place within 6 months of the adoption of the decisions.

The civil court found the appeal to be permitted by law, as it was not against the unappealable decision of the IPAT but rather a constitutional review of the Dublin procedure in the Maltese context. Reading Article 27(3) in conjunction with Article 29(1) of the Dublin III Regulation, the court ruled that the 6-month period within which Dublin transfers were to take place should only start after a decision was reached in the constitutional proceedings initiated by the applicants. Thus, the court stated that taking interim measures was unnecessary in this case, as the appeal had a suspensive effect in itself and gave rise to the applicants' right to remain during the constitutional proceedings.

## Interpretation of absconding under Article 29(2), Sentence 2 of the Dublin III Regulation

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), 11 L 841/23.A, 7 December 2023.

*The Regional Administrative Court of Dresden decided that absconding pursuant to Article 29(2), Sentence 2 of the Dublin III Regulation required more than just a temporary, brief unreachability of the applicant.*

The Regional Administrative Court of Dresden granted an interim measure against a decision on a Dublin transfer to Sweden and held that BAMF unlawfully prolonged the transfer deadline due to absconding pursuant to Article 29(2) of the





Dublin III Regulation because the applicant was neither recorded in the electronic registration system nor found during visual checks in the reception centre.

The Regional Administrative Court of Dresden held that absconding pursuant to Article 29(2), Sentence 2 required more than just a temporary, brief absence. If an applicant had their centre of life in their home or accommodation and was only occasionally absent for a short time, they were not obliged to notify the immigration authority.

**Germany, Regional Administrative Court [Verwaltungsgerichte], Applicant v Federal Office for Migration and Refugees (BAMF), 2a 1953/23.A, 11 December 2023.**

*The Regional Administrative Court of Gelsenkirchen decided that, in order to extend a Dublin transfer period, the applicant must still be absconding, insofar as the authorities have confirmed their whereabouts to be unknown at the time of the extension.*

BAMF prolonged the deadline to transfer an applicant to Bulgaria on the grounds of absconding because the Immigration Office could not find him during a search of his room, although he was undoubtedly present in the reception centre.

The Administrative Court of Gelsenkirchen ruled that Article 29(2), Sentence 2 of the Dublin III Regulation required that the applicant was still absconding at the time of the extension of the transfer deadline. As the applicant could probably have been found in the reception centre during the day, it was concluded that he had not absconded.

## Dublin transfers to Croatia

**Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), Federal Office for Migration and Refugees (BAMF) v Applicants, 10 LB 91/23, 4 December 2023.**

*The Higher Administrative Court of Lower Saxony confirmed a Dublin transfer to Croatia as it did not find any systemic deficiencies in Croatia's asylum system.*

After the Regional Administrative Court overturned the decision on a Dublin transfer of an Iraqi family to Croatia, BAMF lodged an onward appeal. The Higher Administrative Court of Lower Saxony upheld the appeal and ruled that, although country information on Croatia showed that there were allegations of repeated pushbacks from Croatia to Serbia or Bosnia-Herzegovina, there was insufficient evidence that 'chain deportations' or other violations of rights under Article 4 of the EU Charter and Article 3 of the ECHR occurred for Dublin returnees. As regards reception conditions, the court decided that the mere fact that two of the applicants were minors did not preclude the transfer to Croatia, because basic care was also sufficiently provided to families with minor children.

## Dublin transfers to Romania

**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 202306863/1/V3, 27 December 2023.**

*The Council of State ruled that applicants subject to the Dublin procedure did not risk inhuman or degrading treatment upon a transfer to Romania.*







The Council of State decided in an onward appeal against a decision on a Dublin transfer to Romania. Based on the principle of mutual trust, the Council of State rejected the appeal and held that there were no systemic deficiencies in the asylum procedure in Romania and the alleged unlawful pushbacks to Serbia did not affect Dublin transferees.

The court noted that, based on a [readmission agreement](#), the Romanian police brings foreign nationals to Serbia upon crossing the border from Serbia to Romania, but this agreement did not apply to Dublin transferees.

## Dublin transfers to Slovenia

Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), [Federal Office for Migration and Refugees \(BAMF\) v Applicant](#), 10 LB 19/23, 5 December 2023.

*The Higher Administrative Court of Lower Saxony held that there was not sufficient evidence of a serious risk of inhuman or degrading treatment of Dublin returnees upon a transfer to Slovenia.*

Based on the high requirements of the principle of mutual trust in CEAS, the Higher Administrative Court decided that no sufficient evidence existed about 'chain deportations' or other violations of rights under Article 4 of the EU Charter and Article 3 of the ECHR for applicants who are transferred to Slovenia in a Dublin procedure.

The court further held that applicants who left Slovenia during an ongoing first instance procedure and were later given a transfer decision, could apply for a second application in Slovenia which was not considered a subsequent application. The

court further clarified that, even in the potential case of an unlawful treatment of an asylum application as a subsequent application upon a transfer, this would not amount to a violation of Article 3 of the ECHR and Article 4 of the EU Charter.

The court also noted that, since February 2022 when the Croatian authorities suspended the repatriation of applicants based on a bilateral agreement with Slovenia, the situation concerning access to the territory and the asylum procedure has improved.

## Dublin transfers to Spain

Ireland, High Court, [AC v International Protection Appeals Tribunal & Ors](#), [2024] IEHC 77, 12 February 2024.

*The High Court issued an injunction prohibiting a transfer to Spain under the Dublin III Regulation, pending a decision on Article 17 on the discretionary clause.*

Following the issuance of a transfer decision to Spain, the applicant made submissions under Article 17 of the Dublin III Regulation, claiming that if he was sent to Spain, he would face destitution and *refoulement*.

The applicant was notified that the Minister would decide on Article 17 (following previous jurisprudence which clarified such decisions could not be taken by the determining authorities), but he later received notice that he would be transferred to Spain. The applicant appealed the decision and the IPAT upheld the transfer, so the applicant requested an injunction before the High Court.

The High Court issued an injunction as it determined that submissions made under Article 17 are integral in determining the



Member State responsible for an application for international protection under the Dublin III Regulation. Rejecting the injunction would, in the opinion of the High Court, be unfair to the applicant and would enable the minister to benefit from the inability to rule on the decision.



## First instance procedures

### CJEU judgment on subsequent applications

CJEU, [A.A. v Federal Republic of Germany](#), C-216/22, 8 February 2024.

*The CJEU interpreted the concept of new elements or findings for a subsequent application and ruled that its judgments, which significantly add to the likelihood of an asylum seeker qualifying as a beneficiary of refugee status or subsidiary protection, can constitute a new element which justifies a fresh examination of the substance of the asylum application.*

The CJEU held that any judgment it pronounces can constitute a new element that justifies a full re-examination of an asylum case if the conditions required to qualify for refugee status are met. That applies also for a judgment which is limited to interpreting a provision of EU law already in force at the time that a decision on a previous application was adopted.

The court also noted that the date on which the judgment was delivered is irrelevant. However, the CJEU judgment must significantly add to the likelihood of the applicant qualifying as a beneficiary of refugee status.

The court also added that Member States may authorise their courts or tribunals to rule themselves on the application and, where appropriate, grant refugee status, if a national court or tribunal annuls a



decision that rejected a subsequent application as inadmissible.

## Referral for a preliminary ruling on the border procedure

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [Applicants v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#), Nos 300 352, 300 351, 300 350, 300 348, 300 347, 300 349 and 300 346, 22 January 2024.

*CALL referred questions to the CJEU for a preliminary ruling on Article 43(2) of the recast APD, specifically on the qualification of a procedure as a border procedure and the right to an effective remedy.*

Several applicants who lodged requests for international protection at the border received decisions from the CGRS after the expiry of the 4-week period provided in Article 43(2) of the recast APD. They lodged appeals with CALL, which referred preliminary questions to the CJEU related to the qualification – before and after the expiration of the 4-week period– of a procedure carried out in a place of maintenance located geographically on the territory but assimilated by a regulatory text to a place located at the border. The CALL also asked about the extent of the powers of the asylum authorities within the framework of this procedure.

CALL also referred a question on the right to an effective remedy, namely the obligations of the national judge who finds that irregularities have been committed in the context of a border procedure and whether the judge is under the obligation to take into account *ex officio* the expiry of the 4-week deadline.

## Constitutional review of a national law

France, Constitutional Council [Conseil constitutionnel], [Decision on Law to Control Immigration and Improve Integration](#), No 2023-863 DC, 25 January 2024.

*The Constitutional Council reviewed the Law to Control Immigration and Improve Integration and held that 32 out of 86 articles were not constitutional due to procedural irregularities and declared 10 articles to be partially or totally in line with the Constitution, including Article 46 relating to the foreigner's commitment to respect the principles of the Republic.*

After proceeding to a judicial review of the Law to Control Immigration and Improve Integration, the French Constitutional Council held that the following provisions were unconstitutional:

- the modification of the conditions for family reunification and for issuing a residence permit based on health reasons;
- the imposition of a fine for the illegal stay of adult foreigners;
- the requirement that the benefit of the right to housing, personal housing assistance, personalised autonomy allowance and family benefits for foreigners who are not EU nationals be conditional on the prior residence in France for a period of at least 5 years or affiliation with a professional activity for at least 30 months;
- taking the fingerprints and a photograph of a foreigner without their consent in certain instances to verify their right to travel or stay on French territory; and





- the modification of the conditions for emergency accommodation of certain categories of homeless persons or persons in a situation of distress.

The Constitutional Council approved the requirement for foreigners who wish to obtain a residence permit to sign a contract by which they agree to respect the principles of the Republic, including the freedom of expression, gender equality and human dignity.

Finally, the council interpreted the provision according to which the administrative authority which refuses the issuance or renews a residence permit must examine all the bases for the issuance of other residence permits. If residence is refused, any new application before a 1 year period is declared inadmissible, unless there are new factual elements or laws.

### **Safe country concept when the residence permit in a third country has expired**

**Iceland, Immigration Appeals Board [Kærunefnd útlendingamála], [Applicants v Directorate of Immigration \(Útlendingastofnun\)](#), No 722/2023, 7 December 2023.**

*The Immigration Appeals Board ruled that the return of Venezuelan applicants to Argentina, where they had legally resided for 4 years before reaching Iceland, cannot be ordered in the absence of a confirmation by the Argentine authorities that they would be authorised to return and able to renew their residence permits.*

Venezuelan applicants, who had legally resided for 4 years in Argentina before reaching Iceland, had their residence permits expire in Argentina at the time of

submitting their applications for international protection in Iceland. The Immigration Service refused to consider the applications on the grounds that the applicants could have requested international protection in Argentina; consequently, the service ordered their return there.

The applicants appealed against this decision before the Immigration Appeals Board. The board recalled the rule of first country of asylum but ruled that its application nonetheless required the authorities to ensure that the applicants' rights would be safeguarded, including against *refoulement*. The board found that, since the applicants' residence permits had expired, it could not be assumed that the applicants could obtain international protection in Argentina. Thus, in the absence of communications with the government of Argentina, the board sent the case back to the Immigration Service for further investigation.

### **Right to fair asylum proceedings**

**Ireland, High Court, [A.E. v The Chief International Protection Officer & Ors](#), [2023] IEHC 695, 6 December 2023.**

*The High Court granted certiorari, ruling that the availability of a fair appeal does not remedy the absence of a fair first instance decision, in a case where the International Protection Office (IPO) erred in procedure by claiming that the applicant had not submitted the required documentation.*

The applicant electronically submitted evidence which was requested by the IPO, but the office made a procedural error and determined that no supporting documentation had been provided. The applicant's request for international protection was rejected as the IPAT found



that the decision was not affected by the document's omission.

The applicant filed an appeal with the High Court, which ruled that the decision was made in a manner that breached the standards of fair proceedings and compromised the integrity of the process. Acknowledging the applicant's willingness to assist with the investigation, the High Court noted that the applicant was entitled to have any supporting documents considered at first instance and on appeal.

### **Duty to cooperate to determine relevant elements of the application**

**Ireland, High Court, [T.U. v International Protection Appeals Tribunal & Anor](#), [2024] IEHC 73, 12 February 2024.**

*The High Court granted certiorari on the grounds of the authorities' duty to cooperate as the applicant should have been given the opportunity to submit a medical report considering the bruises on his legs during the hearing before the IPAT.*

During an appeal hearing before the IPAT, the applicant presented physical evidence of injuries he claimed were caused by state authorities. Based on CJEU case law and the recast QD, the High Court determined that the IPAT had a duty to cooperate with the applicant to determine relevant elements of the application and, to present his case as fully as possible, the applicant should have been able to submit a medical report or the tribunal should have requested one.

### **Format of the first instance decision**

**Iceland, Immigration Appeals Board [[Kærunefnd útlendingamála](#)], [Applicants v Directorate of Immigration \(Útlendingastofnun\)](#), No 59/2024, 18 January 2024.**

*The Immigration Appeals Board ruled that an oral confirmation by an employee of the Immigration Service that an application for international protection would be accepted could not be regarded as an administrative decision binding on the authorities.*

Following their interview, a Venezuelan family was requested by the Immigration Service to sign a letter of reference to the Centre for Multiculturalism indicating their name, the type of protection they were granted (additional protection) and the date it was granted. A few months later, the applicants received negative decisions on their applications. They appealed before the Immigration Appeals Board, expressing their surprise to receive the decisions after being given oral and written confirmation that they had been granted international protection following their personal interviews. The Immigration Service argued that such confirmation did not constitute an administrative decision, since written decisions, in the format received by the applicants, were issued months after the interviews.

The Immigration Appeals Board agreed that an oral confirmation by an employee of the Immigration Service that an application for international protection would be accepted could not be regarded as an administrative decision binding on the authorities due to the vague nature of the information. However, the board ruled that the letters of reference to the Centre

for Multiculturalism did constitute a binding administrative decision as they gave precise information about the rights granted to the applicants following their personal interview. Therefore, the Immigration Appeals Board annulled the Immigration Service's negative decisions.



## Assessment of applications

### Women as members of a particular social group

CJEU, [WS v State Agency for Refugees under the Council of Ministers \(SAR\)](#), C-621/21, 16 January 2024.

*The CJEU ruled that women as a whole may be regarded as belonging to a social group within the meaning of the recast QD and may qualify for refugee status.*

A divorced Turkish national of Kurdish origin and Muslim religion applied for asylum in Bulgaria, claiming that she was subjected to forced marriage by her family, beaten and threatened by her husband, and she feared for her life if returned to Türkiye. The Bulgarian court hearing the case decided to refer questions to the CJEU for a preliminary ruling on the interpretation of the recast QD.

The CJEU ruled that the recast QD must be interpreted consistently with the Istanbul Convention, which recognises gender-based violence against women as a form of persecution and which is binding on all EU Member States. The CJEU held that women as a whole may be regarded as belonging to a social group within the meaning of the recast QD and may qualify for refugee status when they are exposed, on account of their gender, to physical or mental violence, including sexual violence and domestic violence, in their country of origin.



The court added that, if women do not meet the conditions for refugee status, they may qualify for subsidiary protection when there is a real risk of being killed or subjected to acts of violence inflicted by a member of the family or community due to the alleged transgression of cultural, religious or traditional norms.

## Assessment of country-of-origin information

Ireland, High Court, [\*M.B. v International Protection Appeals Tribunal & Anor\*](#), [2024] IEHC 12, 12 January 2024.

*The High Court granted certiorari, ruling that the tribunal must examine the country-of-origin information (COI) submitted by the applicant and, if the tribunal decides to reject the information or use other COI, the tribunal must provide a rationale for its decision.*

The applicant, who had submitted COI to support his asylum claim, filed an appeal against the IPAT's decision, questioning the COI methodology employed by the tribunal. The High Court determined that it could not safely conclude that the applicant would not face persecution or be at risk of serious harm considering the evidence the applicant presented to the tribunal. The High Court found that the tribunal was required, at the very least, to examine the information that the applicant had provided.

## Subsidiary protection: The situation in the Gaza Strip

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [\*M.A. v French Office for the Protection of Refugees and Stateless Persons \(Office Français de Protection des Réfugiés et Apatrides, OFPRA\)\*](#), No 22054816 C+, 12 February 2024.

*The National Court of Asylum provided subsidiary protection to a Palestinian applicant from Khan Younis, ruling that there was a situation of indiscriminate violence of exceptional intensity in the Gaza Strip.*

An applicant from Khan Younis, a locality in the Gaza Strip, requested international protection in France, alleging a fear of persecution by members of Hamas due to imputed political opinion. The court noted that the applicant did not receive UNRWA protection, as he and his parents were born in Khan Younis and never registered with the organisation.

While the CNDA concluded that the applicant did not fulfil the conditions for refugee protection, the court granted subsidiary protection as it was considered that, if returned to the Gaza Strip, he would run a real risk of serious harm to his life or person by mere presence as a civilian in the area due to the armed conflict between Hamas and the Israeli armed forces.

The court relied on data from ACLED, UNOCHA, the UNRWA situation report, notes from the WHO and press releases from UNICEF highlighting security incidents, the number of victims and internally displaced people due to the humanitarian situation since 7 October 2023. The court also cited the CJEU judgments of [\*Elgafaji v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)\*](#) (C-465/07, 17 February 2009) and [\*CF and DN v Bundesrepublik Deutschland\*](#) (C-901/19, 10 June 2021).

## Subsidiary protection: The situation in Haiti

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [\*M. A. v French Office for the Protection of Refugees and Stateless Persons \(Office\*](#)





**Français de Protection des Réfugiés et Apatrides, OFPRA), No 23035187 R, 5 December 2023.**

*The National Court of Asylum provided subsidiary protection to an applicant from Haiti, ruling that the security situation in Port-au-Prince and in the Ouest and Artibonite departments was such that a mere presence in these areas would expose the applicant to a real risk of serious harm to his life or person.*

A Haitian national requested international protection in France, arguing that he was threatened and shot by gang members, causing him to lose two fingers. He also argued that he was facing a serious and individual threat to his life due to his vulnerabilities from partial blindness and suffering from schizophrenia, for which treatment was unavailable in Haiti.

The CNDA found that the worsening of the economic and political crises in Haiti since 2018 led to the rise of new armed gangs which, since the second half of 2022, had increasingly targeted civilians and institutions, notably by occupying up to 80% of Port-au-Prince and other cities such as the one where the applicant's family resided. The court also observed that in 2023 the use of violence, including collective rape and destruction of infrastructure on a wide scale, had resulted in an unprecedented number of victims and the humanitarian situation was equally worrisome, with the United Nations Integrated Office in Haiti (BINUH) describing it as a “major emergency”, even after the provision of food assistance.

The CNDA considered that the confrontations between the police and gangs should be characterised as an internal armed conflict and that the entire territory was facing indiscriminate violence, with its level in Port-au-Prince and in the West and Artibonite departments being such that the applicant, by his mere

presence there, faced a serious and individual threat.

**Subsidiary protection: The situation in North Darfur (Sudan)**

**France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], M.O. v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 23024696 C+, 21 December 2023.**

*The National Court of Asylum provided subsidiary protection to a Sudanese applicant from North Darfur, noting that the indiscriminate violence in that region was of an exceptional intensity.*

After ruling that the applicant from North Darfur did not qualify for refugee status based on his political opinion, the CNDA considered whether to grant him subsidiary protection. The CNDA noted that the whole region of Darfur was subjected to an upsurge in violence since the end of 2020 and people in the region asserted that their condition deteriorated since the adoption of the Juba Peace Agreement. It highlighted that weapons and ammunition were widely available, allowing large-scale violent attacks between different communities without the government intervening to protect civilians. The court observed that the security situation in North Darfur had worsened since 15 April 2023, as a new conflict started between the Sudanese army and the RSF, leading to a concerning humanitarian situation and high levels of displacement.

Thus, the court concluded that the level of indiscriminate violence in North Darfur was of exceptional intensity and mere presence in the area would expose the applicant to a







real risk of serious harm to his life or person.

## Exclusion from international protection

Norway, Supreme Court [Noregs Høgsterett], [Applicant v Norwegian Directorate of Immigration \(UDI\)](#), HR-2023-2351-A, 12 December 2023.

*The Supreme Court ruled on the exclusion from international protection of a former conscripted soldier from Syria due to complicity under Article 1F(b) of the Refugee Convention in the arrest and surrender of opposition members to the security forces who were then subjected to torture and homicide.*

The authorities excluded a Syrian national from refugee status based on Article 1F(b) of the Refugee Convention for participating in house searches in which opposition figures were arrested and handed over to the security forces, despite knowing that they would then be tortured and killed. In the first appeal instance, the Court of Appeal annulled the exclusion decision, arguing that the threshold of individual responsibility for complicity was not met; it argued that the applicant's role did not amount to a significant contribution to the main act because he was not responsible for choosing the houses which were searched and did not commit the facts alone but in a group of around 20 people.

In the second appeal instance, the Supreme Court set aside the judgment of the Court of Appeal. It concluded that the relevant participation in the arrest and surrender of persons who risked being subjected to torture and homicide was objectively to be regarded as complicity under Article 1F (b) of the Refugee Convention and that it was not a condition that the act of complicity had resulted in a difference in the main act, as the Court of Appeal had assumed.



## Reception

### ECtHR judgments on inadequate conditions for unaccompanied minors

ECtHR, [O.R. v Greece](#), No 24650/19, 23 January 2024.

*Due to poor living conditions and the absence of a designated legal guardian, the ECtHR found Greece in violation of Article 3 of the ECHR in a case concerning an Afghan unaccompanied minor.*

An Afghan applicant complained that he lived in improper conditions between November 2018 to May 2019, being homeless for several months and lacking water, food and shelter. The applicant also lived in overcrowded facilities and claimed that he was a victim of sexual harassment. In addition, despite being known to the authorities as an unaccompanied minor, the applicant claimed that no guardian was appointed.

The court found a violation of Article 3 of the ECHR as the applicant was left to care for himself in an unsuitable environment for minors and the authorities failed to appoint a legal guardian. The court also found that the applicant's allegations on sexual abuse were confirmed by the psychologist's report and supported by reports from the Committee for the Prevention of Torture and the European Committee of Social Rights which showed that the situation described by the applicant existed on a large scale at the time for a high number of asylum seekers with the same profile.



**ECtHR, [T.K v Greece](#), No 16112/20, 18 January 2024.**

*The ECtHR found Greece in violation of Articles 3 and 8, separately and jointly with Article 13 of the ECHR, in a case concerning an unaccompanied minor from Sierra Leone who was accommodated in the vicinity of the Samos camp from 25 October 2019.*

An unaccompanied minor from Sierra Leone complained of improper living conditions in the vicinity of the Samos camp from 25 October 2019 onwards. The court found a violation of Article 13 in conjunction with Articles 3 and 8 of the ECHR because of the inadequate living conditions, the authorities' failure to act diligently for the age assessment and the appointment of a guardian, and the lack of an effective remedy.

**Referral to the CJEU on *Francovich* damages for failure to provide accommodation**

Ireland, High Court, [S.A and R.J v Minister of Children, Equality, Disability, Integration and Youth, Ireland and the Attorney General](#), [2023] IEHC 717, 14 December 2023.

*The High Court referred questions for a preliminary ruling to the CJEU on whether the state is liable for Francovich damages when the state violated the recast RCD by not providing mandatory material reception conditions.*

Two applicants for international protection brought claims for damages for not being provided with accommodation and being left homeless for over 2 months. The cases were part of a group of 50 similar cases.

The state argued that *force majeure* prevented it from providing

accommodation, namely reception capacity was saturated by a mass influx of persons displaced from Ukraine and an unanticipated high increase in the number of other applicants for international protection who arrived in Ireland in the same period.

The High Court acknowledged that the recast RDC does not specifically provide for a defence of *force majeure* where the state failed to provide material reception conditions. The High Court raised the question of whether *force majeure* could be applied in cases involving inviolable rights under Article 1 on human dignity of the EU Charter.

**Reception conditions in the Netherlands**

Netherlands, Court of Justice of Northern Netherlands (Rechtbank Groningen - Noord-Nederland), [Municipality of Westerwolde v Central Agency for the Reception of Asylum Seekers \(COA\)](#), C/18230420 / KG ZA 23-241, 23 January 2024.

*The District Court of Northern Netherlands in Groningen ruled that the Central Agency for the Reception of Asylum Seekers must adhere to the maximum occupancy of 2,000 asylum seekers at the Ter Apel location, which was agreed with the municipality of Westerwolde, and that a failure to do so carries a penalty of EUR 15,000 per day with a maximum of EUR 1.5 million.*

The preliminary relief judge of the District Court of Northern Netherlands ruled that COA had 4 weeks to comply with its order to adhere to a maximum occupancy of 2,000 asylum seekers at the Ter Apel location, to which it had agreed with the Municipality of Westerwolde in 2010 and then in April 2023. The preliminary relief



judge did not agree with COA's argument that this would be unreasonable and unfair, as all the circumstances that COA put forward had already been taken into account during the mediation process in 2023, which was led by the National Ombudsperson.

The judge highlighted that a failure to comply with the order carried a penalty of EUR 15,000 per day with a maximum of EUR 1.5 million.

**Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Opinion on the draft decree on the municipal task of reception facilities](#), W16.23.00372/II, 17 January 2024.**

*The Council of State gave an opinion on the draft decree on the municipal task of enabling reception facilities for the purposes of the Distribution Act.*

The Advisory Division of the Council of State gave an opinion on a draft decree to implement the Distribution Act, which aims to better distribute the reception of applicants for international protection across municipalities and for which the Minister for Justice and Security must determine the distribution every 2 years.

The Council of State suggested to further clarify the rules and criteria on the distribution of registration facilities. It further gave advice on the feasibility and practicability of the distribution of reception facilities for the municipalities and asked for clarification of the position of institutions involved in the migration chain (including COA) in the final distribution of reception places.

Finally, the Council of State asked to clarify rules for sustainable shelters, also in view of permanent special reception places, such as reception places for minor asylum

applicants, so that sustainable special reception places do not have to be included in the distribution every 2 years in accordance with the Distribution Act.





## Detention

### ECtHR judgment on detention of minors and age assessments

ECtHR, [M.H. and S.B. v Hungary](#), Nos 10940/17 and 15977/17, 22 February 2024.

*The ECtHR found Hungary in violation of Article 5(1) of the ECHR for the arbitrary detention of two minors, as the authorities failed to act expeditiously in ordering their age assessments or to consider alternative measures and the children's best interests.*

Two applicants were placed in detention in Hungary after crossing into the territory in 2016 when they were still minors. They were detained for approximately 1 month and more than 1 month, respectively. The ECtHR highlighted that the confinement of migrant children should be avoided and that it is possible only in appropriate conditions if the authorities can establish that other less restrictive measures could not be implemented.

The court identified several failures on the part of the authorities:

- the applicants were kept in detention for a considerable time after they had stated that they were minors;
- the decisions concerning their detention, issued after they claimed to be minors, did not explain why less coercive measures were not considered to be appropriate and did not indicate if the delays in establishing their age were necessary;

- the domestic authorities did not give the benefit of the doubt to the applicants, did not consider their best interests and presumed them to be adults only because they changed their statements; and
- the authorities placed the burden of rebutting the presumption on the applicants, disregarding the fact that detained asylum applicants and especially children would find it challenging, if not impossible, to obtain the necessary evidence to prove their age.

### Referral to the CJEU on bail as an alternative to detention

Italy, Supreme Court of Cassation - Civil section [[Corte Supreme di Cassazione](#)], [Ministry of the Interior \(Ministero dell'Interno\) v Applicants](#), Nos 3562 and 3563, 8 February 2024.

*The Court of Cassation referred a question to the CJEU for a preliminary ruling on the requirement that asylum applicants from countries considered as safe pay bail as an alternative to detention while awaiting the outcome of their application for international protection.*

The United Civil Sections of the Court of Cassation in Italy decided on the immigration appeals lodged by the Ministry of the Interior against the decrees of the Court of Catania on detention at the border referred to in Article 6-bis of Legislative Decree No 142 of 2015, specifically on the requirement that asylum applicants from countries that are considered as safe pay bail of approximately EUR 5,000 to avoid detention while awaiting the outcome of their application for protection. The court referred a preliminary question to the CJEU, asking whether Articles 8 and 9 of the recast RCD preclude a national

regulation which provides a fixed financial guarantee of approximately EUR 5,000 as an alternative measure to detention, without allowing any adaptation of the amount to the individual situation of the applicant, nor establishing the guarantee through the intervention of third parties.

## Access to journalists to immigration detention centres

Malta, First Hall Civil Court, [\*Emanuel Delia v L-Onorevoli Byron Camilleri et\*](#), 201/2020, 11 December 2023.

*The First Hall Civil Court allowed access to the Corradino Correctional Facility (prison) and to administrative immigration detention centres to a journalist to investigate and report on allegations of mistreatment.*

A journalist who formally requested authorisation to access the Corradino Correctional Facility (prison) and the administrative immigration detention centres to report on various allegations of mistreatment was denied access despite repeated requests, some of which were submitted after COVID-19 restrictions were removed and after access was granted to selected social media influencers.

The court held that the situation in institutions such as immigration detention centres and their management is of public interest and that the ECtHR considers investigations in such institutions as protected under Article 10 of the ECHR. The court considered that the reasons to refuse access were dictated by personal arbitrariness and any limitation to the freedom of expression should be regulated by common sense and reason. The court held that the applicant's right to the freedom of expression was violated and ordered the Head of the Detention

Centres and the Director of Prisons to grant access to the applicant so that he may visit the premises and be allowed to take photos (respecting the privacy of detained persons and inmates). The judgment may be appealed by the national authorities.

## Detention pending a return

Germany, Amtsgericht [District court], [\*Applicant\*](#), No 276 XIV 671/23, 4 January 2024.

*The District Court of Darmstadt decided that detention pending a return was unlawful due to the incorrect notification of the asylum and return decisions.*

The District Court of Darmstadt reviewed *ex officio* the legality of a detention order of an Afghan national and ruled that the applicant had not been directly notified of the negative asylum decision, including the return decision, because the applicant was not at the address assumed by BAMF. The court found that BAMF had not transmitted the relevant decision to the last address provided by the applicant and so it could not be demonstrated that there was an enforceable obligation to leave the country.



## Second instance procedure

### Appeals lodged by third party interveners

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], [M. A. v French Office for the Protection of Refugees and Stateless Persons \(Office Français de Protection des Réfugiés et Apatrides, OFPRA\)](#), No 23031032 R, 5 December 2023.

*The National Court of Asylum rejected an appeal lodged by a third-party intervener for the father of a minor child against the decision by which the latter had been granted international protection and noted that allowing such an appeal would be contrary to the principle of confidentiality of an asylum application.*

A minor child's father, through a third-party appeal, requested the CNDA to annul its previous decision by which it had granted the minor and the minor's mother refugee protection.

The Grand Chamber formation of the CNDA examined whether the father's appeal could be admitted. The court noted that the CNDA, as an administrative court, may receive third-party appeals and that the provisions regulating the activities of the CNDA state that its decisions to grant protection may only be appealed by OFPRA or the prosecution.

The court also emphasised its duty to guarantee the confidentiality of the information included in the asylum

application, while noting that the investigation of a third-party appeal deemed admissible involves the automatic communication of procedural documents which gave rise to the CNDA's decision.

The court thus noted that the investigation of the third-party appeal is fundamentally incompatible with the need to ensure the confidentiality of asylum requests and with the organisation of the CNDA. Thus, the CNDA concluded that it had to reject the father's appeal.

### Legal assistance on appeal

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], [Applicants v Federal Agency for Care and Support Services \(BBU GmbH\)](#), G 328/2022, 14 December 2023.

*The Federal Constitutional Court decided that legal assistance provided by the BBU was not sufficiently independent and therefore unconstitutional; however, the legal organisation of the agency as Ltd. was considered to be constitutional.*

The Austrian Federal Constitutional Court annulled several provisions of the BBU Establishment Act (BBU-G) and the BFA Procedure Act (BFA-VG) concerning the independence of legal counselling for asylum seekers and foreigners conducted by the BBU. It considered them unconstitutional considering the right to an effective remedy under Article 47 of the EU Charter and the principle of administration applied to bodies fundamentally bound by instructions pursuant to Article 20 of the Federal Constitutional Law.

The court gave the legislator until 1 July 2025 to enact a new legislation. At the same time, the Federal Constitutional



Court ruled that the BBU's organisation as ltd. under private law was constitutional.

## Competence of appeals courts to assess new elements

Estonia, Supreme Court [Riigikohtus Poordujale], [Police and Border Guard Board \(Politsei- ja Piirivalveamet, PBGB\) v Applicant](#), No 3-22-2509, 12 December 2023.

*The Supreme Court ruled that courts processing appeals against negative administrative decisions in international protection proceedings were responsible for assessing the new elements at the time of the judgment and giving directions to the PBGB for making a new decision.*

A Russian national was refused both refugee status and subsidiary protection by the Estonian authorities and he appealed before the Administrative Court of Tallinn. The court upheld the appeal, noting that the PBGB's assessment of the circumstances of the case was inconsistent and superficial. Pointing to new elements to be considered, the court sent the case back to the PBGB for further consideration.

The PBGB appealed against this decision before the Tallinn Circuit Court. The court dismissed most of the PBGB's appeal, agreeing with the reasoning of the administrative court. In addition, the court ruled that it was primarily the PBGB's responsibility to assess the new elements in the case to adopt a new decision. The PBGB then contested this judgment before the Supreme Court.

The court, which rules only on points of law, upheld the PBGB's appeal in that the courts, although they cannot adopt an administrative decision themselves, should have assessed the new elements of the

case at the time of judging and given the PBGB guidelines in order for a new decision to be made. Thus, the Supreme Court sent the case back to the Tallinn Circuit Court for its appreciation.





## Content of protection

### CJEU judgment on family reunification

**CJEU, [CR, GF, TY v Landeshauptmann von Wien](#), C-560/20, 30 January 2024.**

*The CJEU ruled that an unaccompanied minor refugee has the right to family reunification with the parents, and exceptionally with the vulnerable sibling in need of permanent assistance from the parents on account of a serious illness, even if the unaccompanied minor reached the age of majority during the family reunification procedure.*

The court sitting in Grand Chamber formation ruled that Article 10(3)(a) of the Family Reunification Directive does not require the first-degree relatives in the direct ascending line of an unaccompanied minor refugee to submit the application for family reunification within a given period, when the refugee is still a minor on the date on which the application is submitted and who reaches majority during the family reunification procedure. The court added that, based on this article, the authorities must grant a residence permit to the adult sister of an unaccompanied minor refugee who is a third-country national and who is seriously ill, totally and permanently dependent on the parents.

In addition, Member States may not require the sponsor, an unaccompanied minor refugee, or the first-degree relatives in the direct ascending line to meet the

conditions in Article 7(1) (accommodation, health insurance, stable and regular resources), irrespective of whether the application for family reunification has been submitted within the 3 months provided by Article 12(1).

### ECtHR judgment on family reunification

**ECtHR, [Dabo v Sweden](#), No 12510/18, 18 January 2024.**

*The ECtHR ruled that Sweden did not violate Article 8 of the ECHR concerning the refusal to grant family reunification for a Syrian applicant, as the domestic authorities struck a fair balance between the interests of the applicant and those of the state in controlling immigration, and they did not overstep the margin of appreciation afforded to them when refusing the request for family reunification.*

A Syrian refugee's wife and five children applied for family reunification in Sweden. Their application was rejected because the refugee did not fulfil the maintenance requirement imposed by Swedish law since 2016. The applicant appealed against this decision, arguing that the Swedish authorities had interpreted this legal requirement too narrowly and that hardly anyone could meet it under such conditions. Before the ECtHR, the applicant alleged a violation of Article 8 of the ECHR.

The ECtHR concluded that the Swedish authorities' decision did not violate the principle of the best interests of the child nor Article 8 of the ECHR since the refugee's wife and five children were under UNHCR protection in Jordan since 2013, he had not seen them since, and there were no indications of dependence on him or difficulties because of living apart. The court further noted that



the contested decision struck a fair balance between the applicant's interests and that of the Swedish state in controlling immigration.

## Revocation of international protection

Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), No 12a K 582/20.A, 12 December 2023.

*The Regional Administrative Court of Gelsenkirchen overruled the revocation of refugee status due to a suspended sentence.*

A Syrian national challenged the revocation of his refugee status due to being convicted of a particularly serious crime for which he had received a suspended sentence.

The Regional Administrative Court of Gelsenkirchen held that a future-oriented prognosis had to be conducted for a revocation, which considers all circumstances of the individual case. According to the court's considerations, the conviction of a first offender to a probation sentence usually meant that there was no concrete risk of repetition and therefore overruled the revocation.



## Temporary protection

### End of temporary protection

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 202305663/1/V2, 17 January 2024.

*The Council of State clarified that temporary protection granted to third-country nationals who had a temporary residence in Ukraine prior to the war will end on 4 March 2024.*

The Council of State ruled that the State Secretary could not end the residence permit based on temporary protection on 4 September 2023 for a third-country national who had temporary residence in Ukraine prior to the war. Invoking Article 4(1) of the Temporary Protection Directive, it recalled that temporary protection cannot be ended independently by the State Secretary before the set duration of 1 year.

The Council of State further noted that the Netherlands no longer granted temporary protection to third-country nationals who had a temporary residence in Ukraine prior to the war. Finally, it held that temporary protection would end on 4 March 2024 for this group of persons, while it would be prolonged until 4 March 2025 for Ukrainians, stateless persons and people of other nationalities who had asylum or a permanent residence permit in Ukraine, in line with the decision of the Council of the European Union of October 2023.

## Appeal against a refusal to renew a residence permit for temporary protection

France, Council of State [Conseil d'État], [M. B. A. v Prefect of Hérault](#), No 471605, 29 January 2024.

*The Council of State ruled that the emergency condition necessary to suspend the execution of an administrative decision should be regarded as met when the decision refused to renew, revoke or withdraw a residence permit.*

A Ukrainian applicant appealed against the decision of the police prefect not to renew his temporary protection residence permit on the grounds that he was a threat to public order. The relief judge rejected the applicant's appeal, considering that the emergency condition necessary to suspend the execution of an administrative decision was not fulfilled because the decision did not constitute a serious and immediate violation of public interest or of the applicant's situation or interests. The applicant contested this decision before the Council of State.

Recalling that the required emergency condition should, in principle, be regarded as met when the decision was one refusing to renew, revoke or withdraw a residence permit, the Council of State annulled the relief judge's decision.



## Return

### ECtHR judgment on expulsion to Iraq

ECtHR, [J.A. and A.A. v Türkiye](#), 80206/17, 6 February 2024.

*The ECtHR ruled on a potential violation of Articles 2 and 3 of the ECHR in case of an expulsion to Iraq without a proper assessment of the risks the applicants may face upon a return.*

The ECtHR found that there would be a violation of Articles 2 and 3 of the ECHR if an Iraqi family would be returned without a proper assessment of their asylum claim. The court previously adopted a Rule 39 interim measure to prevent the return, which was considered a sufficient just satisfaction.

### ECtHR judgment on return to the Russian Federation

ECtHR, [U. v France](#), No 53254/20, 15 February 2024.

*The ECtHR ruled that France would not violate Article 3 of the ECHR if an applicant was removed to the Russian Federation after the revocation of refugee protection, considering that all the conditions required for an updated assessment of the individual situation were met.*

A Russian applicant of Chechen origin, whose refugee protection in France was revoked after he was convicted of condoning terrorism, complained about a potential violation of Article 3 of the ECHR if returned to the Russian Federation.



The ECtHR ruled that the applicant had not demonstrated serious, proven grounds to believe that, if returned to the Russian Federation, he would run a real and present risk of being subjected to ill treatment and thus the removal measure would not violate Article 3 of the Convention.

Despite reports of serious human rights violations in Chechnya, the court held that the general situation in North Caucasus was not such that any return to the Russian Federation would constitute a violation of Article 3. The court considered that the individual situation had been examined in depth by both the French administrative authorities and the domestic courts at three appeal stages.

Providing its own updated assessment, the ECtHR referred to the CNDA which had concluded that the applicant had not continued his activism since arriving in France in 2009. The ECtHR added that the applicant had not shown how his activism in the early 2000s could expose him to a present and real risk of being subjected to inhuman or degrading treatment in the Russian Federation. On attributed political opinion, the ECtHR noted that the applicant had not provided information to show that his fears were well-founded. Lastly, the ECtHR noted that the applicant did not appear on any list of persons wanted by the Russian authorities in connection with terrorist or extremist activities and Russia had never requested the applicant's extradition or a copy of the judgment convicting him of condoning terrorism.



