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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)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
COA	Central Agency for the Reception of Asylum Seekers
COI	country of origin information
CNDA	National Court of Asylum | Cour Nationale du Droit d'Asile (France)
DSSH	Difference-Shame-Stigma-Harm model
Dublin III Regulation	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Agency for Asylum
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union and associate countries
HTL	Extra Enforcement and Supervision Location (Handhavings- en Toezichtlocati) (The Netherlands)
IPAC	International Protection Administrative Court (Cyprus)
LGBTIQ+	lesbian, gay, bisexual, transgender, intersex or queer
NGO	non-governmental organisation

OFPRA	Office for the Protection of Refugees and Stateless Persons | Office Français de Protection des Réfugiés et Apatrides (France)
QD	Qualification Directive. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
RCD	Reception Conditions Directive. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
Refugee Convention	The 1951 Convention relating to the status of refugees and its 1967 Protocol
ROV	Regulation deprivation of benefits in kind (Reglement onthouding verstrekkingen kamer) (The Netherlands)
SANS	State Agency for National Security (Bulgaria)
TPD	Temporary Protection Directive. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNRWA	United Nations Relief and Works Agency for Registered Palestine Refugees

Main highlights

The decisions and judgments presented in this edition of the "EUAA Quarterly Overview of Asylum Case Law, Issue No 4/2024" were pronounced from September to November 2024.

Court of Justice of the European Union (CJEU)

The CJEU issued no less than six judgments interpreting provisions of the Common European Asylum System (CEAS) in cases concerning: gender-based violence, safe third countries and safe countries of origin, detention and judicial review of detention measures, the rights of illegally-staying, third-country nationals and return.

Gender remains at the forefront of the jurisprudential developments in European asylum law with the third case pronounced this year on the topic after *WS* (Case C-621/21, January 2024) and *K, L* (C-646/21, June 2024). In *AH* and *FN* v *Federal Office for Immigration and Asylum (BFA)* (joined cases C-608/22 and C-609/22, October 2024), the CJEU ruled in a case referred by the Austrian Supreme Administrative Court concerning two Afghan women who claimed that the situation of women under the new Taliban regime justifies in itself being granted refugee protection. The court held that an accumulation of discriminatory measures in respect of women, which undermine human dignity, which are adopted or tolerated by an actor of persecution, constitutes acts of persecution. Compared to prior judgments, the court nuanced that once gender and nationality are established through an individual assessment, it is not necessary for national authorities to consider other factors to determine the risk for an applicant of being subjected to acts of persecution. The fact that a well-founded fear of persecution would generally be established for Afghan women and girls in view of the measures adopted by the Taliban regime was also the conclusion of the 2023 Country Guidance: Afghanistan. This finding, explicitly referenced by the court, was further confirmed by the 2024 EUAA country guidance update on the country. The judgment was enforced by Austria, where the Supreme Administrative Court overturned the decisions of the BFA, aligning with the considerations of the CJEU.

In addition, the CJEU decided on the application of the safe third country concept in the first-ever reference from Greek courts to the CJEU for a preliminary ruling on asylum provisions. After eight years from the signature of the 2016 EU-Türkiye Agreement, the CJEU clarified in *Greek Council for Refugees, Refugee Support Aegean v Minister for Foreign Affairs, Minister for Immigration and Asylum* (C-134/23, October 2024), that Article 38 of the recast Asylum Procedures Directive (APD), read in light of Article 18 of the EU Charter, does not preclude a Member State from classifying a third country as generally safe, even if it has suspended readmissions and there is no foreseeable change in that position. However, Member States cannot reject as inadmissible or unjustifiably postpone the examination of asylum applications if readmissions are not taking place in practice.

During this period, the CJEU also delivered in Grand Chamber formation its first judgment interpreting the substance of the concept of 'safe countries of origin' in EU law. In *CV* v *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky* (C-406/22, 4 October 2024), the CJEU held that a third country does not automatically lose its designation as a safe country of origin merely because it invokes a derogation under Article 15 of the European

Convention on Human Rights (ECHR). However, the Member State must evaluate whether the derogation impacts the country's compliance with safety criteria. It also ruled that a third country cannot be designated as a safe country of origin if certain regions within it fail to meet the required safety conditions outlined in Annex I of the recast APD. Significantly, the CJEU ruled that courts must conduct a full and *ex nunc* review of the case, considering *ex officio* any potential breaches of designation criteria, even if not explicitly raised by the applicant. This judgment has already been applied by national courts, in Italy, as outlined below.

Concerning detention, in *C. v State Secretary for Justice and Security* (C-387/24, 4 October 2024), the CJEU clarified the obligation of national authorities concerning consecutive detention of applicants and the impact of a judicial review. It noted that EU law does not mandate national authorities to immediately release applicants detained under the Return Directive, even if their prior detention under the Dublin III Regulation was found unlawful.

On returns, the CJEU ruled in *LF* (C-352/23, 12 September 2024) on the rights of rejected asylum applicants who have been in a Member State for years without a national mechanism to regularise their stay. The court held that when return is postponed, the authorities must provide a written confirmation that the return decision will temporarily not be enforced. Significantly, whilst the CJEU held that a reading of Articles 1, 4 and 7 of the EU Charter and the Return Directive did not oblige Member States to grant a right to stay on humanitarian grounds, it ruled that the person may rely on the rights guaranteed by the Charter.

Also on return, the CJEU clarified in *K, L, M, N* (C-156/23, 17 October 2024) that both administrative and judicial authorities must ensure compliance with the principle of *non-refoulement* when deciding on a residence permit and the enforcement of a return decision, respectively. Significantly, the CJEU ruled that Article 13 of the Return Directive, in conjunction with Articles 5, 19(2) and 47 of the EU Charter, obliged national courts to raise *ex officio* any potential violations of the *non-refoulement* principle when reviewing the legality of a decision rejecting a residence permit and lifting the suspension of a return decision.

European Court of Human Rights (ECtHR)

At the Council of Europe, the European Court of Human Rights (ECtHR) ruled for the first time in October 2024 on *refoulement* and expulsion of aliens against Cyprus, in *M.A. and Z.R.* (No 39090/20). The court clarified the test to be applied and the state obligations under Article 3 of the Convention when there are interceptions of asylum seekers at sea, an aspect which was not clarified after *ND and NT v Spain* (Nos 8675/15 and 8697/15) pronounced in 2020 and which concerned a border crossing point at the Melilla enclave. The judgment in *M.A. and Z.R.* v *Cyprus* is significant because of the way the court considered evidence in the proceedings and recognised a state practice of summary returns to Lebanon of persons entering Cyprus illegally and not providing access to asylum procedures. The court noted that obtaining a visa, which is subject to financial and other conditions, is not required, as in the case of these applicants it could not constitute a genuine and effective possibility to present their asylum reasons against expulsion. In addition, the judgment also highlights the obligations of the state towards persons held at sea and not allowed to disembark, specifically to provide them adequate food, water and hygienic facilities. Of relevance for bilateral agreements between countries, the court reiterated that states cannot evade their

responsibility under the Convention and its Protocols by relying on obligations arising out of such bilateral agreements. The judgment is not yet final.

In a second case, concerning the expulsion of an Afghan family, in *M.D. and Others v Hungary* (No 60778/19, 19 September 2024), the court clarified that the expulsion process for accompanied minors meets the requirements of Article 4, Protocol No 4 to the ECHR if accompanying adults can effectively challenge the expulsion.

In another transit zone case against Hungary, the ECtHR reiterated in *Z.L.* (13899/19, 12 September 2024), that prolonged confinement in the Röszke transit zone amounted to *de facto* deprivation of liberty. The ECtHR found that depriving the applicants for four days of food at the transit zone neglected their state of dependency and was sufficient alone to exceed the threshold of severity of Article 3 ECHR. The court also found that, whilst the placement of the applicants in the transit zone during the asylum proceedings was provided in national law, as such it did not meet the standards of lawfulness set out by Article 5(1) and (4) ECHR. The judgment follows the considerations set out in *R.R. and Others v Hungary*, and more recent judgments such as *O.Q. v Hungary*.

In *J.B. and Others v Malta*, the ECtHR found a violation of Articles 3, 5(4) and 13 of the ECHR for the unlawful detention of five unaccompanied minors in 2022 in inadequate conditions. In view of the recurring precedent since its 2015 judgment in *Story and Others v Malta* and the nature of the problems detected in the case, the ECtHR relied on Article 46 ECHR to order the national authorities to adopt concrete measures.

After 5 years, the ECtHR ruled for the first time in *H.T. v Germany and Greece* on returns under the "Seehofer Deal", an inter-state administrative agreement between Greece and Germany which was concluded in 2018. The court found Germany in violation of Article 3 of the ECHR for not having respected their procedural obligation to ensure that the applicant was not at risk of being denied access to an adequate asylum procedure in Greece and protection against *refoulement*. The decision is relevant because the ECtHR sets out states' procedural obligations under Article 3 in such a specific type of agreement.

Further on return, the ECtHR held unanimously in *M.I. v Switzerland* that the authorities had erred in considering that it was unlikely that the sexual orientation of the applicant would come to the knowledge of the Iranian authorities or the rest of the population, and therefore the applicant did not face a real risk of ill treatment. The case follows similar considerations of the ECtHR against Switzerland in *B and C v Switzerland*. It highlights that states cannot merely base their conclusions on conduct upon return approaches; they must sufficiently assess the real risk upon a return and the availability of state protection against harm from state and non-state actors.

National courts

Dublin procedure

Dutch courts ruled in a series of judgments about the principle of mutual trust with regard to Dublin transfers to Bulgaria, Croatia and Poland. They ruled in each concrete case that the principle of mutual trust may be relied upon. In contrast, in a case concerning a Dublin transfer to Hungary, the German Administrative Court of Minden annulled the transfer

decision due to systemic deficiencies in the asylum procedure resulting in a risk of treatment contrary to Article 4 of the EU Charter.

The concepts of safe countries of origin and safe third countries

In the context of the Protocol between Albania and Italy, first instance Italian courts, citing the CJEU judgment in *CV* (described above), ruled in cases concerning applicants from safe countries who were channelled to the accelerated procedure and against whom detention was ordered with a view to being sent to Albania for the processing of their applications. Specifically, the Tribunal of Catania and the Tribunal of Rome ruled that the designation of Bangladesh and Egypt as a safe country violated EU and national laws and is subject to a judicial review due to systematic issues in the country and the presence of at-risk groups for whom the presumption of safety does not apply. On 24 October 2024, the Italian government adopted a decree to modify its list of safe countries of origin. In essence, it removed countries deemed safe with territorial exceptions and it maintained countries with exceptions based on at-risk groups, such as Egypt and Bangladesh. More recently, the Tribunal of Bologna and the Tribunal of Rome referred questions to the CJEU for a preliminary ruling on the compatibility of Italian law with EU law on the designation of safe countries of origin.

On the concept of safe third countries, the Administrative Court of Sofia City referred questions before the CJEU for an interpretation of Articles 33 and 38 of the recast APD on the obligations of the administrative authority when assessing the case based on this concept and on the judicial review to be provided when national law does not provide such review.

Membership of a particular social group

In the Netherlands, the Council of State ruled that Afghan returnees from Western countries are not all at a real risk of inhumane treatment upon return simply because they have stayed in the West, and individual circumstances must be taken into account.

Age assessment

In the Netherlands, a ruling by the Council of State in *Applicant* v *The Minister for Asylum and Migration* (202201742/1/V2, 9 October 2024) caused a change in national policy related to age assessments and the reversal of previous case law. The Council ruled that the principle of mutual trust is not applicable to age assessments, although age registrations in another Member State may be taken into account.

Subsidiary protection for Syrian applicants

In 2019, 2021 and 2023, the Danish Refugee Appeals Board ruled that the conditions in certain provinces of Syria, namely Damascus, Rif Damascus and Latakia, were not of such a nature to justify a residence permit in Denmark. In October 2024, the same appeals body found that Homs is the fourth province in Syria where the general conditions are no longer of such a nature that anyone will be at real risk of being subjected to treatment in violation of Article 3 of the ECHR solely because of mere presence in that area. The Refugee Appeals Board stated that the security situation remains serious and fragile, and noted that the conflict between, among others, Israel and Lebanese Hezbollah in the Middle East, which also negatively affects the situation in the Homs province, cannot lead to a different assessment.

With reference to a Syrian applicant's claim for protection, the Constitutional Court in Austria held that a return to Damascus was feasible, considering the security situation at the time of the decision (2 October 2024), family support and the availability of essential services like water, electricity and healthcare. Furthermore, the German Administrative Court of Schwerin ruled on 20 November 2024 on a request to suspend the implementation of a deportation order for a Syrian national. As the situation is evolving after the fall of the Assad regime, national asylum authorities have suspended the examination of applications lodged by Syrian nationals, or announced that they closely follow the evolving situation, while in some EU+ countries, they also suspended the examination of appeals for this profile of applicants.[1]

Reception conditions

A report on Jurisprudence on Material Reception Conditions in Asylum – Sanctions, Reductions and Withdrawals: Analysis of Case Law from 2019-2024, published by the EUAA on 15 October 2024, provides relevant jurisprudence from courts of EU+ countries implementing Article 20 of the recast Reception Conditions Directive (RCD). The report shows how courts applied the proportionality test when balancing between the gravity and repetitiveness of the breaches of the rules of accommodation and the impact of these sanctions on the applicant, considering an applicant's situation and any special needs.

The Irish Supreme Court referred questions to the CJEU for a preliminary ruling on the interpretation of Article 15(1) of the recast RCD, on access to the labour market for applicants for asylum and the appropriate test to be applied when considering whether a delay in taking a decision by the asylum authority may be attributed to the applicant. The previous case law of the CJEU on this topic dates back to 2021 (*K.S.,* C-322/19 and C-385/19) and concerned access to the labour market in the host Member State for applicants who are the subject of a Dublin transfer decision. However, that judgment noted only that the recast RCD does not provide guidance as to what acts may constitute a delay attributable to the applicant, so the current referral is an opportunity for the CJEU to clarify this provision.

The District Court of Northern Netherlands in Groningen ruled that the Central Agency for the Reception of Asylum Seekers (COA) failed to adhere to the maximum occupancy of 2,000 asylum seekers at the Ter Apel location as agreed with the municipality of Westerwolde and increased the penalty for failure to do so to EUR 50,000 per day with a maximum of EUR 5 million. The judgment can be appealed by the COA.

Detention

In the Netherlands, the Council of State ruled that applicants for temporary protection cannot be detained on the grounds of national law that transposes Article 8(1)(c) of the recast RCD which does not apply to individuals covered by the Temporary Protection Directive.

Family reunification

In Germany, the Federal Administrative Court ruled in September 2024 that family members (second wife and children) of a beneficiary of subsidiary protection living with the first wife and children in Germany cannot, in principle, be granted a residence permit for humanitarian

[1] See press releases from asylum authorities (e.g. Belgium, Croatia, Denmark, Finland, France, Germany, Luxembourg, Malta, the Netherlands, Norway, Sweden) and appeal bodies of EU+ countries (e.g. Denmark).

reasons, because it is legally impossible for them to leave the country for family reasons. Thus, they cannot benefit from a residence permit issued for humanitarian reasons which are, according to the national court, rooted in the protection of marriage and family.

In the Netherlands, the Council of State ruled that the Minister for Asylum and Migration's policy stating that a broken family relationship cannot be restored is contrary to CJEU jurisprudence. The Council declared that the Minister must assess whether a *de facto* family relationship has been restored before the sponsor's entry into the Netherlands, and if it was broken after this point, whether it has been restored at the time of taking the decision on the application.

Temporary protection

The EUAA published a thematic report on Jurisprudence on the Application of the Temporary Protection Directive in September 2024. The report analyses judgments and decisions related to different aspects of the implementation of the Temporary Protection Directive, as pronounced by national courts and the CJEU between March 2022–September 2024.

Access to the asylum procedure

ECtHR judgments on collective expulsions

ECtHR, *M.A. and Z.R. v Cyprus*, No 39090/20, 8 October 2024.

The ECtHR found violations of Article 3 of the Convention, Article 4 of Protocol No 4 to the Convention, alone and jointly with Article 13 of the ECHR in a case concerning forced expulsion of applicants to Lebanon.

Two Syrian nationals who lived in Lebanon after fleeing their country of origin due to the war, travelled by boat with a group of Syrian and Lebanese nationals to Cyprus. On arrival to the territorial waters of Cyprus, their boat was intercepted. The interpreter present with the authorities informed them that no one would be allowed to enter Cyprus and that the authorities would escort them back to Lebanon. The applicants requested an interim measure to the ECtHR but they were sent to Lebanon before their lawyer could submit additional documents requested by the court.

The applicants complained that the Cypriot authorities had refused them access to the asylum procedure and had returned them to Lebanon as part of a collective measure without examining their asylum claims or their individual circumstances. They also complained that they did not have access to an effective domestic remedy.

The court found a violation of Article 3 as Cyprus had not assessed the risk of lack of access to an effective asylum process in Lebanon, the risk of *refoulement* or the living conditions for asylum seekers there. The court reiterated that states cannot evade their responsibility under the Convention and its Protocols by relying on obligations arising from bilateral agreements with other countries.

Furthermore, the court found that the actions of the Cypriot authorities constituted a collective expulsion in violation of Article 4 of Protocol No 4 to the ECHR. It noted that, beyond basic identity details, the Cypriot government had not provided the court with any other records specific to each migrant, any record of the provision of information to the applicants about their rights, transcripts of their interviews, or copies of the required forms which Cyprus would have to complete under the terms of the bilateral agreement before returning them to Lebanon. The court also observed the absence of any written decision, whether a refusal of entry or a deportation order, informing the applicants of the reasons for their return to Lebanon.

The court also found a violation of Article 13, read in conjunction with Article 3 and Article 4 of Protocol No 4 of the ECHR. It noted that the remedies suggested by the government would not have been effective, as they could not have had suspensive effect in the circumstances of the present case, given their summary return to Lebanon.

ECtHR, *M.D. and Others v Hungary*, No 60778/19, 19 September 2024.

The ECtHR ruled that Hungary violated Article 4 of Protocol No 4 to the Convention when it removed an Afghan

family to the border with Serbia, without a legal basis for the removal, without an individual examination of their personal circumstances and without considering that Serbia had refused to readmit them.

An Afghan family who requested international protection in Hungary were initially ordered to be removed to Serbia, considering it a safe transit country. When Serbia refused to accept them, Hungary sought to remove them to Afghanistan instead. The ECtHR found that the applicants' removal violated Article 4 of Protocol No 4 to the Convention.

The court referred to *Ilias and Ahmed v Hungary* (No 47287/15), *M.A. v Belgium* (No 19656/18) and *M.K. and Others v Poland* (Nos 40503/17, 42902/17 and 43643/17), reiterating that Article 4 of Protocol No 4 requires authorities to individually assess the personal circumstances of those facing expulsion and provide an opportunity for them to present arguments against it. The court clarified that for accompanied minors, the expulsion process meets the requirements of Article 4 if accompanying adults can effectively challenge the expulsion.

The court found that the removal to Serbia lacked a formal decision and noted that the authorities failed to consider the applicants' individual circumstances before the expulsion, especially since Serbia had refused readmission, making their entry unlawful. Additionally, the applicants were not given the opportunity to challenge or present arguments against expulsion.

Finally, the court acknowledged that states have the right to set and enforce their immigration policies but emphasised that challenges in managing migratory flows cannot justify actions that violate the state's obligations under the ECHR.

Dublin procedure

Dublin transfers to Belgium

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, E 2913/2023-14, 23 September 2024.

The Constitutional Court dismissed an appeal against a decision on a Dublin transfer of an Afghan applicant to Belgium, finding no violation of the constitutional right to equal treatment or Articles 3 and 8 of the ECHR.

An Afghan national appealed a decision on a Dublin transfer, arguing that there was a risk that he would have to live on the streets in Belgium and would therefore have no protection from degrading treatment (Article 3 ECHR).

The Constitutional Court emphasised that, in line with established ECtHR jurisprudence, a transfer could breach Article 3 of the ECHR if there are substantial grounds to believe that the individual would face a real risk of torture or inhuman or degrading treatment. The court also noted that the Federal Administrative Court had properly addressed this risk and carried out a proportionality assessment, weighing the public interest in ending the residence of a foreign national without a valid residence permit against the claims made under Article 8 of the ECHR and the right to remain in Austria. As a result, the court

dismissed the appeal, determining that no constitutional question arose that would require its intervention.

Dublin transfers to Bulgaria

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration*, NL22.25020, 9 September 2024.

The Court of the Hague seated in Roermond ruled that the principle of mutual trust can be relied upon for Dublin transfers to Bulgaria.

The District Court of the Hague seated in Roermond confirmed the decision on a Dublin transfer by concluding that the principle of mutual trust can be relied upon with respect to Bulgaria. The court referenced the high threshold for prohibiting a transfer, as set out by the CJEU judgment in *Jawo* (Case C-163/17) to reject the claims of the applicant against the transfer as subjective and insufficiently supported by evidence of systemic deficiencies. The court found that even when the asylum request was previously rejected in Bulgaria, it did not change the determination of the Member State responsible under the Dublin III Regulation, because the responsibility does not shift as a result of an unsuccessful application.

Furthermore, the court considered that an assessment of the risk of *refoulement* upon a transfer was out of the scope of the judicial review. In this regard, the court considered that the applicant must first exhaust the legal remedies available in Bulgaria, noting no indications of issues related to access to justice in Bulgaria, and adding the possibility to submit a case before the ECtHR in case of unsuccessful appeals concerning the risk of a deportation. The court also stated that the applicant can receive adequate treatment in Bulgaria for his psychological conditions.

Dublin transfers to Croatia

Netherlands, Council of State, *Applicant v The Minister for Asylum and Migration*, 202404639/1/V3, 9 October 2024.

The Council of State ruled that the principle of mutual trust for Dublin transfers to Croatia may be relied upon.

A Syrian applicant challenged a decision on a Dublin transfer, arguing that in Croatia he would be exposed to serious risks, including pushbacks and inadequate reception conditions.

The Council of State referred to the CJEU judgments of *Jawo* (Case C-163/17) and *X v State Secretary for Justice and Security* (C-392/22). The Council found that, while pushbacks are conducted by Croatian authorities, there was insufficient evidence to conclude that Dublin claimants faced a real risk of being ill-treated. The Council stated that, according to available reports, Dublin claimants were admitted to the asylum procedure without any known obstacles following a transfer. The Council also noted that the mere theoretical possibility of a pushback because Dublin claimants cannot be distinguished from other asylum applicants, as they receive the same asylum applicant identification card, was not enough to establish a real risk as required by Dutch courts.

The Council of State also held that access to reception facilities was generally sufficient, as Croatia had an occupation rate of approximately 61% by the end of 2023, and Croatia was largely a transit country with only a small fraction of arrivals applying for asylum and requiring

accommodation. The Council also referenced the efforts of the authorities to manage inflow, noting that a new reception facility with 520 spaces opened in Dugi Dol in November 2023, aimed at assisting with initial registration and screening before transferring individuals to main centres in Zagreb and Kutina. The Council also noted that reports from the Croatian Law Centre and the Croatian Ombudsperson confirmed that instances of overcrowding were isolated rather than systemic issues.

The Council found no evidence that the applicant's individual circumstances would result in a real risk of ill treatment, as Croatia provided asylum applicants with access to the procedure and to reception, as well as an asylum applicant identification card and legal assistance.

Dublin transfers to Czechia

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicants v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202402220/1/V3, 30 October 2024.

The Council of State found that the Minister for Asylum and Migration fulfilled its duty to verify whether the transfer of an applicant to Czechia under the Dublin III Regulation would violate Article 3 of the ECHR on medical grounds.

Two applicants challenged a decision on a Dublin transfer to Czechia. The applicants argued that transferring one applicant, a woman, under the Dublin III Regulation would violate Article 3 of the ECHR due to medical report indicating a high suicide risk upon a transfer.

The Minister consulted the Medical Advice Bureau (BMA), which deemed the woman to be fit to travel under certain conditions. However, the BMA's assessment primarily addressed her return to Iran, not her transfer to Czechia. The Minister assured that Czechia would receive the necessary medical information and the transfer would be suspended if Czech authorities could not meet her medical needs.

The Council concluded that these measures fulfilled the state's duties as interpreted by the CJEU in *C.K. and Others v Republic of Slovenia* and dismissed the appeal.

Dublin transfers to Hungary

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v BAMF*, No 12 K 2146/24.A, 10 October 2024.

The Administrative Court of Minden annulled a decision on a Dublin transfer to Hungary because of systemic deficiencies in the asylum procedure resulting in a risk of treatment contrary to Article 4 of the EU Charter.

An Uzbek applicant appealed against the decision on a Dublin transfer to Hungary, and the court noted that the applicant did not apply for asylum in Hungary but was allowed a 1-month temporary stay and then travelled to Germany. The court noted that it was unclear whether the applicant would have access to the asylum procedure in Hungary, because the situation of those transferred under the Dublin procedure is not amongst the exceptions to the 'embassy procedure'.

Based on CJEU rulings, the court annulled the contested decision and stated that a transfer would expose the applicant to the risk of ill treatment contrary to Article 4 of the EU Charter, Article 3 of the ECHR and Article 33 of the Refugee Convention due to systemic deficiencies in the asylum

procedure and the risk of deportation, contrary to the principle of *non-refoulement*.

Dublin transfers to Poland

Netherlands, Council of State, Applicant v The Minister for Asylum and Migration, 202402084/1/V3, 4 September 2024.

The Council of State ruled that the principle of mutual trust may be relied upon for Dublin transfers to Poland, clarifying that, although a credibility assessment is not necessary during the Dublin procedure, the claims of the applicant must be taken into account when assessing whether systemic deficiencies exist in another Member State.

A Syrian applicant contested a Dublin transfer to Poland, citing fears of pushbacks to Belarus and a lack of access to the asylum procedure. The District Court of the Hague annulled the decision due to insufficient investigation into the applicant's claims and systemic deficiencies in Poland's asylum process, including violations of Article 4 of the EU Charter.

The Council clarified that a credibility assessment of the foreign national's statements was not required, as wrongly asserted by the District Court. Furthermore, the Council ruled that the Minister had adequately demonstrated, using recent reports like the EUAA's Information on procedural elements and rights of applicants subject to a Dublin transfer to Poland, that Poland provides procedural protection to Dublin transferees, that it was not plausible that the judiciary in Poland was not independent in asylum cases and that Dublin transfers to Poland may continue to be carried out.

Dublin transfers to Poland considering the Polish Refugee Board as appeal body in asylum cases

Netherlands, Council of State, *Applicant v The Minister for Asylum and Migration*, 202402763/1/V3, 4 September 2024.

The Council of State ruled that there was no evidence to substantiate that Dublin claimants would be unable to access effective legal remedies in Poland.

The Council of State rejected an appeal against a decision on a Dublin transfer to Poland, noting that the applicant had not provided sufficient evidence to prove that the judiciary in Poland lacked independence and systemic judicial impartiality for asylum cases. While it indicated that the case would be assigned to the Refugee Board, an appeal body in asylum cases which cannot be considered a 'tribunal established by law', the Council considered that this possibility alone was not enough to discredit the independence of the entire judicial process.

In addition, the Council did not find convincing evidence that the Polish Refugee Board was inclined to automatically uphold decisions of the Polish Office for Foreigners. The Council noted that, although there was a low success rate of asylum appeals, this did not mean that an asylum applicant could not access effective legal remedies. Furthermore, the Council upheld the District Court's finding that no specific facts or circumstances in the applicant's case suggested his legal proceedings in Poland would be unfairly influenced.

First instance procedures

CJEU interpretation of Article 37 of the recast APD on the designation of a safe country of origin

CJEU, *CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, C-406/22, 4 October 2024.

The CJEU clarified the interpretation of Article 37 of the recast APD on the designation of a third country as safe country of origin.

The Regional Court of Brno in Czechia submitted a request for a preliminary ruling on the scope of Member States' authority to designate safe countries of origin under the recast APD and the extent of a judicial review over the designations when an applicant challenges a decision rejecting their asylum application based on that designation. The case concerned the rejection of a Moldovan national's application for asylum in Czechia based on the fact that Moldova was a safe country of origin, with the exception of Transnistria.

The CJEU ruled that a third country does not automatically cease to meet the criteria of being designated as a safe country of origin solely because it invokes the right to derogate from the obligations under the ECHR, as set out in Article 15. The Member State that issued the designation must assess whether the conditions for such a derogation affect the country's ability to continue meeting the safety criteria.

Additionally, the court determined that a third country cannot be designated as a safe country of origin if parts of its territory do not meet the material conditions for such a designation, as outlined in Annex I of the recast APD.

Finally, the court ruled that, in the context of an appeal against a decision rejecting an asylum application examined under the special regime applicable to applications lodged by applicants from a country designated as safe, the court must conduct a full and *ex nunc* examination of the case, considering any breaches of the conditions for the designation, even if such breaches are not explicitly raised in the appeal. This includes reviewing all evidence available to ensure the decision complies with the substantive criteria for safe country designations.

Application of the Italy-Albania Protocol, including referrals to the CJEU

Italy, Civil Court [Tribunali], *Applicant v Questura di Roma*, 46690/2024, 11 November 2024.

The Tribunal of Rome referred questions to the CJEU on the compatibility of Italian law with EU law on the designation of safe countries of origin, focusing on legislative competence, transparency of sources, the court's ability to assess information on the designation of a country as safe in detention validation procedures, and the designation of countries as safe for specific categories of people.

The Tribunal of Rome was tasked with reviewing the lawfulness of detaining a national of Bangladesh, who had

requested international protection after being rescued from the sea by an Italian military vessel and taken to Albania under the Protocol between Italy and Albania.

In its review, the tribunal referred to the CJEU's judgment in *CV* (C-406/22, 4 October 2024), highlighting the necessity for a thorough judicial review of the compatibility of the designation of safe countries with EU law. The tribunal raised concerns about the legality of the detention, particularly in relation to the designation of Bangladesh as a safe country of origin under Italian law.

Referring questions to the CJEU for a preliminary ruling, the tribunal asked whether EU law permits national legislatures to directly designate a third country as a safe country of origin through primary legislation. It further asked whether such designations must be supported by transparent, accessible and verifiable sources, allowing both applicants and courts to scrutinize the decision in line with the right to effective judicial protection. The tribunal also sought clarification on whether judges, in the context of an accelerated border procedure involving a designated safe country, could rely on independent sources to assess whether the country meets the criteria to be considered as safe. Lastly, the tribunal raised the issue of whether a country can be designated safe when certain categories of people within that country do not meet the conditions set out in Annex I of the recast APD.

Italy, Civil Court [Tribunali], *Applicant v Ministry of the Interior (Territorial Commission of Bologna)*, R.G. 14572-1/2024, 25 October 2024.

The Tribunal of Bologna referred questions to the CJEU for a preliminary ruling concerning the interpretation of the criteria for designating safe countries of origin and the obligation of national courts to disapply national provisions conflicting with the recast Asylum Procedures Directive.

The Tribunal of Bologna reviewed whether the conditions for processing the applicant's claim under the accelerated procedure were met, given the designation of Bangladesh as a safe country. It noted that, under CJEU's judgment in *CV* (C-406/22, 4 October 2024), national courts must disapply a country's designation as safe if evidence shows specific groups within the country face a real risk of persecution or harm. The tribunal also observed a conflict in national case law on the judicial review of safe country designations, especially the duty of courts to assess such designations in light of updated information.

The tribunal sought clarification on whether, under Articles 36, 37, and 46 of the recast APD and Annex I, the criteria for determining whether a third country can be considered a safe country of origin should exclude countries where specific social groups, such as LGBTIQ+ individuals, ethnic or religious minorities, or women subjected to gender-based violence, face systemic persecution or serious harm. Secondly, the tribunal asked the CJEU to clarify whether the principle of the primacy of EU law requires national courts to always disapply national provisions that conflict with the recast APD, particularly

when the designation of a safe country of origin is made through primary legislation.

In addition to these referrals, several decisions were issued by tribunals in Italy, citing the CJEU judgment in CV (C-406/22, 4 October 2024) and overturning detention orders for applicants transferred or about to be transferred to Albania under the Italy-Albania Protocol:

- In a decision of 17 October 2024, the Tribunal of Catania provided a suspensive effect to an appeal lodged against a negative decision for a Bangladeshi national who was among the first group transferred to Albania, and ruled that Bangladesh could not be considered as a safe country of origin. Citing the EUAA's Country of Origin Information Bangladesh – Country Focus (July 2024), the tribunal found significant deficiencies in Bangladesh's legal and political context (authoritarian governance, a lack of judicial independence, human rights abuses), as well as failure to adopt the Refugee Convention and provide effective redress mechanisms. Based on these systemic issues and the presence of seven at risk groups for whom the presumption of safety does not apply, the tribunal ruled that Bangladesh's designation as a safe country violated EU and national laws.
- In R.G. 42251/2024 (18 October 2024) the Tribunal of Rome overturned the detention orders of 12 Egyptian and Bangladeshi applicants transferred to Albania and held that the two countries of origin could not be categorised as safe since they were not safe for specific categories of people, and consequently, since this condition was not fulfilled, the applicants could not be channelled through the accelerated border procedure and placed in detention.
- In another decision of 4 November 2024, the Tribunal of Catania similarly overturned the detention order of an Egyptian applicant, citing COI that highlighted significant human rights concerns (violations of the right to life, repression of the freedom of speech, arbitrary detention, torture, lack of fair trials, and the persecution of political opponents, religious minorities and LGBTIQ+ individuals, as well as discrimination against women and minors) and Egypt's failure to ratify the Optional Protocol to the Convention on Torture and the Optional Protocol II to the Convention on Civil and Political Rights. The court further observed that Egypt's designation as a safe country included exceptions, as also outlined by the Tribunal of Rome, so it invalidated the detention order.

CJEU interpretation of Article 38 of the recast APD on safe third countries

CJEU, *Greek Council for Refugees, Refugee Support Aegean v Minister for Foreign Affairs, Minister for Immigration and Asylum*, C-134/23, 4 October 2024.

The CJEU clarified the interpretation of Article 38 of the recast APD on the possibility of considering a third country as safe for certain categories of applicants for international protection.

The case concerned an action for an annulment submitted before the Greek Council of State against Ministerial orders designating Türkiye as a safe third country for certain asylum applicants, despite Türkiye's suspension of readmissions since March 2020. The Council of State referred

questions to the CJEU, asking whether a third country could be classified as safe if it had suspended readmissions and whether the readmission requirement must be verified when the third country is designated as safe or only when rejecting individual asylum applications.

The CJEU ruled that Article 38 of the recast APD read in light of Article 18 of the EU Charter does not preclude a Member State from classifying a third country as generally safe even if it had suspended readmissions and there was no foreseeable change in that position.

However, according to the CJEU, if readmissions were not taking place, the Member State cannot reject the asylum application as inadmissible, nor can it unjustifiably postpone its examination as this would deprive in practice the right of an applicant to obtain the status of a beneficiary of international protection.

Application of the concept of a safe third country

Bulgaria, Administrative Court Sofia city [bg. Административен съд - София град], *Applicant* v *State Agency for Refugees (Държавна агенция за бежанците при Министерския съвет, SAR)*, **7216/2024, 9 October 2024.**

The Administrative Court of Sofia City referred questions to the CJEU for an interpretation of the recast APD on the concept of safe third countries.

The asylum application of a Syrian unaccompanied minor was rejected based on the concept of a safe third country as the State Agency for Refugees (SAR) considered that he can safely return to Türkiye where he previously resided.

The Administrative Court of Sofia suspended the procedure and referred questions before the CJEU for an interpretation of Articles 33 and 38 of the recast APD, specifically on the application of the concept by the administrative authority and the obligations of the latter when assessing the case based on this concept, especially when the country did not fully transpose the provisions of Article 38 of the recast APD.

The court also sought guidance on whether criteria connecting the application to the safe third country concept should be laid out in national law. Finally, the court asked whether, in case the national law does not provide for a judicial review, the court seized with the appeal must declare its jurisdiction to hear and rule on the lawfulness of the decision taken by the administrative authority on the question of the connection with the presumed safe third country.

Threat to national security

Bulgaria, Supreme Administrative Court [Върховен административен съд], ***State Agency for Refugees (Държавна агенция за бежанците при Министерския съвет, SAR)* v *U.B.S.*, No 12353, 14 November 2024.**

The Supreme Administrative Court annulled a negative decision issued to an Iraqi applicant on the grounds of a threat to national security and ruled that the SAR failed to independently assess the facts and provide a reasoned justification.

An Iraqi national contested a negative decision issued by the SAR on his asylum application, based on grounds of a threat to national security. The Administrative Court of Harskovo annulled the contested decision as it found that SAR solely relied

on the opinion of the State Agency for National Security (SANS) and did not independently assess the case.

In an onward appeal, the Supreme Administrative Court confirmed the lower court's decision and stated that the SAR decision was insufficiently reasoned and referred to the CJEU judgment in *GM* (C-159/19, 22 September 2022) to state that the determining authority cannot rely only on the SANS opinion without conducting a thorough investigation and issuing a reasoned decision.

Assessment of vulnerability

Cyprus, International Protection Administrative Court [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *Applicant v Republic of Cyprus through the Asylum Service (Κυπριακή Δημοκρατία και/ή μέσω Υπηρεσίας Ασύλου)*, No 595/2022, 30 September 2024.

The International Protection Administrative Court (IPAC) annulled the decision of the Asylum Service in a case of a vulnerable Cameroonian applicant who was a victim of sexual violence suffering from PTSD, because the procedure at the administrative stage was devoid of due procedural guarantees. The IPAC elaborated on the importance of not substituting itself to the administrative authority when deciding and implementing these guarantees.

A Cameroonian national, victim of sexual violence, challenged a negative decision on her request for asylum arguing that there was a lack of due investigation and reasoning. The court noted that the Asylum Service carried out the interview without obtaining an expert report on her medical state of health or applying any procedural guarantee. Also, the authority did not wait for the medical results before drafting the decision so that any findings thereof would be duly considered while assessing the application. As a result, the procedure lacked due investigation regarding the profile of the applicant and her potential vulnerability. Moreover, the entire procedure was devoid of all due procedural guarantees since the statutorily mandated procedure to examine the possibility of granting these guarantees was not followed.

The court emphasised that the concept of vulnerability is multi-layered and complex. It requires the application of special procedures that are not only legal in nature but also medical, psychological and social. It noted that administrative authorities have the mechanisms and tools to approach these cases in a comprehensive way, ensuring that the application will be evaluated in light of all possible dimensions. The court nuanced that, the procedural guarantees provided by law, especially for persons who may be victims of abuse or sexual violence, must be provided from the first stage of the process, that is, during the interview before the competent authorities. If the court were to take on this role, it would risk reducing the effectiveness of the process while facing difficulties in providing these guarantees as it has neither the infrastructure nor the tools to offer the appropriate protection and psychological support that an applicant may need.

Safeguards in the age assessment procedure

Netherlands, Council of State, *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202201742/1/V2, 9 October 2024.

The Council of State ruled that, while age registrations from other EU Member States can be taken into account, the principle of mutual trust is not applicable to age assessments as EU law does not stipulate specific methods or safeguards for age assessments, nor does it regulate the value assigned to age registrations from other Member States.

The Minister for Asylum and Migration doubted the applicant's claim of being a minor, and relying on the principle of mutual trust, considered him to be an adult based on an age assessment previously conducted by Belgium. Upon appeal, the Council of State concluded that the principle of mutual trust does not apply when the Minister relies on an age registration from another EU Member State in assessing an applicant's age, thereby reversing previous case law and directing the Minister to amend its policy.

The Council cited ECtHR's judgment in *Darboe and Camara v Italy* (5797/17), and CJEU's judgments in *K and L v State Secretary for Justice and Security* (C-646/21) and *Jawo* (C-163/17).

The Council noted that, in the absence of specific EU procedural rules, Member States may establish their own age assessment procedures, ensuring compliance with EU principles of equivalence, effectiveness and fundamental rights. While the burden of proof lies with the applicant, the Minister must assist under the duty to cooperate, especially when an applicant claims to be a minor. In such cases, the presumption of minority applies, and the Minister must investigate further if necessary, prioritising the best interests of the child.

The Council also detailed the obligations and specific check to be carried out by the Minister when relying on age registration from another Member State.

Assessment of applications

Persecution due to Kurdish ethnicity

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, E904/2024, 17 September 2024.

The Constitutional Court ruled that the lower court's decision violated the constitutional right to equal treatment by failing to properly investigate the claim of persecution by the Syrian National Army based on the applicant's Kurdish ethnicity.

A Syrian applicant, member of the Kurdish ethnic group, was rejected refugee status in Austria. He claimed threats of forced conscription from both the (now former) Syrian regime and the Kurdish forces, as well as persecution due to Kurdish ethnicity and opposition views.

The Constitutional Court allowed his appeal, holding that the lower court failed to investigate key facts and deviated from the established case material, making its decision arbitrary. It had erroneously assumed that the applicant was from Al-Hasakah, despite previously acknowledging that he was from Ra's al-Ain. Thus, the Federal Administrative Court should have examined the applicant's claim in relation to Ra's al-Ain and assessed the situation in areas under the control of the Peace Spring military operation. Moreover, the Constitutional Court held that the lower court neglected the guidelines provided by the EUAA Country Guidance: Syria (February 2023), which indicated that Kurds in SNA-controlled areas faced a well-founded fear of persecution.

Gender-based persecution: CJEU judgment on the persecution of Afghan women

CJEU, *AH, FN v Federal Office for Immigration and Asylum (BFA)*, Joined Cases C-608/22 and C-609/22, 4 October 2024.

The CJEU ruled that an accumulation of discriminatory measures concerning women, which undermine human dignity, as adopted or tolerated by an 'actor of persecution' constitutes acts of persecution and that the individual assessment does not require the competent authority to consider factors particular to the personal circumstances of the applicant other than those relating to her gender or nationality.

In a case referred by the Austrian Supreme Administrative Court concerning two Afghan women, the CJEU held that specific acts (such as forced marriage or a lack of protection from gender-based violence or domestic violence) must be classified by themselves as acts of persecution. Other measures (such as requiring women to cover their entire body and face, restricting access to healthcare and freedom of movement, prohibiting them from engaging in employment, prohibiting their access to education and excluding them from political life) may not constitute a sufficiently serious breach of a fundamental right to be classified as acts of persecution when taken separately; however, taken as a whole, they have a

cumulative effect and are applied deliberately and systematically, undermining the full respect of human dignity guaranteed by Article 1 of the EU Charter and may constitute acts of persecution. In this specific case, the Taliban measures imposed after 2021 substantiated, in general, a well-founded fear on the part of Afghan women.

Therefore, it is sufficient for asylum authorities to consider nationality and gender alone, by way of an individual assessment of an application, without the need to establish an individual risk that the applicant will actually and specifically be subjected to acts of persecution if returned to her country of origin.

Gender-based persecution: Domestic violence in Iran

Cyprus, International Protection Administrative Court [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *Applicant* v *Republic of Cyprus through the Asylum Service*, No 2059/2022, 9 September 2024.

The IPAC granted refugee status to an Iranian woman due to a well-founded fear of persecution for belonging to the group of divorced women and victims of previous domestic violence who are accused of adultery. The court evaluated the future-risk for her child in the context of the claimed protection.

An Iranian single mother and her daughter, who alleged a risk of gender-based violence in Iran (physical and verbal violence, threats of being burned with acid), challenged before IPAC the rejection of their request for international protection in Cyprus. The court noted that the administrative decision had deficient methodology and reasoning, insufficiently considered the future risk for the applicant upon return to Iran since her application for divorce was pending and made no reference to the best interests of the child.

Considering available country of origin information, the court concluded that there was no evidence of the willingness and ability of the state to provide protection since it had put in place a system that discriminated women. The court noted that the applicant was a member of the social group of divorced women in Iran and victims of previous domestic violence who are accused of having an extramarital affair or committing adultery. The court also rejected the possibility of an internal protection alternative as the husband would be able to find her.

The IPAC also held that, if returned to Iran, the child could reasonably be expected to be separated from her mother, exposed to psychological violence and coercion, and to violations of a child's basic human rights. It noted that the ground of persecution would be belonging to the particular social group of children of divorced parents whose mother is accused of violating the moral norms of society/sharia law in Iran and who will be estranged from their mother.

The IPAC cited several EUAA Judicial analyses and the EUAA Practical Guide on the Application of the Internal Protection Alternative (2021).

Membership of a particular social group: LGBTIQ+ applicants and the DSSH model

Cyprus, International Protection Administrative Court [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *Applicant v Republic of Cyprus through the Asylum Service*, No 1243/2022, 25 October 2024.

The IPAC annulled the decision of the Asylum Service rejecting the SOGIESC claim of a Cameroonian applicant and granted refugee status while expressing reservations about the use of the Difference-Shame-Stigma-Harm (DSSH) model.

The applicant argued that due to her sexual orientation she would be in danger upon return to Cameroon.

The IPAC noted that an appropriate investigation of the applicant's alleged bisexuality was not carried out by the determining authority. Specifically, the court highlighted deficient interview methods, assessment and evaluation of the applicant's statements.

Upon examining the decision *ex nunc*, the court expressed its reservations about using the DSSH model, as it can limit the understanding of the complexity of an applicant's experiences if it is not applied sensitively to the cultural differences and unique experiences of everyone, since the model seems to follow a linear narrative around sexuality which does not always fit with experiences from different cultures.

The court then evaluated the applicant's statements through common credibility indicators, and stressed the particular importance of the statements of the applicant on how she expresses her sexual orientation in Cyprus. The court granted the applicant refugee status.

To reach its conclusion, the court referred to case law of the CJEU (*X, Y and Z*), the ECtHR (*AAM v Sweden*) and to the EUAA Judicial Analysis on Qualification for international Protection (16 January 2023).

Assessment of credibility in LGBTIQ+ claims

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration*, NL23.11884 T, 13 September 2024.

The District Court of the Hague seated in Roermond ruled that the Minister for Asylum and Migration failed to carry out an adequate credibility assessment, taking into account the personal circumstances of an LGBTIQ+ applicant from Nigeria.

A Nigerian applicant appealed against a negative decision of the Minister for Asylum, by contesting the investigation and assessment made on account of his homosexuality. The court allowed the appeal as it found several shortcomings in the procedure and assessment. It noted that the applicant lacked adequate interpretation in his native language and did not have a female officer for the interview as requested. These deficiencies, which could affect the applicant's ability to express his emotions and personal experiences in regard to sensitive topics like sexual orientation, can undermine the evaluation and the standard of proof to be applied in order to consider the alleged sexual orientation to be credible.

The court acknowledged that during the personal interview, the interviewer acted carefully by asking questions about the applicant's psychological issues,

medication, and treatment, and by allowing opportunities to pause the interview. However, it considered that the determining authority failed to reason on the weight given to the medication and psychological condition, which are parts of the applicant's frame of reference, in the assessment of the credibility of his statements. Also, the court found that third-party statements from two Dutch LBGTIQ support groups were not sufficiently taken into account in the credibility assessment and the authorities did not ask more questions during the interview. The contested decision was annulled in the part which concerned the statements by the applicant on sexual orientation not to be credible and referred the case back for a re-examination.

Afghan returnees from Western countries

Netherlands, Council of State, *Applicant v The Minister for Asylum and Migration*, 202401462/1/V2, 20 November 2024

The Council of State ruled that Afghan returnees from Western countries are not all at a real risk of inhumane treatment upon return simply because they have stayed in the West, and individual circumstances must be taken into account.

An Afghan asylum applicant had his request for international protection rejected by the Dutch Minister for Asylum and Migration in July 2023, citing insufficient credible evidence of threats from the Taliban due to his father's employment with a NATO-affiliated company. The District Court of the Hague overturned this decision, requiring further investigation into risks faced by Afghan nationals returning from Western countries.

The Council of State reviewed the legal framework and public sources, noting that, while returnees might attract negative attention from the Taliban or communities, this did not establish systematic serious harm. Risk assessments depend on individual circumstances.

In this case, the Council found no credible evidence of specific risks to the applicant, citing his limited time in the West, Pashtun ethnicity and adherence to Islam. It ruled that a further investigation was unnecessary and upheld the Minister's rejection of asylum.

Persecution of Gülenist supporters in Türkiye

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration*, NL24.20477, 22 October 2024.

The District Court of the Hague annulled a negative decision of the Minister of Asylum and Migration in a case concerning a Turkish applicant who is a supporter of the Gülenist movement.

The District Court ruled in favour of the applicant, a Turkish national citing fears of persecution due to his support for the Gülenist movement. The court found the Minister's rejection insufficiently substantiated. It noted that as a member of a recognised risk group, the applicant required a lower threshold of evidence to prove his fear of persecution. The court emphasised the need for a holistic assessment of facts, including that the applicant's home was repeatedly visited by police, his family ties to the movement, as well as his father's conviction.

It dismissed claims that the applicant's lawful exit undermined his case and found

that the lack of documents like indictments did not negate his fear, especially given technological issues with accessing evidence.

Persecution based on political activities and military conscription: Russian applicants

Bulgaria, Supreme Administrative Court [Върховен административен съд], *M.K.K. v State Agency for Refugees (SAR)*, No 11989, 7 November 2024.

The Supreme Administrative Court found no substantiated grounds for a Russian applicant's claims of persecution based on military conscription or political opinion.

A national of the Russian Federation appealed the decision of the State Agency for Refugees, refusing to grant him international protection. The Supreme Administrative Court referred to relevant CJEU jurisprudence on claims based on military service obligations, such as *Andre Lawrence Shepherd v Bundesrepublik Deutschland* (C-472/13, 26 February 2015) and *EZ v Bundesrepublik Deutschland* (C-238/19, 19 November 2020).

The court determined that the requirement of applicability of compulsory military service to all military personnel was not present in this case. It noted that at the time of the decision, not all Russian men over 18 were required to fight in the war in Ukraine, meaning that there was no general mobilisation. Furthermore, it highlighted that the applicant had not been issued any summons to join the military. It clarified that without an explicit call to serve, the applicant's military service obligations could not be considered a basis for asylum. Consequently, the court concluded that the applicant's fear of being forced to participate in crimes related to the war in Ukraine was not substantiated.

The court also rejected the applicant's claims of persecution based on political activity in Bulgaria, noting that his involvement in a rally did not establish a clear political opinion that would expose him to a risk of persecution. It also dismissed his appeal for humanitarian status, finding no evidence that he had been forced to leave Russia due to a genuine threat of serious harm or that he would face risks such as torture or inhuman treatment upon return. The court emphasised that, at the time of the decision, the situation in Russia did not indicate an ongoing internal or international conflict that would place the applicant in such danger.

Bulgaria, Administrative Court Varna [bg. Административен съд -Варна], *Applicant v State Agency for Refugees (SAR)*, No 10594, 17 October 2024.

The Administrative Court of Varna considered a Russian applicant to be eligible for protection on grounds of a risk of persecution due to military conscription and membership of a particular social group.

A Russian national argued that he would face a real risk of persecution on grounds of military conscription because he was already summoned for mobilisation, a law was adopted by Russia to create a digital unified register of citizens who are fit for military service and the consequences of desertion were provided by the Criminal Code of Russia.

The court allowed the appeal and considered that the administrative authority insufficiently investigated the case. The court instructed the SAR to conduct an individual and full assessment

of all facts and elements of the case, including COI, because it considered that the applicant would be eligible for protection on grounds of a risk of persecution due to military conscription and membership of a particular social group.

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (BAMF)*, 3 A 140/24 MD, 1 October 2024.

The Administrative Court of Magdeburg found a Russian national to be eligible for subsidiary protection, as being forced to participate in a war of aggression that violates international law leads to a risk to life.

A Russian national was rejected a subsequent application for asylum on grounds of lack of new facts related to the risk of forced recruitment for military service. The Administrative Court of Magdeburg annulled the contested decision and found, based on COI, including the EUAA COI Report: The Russian Federation – Military Service (December 2022), that conscripts are at risk of being deployed to combat operations in the war of aggression against Ukraine. The court assessed that the war was in violation of international law, that the risk of conscription was probable and as such, the applicant met the eligibility requirements for subsidiary protection.

Military conscription: Syrian applicants

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, E 3587/2023-15, 2 October 2024.

The Constitutional Court upheld the Federal Administrative Court's decision to reject the application of a Syrian national, ruling that he could afford the exemption fee to avoid military service and his return to Damascus was feasible given the security situation, family support and availability of essential services.

The Constitutional Court upheld the Federal Administrative Court's decision to reject the asylum application of a Syrian national. It found no constitutional violation in the lower court's conclusion that the applicant could afford the exemption fee and undertake the necessary administrative steps to secure his exemption from military service in Syria, deeming this option reasonable and feasible for him.

The Constitutional Court also upheld the lower court's assessment on the applicant's return to his home city of Damascus. It concluded that the security situation in Damascus was sufficiently stable, the applicant had strong family support from relatives abroad and he would have access to essential services like water, electricity and healthcare. Therefore, his return was deemed feasible and not in violation of his rights under Articles 2 or 3 of the ECHR.

Regarding subsidiary protection, the Constitutional Court agreed with the lower court's assessment that, despite the ongoing civil war in Syria, the conflict was concentrated in the northwest and Damascus had been largely stabilised since the government's recapture of surrounding areas. Furthermore, the court noted that the applicant did not face any exceptional risks, as there was no indication of persecution or a real threat to his life or health in Syria.

The court also addressed the applicant's claim under Article 8 of the ECHR, ruling that the public interest in deporting a foreign national without a legal status outweighed the applicant's interest in remaining in Austria. The Constitutional Court confirmed that the Federal Administrative Court had properly balanced these interests.

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *Applicant v Federal Office for Immigration and Asylum (BFA)*, W261 2289490-1, 12 September 2024.

The Federal Administrative Court referred questions to the CJEU on the interpretation of Articles 9(2)(e) and 9(2)(c) of the recast QD, addressing the possibility of paying an exemption fee to avoid military service in Syria.

The applicant requested international protection, claiming he fled Syria to avoid conscription in the Syrian military. The BFA granted subsidiary protection but rejected his application for refugee status, reasoning that the applicant could avoid military service by paying a fee, as prescribed by Syrian military law. The applicant appealed, asserting that he objected to the fee on political and conscientious grounds, as this would financially support a government he opposed.

In reviewing the case, the Federal Administrative Court referred several questions to the CJEU for clarification of Articles 9(2)(e) and 9(2)(c) of the recast QD. The court sought guidance on whether the possibility of paying an exemption fee, which is the sole means of avoiding conscription, could preclude the finding of persecution under these provisions, especially where the applicant refuses payment on political or moral grounds. The court also asked whether the payment of such an exemption fee could be considered an act of support for the Syrian government, raising concerns about the potential conflict with EU sanctions under Council Regulation No 36/2012, which prohibits the allocation of financial resources to entities linked to the Syrian military, including the Syrian Ministry of Defence.

After this referral, in case E 3587/2023-15 decided on 2 October 2024, the Austrian Constitutional Court upheld a decision to reject the application of a Syrian national, ruling that he could afford the exemption fee to avoid military service and that his return to Damascus was feasible, given the security situation, family support and availability of essential services.

Fear of future persecution in the country of origin: Investigation of criminal offences in Türkiye

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. v State Secretariat for Migration (SEM)*, E-4103/2024, 8 November 2024.

The Federal Administrative Court ruled, in a leading case, on the relevance in the asylum procedure of ongoing investigations in Türkiye for critical political statements and reassessed the situation in two provinces in view of the implementation of returns.

A Turkish national of Kurdish origin, who claimed a fear of persecution considering that criminal investigations were opened against him in Türkiye, was rejected asylum in Switzerland.

In a leading judgment of joint divisions, the court ruled that investigations in Türkiye were not relevant under the asylum law and could not give rise to a well-founded fear of future persecution in the home country. The court noted that Turkish asylum seekers were not eligible for refugee protection solely because the public prosecutor's investigations were pending in their home country for “insulting the president” or “propaganda for a terrorist organisation”.

The court further assessed the possibility of executing the expulsion to the applicant’s region of origin. In view of a significant change in the security situation in the provinces of Hakkâri and Şırnak, the court ruled that the general considerations that the return was not reasonable were no longer valid and that the assessment must be done on a case-by-case basis. The court confirmed that expulsion could be implemented because he was not in a situation of risk of not securing a minimum livelihood as he is a young healthy man, with a good education, family and network who could provide financial support.

Cessation of UNRWA assistance

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *Applicant v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 23042517 and 23042541 C+, 13 September 2024.

The CNDA granted refugee protection to a Palestinian couple from the Gaza Strip, considering that UNRWA was no longer able to effectively provide assistance and protection to any Palestinian residing in that territory, in application of the CJEU judgment of 13 June 2024 in C-563/22.

The CNDA examined UNRWA's ability to fulfil its mission in light of the deterioration of the security and humanitarian situation in the Gaza Strip since 7 October 2023. The CNDA considered that the Gaza Strip is in the grip of an armed conflict between Hamas forces and Israeli armed forces and that this territory is facing a major humanitarian crisis. In reaching this conclusion, it relied on publicly available documentary sources, including data from the NGO Armed Conflict Location and Event Data Project (ACLED), the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the Integrated Food Security Phase Classification (IPC), notes from the World Health Organization (WHO) and press releases from the United Nations International Children's Emergency Fund (UNICEF). The court referred to the CJEU judgment *LN, SN* (C-563/22) of 13 June 2024, in which the CJEU held that applicants of Palestinian origin registered with UNRWA should be granted refugee status if UNRWA’s protection or assistance has ceased.

Assessment of vulnerability aspects in the context of indiscriminate violence: Subsidiary protection for member of minority clan in Somalia

Cyprus, International Protection Administrative Court [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *Applicant v Republic of Cyprus through the Asylum Service*, No 691/22, 5 September 2024.

The IPAC granted subsidiary protection based on Article 15(c) of the recast QD to an applicant from Qoryoley, Lower Shabelle, considering a real risk of serious

harm due to the indiscriminate use of violence in the area and the applicant belonging to a minority tribe which placed him in a more vulnerable situation within the conflict dynamics in the area.

A national of Somalia from Qoryoley, Lower Shabelle had his application for refugee protection rejected. Upon appeal, the IPAC confirmed that he did not qualify for refugee status; however, the court evaluated the applicant's eligibility for subsidiary protection. Citing CJEU judgments in *Elgafaji* (C-465/07) and *CF and DN* (C-901/19), and the EUAA COI Report Somalia: Security Situation (February 2023), the court examined the situation of indiscriminate violence in Somalia. The court focused specifically on the security situation in Lower Shabelle and Qoryoley, noting a high number of incidents related to intra-clan conflicts and Al Shabaab activities. It concluded that the region was highly volatile, with frequent armed attacks and significant displacement of civilians due to ongoing conflict.

Applying the *Elgafaji* 'sliding scale', the court found that, as a member of a minority clan, the applicant would be unable to support himself upon return due to the high level of indiscriminate violence in the Lower Shabelle region and his inability to rely on protection from state authorities or his clan. It emphasised that individuals from minority clans in Somalia, like the applicant, are more likely to be exposed to violence, as Al Shabaab typically protects members of majority clans but does not extend the same support to minority groups. The court also noted that the applicant had no reliable support network in Somalia, as he could not depend on his two older siblings and no internal protection alternative was available.

Subsidiary protection: South Sudan

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant* v *The Minister for Asylum and Migration*, NL22.7738, 21 October 2024.

The District Court of the Hague seated in Rotterdam ruled that the Minister for Asylum and Migration failed to adequately assess the risk of forced recruitment and indiscriminate violence in South Sudan.

A South Sudanese national sought asylum in the Netherlands, citing fears of forced recruitment, indiscriminate violence and past persecution, including family members being killed.

While the court upheld the Minister's scepticism about the plausibility of the applicant's narrative, it criticised the dismissal of his fear of forced recruitment, given consistent reports of ongoing recruitment by both government and rebel forces. The court also found the Minister's assessment of South Sudan's general security situation inadequate. It noted that the Minister downplayed key evidence from UNHCR and other reports highlighting persistent violence, displacement and humanitarian crises. The court emphasised the need to consider the applicant's personal circumstances, including his fear of forced recruitment, displacement, tribal identity as a Nuer and the lack of government protection, in conjunction with the broader security situation. The Minister was ordered to reassess the case.

Subsidiary protection: Syria

Denmark, Refugee Appeals Board [Flygtningenævnet], *Applicants v Danish Immigration Service*, 22 October 2024.

The Refugee Appeals Board decided that there was no basis for assuming that anyone will be at a real risk of being subjected to treatment in violation of Article 3 of the ECHR in Homs (Syria) solely because of mere presence in that area.

The Danish Immigration Service refused to extend the residence permits of beneficiaries of temporary protection from Syria. On appeal, the Refugee Board held that the conditions in Homs (and the applicant's individual circumstances) no longer justified a continued residence permit on this basis.

The Refugee Appeals Board stated that the general security situation remained serious and fragile, but it did not have such a character that there was a basis for assuming that anyone would be at a real risk of being subjected to treatment in violation of Article 3 of the ECHR solely as a result of mere presence in the area. Furthermore, it noted that the conflict between Israel and Lebanese Hezbollah in the Middle East, which negatively affects the situation in the Homs province, cannot lead to a different assessment.

In one of the cases, the board found that Article 8 of the ECHR prevented a refusal to extend the residence permit due to close family ties in Denmark.

Secondary movements

Germany, Federal Administrative Court [Bundesverwaltungsgericht], *Applicants v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 1 C 23.23 and 1 C 24.23, 21 November 2024.

The Federal Administrative Court clarified the situation of beneficiaries of international protection in Italy, holding that single, employable and non-vulnerable beneficiaries of international protection were not exposed to the substantial risk of degrading or inhuman living conditions if transferred to Italy and thus their applications for protection in Germany may be dismissed as inadmissible.

The Federal Administrative Court clarified the situation of beneficiaries of international protection who must return to Italy, a matter that has been assessed differently among the Higher Administrative Courts.

The Federal Administrative Court held that it was not to be expected with considerable probability that people who are granted international protection in Italy would find themselves in extreme material hardship there, which would not allow them to satisfy their most basic needs in terms of accommodation, food and hygiene. They would probably at least be able to find accommodation in temporary shelters or emergency housing with basic sanitary facilities offered by local authorities, the church and other non-governmental organisations, be guaranteed basic medical care and cover their other basic needs, including food, through their own income, which might be supplemented by support services. This assessment would also apply to women entitled to international protection.

Reception

Access to the labour market

Ireland, Supreme Court, *L.K.* v *International Protection Appeals Tribunal,The Minister for Justice, The Attorney General*, [2024] IESC 42, 23 October 2024.

The Supreme Court referred questions to the CJEU for a preliminary ruling on the interpretation of Article 15(1) of the recast RCD on access to the labour market for applicants for asylum and the appropriate test when considering whether a delay in taking a decision by the asylum authority may be attributed to the applicant.

L.K., a Georgian national, applied for asylum in Ireland and did not submit in time the international protection questionnaire. He was granted several extensions as he did not have a solicitor for legal advice and because there were difficulties with translators due to the COVID-19 pandemic. His request for a labour market permit, made after 8 months had expired without a decision on the request for asylum being taken, was denied with the justification that the delay was attributable to him.

The Supreme Court asked the CJEU:

- whether the fact that the applicant did not provide information for more than 9 months, is an act that may constitute a delay attributable to the applicant;
- whether any delay in processing the application must be exclusively that of the applicant; and
- whether Ireland properly transposed Article 15(1) of the recast RCD when adding the phrase 'attributed in part' to the applicant.

Sanctions for breaking reception centre rules

Netherlands, Council of State, *Applicants* v *The Minister for Asylum and Migration*, 202300933/1/V1 and 202401533/1/V1, 11 September 2024.

The Council of State ruled in two judgments that the transfer from a regular reception centre to an Extra Enforcement and Supervision Location (HTL) did not constitute a deprivation of liberty, despite significantly restricting the freedom of movement. It also analysed additional restrictions of reception rights.

The cases involved applicants transferred to a stricter reception centre (HTL) after violating rules and exhibiting problematic behaviour, being confined to the HTL premises. They invoked a deprivation of liberty under Article 5 of the ECHR.

The Dutch Council of State concluded that restrictions such as mandatory reporting and structured activities, did not amount to deprivation of liberty. Residents could leave the HTL without legal repercussions, and the stay was limited to 13 weeks, with opportunities for behaviour-based advancement to less restrictive conditions. Regarding isolation in a ROV room, the Council noted that, while it involved significant restrictions on the freedom of movement and limited access to facilities, some level of freedom was maintained and residents could receive visitors.

The Council referred to the CJEU judgment in *FMS* , the ECtHR judgments in *Ilias and*

Ahmed v Hungary and *R.R. and Others v Hungary*.

Reception conditions

Netherlands, Court of Justice of Northern Netherlands (Rechtbank Groningen - Noord-Nederland), *Municipality of Westerwolde v Central Agency for the Reception of Asylum Seekers (COA)*, C/18/238475/KG ZA 24-145, 30 October 2024.

The District Court of Northern Netherlands seated in Groningen increased the penalty payment for the COA for exceeding the occupancy limit of 2,000 people at Ter Apel reception centre to EUR 50,000 per day, up to a maximum of EUR 5 million.

The District Court of Northern Netherlands ruled in favour of the Municipality of Westerwolde in a case against the COA on overcrowding at the Ter Apel reception centre. The court upheld a 2,000-person occupancy cap, including individuals present during the day, aligning with national legal standards for asylum care. The COA argued that only overnight occupants should count but was found non-compliant as occupancy regularly exceeded the limit.

Despite COA's claims related to a national shelter crisis, housing shortages and limited municipal cooperation, the court found COA's efforts insufficient and noted a lack of collaboration with the Minister for Asylum and Migration. To enforce compliance, the court raised the penalty for exceeding the cap to EUR 50,000 per day, up to a maximum of EUR 5 million.

Detention

Scope of a judicial review

CJEU, *C. v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, C-387/24, 4 October 2024.

The CJEU clarified the scope of the judicial review of consecutive detention measures.

The CJEU clarified national authorities' obligations in case of consecutive detention of applicants and the impact of judicial reviews under provisions of different legislations, namely the Dublin III Regulation and the Return Directive. The court stated that "Article 15(2) and (4) of the Return Directive, Article 9(3) of the Reception Conditions Directive and Article 28(4) of the Dublin III Regulation, read in the light of Articles 6 and 47 of the EU Charter, must be interpreted as not precluding national legislation which does not require the competent judicial authority to order the release of a third-country national who is in detention pursuant to a measure adopted on the basis of the Return Directive, on the ground that that person, whose detention had initially been ordered pursuant to a measure adopted on the basis of the Dublin III Regulation, had not been released immediately after a finding that that latter measure had become unlawful".

ECtHR judgments on detention

ECtHR, *Z.L.* v *Hungary*, 13899/19, 12 September 2024.

The ECtHR found violations of Articles 3, 5(1) and 5(4) of the ECHR in a case concerning the confinement of applicants in the Röszke transit zone for 17 months between 2019-2020.

A mother, her three minor children and an adult child from Iran lodged complaints under Articles 3, 5 and 8 of the ECHR, alleging violations related to inadequate detention conditions, food deprivation, prolonged confinement and inadequate medical care for one child.

The ECtHR determined that the three minor children, aged 17, 15 and 13, were subject to a significant violation of Article 3 of the ECHR due to their prolonged, 17-month confinement in the Röszke transit zone. The court noted that the first and second applicants were denied food for a period of 4 days and rejected the government's claim that food could be obtained at their own expense. It found that the authorities failed to have due regard to the state of dependency in which the applicants lived during this period.

The court also held that the applicants' prolonged confinement in the transit zone during their asylum proceedings amounted to a *de facto* deprivation of liberty. Finally, the court found violations of Article 5(1) and (4) due to the lack of adequate safeguards against arbitrariness in the alien policing procedure. It held that the absence of formal detention decisions, the indefinite duration of confinement and insufficient judicial review mechanisms rendered the national law incompatible with the lawfulness standard required by the ECHR.

ECtHR, *J.B. and Others* v *Malta*, No 1766/23, 22 October 2024.

The ECtHR found Malta in violation of Articles 3 and 5(4), alone and jointly with Article 13 of the Convention, for detaining five Bangladeshi unaccompanied children in Ħal Far Initial Reception Centre. It called on the state to enact legislation to provide for an effective remedy to complain about ongoing detention conditions and ensure an independent and impartial Immigration Appeals Tribunal.

The ECtHR found violations of Article 3 for inadequate conditions of detention of five Bangladeshi unaccompanied minors detained for 2 months at the Hal Far Initial Reception Centre, in view of their vulnerability as minors and the effects of the detention on their mental health. Jointly with Article 3, the court found a violation of Article 13 of the Convention due to the absence of an effective remedy for the applicants to complain about the conditions of detention.

Regarding Article 5(1), the court noted that, although the measure of keeping migrants in a hotspot for a limited time and with strict necessity may be justified for identification, registration and interviews, the measure applied to the applicants amounted to detention and lacked any procedural safeguards. The court found that the applicants' detention between 18-30 November 2022 was unlawful and contrary to Article 5(1) of the ECHR. Even after the detention order of 30 November 2022, the situation of the applicants did not change as they were kept at the same place and in the same conditions. The court reiterated that detention, especially of minors, must be a measure of last resort, noted that the authorities did not consider alternatives to detention, and that contrary

to legal provisions, no automatic judicial review took place.

In addition, the court noted that the applicants considered the review of the detention order before the Immigration Appeals Board (IAB) as ineffective, due to an alleged lack of independence and impartiality of its members. It noted that both the European Commission and the Venice Commission had expressed serious concerns about the functioning of similar bodies. Moreover, the court noted that 5 months without any automatic review could not be considered compliant with Article 5(4), in the particular circumstances of the case.

In view of the seriousness of the issues, the court called for the adoption of general measures on two main aspects: establishment of an Immigration Appeals Tribunal compliant with the requirements of independence and impartiality of its members and the provision of an effective remedy, both in law and in practice, to complain about the conditions of an ongoing detention.

Detained applicants for temporary protection

Netherlands, Council of State, *Applicants v The Minister for Asylum and Migration*, BRS.24.000105, 30 October 2024.

The Council of State ruled that applicants for temporary protection cannot be detained on the grounds of Article 6(3) of the Aliens Law 2000.

Two Ukrainian nationals requested protection at Schiphol Airport on 6 March 2024, invoking the Temporary Protection Directive. They were detained by the Minister for Asylum and Migration under Article 6(3) of the Aliens Law 2000.

On appeal, the Council of State noted that Article 6(3) of the Aliens Law 2000 transposes Article 8(1)(c) of the recast RCD, which does not apply to individuals covered by the Temporary Protection Directive as per Article 3(3) of the recast RCD. The Council ruled that the detention of Ukrainians invoking temporary protection under Article 6(3) was unlawful and upheld the applicants' appeal.

Second instance procedures

Appeals in return-related decisions

Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshof), *Applicant v Federal Office for Migration and Refugees (BAMF)*, 13 ME 201/24, 29 October 2024.

The Higher Administrative Court of Lower Saxony clarified the inadmissibility of second appeals against a decision related to deportation.

The Higher Administrative of Lower Saxony clarified the provisions of Section 80 of the Asylum Act with regard to second appeals against decisions related to returns after the legislative amendments of February 2024. It stated that, under Section 58(1) of the Residence Act, a measure to enforce the threat of deportation under Section 34 of the Asylum Act or the deportation order under Section 34a of the Asylum Act is considered deportation. Decisions related to these provisions are subject only to the first appeal as provided under Section 80 of the Asylum Act. The same was concluded regarding judicial decisions directly or indirectly related to return proceedings (legal aid, costs, suspensive effect, etc.).

Content of protection

Family reunification with a second wife and children

Germany, Federal Administrative Court [Bundesverwaltungsgericht], *Applicants*, 1 C 11.23, 26 September 2024.

The Federal Administrative Court held that family members (second wife and children) of a person entitled to subsidiary protection living with the first wife and children cannot, in principle, be granted a residence permit for humanitarian reasons because it is legally impossible for them to leave the country for family reasons.

The second wife and the children of a Syrian national, beneficiary of subsidiary protection in Germany and living in Germany with his first wife and six other children, requested family reunification.

Their appeal before the Federal Administrative Court was rejected. The court held that Section 36a of the Residence Act fundamentally contradicts the applicability of Section 25(5) of the Residence Act, according to which a residence permit can be issued for humanitarian reasons due to the legal impossibility of leaving the country through no fault of one's own. The court noted that Section 36a of the Residence Act requires the existence of humanitarian reasons, which are rooted in the protection of marriage and family, among other things.

The court added that Section 36a(2), sentence 2 of the Residence Act provides for a quota of 1,000 visas per month, which clearly shows the legislator's aim of preventing the reception and integration systems and society from being overwhelmed and of controlling the reunification of family members of persons entitled to subsidiary protection in terms of residence law through the quota procedure. The court highlighted that the resulting blocking effect of Section 36a of the Residence Act opens up scope for the application of Section 25(5) of the Residence Act only in the case of subsequent events occurring in the federal territory, which, according to the findings of the appeal court, did not occur in the present case.

Thus, the court held that Section 36a of the Residence Act regulates family reunification for beneficiaries of subsidiary protection in a fundamentally conclusive manner and blocks recourse to Section 25(5) of the Residence Act if the legal impossibility of leaving the country is based solely on family ties to the person entitled to subsidiary protection that already existed before entry.

Family reunification: Establishing family ties between a grandparent and their grandchild

Netherlands, Council of State, *Applicant v The Minister for Asylum and Migration*, 202307322/1/V2, 15 November 2025.

The Council of State ruled that cohabitation is not sufficient alone to establish close family ties under Article 8 of the ECHR between a grandparent and a grandchild for the purposes of family reunification.

A Syrian national sought a residence permit to join her son and grandchild who are beneficiaries of international protection in the Netherlands, citing family life under Article 8 of the ECHR. The State Secretary denied her application.

On appeal, the Council of State ruled that cohabitation alone was insufficient to establish such ties without evidence of caregiving responsibilities. It also rejected claims of exceptional dependency on her son. The Council upheld the State Secretary's decision to deny the permit and dismissed the applicant's appeal.

Family reunification: The possibility for a broken family relationship to be restored

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202307672/1/V1, 20 November 2024.

The Council of State ruled on the assessment of family reunification applications and found that the position of the Minister for Asylum and Migration that a broken family relationship can never be restored is not in line with CJEU rulings.

The Council of State analysed the Minister's policy on assessing *de facto* family relationships in family reunification cases at two key reference points: the sponsor's entry into the Netherlands (reference point 1) and the decision on the application (reference point 2). The Minister's policy assumed that, if the family relationship was not intact at either reference point, the application can be

rejected without considering whether the relationship may have been restored. The court referred to two rulings issued in 2022 by the CJEU in *SW (C-273/20), BL, BC v Stadt Darmstadt (C-273/20), Stadt Chemnitz (C-355/20)* and *Bundesrepublik Deutschland v XC, joined by Landkreis Cloppenburg* (C-279/20) (hereafter, *XC*), which describe the assessment of effective family life within the meaning of Article 16(1b) of the Family Reunification Directive.

The Council ruled that the *XC* judgment makes clear that a broken family relationship before the point of entry can be restored and the Minister must consider all relevant facts, including efforts to restore relationships.

The Council similarly noted that in accordance with the *XC* judgment, where a *de facto* family relationship existed at the time of the sponsor's entry but was later broken, the Minister has the responsibility to assess whether the relationship has been restored at the point of making the decision on the application.

Effective date of asylum residence permit and subsequent applications

Netherlands, Council of State, *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202301617/1/V2, 7 November 2024.

The Council of State ruled that the declaratory nature of refugee status does not preclude aligning the effective date of an asylum residence permit with the date of a successful subsequent application.

An Afghan national sought to backdate his temporary asylum residence permit to 2016, the date of his first application. His initial asylum request, based on threats to his family, was rejected. In 2020, he filed a second application citing his homosexuality, which was deemed credible and asylum was granted from that date. The District Court ruled in his favour, arguing that refugee status is declaratory and he was eligible as a refugee in 2016 despite not disclosing his sexual orientation earlier due to cultural and psychological barriers.

On appeal, the Council of State overturned this ruling. It affirmed that, while refugee status is declaratory, the effective date of a residence permit may vary and is linked to the application where the successful asylum grounds were raised. The Council emphasised the distinction between refugee status and a residence permit, citing CJEU judgments to support its reasoning. Consequently, the Minister's decision to set the permit's effective date in 2020 was upheld.

Return

Non-refoulement and return decisions

CJEU, *K, L, M, N* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, C-156/23, 17 October 2024.

The CJEU clarified that both administrative and judicial authorities must ensure compliance with the principle of non-refoulement when deciding on a residence permit and on the enforcement of a return decision, respectively.

The Court of the Hague seated in Roermond submitted a request for a preliminary ruling on the lawfulness of the rejection of a residence permit application in the Netherlands and the enforcement of a prior return decision adopted during an international protection procedure.

The CJEU ruled that Article 5 of the Return Directive, in conjunction with Article 19(2) of the EU Charter, requires administrative authorities to ensure compliance with the *non-refoulement* principle when rejecting a residence permit application. Specifically, authorities must review any prior return decision which was suspended during the international protection procedure to determine if enforcing it would breach the *non-refoulement* principle.

The court further affirmed that Article 13 of the Return Directive, in conjunction with Articles 5, 19(2) and 47 of the EU Charter, obliges national courts, when reviewing the legality of a decision rejecting a residence permit and lifting the suspension of a return decision, to raise, on their own initiative, any potential violations of *the non-refoulement* principle.

Rights of an illegally-staying third-country national when a return is postponed

CJEU, *LF* v *State Agency for Refugees (Държавна агенция за бежанците при Министерския съвет, SAR)*, C-352/23, 12 September 2024.

The CJEU ruled that, when a return is postponed, the authorities must provide the person with a written confirmation that the return decision will temporarily not be enforced; however, irrespective of the duration of that person's stay in the territory, there is no obligation under Articles 1, 4 and 7 of the EU Charter and the Returns Directive to provide a right to stay on humanitarian grounds.

The CJEU ruled that the recast QD does not preclude a Member State from granting a right to stay to a third-country national for reasons which have no connection with the general scheme and objectives of that directive, provided that that right to stay can be clearly differentiated from the international protection status under the recast QD.

Furthermore, the court held that, under Article 14(2) of the Returns Directive, a Member State which is unable to remove a third-country national within the periods laid down under Article 8 must provide that person with a written confirmation that, although staying illegally, the return decision will temporarily not be enforced.

Lastly, the CJEU held that under Articles 1, 4 and 7 of the EU Charter, read in conjunction with the Returns Directive, a Member State is not required to grant a

right to stay on compelling humanitarian grounds to a third-country national who resides illegally, irrespective of the duration of the stay. If the person has not been removed, he/she may rely on the EU Charter and Article 14(1) of the Returns Directive. Furthermore, if that third-country national also has the status of an applicant for international protection, authorised to remain in the territory of that Member State, he/she may also rely on the rights enshrined in the recast Reception Conditions Directive.

Risk for LGBTIQ+ persons upon a return to Iran

ECtHR, *M.I. v Switzerland*, No 56390/21, 12 November 2024.

The ECtHR found that there would be a violation of Article 3 if an Iranian national is expelled without a fresh assessment of the risk of ill treatment, in view of his sexual orientation and the discrimination against LGBTIQ+ persons in Iran.

An Iranian national's request for asylum was rejected in Switzerland and the authorities considered that his expulsion would not expose him to a risk of ill treatment contrary to Article 3 of the ECHR.

The applicant complained before the ECtHR on Articles 2, 3, 8, 13 and 14 of the Convention. An interim measure request was ordered by the court on 23 November 2021 when the Swiss government was indicated not to expel the applicant to Iran during the proceedings before the ECtHR.

The court held that the Swiss authorities failed to conduct a proper investigation into the applicant's risk of ill treatment as a homosexual man in Iran or whether state protection against ill treatment by non-state actors was available. The court did not question the credibility assessment of the asylum claim based on the risk of persecution on grounds of sexual orientation, but it took into consideration the fact that ill treatment may also be inflicted by non-state actors other than family members. As such, the court questioned the ability and willingness of Iranian state authorities to provide the applicant with adequate protection and considered that the Swiss authorities failed to investigate this relevant aspect.

Thus, the court held that the applicant's removal to Iran without a fresh reassessment of these issues would result in a violation of Article 3 of the Convention.

Proportionality of expulsion and compatibility with Article 8 of the ECHR

ECtHR, *Winther v Denmark*, No 9588/21, 12 November 2024.

The ECtHR ruled that the expulsion and 6-year re-entry ban for a Syrian national were proportionate and did not breach Article 8 of the ECHR, considering the seriousness of the applicant's crimes, his limited integration into Denmark and his family's personal circumstances.

The applicant was convicted of multiple crimes, sentenced to 7 months' imprisonment and ordered to be expelled with a 6-year re-entry ban. The High Court of Western Denmark and the Supreme Court upheld these measures as proportionate due to the seriousness of his crimes and personal circumstances. The applicant later claimed that the Supreme Court's decision violated Article 8 of the ECHR.

The ECtHR cited its judgments in *Üner v the Netherlands* (18 October 2006) and

Savran v Denmark (7 December 2021), deeming necessary to assess whether the interference with the applicant's right to respect for private and family life was necessary in a democratic society. It observed that the Supreme Court acknowledged the impact of an expulsion on his family but noted the relatively short duration of their life together and the young age of the children, which would make separation less harmful.

In relation to the entry ban, the court held that, while such a ban can sometimes support the proportionality of expulsion, its effectiveness depends on the likelihood of re-entry. Given the applicant's behaviour (leaving Denmark for asylum in the Netherlands and not complying with obligations), the court found his chances of returning uncertain. It noted that, in practice, a time-limited re-entry ban could act as a *de facto* permanent ban if a return is not realistically possible. Despite this, the court found that the seriousness of the applicant's crimes and limited integration outweighed the mitigating effect of the re-entry ban in assessing the proportionality of the expulsion. Therefore, it held that there had been no violation of Article 8 of the ECHR.

Removals under administrative arrangements between Member States

ECtHR, *H.T. v Germany and Greece*, No 13337/19, 15 October 2024.

The ECtHR found Germany in violation of Article 3 for the removal of a Syrian asylum applicant to Greece in 2018 on the basis of an administrative arrangement, in violation of its procedural obligation to ensure that the applicant was not at risk of being denied access to an adequate asylum procedure in Greece and would not be detained in inadequate conditions.

A Syrian national complained under Article 3 of his removal from Germany to Greece in 2018 without procedural safeguards, based on an agreement between the two countries. The applicant also complained of detention and conditions of detention in Greece.

The court found that Germany failed to comply with its obligations with regard to the transfer of the applicant to Greece, because Germany made no investigation on the access to the asylum procedure and protection against *refoulement* upon removal to Greece; no individual assessment was carried out in view of the removal, no information was provided to the applicant on where he will be transferred, the legal basis for the transfer and possibility to contest it; and he had no access to interpretation or a lawyer.

The court found a violation of Article 3 and stated that Germany failed to discharge its procedural obligation to ensure that the applicant was not at risk of being denied access to an adequate asylum procedure in Greece and would not be detained in conditions contrary to Article 3 of the ECHR. The fact that the applicant managed to submit an asylum application in Greece, following which he was considered vulnerable, and recognised as a refugee did not discharge Germany of its obligations under Article 3.

Concerning the conditions of detention in Lesbos (Greece), the court found a violation of Article 3, and of Article 5(4) for the absence of an examination of the legality of detention.

Return of a Syrian applicant

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 5 B 2458/24 SN, 20 November 2024.

The Administrative Court of Schwerin rejected an urgent request to suspend a deportation order to Syria, as it considered that the public interest to remove the person outweighed the risks to which the person would be exposed in Syria, which were assessed as not probable.

After the revocation of his refugee status due to having committed and being sentenced for preparing an act of violence endangering the state, the applicant received a deportation order to Syria, which he challenged in court.

The Administrative Court of Schwerin upheld the decision to implement the deportation, as it considered that the applicant was no longer at a significant risk of danger upon a return to Syria, considering the change of situation there. The court also considered that the applicant can have support from his family, who was loyal to the (now-former) Assad regime and could avoid possible dangers with sufficient probability, including by avoiding more conflict-ridden areas.

Return and medical conditions

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (BAMF)*, 9 K 1563/20, 1 October 2024.

A Nigerian applicant appealed against the return decision, following a negative asylum procedure. The applicant invoked a serious medical condition as she suffers from type 2 diabetes mellitus. The court allowed the appeal and found that the condition is a serious and life-threatening disease which can lead to death or serious health problems if left untreated. Although it is generally treatable in Nigeria, the cost of metformin and sitagliptin tablets and the cost of consultations are very high. In view also of the personal circumstances of the applicant, a single aged woman with no social network or relatives in Nigeria, the court concluded that she would be unable to secure adequate treatment upon return.

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A., B. v State Secretariat for Migration (SEM)*, D-5768/2024, 3 October 2024.

The Federal Administrative Court confirmed a negative decision on asylum and the return to Georgia and rejected the claim for provisional admission considering that the applicant had adequate treatment for cancer in his country.

A Georgian couple applied for asylum in Switzerland, arguing that the husband suffered from cancer and that there was no adequate and sufficient treatment in their country of origin. The SEM rejected the application and ordered their removal. The applicants appealed the decision and requested provisional admission to Switzerland, arguing about the unavailability of specific medical care in Georgia and the high, unsustainable cost.

The Federal Administrative Court rejected the appeal. Looking at the EUAA MedCOI Report on Georgia, it concluded that, although the standards of medical treatment are different between Georgia and Switzerland, there is medical care in Georgia, it is adequate, and chemotherapy

drugs are available. The court underlined that the husband could continue the chemotherapy treatment that he already started in Georgia and noted that state support is available for people who are financially disadvantaged.

In the absence of other grounds to support their application for a provisional admission and since Georgia had been designated (with the exception of South Ossetia and Abkhazia) as a safe country of origin since 1 October 2019, the court ruled that their return and their removal to Georgia was admissible, reasonable and possible.


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