Issue No 2

euaa
EUROPEAN UNION AGENCY FOR ASYLUM

Quarterly Overview of Asylum Case Law

June 2024

Manuscript completed in June 2024.

PDF BZ-AM-24-002-EN-N ISBN 978-92-9410-275-1 ISSN 2811-9606 DOI 10.2847/449315

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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

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)
BBU GmbH	Federal Agency for Reception and Support Services (Austria)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
COI	country of origin information
CNDA	National Court of Asylum | Cour Nationale du Droit d'Asile (France)
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
EASO	European Asylum Support Office (now the EUAA)
EUAA	European Union Agency for Asylum
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union and associate countries
FGM/C	female genital mutilation/cutting
IPAC	International Protection Administrative Court (Cyprus)
LGBTIQ	lesbian, gay, bisexual, transgender or intersex
NGO	non-governmental organisation

OFPRA	Office for the Protection of Refugees and Stateless Persons | Office Français de Protection des Réfugiés et Apatrides (France)
OMCA	Office of Citizenship and Migration Affairs (Latvia)
ONA	National Reception Office (Luxemburg)
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)
PBGB	Police and Border Guard Board (Estonia)
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 Centre (Greece)
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
UN	United Nations

Main highlights

The decisions and judgments presented in this edition of the "EUAA Quarterly Overview of Asylum Case Law, Issue No 2/2024" were pronounced from March to May 2024.

Court of Justice of the European Union (CJEU)

In *AHY* v *Minister for Justice* (C-359/22), the CJEU ruled that Article 27(1) of the Dublin III Regulation does not require Member States to make available an effective remedy against a decision adopted under the discretionary clause contained in Article 17(1) of the Dublin III Regulation, and that Article 47 of the EU Charter does not preclude a Member State from implementing a Dublin transfer decision before the request or judicial review of the application of the discretionary clause has been finalised.

European Court of Human Rights (ECtHR)

In *Sherov and Others* v *Poland*, the ECtHR ruled on collective expulsions from Poland to Ukraine and the lack of access to the asylum procedure.

In *W.S.* v *Greece*, the ECtHR ruled unanimously that Greece had violated Article 3 of the ECHR for not providing adequate reception conditions to an unaccompanied asylum-seeking Afghan child and placing him in 'protective custody' in a police station.

In *M.B.* v *The Netherlands*, the ECtHR ruled that the Netherlands violated Article 5(1)(f) of the ECHR for the arbitrary detention of an asylum applicant pending the examination of his asylum claim, after his release from detention for a terrorism conviction.

In *A.R. and Others v Greece*, the ECtHR found violations of Article 3 for inappropriate living conditions in the reception and identification centers (RIC) in Chios, Kos and Samos in 2019.

In *L* v *Hungary*, the ECtHR ruled that Hungary violated the right to liberty of a Syrian national under Article 5(1) of the European Convention due to arbitrary detention which took place in 2019 and lasted for almost 6 months.

In *A.K.* v *France* and *S.N.* v *France,* the ECtHR determined that the return of a Guinean applicant suffering from a psychotic illness and respectively of a Senegalese applicant suffering from schizophrenia did not violate Article 3 of the ECHR as country of origin information (COI) revealed the applicants could receive effective care to treat their illnesses upon a return.

In *A.D. and Others* v *Sweden*, the ECtHR ruled that the removal of the asylum applicants to Albania would not be in breach of Article 3 of the ECHR since it was not demonstrated that the Albanian authorities would be unable or unwilling to obviate any risk of ill treatment by non-state actors.

National courts

Dublin procedure

The Italian Supreme Court of Cassation dealt with two cases concerning questions on the application of the discretionary clause and the impact on a transfer of an *ex officio* assessment of inhuman or degrading treatment which can result in granting a form of national protection.

The Italian Court of Cassation ruled also on the obligation to provide information on the Dublin procedure separately from the information provision in the asylum procedure, as required by Articles 4 and 5 of the Dublin III Regulation.

Several national judgments analysed reception conditions and access to the asylum procedure in Belgium, Croatia, Romania, Lithuania and Spain in view of a potential Dublin transfer. In these cases, national courts found that the interstate principle of mutual trust can be relied upon and confirmed the Dublin transfer decisions.

First instance procedures

The Czech Regional Court in Brno referred a question to the CJEU for a preliminary ruling on Article 3 of the recast Qualification Directive (QD), specifically on more favourable rules for granting international protection.

Safe country concepts

The High Court in Ireland ruled that, in light of the UK-Rwanda agreement, the designation of the United Kingdom as a safe third country violates Ireland's obligations under EU law.

In France, the Council of State confirmed the legality of OFPRA's Board of Directors' decision on the designation of Albania, Armenia, Bosnia-Herzegovina, Georgia, India, Kosovo, Moldova and Serbia as safe countries of origin.

In Germany, the Administrative Court of Berlin questioned the designation of Senegal as a safe country of origin in view of different groups of persons who are at risk of persecution based on Article 10(1)(d) of the recast QD, namely FGM/C victims, homosexuals and Talibe children.

Applications by Palestinians from Gaza

On the situation in the Gaza Strip and the impact on the processing of asylum applications, the Council of State in the Netherlands ruled that the State Secretary moratorium to suspend processing lacked sufficient and clear information based on the situation in the Gaza Strip, while the German Administrative Court of Dresden found that BAMF must assess pending asylum applications because the situation in Gaza is characterised by intensified violence and is not of a temporary nature.

Military service by Russian nationals

In Austria, the Constitutional Court overturned a decision of the Federal Administrative Court as it found that a Russian applicant, a doctor with military training, had a high profile which exposed him to a risk of forced recruitment into the military and potential involvement in the war in Ukraine.

Second instance procedures

The Austrian Constitutional Court ruled on the right to legal representation of unaccompanied minors for proceedings before the Constitutional Court on matters related to asylum.

Reception conditions

The Higher Administrative Court of Baden-Württemberg ruled on direct application of the recast Reception Conditions Directive with regards to the appointment of a legal representative for an unaccompanied minor, especially for the age assessment procedure.

Detention

The Tallinn Circuit Court ruled on detention on the grounds of a threat to national security, while the Supreme Court decided on two cases involving detention and the risk of absconding in Estonia.

Temporary protection

The Dutch Council of State and the Court of the Hague seated in Amsterdam referred questions to the CJEU for preliminary rulings on temporary protection for third-country nationals with temporary residence in Ukraine on 24 February 2022.

Access to the asylum procedure

ECtHR judgment on collective expulsion from Poland to Ukraine

ECtHR, *Sherov and Others v Poland, No 54029/17, 54117/17, 54128/17 and others*, 4 April 2024.

The ECtHR found Poland in violation of Article 3 of the Convention (procedural aspect) and Article 4 of Protocol No 4 to the Convention for the lack of examination of asylum applications at the border crossing point and the collective expulsion of applicants to Ukraine without an examination of whether this was a safe country for the applicants and of the risk of chain refoulement to Tajikistan.

The ECtHR found Poland in violation of Article 3 for failing to initiate the asylum procedure and repeatedly returning four Tajik applicants to Ukraine without assessing the safety of the country, access to the asylum procedure, and the risk of chain *refoulement*. The court concluded that the applicants were not provided with effective guarantees against the risk of inhuman or degrading treatment.

The court referenced established legal principles from its case law on *non-refoulement* and the return of applicants. It emphasised that, in cases of a removal of applicants to a third country without assessing their asylum requests, expelling states must ensure access to adequate asylum procedures to prevent *refoulement*.

Moreover, the ECtHR found a breach of Article 4 of Protocol No 4, deeming the decision at border checkpoints to refuse entry into Poland as expulsion and that the applicants legally attempted to enter the territory, yet their fears of persecution were not assessed. The court concluded that those decisions constituted a collective expulsion, violating both domestic and international laws, as they formed part of a systematic refusal to accept asylum applications and resulted in applicants being returned to Ukraine.

Finally, the ECtHR determined a violation of Article 13 in conjunction with Article 4 of Protocol No 4 to the Convention due to the absence of an automatic suspensive effect in appeals, with no alternative remedies indicated by the government of Poland.

Temporary closure of borders

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicants v Finnish Government*, KHO:2024:27, 14 March 2024.

The Supreme Administrative Court rejected an appeal submitted by Finnish citizens against the Government Council decision on the temporary closure of the eastern Finnish border with Russia.

Finnish citizens appealed against the Government Council decision in the General Sessions of 16, 22 and 28 November 2023 on the temporary closure of the eastern Finnish border with Russia, claiming that these decisions restricted their right to freedom of movement and milder measures could

have been adopted to prevent the arrival of asylum applicants.

The Supreme Administrative Court rejected the claim on grounds of a lack of the right to appeal and underlined that travel from Russia to Finland and back was not fully closed since crossing was possible at other border crossings.

Dublin procedure

CJEU judgment on effective remedies against decisions adopted under the discretionary clause of Article 17(1) of the Dublin III Regulation

CJEU, *AHY v Minister for Justice*, C-359/22, 18 April 2024.

The CJEU ruled that Article 27(1) of the Dublin III Regulation does not require Member States to make available an effective remedy against a decision adopted under the discretionary clause contained in Article 17(1) of the Dublin III Regulation and that Article 47 of the EU Charter does not preclude a Member State from implementing a Dublin transfer decision before the request or judicial review regarding the application of the discretionary clause has been finalised.

After an appeal against the decision on a Dublin transfer from Ireland to Sweden was dismissed, a Somali national requested the Minister for Justice to exercise the discretionary clause in Article 17(1) of the Dublin III Regulation. His request was rejected, and he challenged this decision before the High Court, which decided to refer several questions to the CJEU for a preliminary ruling.

The High Court noted that in Ireland the decision on the Dublin transfer lies within the competence of the International Protection Office (with appeal before the International Protection Appeals Tribunal), while the decision on whether or not to exercise the discretion under Article 17(1) of the Dublin III Regulation is within the competence of the Minister for Justice (with judicial review of the lawfulness of an administrative action before the High Court). It further noted that the CJEU had not previously decided on the matter of a suspensive effect for the appeal lodged against a decision refusing to apply Article 17 of the Dublin III Regulation.

The CJEU ruled that Article 27(1) of the Dublin III Regulation does not require Member States to provide an effective remedy against a decision adopted under the discretionary clause contained in Article 17(1) and that Article 47 of the EU Charter does not apply to such a decision to exercise discretion. Thus, the Member State may implement a decision on a Dublin transfer before a decision is made or an appeal is examined on the issue of exercising discretion.

The CJEU further noted that the 6-month time limit to proceed with a Dublin transfer starts to run from acceptance of the request to take charge or to take back the person, or from the final decision on an appeal where a suspensive effect is provided in accordance with Article 27(3), and not from the date of the final decision on whether to use the discretionary clause under Article 17(1).

Application of the discretionary clause

Czech Republic, Regional Court [Krajský soud], *M.A v Ministry of the Interior (Ministerstvo vnitra České republiky)*, 34 Az 1/2024 - 41, 1 March 2024.

The Regional Court in Brno confirmed a Dublin transfer to Germany and found no grounds to apply Article 17 of the Dublin III Regulation.

In an appeal against a decision on a Dublin transfer to Germany, the applicant requested the application of Article 17 of the Dublin III Regulation because he was expecting a child with his girlfriend and invoked the best interests of the child, as well as respect for family life.

The Regional Court found no grounds to apply Article 17 of the Dublin III Regulation as there was no dependency between the applicant and girlfriend (including their unborn child), and the decision did not contradict the best interests of the child or the respect for family life.

Supreme Court of Cassation, Civil section [Corte Supreme di Cassazione], 5 April 2024:

- ***Ministry of the Interior (Ministero dell'Interno) v A.S.*, R.G 10898/2024.**
- ***Ministry of the Interior (Ministero dell'Interno) v H.A.*, R.G 10903/2024.**

The Supreme Court of Cassation ruled on the application of discretionary clauses of the Dublin III Regulation and their interaction with national protection systems.

The Ministry of the Interior appealed the annulment of decisions on Dublin transfer concerning applicants from Iraq and Pakistan, issued on the basis of take-back requests pursuant to Articles 23 et seq. of the Dublin III Regulation.

The Supreme Court of Cassation cited the CJEU judgment in joined cases 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-228/21, C-254/21, C-297/21, C-315/21 and C-328/2 (30 November 2023) to state that a court cannot compel a Member State to apply the discretionary clauses if it identifies a risk of breaching *non-refoulement* in a Dublin transfer decision. However, the decision not to apply these clauses may be contested in an appeal against the transfer decision. Additionally, following the CJEU judgment in *C.K. and Others* v *Republic of Slovenia* (C-578/16 PPU, 16 February 2017), the court deemed that Article 4 of the EU Charter may be invoked if a transfer poses a genuine risk of inhuman or degrading treatment even if systemic deficiencies are not found.

The court questioned whether refraining from transferring an applicant after a take-back request is permissible when conditions for granting national protection must be examined *ex officio*. It considered that derogating from the general principles of the Dublin III Regulation may necessitate examining the legitimacy of national protection's interference with the transfer decision. The court also questioned whether the possibility of granting a form of national protection could be seen as a way of exercising discretionary clauses, while indicating a tacit refusal to use them and enabling their scrutiny.

In view of the significant importance of the questions of the court, the case was

referred to the United Sections for further assessment.

Member State responsibility for failing to transfer the applicant within the deadlines under Article 29(2) of the Dublin III Regulation

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202107377/1/V1, 4 March 2024.

The Council of State clarified that, when the Netherlands became responsible to examine an application according to Article 29(2) of the Dublin III Regulation, for failing to transfer the applicant within the deadline, the applicant does not have to submit a new application and the date of the original application is effective for the status granted.

An asylum applicant for whom the period for a Dublin transfer to Germany expired and the Netherlands became responsible for processing the asylum application was requested by the State Secretary to submit a new application because the proceedings for his first application were considered terminated.

In the onward appeal submitted by the applicant, the Council of State ruled that the State Secretary consideration that the asylum procedure was terminated was contrary to the Dublin III Regulation and the recast Asylum Procedures Directive (APD). It clarified that Member States cannot waive their obligation to examine the case because the applicant had not submitted a new application, since this would result in a temporary situation where no Member State would be responsible for examining the application, rendering Articles 3(1) and 29(2) of the Dublin III Regulation ineffective.

The Council of State concluded that the State Secretary had to examine the application based on the initial file, after the Netherlands became responsible to examine it, and that the effective date of the residence permit is the time of the submission of the application.

Obligation to provide information specifically on the Dublin procedure

Supreme Court of Cassation - Civil section [Corte Supreme di Cassazione], 3 April 2024:

- ***Applicant v Ministry of the Interior (Ministero dell'Interno)*, R.G. 11000/2024.**
- ***Applicant v Ministry of the Interior (Ministero dell'Interno)*, R.G. 10331/2024.**

The Court of Cassation ruled on the obligation to provide information specifically on asylum and the Dublin procedure and annulled the transfer decision for failure to comply with information provision as provided by Articles 4 and 5 of the Dublin III Regulation.

Applicants from Algeria and Pakistan requested the annulment of decisions on Dublin transfers to France on grounds of failure of the national authorities to provide specific information on the Dubin procedure.

The Supreme Court of Cassation clarified that information provision under Articles 4 and 5 of the Dublin III Regulation cannot be absorbed by the information provision completed for the purposes of the

international protection procedure. The Court of Cassation reiterated the purpose and content of the obligations related to information provision and the Dublin personal interview and relied on the interpretation of CJEU in the judgment 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, 30 November 2023. The Court of Cassation concluded that the decision on Dublin transfers should be annulled for breach of these obligations.

Dublin transfers to Belgium

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant*, 202304212/1/V3, 13 March 2024.

The Council of State annulled the decision of the District Court of the Hague seated in Rotterdam and ruled that, when applying the Dublin III Regulation, the inter-state principle of mutual trust can still be relied upon in respect of the reception situation in Belgium.

The District Court of the Hague seated in Rotterdam upheld the appeal lodged by an Angolan applicant against a decision on a Dublin transfer to Belgium. In the appeal lodged by the State Secretary against the lower court decision, the Council of State noted that in line with Article 3(2) of the Dublin III Regulation and referring to the CJEU judgment in *Abubacarr Jawo v Bundesrepublik Deutschland*, the State Secretary must proceed with the presumption that the treatment of a foreign national in the requested Member State is in line with the provisions of the EU Charter and the ECHR, unless rebutted by the applicant on the basis of objective information indicating systemic flaws in the asylum procedure or reception conditions of that Member State.

The Council noted also that when the State Secretary cannot properly justify the applicability of the principle of inter-state mutual trust and legitimate expectations, it is obliged to carry out a further investigation in the requested Member State. While acknowledging the existence of shortcomings in the reception facilities in Belgium, the Council of State mentioned that asylum applicants are temporarily placed in emergency accommodation and homeless shelters, receive medical and psychological care and legal aid, and are gradually invited to the regular shelters.

The Council of State consulted the Roadmap Dublin Transfer Fact Sheet – Belgium (24 April 2023), when examining the reception situation in Belgium.

Dublin transfers to Croatia

Slovenia, Supreme Court [Vrhovno sodišče]:

- ***Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00073193, 11 March 2024.**
- ***Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00073211, 12 March 2024.**

The Supreme Court determined that there were no personal circumstances that would prevent the transfer of the applicants to Croatia owing to a well-founded risk of inhuman or degrading treatment under the Dublin III Regulation.

In appeals against decisions on Dublin transfers to Croatia, the Supreme Court ruled that the applicants did not provide any arguments or evidence on personal circumstances that would lead to a risk of inhuman or degrading treatment upon a transfer.

The Supreme Court found in the second case that allegations of pushbacks in Croatia as evidence of systematic deficiencies in the asylum procedure were irrelevant because upon a Dublin transfer the applicant will already have the status of an applicant for international protection under the Dublin III Regulation.

Dublin transfers to Romania

Czech Republic, Regional Court [Krajský soud], *BGS v Ministry of the Interior (Ministerstvo vnitra České republiky)*, 20 Az 1/2024 - 31, 5 March 2024.

The Regional Court in Ostrava rejected an appeal against a Dublin transfer decision to Romania and found the allegations of systemic deficiencies in the asylum and reception systems as not substantiated.

The Regional Court of Ostrava rejected an appeal against a decision on a Dublin transfer to Romania because it found the applicant's allegations were neither substantiated nor supported by proof of systemic deficiencies in the asylum and reception systems, a lack of interpreters and assaults by the police. The court stated that although the conditions in the reception centres are different when compared to other countries, this does not mean that are systemic deficiencies in the asylum and reception systems.

Dublin transfers to Spain

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *A,K, M v Directorate of Immigration (Útlendingastofnun)*, No 287/2024, 21 March 2024.

The Immigration Appeals Board confirmed the decision of the immigration authorities to transfer the applicants to Spain under the Dublin III Regulation as they could receive all procedural safeguards and adequate medical assistance for their son.

The applicants, a married Palestinian couple and their son, applied for international protection in Iceland on 17 May 2023 in view of the medical condition of their son who suffered from Duchenne muscular dystrophy. Spain was found responsible to examine the application for international protection under the Dublin procedure, since they had valid visas from the Spanish authorities.

In rejecting the appeal against the Dublin transfer, the Immigration Appeals Board stated that Spain enabled access of the applicants to services and assistance, such as standard and specialised health services and education, under the same conditions as those which apply to Spanish nationals. In addition, reports showed Spain's efforts in finding treatment for Duchenne disease, the Children's Hospital in Barcelona being the first health institution in Europe to attend a clinical trial of a new gene therapy for this disease.

The court concluded that the transfer of the applicants under the Dublin III Regulation would not violate Article 3 of the ECHR.

Dublin transfers to Lithuania

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202401007/1/V3, 1 May 2024.

The Council of State ruled that the principle of mutual trust can be relied upon with respect to Dublin transfers to Lithuania.

A Yemeni applicant appealed against a decision on a Dublin transfer to Lithuania, arguing that the principle of mutual trust cannot be relied upon.

The court examined the situation in Lithuania, noting the following aspects: i) the Dublin applicants were not at risk of being victims of pushbacks; ii) there was no concrete basis to conclude that Dublin applicants are detained illegally and by default; iii) the reception and detention conditions had improved; iv) Lithuanian authorities are able and willing to protect LGBTIQ persons in individual cases; and v) access to effective remedies was ensured. Thus, the court found that the transfer would not lead to a violation of Article 3 of the ECHR and Article 4 of the EU Charter and the principle of mutual trust can be relied upon with respect to Lithuania.

First instance procedures

Concept of minor and impact on the assessment of the asylum application

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant v Finnish Immigration Service* (Maahanmuuttovirasto, FIS), KHO:2024:25, 6 March 2024.

The Supreme Administrative Court of Finland clarified, in view of CJEU case law, that an asylum applicant who is a minor at the moment of applying for international protection shall be treated as a minor throughout the asylum procedure even if the applicant becomes an adult by the time of the decision of the Finnish Immigration Service.

An Iranian child unsuccessfully applied for asylum in Finland together with his parents and younger sister. Upon a subsequent joint application, his claim was rejected again, but his parents and younger sister were granted asylum. During the proceedings, the applicant reached the age of majority, and the Finnish Immigration Service issued a separate decision, considering him an adult.

In appeal, the Supreme Administrative Court clarified that an applicant who was a minor when applying for international protection should be treated as such throughout the entire procedure. It noted that the definitions in the recast QD must

be applied uniformly, and EU law had not given discretion to Member States on the definition of a minor. The court stated that another interpretation would breach the principles of equal treatment and legal certainty, in the absence of a guarantee of the same and predictable treatment when processing the case at first and second instances.

Review of the safe countries of origin list

France, Council of State [Conseil d'État], *La Cimade Association v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 490225, 25 April 2024.

The Council of State confirmed the legality of OFPRA's Board of Directors' decision on the designation of Albania, Armenia, Bosnia-Herzegovina, Georgia, India, Kosovo, Moldova and Serbia as safe countries of origin.

La Cimade association challenged the legality of the decision issued by OFPRA on the designation of Albania, Armenia, Bosnia-Herzegovina, Georgia, India, Kosovo, Moldova and Serbia as safe countries of origin.

The Council of State noted that the mere existence of violence against women within the listed countries did not suffice to establish that OFPRA's Board of Directors inaccurately assessed the situation, since it was not established whether the level of seriousness or the systematic nature of the violence would imply persecution. Based on an assessment of the security and human rights situation in these countries, the court concluded that OFPRA's decision was legal.

Rebuttable presumption of a safe country of origin

Czech Republic, Regional Court [Krajský soud], *X v Ministry of the Interior (Ministerstvo vnitra České republiky)*, 21 Az 39/2023 - 23, 18 March 2024.

The municipal court in Prague rejected an appeal against a negative decision and confirmed the application of the safe country of origin concept for an applicant from Moldova.

The municipal court in Prague confirmed the rejection of an asylum application as manifestly unfounded based on the designation of Moldova as a safe country of origin. The court reiterated that the burden of proof lies with the applicant to rebut the presumption of compliance with international obligations and respect for human rights.

The applicant's allegations of a fear of conscription into military service for Russian troops and Russian threats in Transnistria were assessed as speculative and not supported by any evidence under the grounds for international protection. Moreover, the court affirmed that a deteriorated economic situation in the country of origin does not fall under the grounds for refugee protection.

Czech Republic, Regional Court [Krajský soud], *ZG v Ministry of the Interior (Ministerstvo vnitra České republiky)*, 34 Az 5/2024 - 21, 18 March 2024.

The Regional Court in Brno ruled that Georgia is a safe country of origin and the safe country concept implies that national authorities would provide sufficient protection.

A Georgian applicant claimed to be at risk of attacks by private persons if returned to

his country of origin. The Department of Asylum and Migration Policy noted that Georgia was on the list of safe countries of origin and considered that national authorities would provide sufficient protection.

In the appeal, the Regional Court in Brno, clarified that, since Georgia is on Czechia's list of safe countries of origin, the Asylum Department was not required to collect COI to the same extent, unless the applicant presented evidence that Georgia was not to be considered safe. However, the applicant failed to rebut the presumption.

Safe country of origin: Senegal

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 31 L 670/23 A, 16 April 2024.

The Administrative Court of Berlin allowed a request for a suspensive effect against a threat for deportation and questioned the legality of the designation of Senegal as a safe country of origin.

An applicant from Senegal contested a negative decision based on the safe country of origin concept and requested a suspensive effect on the threat of deportation. The Administrative Court of Berlin allowed the suspensive effect and also ruled on the concept of "generally and consistently" in Annex I to the recast APD as meaning that, in order for a country to be designated as a safe country of origin, there must be security throughout the country and for all groups of persons and populations.

The court noted that the situation in Senegal cannot be considered as safe for certain groups of people who belong to a particular social group in the sense of Article 10(1d) of the recast QD, namely: girls and young women as victims of FGM/C since some regions have the highest occurrence in the world, Talibe children and homosexuals. The court suggested questions for a potential referral to the CJEU, in the main proceedings, on interpretation of the wording 'generally and consistently' in Annex I to the recast APD in the main proceedings.

Designation of the UK as a safe third country

Ireland, High Court, *A v Minister for Justice & Ors, B -v- International Protection Appeals Tribunal & Ors*, [2024] IEHC183, 22 March 2024.

The High Court ruled that, in light of the UK-Rwanda agreement, which seeks to transfer asylum seekers to Rwanda for the processing of their asylum claim, the designation of the United Kingdom as a safe third country violates Ireland's obligations under EU law.

The applicants contested the legality of the decision to return them to the UK for processing their asylum applications, based on Ireland's designation of the UK as a safe third country in 2020.

The High Court determined that the safe third country concept is established by national law, insofar as the prerequisites for its implementation are met, in line with Articles 27(1d) and 38(1b) of the recast APD, Article 15(1) of the recast QD, and Article 3(3) of the Dublin III Regulation. In the absence of these guarantees in the UK due to the Rwanda policy, the High Court

ruled that the designation of the UK as a safe third country is contrary to EU law.

The High Court further identified these two cases as landmarks for raising the same issues in a significant number of pending cases.

Applications by Palestinians from Gaza

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicants v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202400561/1/V2, 24 April 2024.

The Council of State annulled a moratorium decision adopted by the State Secretary on processing asylum applications by Palestinians from Gaza and the West Bank.

On 19 December 2023, the State Secretary adopted a moratorium concerning stateless persons from Palestine territories, namely Gaza and the West Bank, allowing the suspension of the processing of their asylum applications. Based on the moratorium, the processing timeline was extended by 6 months. The applicant contested the moratorium and the Council for State found that the State Secretary failed to assess the situation in Gaza based on available sources.

Based on available COI, the Council of State ruled that the State Secretary should have assumed that Gaza was facing a situation of indiscriminate violence of such a level as it can be assumed that every person who returns is at serious risk of serious harm by mere presence there. The Council of State concluded that The State Secretary did not support its decision with sufficient and clear information.

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 11 K 357/24.A, 16 April 2024.

The Administrative Court of Dresden ruled that the situation in Gaza was persistent, with intensifying fighting lasting several months, thus not of temporary nature and BAMF should take decisions on asylum requests lodged by applicants from Gaza.

A Palestinian from Gaza submitted an action against BAMF for failure to act, specifically for not receiving information on the processing of his asylum application. The Administrative Court of Dresden noted that the application was pending for 3 years, that the applicant was heard on merits and that information was available on the situation in Gaza.

The court indicated that the uncertain situation in Gaza and the ongoing military operations cannot justify not processing asylum applications. The court ordered BAMF to take a decision within 3 months.

New elements in subsequent applications

Latvia, District Administrative Court [Administratīvā rajona tiesa], *Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)*, No A42-01470-24/21, 7 May 2024.

The District Administrative Court upheld a decision not to assess a subsequent application submitted by a Russian applicant, concluding that he failed to provide relevant evidence substantiating a need for protection.

A Russian national filed a second subsequent application for international protection, claiming persecution in his country of origin and presenting as new evidence two summons to attend the war commissioner, alleging that these letters had not been previously assessed. The OCMA decided not to assess the application. In the appeal, the District Administrative Court cited the CJEU judgment in *XY* to emphasise that new elements or facts which have arisen or have been presented by the applicant may include both circumstances that occurred after the final decision was made and those existing before the conclusion of the procedure but not previously relied on by the applicant. Furthermore, the court clarified that not all changes in general circumstances in Russia can justify a subsequent asylum application, but rather only those capable of prompting a distinct assessment from the initial decision concerning the applicant. The court found contradictions between the initial story of the applicant, doubted the authenticity of the summons and concluded that the applicant had not indicated a change in his individual circumstances deemed significant enough to warrant an increased likelihood of being granted international protection, in accordance with Article 30(1)(4) of the Asylum Act.

Slovenia, Supreme Court [Vrhovno sodišče], *Applicant* v *Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00074503, 8 April 2024.

The Supreme Court clarified that new facts and evidence must be provided in order to submit a subsequent request for international protection, including when the first application is considered withdrawn.

After the asylum proceedings were terminated and considered withdrawn because the applicant left the asylum centre arbitrarily and did not return within 3 days, he submitted a subsequent application following the 9-month expiry period.

In the absence of new facts or evidence that would significantly increase the probability that the applicant meets the conditions for international protection, the Ministry of the Interior rejected the subsequent application. The inadmissibility decision was confirmed in appeals.

Inadmissibility for lack of new elements

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.* v *French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 2306413 C, 29 April 2024.

The CNDA ruled that a request for asylum on behalf of a minor applicant, born after his parents' asylum applications were rejected, and containing no new elements, constituted an inadmissible re-examination.

A minor from the Democratic Republic of the Congo requested asylum in France and appealed against the negative decision. The CNDA noted that the parents of the applicant were beneficiaries of subsidiary protection in Greece and their asylum applications in France were rejected as inadmissible. Based on this, the CNDA ruled that the minor's request, made by his parents on his behalf, would lead to a re-examination, because it relied on the same facts and elements submitted by the parents in their applications, and which

were deemed unfounded. In the absence of new facts or elements, the court rejected the appeal.

Assessment of applications

Referral for a preliminary ruling on Article 3 of the recast QD

Czech Republic, Regional Court [Krajský soud], *XXX v Ministry of the Interior (Ministerstvo vnitra České republiky)*, 41 Az 46/2023-35, 9 May 2024.

The Regional Court in Brno referred a question before the CJEU for an interpretation of Article 3 of the recast QD.

An applicant from Uzbekistan, who lived for more than 17 years in Czechia, requested asylum by submitting a third application which was rejected by the Ministry of the Interior. On appeal, the Regional Cour of Brno submitted a question to the CJEU on interpretation of Article 3 of the recast QD on whether more favourable rules for granting international protection to applicants fall within the scope of the recast QD when such rules derive from international obligations of that Member State on harm to the applicant in his country of origin, if returned.

Precisely, the referring court considered the applicant could be granted a form of subsidiary protection due to the risk of serious harm in the form of a breach of Czechia's international obligations for situations that occur in Czechia and that could be an interference with the applicant's right to respect for private life or to medical assistance, if the applicant was to be returned to his country of origin.

Political opinion

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *Applicants v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, I422 2284254-1, 4 March 2024.

The Federal Administrative Court granted refugee status to a Syrian woman of Kurdish ethnicity and her children on grounds of imputed political opinion and risk of persecution upon return.

A Syrian woman of Kurdish ethnicity requested asylum for her and her sons but was unsuccessful due to a lack of credibility. On appeal, the Federal Administrative Court found that the applicant previously worked for the Kurdish autonomous authorities as a political activist and then as a teacher in two schools in her home area of Qamishli. Based on evidence, the court found it credible that she supported the political movement initiated by her brother in their home area.

Based on COI, including EUAA Country of Origin Information Report, Syria Security situation (September 2022) and EASO Country of Origin Information Report, Syria - Situation of returnees from abroad (June 2021), the court noted ongoing mass arrests of civilians, including activists and educators, by the ruling Kurdish authorities such as the Syrian Democratic Forces (SDF) in north-eastern Syria, with an increasing number of women and children being affected. The court granted refugee status to her and her sons on grounds of a

risk of political persecution in Qamishli by the Kurdish autonomous authorities.

Military conscription: Syria

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, L527 2276741-1, 9 April 2024.

The Federal Administrative Court dismissed a Syrian applicant's appeal against a negative decision for refugee status, affirming his duty to cooperate and concluding that the applicant failed to demonstrate that his refusal of conscription for military service in Syria had a link with the Refugee Convention grounds.

The Federal Administrative Court dismissed a Syrian applicant's appeal against a BFA decision to grant subsidiary protection and not refugee status.

The court observed that conscription for military service in Syria did not amount to persecution *per se* under the Refugee Convention. Making reference to the EUAA Country Guidance: Syria (February 2023), the court emphasised that evaluating whether individuals who have evaded military service in Syria require protection depends on individual circumstances, such as whether draft evasion is based on conscientious objection. Moreover, citing EASO Country Guidance: Syria (November 2021) and EUAA Country Guidance: Syria (February 2023), the court observed that not all individuals in the sub-profile group "civilians from areas associated with the anti-government opposition" face a sufficiently serious danger to establish a well-founded fear of persecution.

The court noted that the individual circumstances, such as the control of the Syrian Democratic Forces in the applicant's home area and the absence of evidence indicating a refusal to serve on political or conscientious grounds, did not prove a significant likelihood of persecution under the grounds of the Refugee Convention concerning his conscription for military service or forced recruitment by Kurds.

Military service in reserve ranks: Syria

Latvia, District Administrative Court [Administratīvā rajona tiesa], *Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia* (Pilsonības un migrācijas lietu pārvalde), No A42-01132-24, 13 May 2024.

The District Administrative Court confirmed a lack of a well-founded fear of persecution on grounds of military service in Syria in the absence of proof of intentions or threats to enlist him in reserve ranks.

The OCMA denied refugee status to a Syrian applicant due to his failure to demonstrate personal threats from conscription in the military reserve after having completed compulsory military service, deeming his fears unfounded and not constituting persecution. In the appeal, the District Administrative Court confirmed the OCMA's negative decision.

The court cited the EUAA Country Guidance: Syria (February 2023), the EUAA COI Report: Syria - Country focus (October 2023) and the EUAA COI Report: Syria – Targeting of Individuals (September 2022) in its assessment. The court observed that men aged 18 to 42 are obligated to serve for 18 to 21 months, with the possibility of reserve duty thereafter;

however, there is a low demand for reserve conscripts in Syria and a higher likelihood of new recruits being called compared to reserve soldiers.

While noting the applicant's failure to provide concrete evidence of personal threats or imminent conscription and considering his personal circumstances, i.e. his 10-year absence from Syria and his age of 40 years, the court concluded that the threat of conscription was merely a possibility for him. The court stated that there was no justification to deem him as evading military service, which would subject him to a penalty. On this, the court clarified that even if the applicant would face penalties for evading military service, such penalties typically do not amount to persecution. Conclusively, the court determined that the alleged fear of military service upon a return to Syria was not inherently well-founded and did not constitute persecution.

Military service: Kazakhstan

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 23053689 C, 13 May 2024.

The CNDA rejected the appeal against a negative decision for a Kazakh applicant who alleged a fear of persecution due to conscription.

A Kazakh applicant was rejected international protection because OFPRA found that the refusal to perform military service did not amount to persecution.

The negative decision was confirmed by the CNDA which stated that, although there was no alternative to the 12-month military service in Kazakhstan for men aged 18 to 27 or procedures to admit conscientious objection, the sanctions and prosecutions provided by national law for non-compliance did not reach such a threshold as to be considered persecution or serious harm.

Military service and potential involvement in war crimes in the conflict in Ukraine

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicants v Federal Administrative Court*, E 3529-3530/2023-15, 4 March 2024.

The Constitutional Court allowed an appeal submitted by a Russian applicant and found that he would be at risk of conscription into military service due to his military medical background and potential involvement in war crimes within the context of the conflict in Ukraine.

The Constitutional Court found that the Federal Administrative Court failed to properly assess a Russian applicant's claim about the risk of conscription in the military service, given his background as a doctor with military training. It noted that due to his profile the applicant faced a very high likelihood of being drafted upon return.

The court emphasised that refusal to perform military service is relevant if the applicant risks involvement in war crimes or crimes against humanity. Following the CJEU judgment in *Andre Lawrence Shepherd v Bundesrepublik Deutschland* (C-472/13 Shepherd, 26 February 2015), the court determined that Article 9(2e) of the recast QD encompasses instances where the applicant provides indispensable aid for the preparation or execution of war crimes, even if indirectly involved. The court also referenced the CJEU judgment in *EZ v Bundesrepublik*

Deutschland (C-238/19, 19 November 2020) and held that national authorities hold exclusive jurisdiction to assess whether an applicant's military service may entail the commission of war crimes. The court acknowledged a significant likelihood, within the context of the war in Ukraine, that individuals serving in the Russian armed forces could be implicated in the commission of war crimes.

The court found that the Federal Administrative Court erred in dismissing the applicant's claim about his negative stance on the war in Ukraine solely due to his previous association with the Russian armed forces. It clarified that a negative attitude needed not to be directed towards all military actions, but can be specific to a particular conflict, such as the war in Ukraine. Consequently, the court allowed the appeal and found a breach of the constitutionally guaranteed right to equal treatment amongst foreigners.

Estonia, Courts of Appeal (Circuit Courts) [Ringkonnakohtud], *Police and Border Guard Board (Politsei- ja Piirivalveamet, PBGB)* v *X*, 3-23-840, 28 March 2024.

The Tallinn Circuit Court upheld a negative decision on an application for international protection submitted by a Russian applicant who claimed a fear of persecution on grounds of military conscription.

The PBGB rejected the application for international protection of a Russian national who had resided in Ukraine for an extended period. The applicant appealed to the Tallinn Administrative Court, which annulled the PBGB's decision on grounds of insufficient consideration of crucial evidence, including the personal circumstances of the applicant and the risks of potential mobilisation. The PBGB contested this decision, and the Tallinn Circuit Court upheld the PBGB's appeal.

The Tallinn Circuit Court ruled that the applicant could not be recognised as a refugee solely based on his Ukrainian ethnicity, long-term residence in Ukraine and family ties there. It emphasised that, while Ukrainians face mistreatment in Russia, this fact alone does not constitute persecution. The court concluded that potential mobilisation or related penalties did not justify granting the applicant international protection and found no strong likelihood that he would be forced to engage in hostilities against Ukraine.

Moreover, the court determined that his anti-war views and Ukrainian background did not significantly increase the risk of persecution and were not sufficiently high to warrant granting international protection.

Persecution based on religious beliefs

Norway, Court of Appeal [Lagmannsrettane], *Applicant* v *Directorate of Immigration (Utlendingsdirektoratet, UDI)*, LB-2023-79432, 4 March 2024.

The Court of Appeal ruled that an Iranian applicant who converted to Christianity would not be at risk of persecution upon a return, following a thorough credibility and evidence assessment.

An Iranian applicant, who initially unsuccessfully claimed asylum based on a fear of persecution due to participation in a demonstration, reapplied for asylum based on conversion to Christianity. The application was rejected, and in the first appeal, the Oslo District Court assessed, based on evidence and COI, and without disputing the applicant's conversion, that he would not be at risk of persecution.

In the onward appeal, the Court of Appeal, following a thorough credibility and evidence assessment, confirmed the negative decision by stating that the applicant's religious activity and any activity critical of the regime in exile do not have a scope or character which entails any danger reaching the threshold of acts of persecution.

Women as members of a particular social group: Victims of FGM/C

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *N. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No. 23054482 C+, 5 April 2024.

The CNDA granted refugee status to an applicant from Sri Lanka on grounds of membership in a particular social group due to a risk of FGM/C.

A Muslim minor applicant from Sri Lanka requested asylum on grounds of being exposed to female circumcision, but OFPRA rejected the claim. In the appeal, the CNDA noted that according to COI approximately 80% of Muslim women in Sri Lanka were victims of female circumcision and the absence of prosecution for these practices by the authorities. Consequently, the CNDA considered that unmutilated children and woman constituted a social group within the meaning of Article 1A2 of the Geneva Convention. The CNDA annulled the negative decision and granted the applicant refugee status.

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, A 14 K 3836/21, 21 March 2024.

The Administrative Court of Sigmaringen ruled on the potential of female genital mutilation occurring before the age of puberty and determined that there was a high probability that uncircumcised girls or young women, such as the applicant in the case, may become victims of FGM/C in Sierra Leone.

BAMF rejected the application for international protection of an applicant from Sierra Leone as it determined that the applicant was unlikely to be circumcised against her will in the next 10 years, as most females in Sierra Leone are circumcised when they reach puberty, and her parents could avoid the threat until then.

On appeal, the applicant argued that she would be at risk of FGM/C and that the threat existed not just in the future but also in the present. The Administrative Court granted refugee status and determined that the threat of FGM/C does not cease to exist due to the applicant's age and the age at which FGM/C is commonly performed.

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *B. and B. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA),* No 23025482 C+, 29 March 2024.[1]

The National Court of Asylum (CNDA) accepted the supplementary submission made on appeal for the applicant's daughter, a minor of Guinean nationality born in France, born after a negative first instance decision and granted her refugee status due to the risk of being subjected to FGM/C in the event of returning to the country of origin.

An applicant from Guinea, mother of unmutilated girls, was rejected asylum. In the appeal, she claimed, in supplementary submissions, to fear for her newborn daughter (born in France) due to risks incurred on grounds of her membership to the social group of uncircumcised Guinean children.

Since the negative decision on the mother's application did not apply to the newborn daughter, the CNDA assessed COI, the fact that the daughter was born after the negative decision for the mother and took into consideration the daughter's fears to grant refugee status to the daughter on grounds of membership to the particular social group social group of non-mutilated Guinean children and young girls.

Women as members of a particular social group: Westernised Iranian woman

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 10 A 5193/23, 19 April 2024.

The Regional Administrative Court of Hamburg granted refugee status on grounds that the applicant must be considered as belonging to a particular social group of women in Iranian society and found that upon return she would be forced to extensively deny her personality due to gender discrimination.

An Iranian woman who has lived in Germany since the age of 15 years claimed to fear persecution upon return due to her 'Western lifestyle'. BAMF rejected the application, but the Regional Administrative Court of Hamburg overturned the decision and granted refugee protection. The court stated that adopting a western lifestyle can be important when it changes the person's identity on a long-term basis. It considered that women in the Iranian society can constitute a particular social group in the sense of Article 10(1d) of the recast QD due to cultural views and wide discrimination in all aspects, without state protection.

Gender-based persecution: Cameroon

Cyprus, International Protection Administrative Court, *Applicant v Republic of Cyprus through the Asylum Service (Κυπριακή Δημοκρατία και/ή*

[1] The CNDA ruled in a similar case on an application for international protection concerning a child born after the first instance decision, see below under the Second instance determination section.

***μέσω Υπηρεσίας Ασύλου)*, No 624/2021, 29 March 2024.**

The International Protection Administrative Court ruled that the determining authority had insufficiently and inadequately investigated and assessed the reasons for protection of a Cameroonian applicant who had experienced gender-based violence and granted her refugee status upon a substantive assessment.

A Cameroonian woman applied for asylum in Cyprus, alleging fear to experience again gender-based persecution. Her application was rejected.

On appeal, the International Protection Administrative Court (IPAC) found errors and procedural shortcomings which affected the assessment of the application, including the designation of the habitual place of residence, insufficient assessment of the sexual and gender-based violence (GBV) and the personal targeting, along with a lack of updated COI on available state protection for GBV victims.

IPAC also mentioned that the Asylum Service failed to assess specific forward-risks by considering the profile of the applicant as the wife of a police officer, as well as her personal circumstances upon a return to Cameroon. Specifically, the fact that she would be a single woman with a child, without network support, and a victim of GBV.

IPAC granted refugee status based on the finding of a real risk of ill treatment and violence against the applicant upon return, as a single woman, mother of a minor child, with a history of sexual violence, and without a supportive environment. The court noted that the intensity and seriousness of the risks were assessed in view of the applicant's individual circumstances and stated that the infringement of such rights constituted acts of persecution on account of her membership of a particular social group.

While defining the group, the court noted that the applicant would belong to the group of 'women in Cameroon who have been raped and who lack a family environment and any support network'. IPAC referenced the CJEU judgment *WS v State Agency for Refugees under the Council of Ministers (SAR)*.

Subsidiary protection: Central Sudan

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.I. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 23057457 C+, 20 March 2024.

The CNDA provided subsidiary protection to an applicant from Central Sudan, holding that the region was experiencing a situation of exceptional indiscriminate violence which would affect civilians by mere presence there.

An applicant from Abu Jaradil, a locality in Central Darfur, requested international protection due to an alleged fear of Janjawid militiamen and Sudanese authorities due to political opinions favourable to rebellion which were attributed to him due to his Borgo ethnic origin. On appeal against the OFPRA negative decision, the CNDA ruled that the applicant did not qualify for refugee status due to ethnic persecution but granted subsidiary protection due to indiscriminate violence of exceptional intensity.

The court relied on updated COI and referenced the CJEU judgment in *CF and DN (Afghanistan) v Bundesrepublik Deutschland*, which clarified the criteria to assess indiscriminate violence.

Subsidiary protection: Afghanistan

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.26060, 25 March 2024.

The court ruled that Dutch country policy on Afghanistan was insufficiently motivated and should not be applied to the detriment of the applicant.

The State Secretary for Justice and Security rejected the asylum application of an Afghan applicant of Shiite faith and Tajik ethnicity, based on the Netherlands' country policy for Afghanistan, when examining the situation in light of Article 15(c) of the recast QD.

On appeal, the District Court of the Hague seated in Zwolle ruled that the policy cannot be applied to the detriment of the applicant as it considers solely the number of civilian casualties to be decisive for the existence and intensity of the armed conflict. The court found the contested decision to be contrary to the CJEU judgment in *CF and DN v Bundesrepublik Deutschland*, because the determining authority must apply a balancing exercise involving a cross-examination of all the circumstances of the case.

The court further ruled that, along with the general situation in Afghanistan, the court should have considered the personal situation and individual circumstances of the applicant, as well as the humanitarian and economic situation resulting from the armed conflict, for a proper assessment on subsidiary protection. The court referred to the EUAA Afghanistan – Country Focus (December 2023) to describe the situation of Shia minorities, Tajiks and westernised individuals in Afghanistan.

Exclusion from international protection

Norway, Court of Appeal [Lagmannsrettane], *Applicant v Directorate of Immigration (Utlendingsdirektoratet, UDI)*, LB-2023-188241, 16 April 2024.

The Court of Appeal ruled on the exclusion from international protection of a Syrian former conscript soldier under Article 1F (b) of the Refugee Convention for complicity in the arrest and surrender of opposition members to the security forces, who were subjected to torture and murder.

The case concerned a new examination made by the Court of Appeal following the Supreme Court judgment *Applicant v Norwegian Directorate of Immigration* of 12 December 2023. The Court of Appeal found that the applicant acted with the necessary subjective guilt under Section 31(b) of the Immigration Act as to entail the application of Article 1F of the Geneva Convention for his acts while he was a soldier conscript in Syria in 2011.

Under considerable doubt, the Court of Appeal concluded that the applicant did not act under such duress during the entire period that the exclusion clause could not be applied. Oon the contrary, the court found that the applicant had the necessary subjective guilt for a certain period of time precisely during a short leave period when he had the opportunity to desert, so that he would not be involved in excludable acts. The Court of Appeal ruled in favour of

the state and dismissed the applicant's appeal.

Reception

ECtHR judgments on inadequate reception conditions

ECtHR, *W.S. v Greece*, No 65275/19, 23 May 2024.

The ECtHR ruled unanimously that Greece had violated Article 3 of the ECHR for not providing adequate reception conditions to an unaccompanied asylum-seeking Afghan child and placing him in 'protective custody' in a police station.

The case concerned the living conditions of an unaccompanied minor from Afghanistan in Greece, as well as the conditions in 'protective custody' in a police station.

The applicant complained to the ECtHR that he was subjected to desperate, stressful and dire reception conditions. The applicant claimed that, despite his minor age, no guardianship measures in the best interests of the child were put in place and, given his status as an unaccompanied minor, the treatment he received from the authorities, particularly the fact that he lived without shelter and guardianship and was detained, was inhuman and degrading.

The court determined that there had been a breach of Article 3 of the ECHR and referred to established case law, including *MSS v Greece and Belgium*, *Rahimi v Greece* and *H.A. and Others v Greece*. The court noted that the authorities were aware of the applicant's specific situation, including that he was an unaccompanied minor without stable housing, access to basic necessities or a permanent legal guardian. However, it was not until 1 month and 7 days after his application that he was placed in an accommodation facility tailored to his personal circumstances. The applicant was also left alone before being taken into 'protective custody' at the police station.

ECtHR, *A.R. and Others v Greece*, No 59841/19, 15782/20, 21997/20, 18 April 2024.

The ECtHR ruled that Greece violated Article 3 of the ECHR by failing to provide adequate reception conditions and medical assistance in reception and identification centres on the islands of Kos, Chios and Samos.

The ECtHR found violations of Article 3 of the ECHR due to inadequate living conditions in reception and identification centres (RICs) in Kos, Chios and Samos. The court mentioned that the Greek authorities failed to take measures on the following issues, thus reaching the threshold of Article 3: i) severe overcrowding; ii) lack of basic living arrangements; iii) insufficient medical facilities and food supply; and iv) lack of security. The court reaffirmed the general principles on living conditions for asylum of applicants as established in the judgments: *M.S.S. v Belgium and Greece* (Case 30696/09, 21 January 2011) and *Khlaifia and Others v Italy* (Case 16483/12, 15 Decembre 2016).

Moreover, the court stated that prolonged delays in providing necessary medical

attention for serious health conditions for the applicant W.A., despite prior diagnosis and notification to authorities, constituted an additional ground for finding a violation of Article 3 of the ECHR.

The court also found a violation of Article 5(2) for failing to inform the applicant A.R. about the reasons for detention, in a language that she understood and referred to similar circumstances and findings in the case *J.R. and Others v Greece* (Case 22696/16, 25 January 2018),

Referral for preliminary ruling on withdrawal of reception conditions

Italy, Regional Administrative Court, *AF,and BF v Ministero dell'Interno – U.T.G. – Prefettura di Milano*, 5 March 2024.

The Regional Administrative Court referred a question to the CJEU for a preliminary ruling on the recast RCD.

In a case concerning the withdrawal of reception conditions from an applicant and his child due to refusal of a transfer to another reception facility, the referring court asked to the CJEU a question for interpretation of Article 20 of the recast RCD:

- *"Does Article 20 of Directive [2013/33/EU] and the principles set out by the Court of Justice in its judgments of 12 November 2019 in Case C-233/[18] and 1 August 2022 in Case C-422/[21] - in so far as they preclude the administrative authority of the Member State from ordering, as a sanction, the withdrawal of reception measures where that decision would be detrimental to the basic vital needs of the foreign national applying for international protection and of his family - preclude national legislation which permits, following a reasoned individual assessment, relating also to the necessity and proportionality of the measure, withdrawal of reception, not for sanctioning reasons, but because the conditions for being granted it are no longer met, in particular, on account of the foreign national's refusal, on grounds which do not relate to covering basic vital needs and protecting human dignity, to agree to the transfer to another accommodation centre, designated by the administrative authority on account of objective organisational needs and guaranteeing, under the responsibility of the administrative authority itself, that the material reception conditions equivalent to those enjoyed at the centre of origin will be maintained, where the refusal to transfer and subsequent decision ordering the withdrawal place the foreign national in the position of being unable to meet basic needs of personal and family life?"*

Appointment of a legal representative for an unaccompanied minor

Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Jugendamt of the City of Freiburg v Applicant*, 12 S 77/24, 9 April 2024.

The Higher Administrative Court of Baden-Württemberg ruled that the recast RCD must be applied directly for the appointment of a legal representative for an unaccompanied minor for the age assessment procedure because the

national legislation is contrary to the EU law.

The Higher Administrative Court of Baden-Württemberg clarified that national legislation for the provision of temporary custody for third-country, unaccompanied minors were not compatible with the requirements provided by Article 24(1) of the recast Reception Conditions Directive (RCD) with regard to representation of unaccompanied minors for the purposes of the asylum procedure.

The court concluded to a direct application of the recast RCD. It reiterated the importance of a representative to ensure the right to a fair hearing of the child and his/her best interests, as well as legal protection during the age assessment or decision on accommodation.

Reception conditions: Luxembourg

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v National Reception Office (ONA)*, No 50138R, 8 March 2024.

The Administrative Tribunal allowed a request for interim measures for the immediate access of an applicant from Djibouti to material reception conditions.

The applicant was informed of his right to an accommodation facility but received a notification from ONA stating that he had been placed on waiting list due to the saturation of the facilities. The applicant contested the decision and requested safeguard measures pending the outcome of the appeal. He claimed to be staying in a shelter for homeless people, a facility that did not guarantee an adequate standard of living.

The Administrative Tribunal ruled only on interim measures, noting that these could only be granted on the twofold condition that the contested decision was likely to cause the applicant serious and definitive damage and that the pleas in law put forward in support of the appeal against the decision appear to be serious. In this case, the tribunal considered that the lack of a guarantee of permanent and available accommodation constituted a serious harm of indefinite duration, as well as the lack of any concrete position by the authorities on the allegations made the applicant's pleas sufficiently serious. Referring to CJEU case-law, it also emphasised that the authorities must ensure and supervise a decent standard of living permanently and without interruption as of the request for international protection.

Therefore, the tribunal accepted the request for safeguard measures and ordered ONA to provide accommodation to the applicant.

Access to the labour market

Ireland, Court of Appeal, *A v Ors -v- The International Protection Appeals Tribunal & Ors*, [2024] IECA 133, 29 May 2024.

The Court of Appeal affirmed the High Court's ruling that the parents of a minor in the international protection procedure cannot be granted access to the labour market on behalf of their minor child or as a derived right under Article 15 of the recast RCD.

In an onward appeal, the Court of Appeal confirmed a High Court ruling, according to which the right to access the labour market is a personal and individual right and cannot be exercised as a derived right by the parents of a minor asylum applicant. After having referenced CJEU

jurisprudence and EU law, the Court of Appeal also stated that if the EU legislator would have intended to confer the parents of a minor with the right to access the labour market by proxy or vicariously, on the minor's behalf, it would have stated it accordingly.

Detention

ECtHR judgments on detention

ECtHR, *M.B. v The Netherlands*, No 71008/16, 23 April 2024.

The ECtHR found the Netherlands in violation of Article 5(1) of the ECHR for the arbitrary detention of an asylum applicant pending the examination of his claim, after his release from detention for a terrorist conviction.

A Syrian applicant was arrested on suspicion of participation in a terrorist organisation and placed in pre-trial detention. The applicant was given 10 months' detention but subsequently placed in immigration detention in Rotterdam pending the examination of his asylum application, on the grounds of being a threat to public order.

The applicant complained under Article 5(1f) of the ECHR that the immigration detention pending the examination of his asylum application was unlawful and arbitrary.

The ECtHR noted that while Article 8(3e) of the recast RCD allows detention on the grounds of national security or protection of public order, Article 5(1f) of the ECHR only permits immigration detention to prevent unauthorised entry or for deportation.

The court highlighted that it was established case law that detention based on public order grounds while no removal proceedings are actively ongoing was considered arbitrary. It noted that the legitimate concerns of the state after an applicant is convicted of terrorism cannot result in preventive detention, and it does not absolve the state to follow its obligations under the ECHR. The court further observed that, while the applicant was in pre-trial detention, there were no steps taken to examine his asylum application and possibly exclude him from international protection based on Article 1F of the Refugee Convention, but interviews were only conducted when the applicant was in immigration detention.

The ECtHR concluded that the immigration detention appeared disproportionate and unnecessary to enable the examination of his asylum claim, and it lacked the close connection between detention and the aim of preventing unauthorised entry.

ECtHR, *L. v Hungary*, No 6182/20, 21 March 2024.

The ECtHR ruled that Hungary violated the right to liberty of a Syrian national under Article 5(1) of the European Convention due to arbitrary detention for almost 6 months.

The court examined the claim of arbitrary detention made by a Syrian applicant and the alleged lack of detention alternatives despite the vulnerable state of the applicant.

The court held that the asylum-related detention lasted almost 6 months and stated that the duration itself raised

concerns, even without taking into account the possible vulnerability of the applicant.

In addition, the ECtHR ruled that the repeated extension of the asylum detention by the Hungarian authorities lacked a legal basis as no relevant evidence was provided regarding:

- the necessity to secure the applicant's transfer to Greece since it was established that Hungary was responsible to process the asylum application;
- the applicant's risk of absconding considering that she had voluntarily surrendered upon arrival in Hungary and she did not contact her family;
- a refusal of the applicant to collaborate with the authorities; and
- a threat that the applicant would represent for national security.

Threat to national security

Estonia, Courts of Appeal (Circuit Courts) [Ringkonnakohtud], *X v Police and Border Guard Board (Politsei- ja Piirivalveamet, PBGB)*, 3-23-2004, 27 March 2024.

The Tallinn Circuit Court confirmed the detention of a Tajikistani applicant, concluding that there were reasonable grounds to consider him a threat to national security due to potential links with Russian authorities.

The Tallinn Circuit Court upheld the Tallinn Administrative Court's order to extend the detention of a national of Tajikistan due to his potential ties with the Russian armed forces or security authorities, which may have represented a real and sufficiently serious threat to the national security of Estonia.

Following the CJEU judgment in *J.N. v State Secretary for Security and Justice* (15 February 2016), the Tallinn Circuit Court reiterated that the detention of an applicant or the continuation of detention was justified solely if their individual conduct constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the Member State. Additionally, the court cited the CJEU judgment in *M.A. v State Border Protection Service at the Ministry of the Interior of the Republic of Lithuania* (30 June 2022), according to which an applicant cannot constitute a threat to the national security or public order, within the meaning of Article 8(3e) of the RCD, solely on the ground of their illegal stay in that Member State. The court also referenced the CJEU judgment in *Land Baden-Württemberg v Panagiotis Tsakouridis* (23 November 2010), affirming that the concept of public security covers both the internal and external security of a Member State.

The court specified that the threat posed by the applicant was related to the outbreak of war and the end of a state's existence. The court assessed that the detention of the applicant was lawful, as there was sufficient doubt that he may have entered Estonia to contribute to Russia's activities that jeopardise Estonia's security. Considering his individual profile and personal conduct, the court determined that his detention was justified, because his presence in Estonia could pose an immediate and sufficiently serious threat in the current security situation.

Detention pending a return

Supreme Court [Riigikohtusse Poordujale], 12 April 2024:

- ***Applicant v Police and Border Guard Board (Politsei- ja Piirivalveamet, PBGB)*, 3-23-2204.**
- ***Applicant v Police and Border Guard Board (Politsei- ja Piirivalveamet, PBGB)*, 3-23-2232.**

The Supreme Court confirmed the detention of applicants due to a risk of absconding and clarified the grounds for detention in asylum and return procedures.

The Supreme Court upheld the extension of detention periods of applicants from Senegal and the Democratic Republic of the Congo, who respectively presented forged and stolen identity documents.

Following the CJEU judgment in *Alexandre Achughbabian v Préfet du Val-de-Marne*, the Supreme Court affirmed that conditions for the initial detention of third-country nationals who are suspected of having been illegally present in a Member State remain governed by national law. The court found that the detention of the applicants was permissible under Section 36.1 of the Act on Granting International Protection to Aliens (AGIPA) in conjunction with Section 68 of the Obligation to Leave and Prohibition on Entry Act (OLPEA). The court further specified that the detention must strictly comply with Article 15 of the Return Directive, one of the grounds being the risk of absconding of a third-country national subject to a return procedure in preparation for or in the context of a removal.

The court concluded that if a person detained on a suspicion of unlawful presence submits an application for international protection after their unlawful presence is confirmed, with the intent of preventing their return, this fact clearly constitutes a situation described in Section 36.1 of the AGIPA and Article 8(3d) of the RCD.

Second instance procedure

Fear of persecution related to a newborn child in a parent's appeal

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *Applicants v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, Nos 23040894 and 23040895 C, 21 March 2024.[2]

The CNDA ruled that OFPRA is not required to summon for a new interview the parent of the child born before its decision was pronounced and who invokes a fear specific to the child in support of their appeal, without having informed OFPRA of the birth of the child.

OFPRA rejected the asylum request lodged by an Egyptian couple and their first minor child. The applicants appealed the decision to the CNDA and raised

[2] The CNDA ruled in a similar case concerning an application for international protection from a child born after the first instance decision, see below under the Assessment of applications section, subsection on women as a particular social group.

before the court the fear of FGM/C of their second child, a daughter born after the personal interviews of the parents took place and before the appeal was lodged with the CNDA.

The court recalled that in the event of the birth or entry into France of a minor child after the registration of the parent's application, the parent is required to inform OFPRA as soon as possible about the birth or entry, including when OFPRA has already ruled on the application for international protection. The court highlighted that if the birth or entry into France of the minor child was:

- prior to the personal interview of the parent, the decision of OFPRA is deemed to be rendered with regard to the applicant and the child, unless the child establishes that the person who submitted the application was not entitled to do so.

- after the interview with the third-country national and if the child claims specific fears of persecution, OFPRA must summon again the third-country national so that the person can assert such fears. If OFPRA is informed of these fears after it pronounced a decision or after an appeal was lodged with the CNDA, OFPRA must re-examine the case in order to take these fears into account.

In this case, the court noted that there was no evidence that the parents had informed OFPRA about the birth or about the child's fears and thus there was no reason to annul the decision of OFPRA. However, the court provided refugee protection to the minor daughter due to the risk of being subjected to FGM/C if returned to Egypt.

Legal assistance on appeal

Estonia, Supreme Court [Riigikohtusse Poordujale], *Applicant v Estonian Bar Association*, 3-23-2195, 17 April 2024.

The Supreme Court ruled on the determination of the amount of the state legal aid fee provided to the lawyer of a detained applicant in an appeals procedure.

The Tartu Circuit Court granted state-funded legal aid to a detained applicant to contest his deprivation of liberty. The court partially granted the lawyer's fees as it considered that no compensation was justified for the lawyer to familiarise with the case, translate documents and reply to the client's letter. For other activities, the court reduced the fee on grounds of overestimation.

On appeal lodged by the lawyer before the Supreme Court, the latter partially upheld it and emphasised a lawyer's duty to respond to client's enquiries in a language understood by the applicant. It was confirmed that legal aid lawyers are not required to submit evidence of services, nonetheless, the court may request evidence for clarification. Translation was not disputed as being part of legal aid, but the court found the amount of time requested was unjustified and reduced the time. The court further noted that the lawyer was appointed during the appeal procedure, meaning he needed more time to familiarise with the case file.

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 23030354 C+, 25 April 2024.

The National Court of Asylum ruled that the physical presence of legal representatives is required during court sessions although the applicant agreed expressly to a remote representation.

An applicant from Somalia appealed a negative decision by OFPRA on his asylum request lodged on account of a fear of persecution due to his membership in the Rahanweyn clan and his religious beliefs in Sufism. The applicant also mentioned the risk of indiscriminate violence in Benadir, his region of origin due to threats carried out by the Al Shabaab militia.

The CNDA assessed the procedural requirements of the court hearings as the applicant's attorney represented him remotely by audiovisual means. The court ruled that Article L. 532-13 of the Code of Entry and Residence of Foreigners and the Right to Asylum requires the physical presence of legal representatives during court sessions, even though the applicant agreed expressly to the remote representation.

On merits, the appeal was rejected for a lack of credibility and evidence. The court ruled that the mere presence within the Benadir region did not suffice to establish a real risk of serious harm within the meaning of Article 15c of the recast QD.

Legal assistance for unaccompanied minors

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicant represented by the Federal Agency for Federal Care and Support (BBU)*, E 345/2024-7, 1 March 2024.

The Constitutional Court ruled on the responsibility of the BBU GmbH to legally represent unaccompanied minors during the asylum procedure, including before the Constitutional Court.

An unaccompanied minor requested legal assistance to submit an appeal against the negative decision of the Federal Administrative Court on his asylum request. Due to the minor's lack of legal capacity, the BBU GmbH temporarily represented the unaccompanied minor while he was still in federal care. However, the legal provisions in Austria provide a division of representation, as after the minor's admission and assignment to a care centre in a federal state, the legal representation must be transferred to the local Child and Youth Welfare authority within the federal state in question.

The Constitutional Court ruled that until the appointment of a legal guardian, the BBU GmbH remained responsible for representing the minor during the asylum procedure, including the procedure before the Constitutional Court since a time gap between the end of the admission procedure and the assignment of the minor to a care facility, throughout which the minor would not benefit from legal representation, was not justified.

Content of protection

Family reunification

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant v Finnish Immigration Service (Maahanmuuttovirasto, FIS)*, KHO:2024:52, 8 April 2024.

The Supreme Administrative Court ruled on the derived right of residence of a third-country national, as provided by Article 20 of the TFEU and the assessment of the threat to national security.

A Turkish national applied for family reunification based on family ties with the sponsor, his minor child, who is a Finnish citizen. The FIS rejected the request and decided to return the applicant to his country of origin, noting that he posed a threat to national security and public order.

In the onward appeal, the Supreme Administrative Court stated that, although the applicant's spouse, who is a Finnish citizen, could in principle take care of the family despite her health issues, in view of the number of children, their age and the applicant's emotional involvement and financial responsibility for the family, the assumption presented by the CJEU in joined cases C-451/19 and C-532/19, *Subdelegación del Gobierno en Toledo* needed to be considered. Consequently, the court found that there was a dependency relationship between the applicant and his children as defined in the court's jurisprudence and concluded that the applicant had a derived right to reside as provided by Article 20 of the Treaty on the Functioning of the EU.

France, Council of State [Conseil d'État], *Association Elena France and others* v *Minister of the Interior and Overseas and Minister for Europe and Foreign Affairs*, No 491232, 25 April 2024.

The Council of State annulled a ministerial decision on family reunification applications by Sudanese refugees, citing failures to implement necessary measures amid escalating conflict and ordering expedited processing for such visa applications.

The Council of State nullified the decision adopted by the Minister of the Interior and the Minister for Europe and Foreign Affairs on 28 September 2023 on family reunification applications by Sudanese beneficiaries of international protection. The Council of State found that the ministries failed to implement necessary measures for processing family reunification applications by Sudanese refugees amid the significant deterioration of the situation in Sudan.

The Council found that, in light of the exceptional circumstances in Sudan, the ministries failed to expedite the processing of visa applications for family members of Sudanese beneficiaries of international protection. This neglect included the failure to prioritise applications, make adjustments to appointment arrangements, and postpone identity and security checks. Consequently, the Council ruled that the Ministries must implement measures to ensure that visa applications by Sudanese family members of beneficiaries of international protection in France are processed within a reasonable timeframe.

Revocation of a residence permit due to false information

Norway, Court of Appeal [Lagmannsrettane], *Applicant* v *Directorate of Immigration (Utlendingsdirektoratet, UDI)*, LB-2023-179207, 17 April 2024.

The Court of Appeal confirmed the revocation of an Afghan's national residence permit on grounds of false information provided in his asylum claim and stated that, despite being a minor at the time, the applicant was above the criminal age and was assumed he

understood the consequence of his statements.

The applicant arrived in Norway as an unaccompanied minor and was granted international protection. In applying for Norwegian citizenship, the applicant was brought in for an interview, during which he admitted providing false information during the asylum procedure, resulting in the revocation of his residence permit.

The Court of Appeal upheld the revocation, as it determined that the information played a significant role in granting a residence permit based on asylum. The court determined there were no grounds for international protection and that he would not be at risk upon a return to Afghanistan.

Temporary protection

In the Netherlands, the State Secretary initially decided on 18 July 2022 to end the application of the optional provision of the Council Implementing Decision of 4 March 2022, based on Article 7 of the Temporary Protection Directive (TPD), and thus, to end temporary protection initially granted to third-country nationals who held a temporary residence permit in Ukraine when the war broke in February 2022. The State Secretary decided to end temporary protection on 4 March 2023, then on 4 September 2024. However, in a judgment of 17 January 2024, the Council of State decided that temporary protection for this category will end on 4 March 2024.[3]

In appeals submitted by third-country nationals, the Dutch courts adopted divergent views about the application of the optional provision of the Council Implementing Decision of 4 March 2022[4] and the right to temporary protection for this category under the latest Council Implementing Decision of 19 October 2023. The Court of the Hague seated in Roermond considered that this category is entitled to temporary protection within the same timeframe and conditions as for other displaced categories, thus with the status extended until 4 March 2025.

The Council of State suspended the implementation of return orders issued by the State Secretary, based on an end of protection as of 4 March 2024, and referred questions to the CJEU for a preliminary ruling on the TPD and the optional provision, while the Court of the Hague seated in Amsterdam referred questions not only on TPD but also on interpretation of the Return Directive. These two referrals are summarised below along with recent rulings from Dutch courts on return and the extension of temporary protection for this category pending the outcome of the referrals.

Referrals for a preliminary ruling on the extension of temporary protection for third-country nationals with a temporary residence permit in Ukraine

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security (Staatssecretaris van Justitie en*

[3] See also Quarterly Overview of Asylum Case Law, Issue 1/2024.

[4] See also Quarterly Overview of Asylum Case Law, Issue 3/2023.

Veiligheid) v A,B, C, 202401901/1/V3, 202402020/1/V3 and 202402066/1/V3, 25 April 2024.

The Council of State referred questions before the CJEU, requesting their examination in an expedited procedure, on temporary protection for third-country nationals with a temporary residence in Ukraine on 24 February 2022.

In view of divergent case law by Dutch courts on temporary protection granted under the optional provision for third-country nationals with a temporary residence permit in Ukraine and the State Secretary decision to end protection as of 4 March 2024, the Council of State referred questions before the CJEU and requested the treatment of the referral in an expedited procedure as provided by Article 105 of the Rules of Procedure:

1. Should Article 4 of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for the granting of temporary protection in the event of a mass influx of displaced persons and on measures to promote a balance between the efforts of the Member States in reception and bearing the consequences of receiving these persons be interpreted as meaning that, if a Member State has made use of the option offered by Article 7(1) of that Directive to also grant other categories of displaced persons (hereinafter: the optional group) temporary protection under that Directive, the temporary protection of this optional group continues not only upon an automatic extension as referred to in Article 4(1) for the period referred to in that provision, but also upon a decision to extend the period as referred to in Article 4(2) for the period mentioned in that provision?

2. Does it make any difference to the answer to the question whether the temporary protection of the optional group continues in the event of a decision to extend as referred to in Article 4(2) that a Member State has decided to terminate the temporary protection of the optional group before the moment when the Council has decided to extend temporary protection for 1 year as referred to in Article 4(2)?

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL24.5401 T, 29 March 2024.

The Court of the Hague seated in Amsterdam referred questions to the CJEU on the interpretation and application of the Return Directive and the Temporary Protection Directive to third-country nationals, not Ukrainians, who were granted temporary protection under the optional provision of the Council Implementing Decision of 4 March 2022.

The Court of the Hague seated in Amsterdam submitted the following questions to the CJEU for an interpretation of the Temporary Protection Directive concerning third-country nationals, holders of temporary residence in Ukraine, who were granted protection under the optional provision:

1. Must Article 6 of the Return Directive be interpreted as precluding a return decision from being issued on a date on which a foreigner is still lawfully resident in the territory of a Member State?

2. Does it matter for the answer to the previous question whether the return decision includes a date on which lawful residence ends, that that date is in the near future, and the legal consequences of the return decision only occur at that later time?

3. Should Article 1 of the Council Implementing Decision be interpreted as meaning that this extension also concerns a group of third-country nationals who have already been brought under the scope of the Temporary Protection Directive by a Member State using the optional provision of Article 2(3) of the Implementation Decision, even if the Member State has subsequently chosen to no longer offer temporary protection to that group of third-country nationals?

No return and extension of temporary protection based on the optional provision.

Netherlands, Court of the Hague [Rechtbank Den Haag], 19 March 2024:

- ***Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.24696 and NL24.7930.**
- ***Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid*), NL23.24995 and NL24.7928.**

The District Court of the Hague seated in Roermond ruled in cases concerning applicants from Ghana and Algeria that third-country nationals who had a temporary right of residence in Ukraine and were granted temporary protection in the Netherlands are covered by the Council's Implementing Decision of October 2023 and cannot be returned.

Applicants from Ghana and Algeria challenged return decisions issued on 7 February 2024 based on the end their temporary protection status as of 4 March 2024. The District Court of the Hague seated in Roermond noted that the State Secretary granted temporary protection pursuant to the optional provision, allowing the extension of temporary protection to displaced persons holding a temporary right of residence in Ukraine who registered in the Netherlands before 19 July 2022. The court interpreted the Council's Implementing Decision of October 2023, determining that it extended the duration of temporary protection for individuals already granted such a status.

The court concluded that the termination of temporary protection for third-country nationals under the optional provision could only occur simultaneously with that of other displaced persons.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State]:

- ***Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202402011/2/V3, 29 March 2024.**
- ***Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202402011/3/V3, 2 April 2024.**

The Council of State allowed interim requests to suspend the implementation of return decisions, pending the outcome on appeals against the end of temporary protection for third-country nationals.

Third-country nationals who were beneficiaries of temporary protection requested interim relief against return decisions issued based on the end of temporary protection. After rejection by the Court of the Hague, the applicants appealed before the Council of State.

The Council of State referred to the judgment of 29 March 2024, *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, where the Court of the Hague seated in Amsterdam referred three questions before the CJEU for an interpretation of the Temporary Protection Directive and the Council Implementation Decision of 19 October 2023 (extending temporary protection until 4 March 2025).

The Council of State considered that the implementation of the return decisions must be suspended, and the applicants must be treated as beneficiaries of temporary protection, pending the outcome of the appeals.

Statelessness

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicants v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.23384 and NL23.23386, 26 March 2024.

The District Court of the Hague ruled that no assessment of accessibility was necessary when determining the country of habitual residence for stateless applicants.

The applicants were a married couple, stateless Palestinians, who have lived in Libya since their early childhood. After the rejection of their first asylum application, they filed a subsequent application on the basis of an impossibility to physically return to Libya, but the State Secretary for Justice and Security rejected the request.

On appeal, the District Court of the Hague seated in Groningen held that, from the definition of a refugee stipulated in the Geneva Convention, it emerged that even if an applicant does not have a nationality, an individual may demonstrate that they have a well-founded fear of persecution in the country in which they are habitually resident. As such, the court agreed with the position of the State Secretary that when determining the habitual place of residence, the question of whether that habitual residence is accessible does not need to be addressed.

Return

Return of applicants with medical conditions

ECtHR, 18 April 2024:

- ***A.K. v France*, No 46033/21.**
- ***S.N. v France*, No 14997/19.**

The ECtHR found in both cases that the return of a Guinean applicant suffering from psychotic illness and the return of a Senegalese applicant suffering from schizophrenia did not violate Article 3 of the ECHR as COI attested the possibility for the applicants to receive effective and appropriate care to treat their illness upon return.

In both cases, the ECtHR recalled the general principles applicable in cases of an

expulsion of seriously ill applicants stated in the cases of *Paposhvili v Belgium* and *Savran v Denmark*, which principles are as well applicable to mental pathologies.

The ECtHR reiterated that a violation under Article 3 may arise when there are substantial grounds to believe that the person, upon a removal, although not at imminent risk of death, would face, due to the absence or lack of access to adequate treatment in the country of destination, a real risk of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in severe suffering or a significant reduction in life expectancy.

Based on COI, the court stated that the applicants would receive appropriate treatment upon return and assessed that their state of health allowed them to travel back to their countries without risk.

ECtHR judgment on the return of applicants to Albania

ECtHR, *A.D. and Others v Sweden*, No 22283/21, 7 May 2024.

The ECtHR ruled unanimously that the removal of the asylum applicants, an Albanian family, would not be in breach of Article 3 of the ECHR, since it was not demonstrated that the Albanian authorities would be unable or unwilling to obviate any risk of ill treatment by non-State actors.

The ECtHR reiterated the relevant general principles established in its case law, especially in *F.G. v Sweden* and *J.K. and Others v Sweden*, to determine whether the removal of applicants would constitute a violation of Article 3 of the ECHR.

The ECtHR noted that, while corruption continued to be a widespread problem in Albania and criminals have ties with police and judicial authorities, Albania has made concerted efforts to address the issues by introducing several concrete measures to improve the capability and integrity of law enforcement authorities.

The ECtHR highlighted that the documents submitted indicated that the Albanian authorities took note of the applicants' reports and acted on them, at least by taking certain investigative measures. However, the applicants failed to submit information on the progress of the investigations and on any measures taken by the Albanian authorities or a failure to take relevant measures.

The court concluded that the applicants did not demonstrate their allegations and found no violation of Article 3 of the ECHR.

Return decision when country of origin cannot be determined.

***Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid),* 202201422/1/V2, 8 May 2024.**

The Council of State ruled that a return decision must indicate one or more countries of return, even when the applicant's nationality and origin could not be established during the asylum procedure.

The District Court of the Hague annulled a return decision issued by the State Secretary for Justice and Security as it did not indicate a country of return. The State Secretary filed an appeal with the Council of State.

The Council of State referred to the CJEU judgments in Cases C-924/19 C-925/19 and C-673/19, which ruled one or more countries of return must be mentioned in every return decision, with no exceptions

to this rule. The court stated that, in accordance with Article 5 of the Return Directive, to protect the best interests of the applicant, it must be clear which is the country of return so that the individual will be able to exercise effective legal remedies against the decision and to apply for an appropriate residence permit.

The court ruled further that, contrary to the instructions of the district court in the contested judgment, the State Secretary does not have to carry out an active investigation after the asylum procedure and before a return decision is taken to determine the country of return.

The court elaborated that the applicant may submit a new asylum application or request a review of the previous decision, if during the return procedure he is able to prove his nationality or origin or if a country of return named in the return decision recognises him as a national.

Returns to Algeria

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicants v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202306388/1/V3 and 202307965/1/V3, 6 May 2024.

The Council of State ruled that the prospect of deportation of foreign nationals to Algeria within a reasonable period of time has been restored.

In two previous judgments in 2021 and 2022, the Council of State ruled that there was no prospect of deportation to Algeria within a reasonable period of time. Nevertheless, the court ruled that as of December 2023, this was no longer applicable due to recent developments presented by the State Secretary showing increased cooperation with the Algerian authorities and a rise in the issuances of laissez-passer documents to Algerian nationals.

In a press statement about the cases, the Council of State stated that Algerian nationals who made use of all remedies can be deported to Algeria within a reasonable period and can be detained for this purpose.


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