EASO Newsletter on Asylum Case Law

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Contents

Note

The "EASO Newsletter on Asylum Case Law" is based on the EASO 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 newsletter.

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

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

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Main highlights from June-August 2021

The interim measures, decisions and judgments presented in this issue of the "EASO Newsletter on Asylum Case Law" were pronounced from June to August 2021.

Special focus on cases lodged by applicants from Afghanistan

National courts initially noted differences in the level of violence between regions in Afghanistan, with certain regions still considered to be safe and without a real and present risk of suffering serious harm upon return. For example, the Council of State in France considered in July 2021 that the security situation in Afghanistan, particularly in Kabul and Herat, did not warrant the granting of international protection to an applicant of Hazara ethnicity. In Bulgaria, Luxembourg, and Sweden, the courts followed a similar approach when examining the situation in the region of origin of applicants.

However, considering the 'Taliban offensive' nationwide after the withdrawal of international troops, national courts in EU+ countries began to gradually change their assessments. In some cases, courts granted subsidiary protection (Austria), ordered national forms of protection (Switzerland) due to a real risk of being exposed to inhuman and degrading treatment or took the approach of suspending returns to Afghanistan (Netherlands).[1] Regarding detention, national courts varied in approach, some extended detention measures due to the impossibility to enforce returns (Romania) and others considered the detention measure unlawful based on unrealistic prospects to implement the return to the country of origin (Austria). The key security and socio-economic situation were addressed by national courts after the Taliban take over (Austria).[2]

Furthermore, on 2 August 2021, the ECtHR indicated an interim measure to the government of Austria not to return an Afghan national until 31 August 2021.

European courts

The CJEU interpreted the concept of 'new elements or findings' within the meaning of the recast Asylum Procedures Directive, Article 40(2).

In other cases, the CJEU ruled on the objective criteria justifying the detention of an asylum applicant and clarified the criteria to assess indiscriminate violence in the country of origin for the purposes of granting subsidiary protection.

Furthermore, the European Commission referred Hungary to the CJEU for infringement related to restrictions on access to asylum procedures in violation of the recast Asylum Procedures Directive, Article 6.

The ECtHR found violations of the prohibition of collective expulsions both against Hungary, for expulsions to Serbia, and against Poland, for summary returns to Belarus. The court also issued

[1] See also the Finnish Supreme Administrative Court, Press release of 20 August 2021, banning the return of 12 Afghan nationals.

[2] See the French National Court of Asylum, Press release of 30 August 2021, concerning the assessment of appeals lodged by Afghan nationals against decisions of the Office for the Protection of Refugees and Stateless Persons (OFPRA).

interim measures in two cases concerning Afghan and Iraqi nationals stranded at the borders of Latvia and Poland with Belarus.

Furthermore, the ECtHR found France in violation of the European Convention on Human Rights (ECHR), Articles 3 and 5 for detaining a mother and her child for 11 days pending a Dublin transfer.

In addition, the ECtHR ruled that a waiting period of 3 years in family reunification cases violates the ECHR, Article 8.

National courts

In France, the CNDA granted subsidiary protection to applicants from Tillabéri (Niger) due to indiscriminate violence of exceptional intensity.

In Germany, the Administrative Court of Mainz confirmed the legality of imposing compulsory COVID-19 tests prior to a deportation.

In Luxembourg, the Administrative Tribunal assessed whether Morocco is a safe third country for applicants married to Moroccan nationals.

In the Netherlands, the Council of State confirmed its previous jurisprudence on secondary movements from Greece, and in another case, it requested the CJEU to interpret the Dublin III Regulation, Article 2(l) ('residence documents').

In Spain, the Administrative Court of Ceuta ordered the temporary cessation of removals of unaccompanied minors to Morocco.

Case law in EU+ countries from June-August 2021

Special focus on cases lodged by applicants from Afghanistan

Interim measure from the ECtHR

Council of Europe, European Court of Human Rights [ECtHR], *R.A.* v *Austria*, No 38335/21, 2 August 2021.

The ECtHR indicated an interim measure to the government of Austria not to return an Afghan national until 31 August 2021.

The ECtHR indicated to the government of Austria not to remove an Afghan national from Austria to Afghanistan until 31 August 2021. This interim measure was adopted prior to the planned deportation of the applicant on 3 August 2021 and the decision of the Afghan Ministry of Refugees and Repatriation, which was notified to EU Governments, to stop accepting deportations to Afghanistan from 8 July to 8 October 2021. The court noted that Finland, Norway and Sweden suspended removals to Afghanistan due to the security situation.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1973

Subsidiary protection not granted

France, Council of State [Conseil d'État], *M.* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 448707, 9 July 2021.

The Council of State confirmed the CNDA's assessment that the security situation in Afghanistan, particularly in Kabul and Herat, did not warrant the granting of international protection for a Hazara applicant.

A national of Afghanistan of Hazara ethnicity challenged the negative decision issued by OFPRA and claimed to fear persecution upon return. The CNDA rejected the appeal based on a lack of evidence to prove the risk of persecution. For subsidiary protection, the court stated that according to UN and EASO reports the security situation in Kabul and Herat did not reach the threshold to justify international protection, despite a significant level of violence. The court considered the number of victims, incidents and displaced people, the methods employed, preferred targets and the intensity of the fighting.

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https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1880

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicants* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, No 44940, 28 July 2021.

The Administrative Tribunal dismissed an appeal against a negative decision for an Afghan family.

In the absence of sufficient reasons to be granted asylum, the Administrative Tribunal examined the security situation in Afghanistan (specifically in Kabul). Despite significant differences in the level of violence in various regions and based on updated country of origin information at the time of the decision, the tribunal found that the applicants had no real

and present risk of suffering serious harm upon return.

The court referenced the EASO Country Guidance Afghanistan, June 2019 and the EASO COI Report Afghanistan Security Situation, September 2020.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1967

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, No 44884, 12 July 2021.

The Administrative Tribunal ruled on the risk of persecution in Afghanistan for a woman of Hazara ethnicity and Shia Muslim faith.

An Afghan woman, with a temporary family reunification permit was denied asylum for failure to prove that Shiites of Hazara ethnicity faced a real risk of being persecuted solely because of ethnicity or religious beliefs, irrespective of their personal circumstances. For subsidiary protection, the Administrative Tribunal noted differences in the level of violence between regions in Afghanistan, thoroughly examined the situation in the region of origin of the applicant and concluded that there was no evidence that she would face a higher risk than other Afghans and that there was no real risk upon return.

The court referenced the EASO Country Guidance: Afghanistan, June 2019.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1963

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, No 44743, 12 July 2021.

The Administrative Tribunal rejected an appeal against a negative decision pronounced in the case of an Afghan national.

Despite being a member of a religious group that is more prone to persecution than the general population of Afghanistan, an Afghan national of Hazara ethnicity and Shia Muslim faith was denied international protection as the court considered that ethnicity or religious beliefs solely did not expose all members, irrespective of individual circumstances, to a real risk of being persecuted. In addition, the mere invocation of Afghan nationality was no longer considered sufficient to justify refugee status.

The court referenced the EASO Country Guidance: Afghanistan, June 2019 and the EASO COI Report Afghanistan Security Situation, September 2020.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1964

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, No 44925, 12 July 2021.

The Administrative Tribunal confirmed the Minister's decision to refuse international protection for an Afghan national.

The court rejected the applicant's request for international protection, as the fact that the conflict with the Taliban in 2004 in which the applicant's male ascendants were killed was based uniquely on a land dispute and had no nexus to a Geneva Convention reason for persecution. The Administrative Tribunal assessed the security situation in Kabul based on data available at the time of the decision

and held that mere presence in the province was insufficient to find a real risk of serious harm upon return.

The court referenced the EASO Country Guidance: Afghanistan, June 2019.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1965

Sweden, Migration Court of Appeal [Migrationsöverdomstolen], *A.* v *Swedish Migration Agency (Migrationsverket),* No UM2839-20, 8 July 2021.

The Migration Court of Appeal ruled that the situation in Afghanistan does not amount to indiscriminate violence and the return of a rejected applicant was possible.

The applicant challenged the refusal of the Swedish Migration Agency to renew a residence permit initially issued in 2017 based on subsidiary protection. In July 2021, the Swedish Migration Court of Appeal confirmed the negative decision and held that the applicant was no longer vulnerable after reaching the age of majority and that the situation in Afghanistan, although still serious and affected by an internal armed conflict in large parts of the country, was not such that everyone is at risk and in particular does not put the applicant at risk upon return.

The court referenced the EASO's Judicial Analysis Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive [2011/95/EU], December 2016.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1952

For similar outcomes, see also judgments pronounced in Bulgaria by the Haskovo Administrative Court in *H.S.* v *Chairman of the State Agency for Refugees* (13 August 2021) and *Applicant* v *Chairman of the State Agency for Refugees* (11 August 2021) in which the court stated that there was no indiscriminate violence in Afghanistan to justify subsidiary protection. The decisions were based on country of origin information available at the time and with reference to the CJEU case of *Elgafaji*.

Subsidiary protection granted

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *BF* v *Austrian Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl- BFA),* No W228 2241306-1, 18 August 2021.

The Federal Administrative Court granted subsidiary protection to an Afghan applicant due to the current situation in Afghanistan, including the COVID-19 pandemic and poor living conditions that would expose the applicant to inhuman treatment if returned.

The Federal Administrative Court held that the security situation in Afghanistan had significantly deteriorated, was unstable and poor living conditions would expose the applicant to inhuman and degrading treatment upon return. These factors, coupled with the COVID-19 situation in the country, the associated health risks and limited access to medical care, justified the decision of the court to grant subsidiary protection status to the applicant with a 1-year residence permit, subject to extension.

The court referenced the EASO Country Guidance: Afghanistan, December 2020.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1942

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *Applicant* v *Austrian Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl- BFA),* W104 2216389-1, 12 August 2021.

The Federal Administrative Court granted subsidiary protection to an Afghan national due to the current situation nationwide in Afghanistan.

An Afghan national from the Baghlan province challenged a negative decision for international protection, and the Federal Administrative Court granted him subsidiary protection due to a real risk of being exposed to inhuman and degrading treatment in the context of arbitrary violence and domestic conflict after the withdrawal of international troops and the Taliban advance in the country. The court also analysed the security situation in the three cities (Kabul, Mazar-e Sharif, and Herat) and concluded that internal flight alternatives were not possible.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1939

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *G.* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20015236, 9 July 2021.

The CNDA granted subsidiary protection to an Afghan applicant from the Baghlan province due to indiscriminate violence of exceptional intensity.

Allegations by an Afghan national from the Baghlan province of fear of threats from the Taliban were not considered credible by OPFRA nor the CNDA. However, the CNDA granted subsidiary protection due to the intensified Taliban offensive following the withdrawal of the United States and the indiscriminate violence of exceptional intensity. It held that when the violence generated by the armed conflict reaches such a level, the granting of subsidiary protection is justified by the risks to life or the person due to the mere presence in the territory or region, without being necessary to retain individual factors.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1882

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, No 44530, 15 July 2021.

The Administrative Tribunal analysed the security situation in Afghanistan and granted subsidiary protection.

An Afghan national of Hazara ethnicity from the Ghazni province appealed the refusal of international protection, arguing that he had a well-founded fear of persecution by the Taliban if returned to Afghanistan, since his village was attacked by the Taliban and he was threatened with execution for being part of the resistance. Although the Administrative Tribunal found that the fear of being persecuted based on ethnicity is too hypothetical to grant refugee status, it granted subsidiary protection as it considered that there was a climate of indiscriminate violence caused by an internal armed conflict in the province of Ghazni, from where the applicant originates.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1966

Detention pending return to Afghanistan

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *BF* v *Austrian Federal Office for Aliens and Asylum (BFA)*, No W283 2245292-1, 16 August 2021.

The Federal Administrative Court assessed the detention of an Afghan national pending deportation as unlawful, based on unrealistic prospects of implementing the removal to the country of origin.

Following his release from criminal detention, the applicant was placed in custody pending enforcement of a return order as he was refused international protection due to his criminal offences. The first attempt to deport the applicant was unsuccessful because the Afghan authorities did not issue a landing permit and the procedure was postponed for September 2021. The applicant contested his placement in custody and the Federal Administrative Court ordered his release, stating that detention pending a removal within the maximum period allowed by law was not realistic in the context of the current situation in Afghanistan.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1940

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State]], *State Secretary for Justice and Security* v *Applicant*, No 202103188/1/V3, 26 July 2021.

The Council of State held that the uncertain security situation in Afghanistan was a temporary impediment to deportation.

An Afghan national was placed in detention by the State Secretary for Justice and Security based on his illegal stay in the Netherlands. On appeal, the Court of the Hague lifted the detention of the applicant, although the State Secretary argued that the lower court erroneously considered that there were no prospects of deportation to Afghanistan. The Council of State allowed the appeal and annulled the contested decision as the State Secretary temporarily suspended deportations until Afghan authorities cooperate in the forced returns. The Council of State considered that the uncertainty in the security situation in Afghanistan was only a temporary impediment to deportation and cannot amount to no prospect of deportation to Afghanistan.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1949

Romania, Court of Appeals (Curte de apel), *General Inspectorate for Immigration* v *Applicant*, No 451/2021, 11 August 2021.

The Court of Appeal of Timisoara extended the detention of an Afghan national by 3 months due to the impossibility of a forced return to Afghanistan and the risk of absconding.

The Romanian General Inspectorate for Migration requested the extension of the detention period of an Afghan applicant. The Court of Appeal allowed the request and prolonged the detention by 3 months. This was because the Ministry of Foreign Affairs of the Islamic Republic of Afghanistan announced a 3-month suspension of all forced returns and due to a risk of absconding, since the applicant tried to fraudulently cross the national border.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1962

Return of rejected applicants to Afghanistan

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicant*, No E 3115/2021-4, 18 August 2021.

Given the current information on Afghanistan, the Constitutional Court held that a prompt deportation of the rejected applicant to his country of origin was not possible.

The Constitutional Court in Austria allowed a request for a suspensive effect of the appeal

against a negative decision, finding that a deportation order was a disproportionate measure against the applicant.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1935

Netherlands, Court of The Hague [Rechtbank Den Haag], *V* v *State Secretary for Justice and Security*, No NL21.8410, 11 August 2021.

The Court of the Hague ordered the suspension of a return to Afghanistan.

An interim measure was adopted by the Court of The Hague, suspending the return of an Afghan national pending the outcome of the appeal. The State Secretary for Justice and Security did not oppose the measure since it had already decided to impose a 6-month departure moratorium to Afghanistan.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1975

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, D-2284/2021, 2 August 2021.

The Federal Administrative Court rejected an appeal against a negative decision but ordered a provisional admission for an Afghan national due to the unreasonable nature of a return.

A negative decision was issued against an Afghan national based on a lack of evidence for the alleged fear of persecution by the Taliban, and a return order was issued. On appeal, the Federal Administrative Court confirmed the negative decision and allowed the applicant to stay under provisional admission due to the impossibility of a return in light of the situation in Afghanistan.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1912

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A and B* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, D-1008/2020, 26 July 2021.

The Federal Administrative Tribunal annulled a return decision based on the situation in Afghanistan and the medical condition of the applicants.

Applications for international protection by two Afghan nationals were rejected due to a lack of credibility. They appealed and requested the return orders to be suspended based on medical documentation. The Federal Administrative Court reiterated that a return is enforced if it is legal, possible and reasonable to execute, and, in the absence of these criteria, provisional admission is granted. The court noted that the humanitarian and security situations in Afghanistan made a return unreasonable, especially for those originating from Kabul, Mazar-i-Sharif and Herat. Based on the situation in the country of origin and the deteriorating health condition of the applicants, the court annulled the return order and granted provisional admission.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1907

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, D-4705/2016, 14 June 2021.

The Federal Administrative Court reassessed the situation in Herat based on updated country of origin information and found a return to be unreasonable.

An Afghan applicant of Tajik ethnicity who last resided in Herat had his asylum application rejected in 2016. The return to Herat was assessed as reasonable and enforceable in 2016, but on appeal, the court noted that the

security and socio-economic situation had deteriorated significantly, and it could be considered threatening and unreasonable to return the applicant unless particular favourable circumstances were present. The court noted that the applicant did not have sufficient links to his country of origin and a return was not to be implemented according to updated country of origin reports. Provisional admission was ordered.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1909

Visa-related developments

France, Council of State [Conseil d'État], *N.G., K.B. and O.J. (Afghanistan)* v *Prime Minister, the Minister for Europe and Foreign Affairs and the Minister of the Interior*, Nos 455744, 455745 and 455746, 25 August 2021.

The Council of State rejected a request for urgent measures related to issuing visas for family reunification purposes.

Three Afghan nationals who are beneficiaries of international protection in France requested the court, in urgent proceedings, to order the Prime Minister, the Minister for Europe and Foreign Affairs and the Minister of the Interior to add their family members (spouses and children) to the repatriation scheme announced by the President of France, thus allowing persons who can benefit from family reunification to be repatriated to France with the rotation flights organised from Kabul since 15 August 2021. The applicants submitted requests for an accelerated verification process of documents so that the family members could be issued visas for repatriation.

The request was rejected, and the judge held that visa-related matters are no longer relevant in this case since all persons entitled to family reunification are being taken care of by the French military, irrespective of their visa requirements. The judge further found that administrative jurisdictions were not competent to deal with France's obligations under international relations and noted that in any event national authorities are treating all similar requests with due diligence.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1987

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicants* v *Federal Foreign Office*, 26 August 2021.

The Regional Administrative Court of Berlin ordered the issuance of visas for a former field officer and his family.

In an urgent procedure, the Berlin Regional Administrative Court ordered the Federal Foreign Office to issue a visa for a former local Afghan worker and his family due to the risk of being wanted by the Taliban after the withdrawal of international troops. The court based its decision on the legal provision for the right to admission and on Federal Foreign Office practice in similar cases.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1972

Access to the asylum procedure

Council of Europe, European Court of Human Rights [ECtHR], *Shahzad* v *Hungary*, No 12625/17, 8 July 2021.

The ECtHR held that a Pakistani national was subjected to a collective expulsion when entering Hungary from Serbia.

The applicant unsuccessfully applied for asylum in Serbia and attempted to enter Hungary several times to claim asylum, but he was removed by police to the other side of the border fence with Serbia. The court found that the applicant had been subjected to a collective expulsion in the absence of an individual examination of his case and due to restrictions imposed by Hungary in the two transit zones, where access was limited by daily admissions and lacked any formal procedure with appropriate safeguards.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1872

Council of Europe, European Court of Human Rights [ECtHR], *D.A. and others* v *Poland*, No 51246/17, 8 July 2021.

The ECtHR found a violation of the prohibition of collective expulsions on account of summary returns from Poland to Belarus.

Syrian nationals claimed that the Polish authorities did not allow them to lodge applications for international protection, their claims were not assessed individually, and their situation was part of a general policy in Poland to reduce asylum applications. They had also been returned to Belarus by the Polish authorities, despite the ECtHR's interim measure indicating that they should not be removed.

The court found a violation of Protocol No 4, Article 4, citing *M.K. and Others* v *Poland* in which a violation of the provision was found when refusing entry at the Polish-Belarusian border and returning applicants to Belarus. In addition, there was a wider policy of refusing entry to foreigners from Belarus and ignoring their requests for international protection even though they had been interviewed by border officers. Furthermore, the decisions on refusing entry given to each applicant were not sufficiently individualised.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1871

Council of Europe, European Court of Human Rights [ECtHR], *D.* v *Bulgaria*, No 29447/17, 20 July 2021.

The ECtHR ruled on the return to Turkey of a Turkish journalist who had expressed fear of ill treatment.

A Turkish journalist, who allegedly received death threats prior to fleeing his country, illegally entered Bulgaria wishing to reach Germany. The applicant alleged that he expressed his wish to apply for asylum while in detention at the border, but he was not assisted by a lawyer and the documents presented to him by police officers were not communicated in a language he could understand. The court found that the removal of the applicant took place within a very short period of time, breaching national legislation. It also stated that a wish to apply for asylum does not need to be formalised in a particular way, but the key element to determine the intent to apply for asylum is the fear expressed at the prospect of returning to a country. The court found a violation of the ECHR, Article 3 since the Bulgarian authorities failed to comply with relevant domestic procedures, including not offering the applicant protection and safeguards against a rapid removal without an assessment of individual circumstances.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1878

Council of Europe, European Court of Human Rights [ECtHR], *Amiri and Others* (Afghanistan) v *Poland* and *Ahmed and Others* (Iraq) v *Latvia*, No 42120/21 and No 42165/21, 25 August 2021.

The ECtHR issued interim measures in two cases concerning Afghan and Iraqi nationals stranded at the borders of Latvia and Poland with Belarus.

In two cases concerning the situation at the borders of Latvia and Poland with Belarus, the ECtHR issued interim measures and ordered national authorities to provide basic needs and assistance (food, accommodation and medical assistance) to the applicants, namely 32 Afghan nationals in *Amiri and Others* and 41 Iraqi nationals in *Ahmed and Others*. The applicants were reportedly stranded at the border area without the possibility to enter any Contracting State and seeking international protection. The interim measures are applicable for a 3-week period, from 25 August to 15 September 2021.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1953

Dublin procedure

Referral for a preliminary ruling (Dublin III Regulation, Article 2(l))

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security* v *Applicants*, No 2020201990/1/V3, 25 August 2021.

The Council of State requested the CJEU to interpret the Dublin III Regulation, Article 2(l) and determine whether diplomatic cards may be considered 'residence documents' under the provision.

The State Secretary for Justice and Security did not consider the applications for international protection submitted by a family who had received diplomatic cards from the Ministry of Foreign Affairs of another EU Member State, issued under the Vienna Convention on Diplomatic Relations. They had left that country and requested international protection in the Netherlands. The Court of The Hague considered that the diplomatic cards were only declaratory in nature and the State Secretary erroneously assessed that the other Member State is responsible for examining the applications for international protection.

On further appeal, the Council of State decided to stay the procedure and addressed the following question to the CJEU: *Must Article 2(l) of the Dublin III Regulation be interpreted as meaning that a diplomatic card issued by a Member State under the Vienna Convention on Diplomatic Relations is a residence permit within the meaning of that provision?*

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1950

Transfer to Italy

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL21.7646, 7 July 2021.

The Court of the Hague dismissed an appeal against a Dublin transfer to Italy.

The applicant contested a Dublin transfer from the Netherlands to Italy, alleging that asylum conditions in Italy were poor. The Court of the Hague rejected the appeal and found that, although the applicant may find himself without access to reception for a couple of days, it does not mean that there are plausible reasons to prevent a transfer to Italy. The court based its reasoning on the ECtHR judgement of *M.T. v the Netherlands* where the court concluded that a Dublin applicant has access to the asylum system and is entitled to reception in Italy, including vulnerable applicants.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1905

Transfer to Malta

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant* v *State Secretary for Justice and Security*, NL21.5187, 16 August 2021.

The District Court of the Hague suspended a Dublin transfer to Malta and requested more information from the State Secretary to assess the risk of inhuman and degrading treatment due to potential placement in detention.

The District Court of The Hague allowed an interim injunction submitted by an applicant, pending a Dublin transfer to Malta, due to the risk of being placed in detention and face poor living conditions, without access to an effective remedy. The Court of The Hague referred to recent country reports describing the situation of asylum applicants placed in detention in Malta, noted that improvements were made by national authorities but considered that more information was needed from the State Secretary to determine the risk of treatment contrary to the ECHR, Article 3.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1983

Transfer to Romania

Germany, Federal Constitutional Court [Bundesverfassungsgericht], *Applicant (Somalia)* v *BAMF*, No 2 BvR 627/21, 1 July 2021.

The Federal Constitutional Court annulled the lower court's decision for infringement of the right to legal protection and effective remedy prior to a deportation.

In a case concerning a Dublin transfer to Romania, the Regional Administrative Court noted that the applicant, who had left Romania for more than 9 months, would be considered a subsequent applicant and would not benefit from adequate material reception conditions. In addition, the court found shortcomings in the asylum and reception systems in Romania and for these reasons considered that no transfer is possible as the applicant would risk being exposed to treatment contrary to the ECHR, Article 3.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1980

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant* v *Federal Office for Migration and Refugees (BAMF)*, No A 13 K 2227/21, 3 August 2021.

A Dublin transfer to Romania was not implemented when initial asylum procedures were discontinued in Romania and the applicant risked being exposed to inhuman treatment.

The Administrative Court assessed that the threshold of the risk of being subjected to inhuman and degrading treatment was likely to be attained upon a transfer to Romania because of an extreme material hardship. The court noted that since the initial asylum proceedings were discontinued in Romania, the applicant would have no access to material reception conditions as he would only be able to lodge a subsequent application. The Administrative Court took into consideration the weaknesses in the asylum and reception systems, in addition to the significant impact of the COVID-19 pandemic on the economic situation.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1978

First instance procedures

Subsequent applications

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant* v *BAMF*, No A 1 K 2775/19, 27 July 2021.

The Higher Administrative Court found that an application cannot be deemed inadmissible due to unsuccessful initial proceedings in Denmark.

The applicant unsuccessfully initiated procedures in Denmark prior to applying for international protection in Germany. The Higher Administrative Court ruled that, since Denmark is not bound by the recast Qualification Directive nor the recast Asylum Procedures Directives, the application made in Germany cannot be rejected as inadmissible. The court referred to the CJEU judgment in *L.R. v Bundesrepublik Deutschland* and reiterated that the recast Asylum Procedures Directive, Article 33(d) is applicable when a decision is taken in the first asylum procedure where the applicant's status was determined in accordance with the recast Qualification Directive and similar safeguards and substantive standards were observed.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1977

Evidence assessment

European Union, Court of Justice of the European Union [CJEU], *LH* v *Staatssecretaris van Justitie en Veiligheid*, C-921/19, 10 June 2021.

The CJEU interpreted the concept of 'new elements or findings' within the meaning of the recast Asylum Procedures Directive, Article 40(2).

An Afghan national who fled his country after he received death threats from the Taliban, applied for international protection in the Netherlands. The State Secretary considered that the death threats were not credible and rejected his application. The applicant submitted a subsequent request, including new evidence. The application was dismissed as inadmissible on the grounds that the applicant was unable to establish the authenticity of the documents. The applicant appealed and included an explanation of how he obtained the documents.

The referring court asked the CJEU to interpret the concept of 'new elements or findings' within the meaning of the recast Asylum Procedures Directive, Article 40(2). If the authenticity of the document cannot be established or its source objectively verified, the CJEU held that it is automatically not considered to constitute a new element. In addition, the assessment of the evidence cannot vary according to whether it is a first or subsequent application and that a Member State is required to cooperate with the applicant in assessing the relevant elements of the subsequent application if the authenticity of the documents cannot be established.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1841

Second instance procedures

Access to an effective remedy

Germany, Federal Constitutional Court [Bundesverfassungsgericht], *Applicant (Somalia)* v *BAMF*, No 2 BvR 627/21, 1 July 2021.

The Federal Constitutional Court annulled the lower court's decision for infringement of the right to legal protection and effective remedy prior to a deportation.

The Federal Constitutional Court allowed a constitutional complaint against an inadmissible decision adopted in urgent proceedings against a deportation order and concluded that the right to effectiveness of legal protection is applicable also to urgent proceedings and implies the possibility to have access to a judicial review prior to enforcing a deportation order, not only a mere possibility to submit a case before a court.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1980

Impartiality of the judge deciding on the appeal

Germany, Federal Constitutional Court [Bundesverfassungsgericht], *Applicant* v *Administrative Court*, No 2 BvR 890/20, 1 July 2021.

The Federal Constitutional Court allowed a constitutional complaint against a lower court's decision pronounced by a biased judge.

The Federal Constitutional Court held a complaint as admissible when an asylum applicant alleged that a judge at the

administrative court lacked neutrality because he considered that "migration is a fundamental evil". The Federal Constitution Court ruled that the Constitution is violated when arbitrary considerations are decisive for the determination of a case or when the meaning and scope of the constitutional law provision is fundamentally misjudged.

Link: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1969

Prerequisites to lodge an appeal on points of law

Italy, Supreme Court of Cassation- Civil section [Corte Suprema di Cassazione], *Applicant* v *Ministry of Interior [Ministero dell'Interno]*, No 17970/2021, 7 June 2021.

The Court of Cassation referred a case to the Constitutional Court to clarify compliance with the Constitution of a provision on the obligation to have a power of attorney to lodge an appeal on points of law in proceedings concerning international protection.

The case concerned the rejection of an appeal against a negative decision which ruled the application for international protection as inadmissible because, according to the Legislative Decree No 251/2007, it was found that there was no certification of the date of issuance of the power of attorney.

The Court of Cassation referred the case to the Constitutional Court, considering that the legal provision requiring certification of the authenticity of the date of issuance of the power of attorney, limited only to international protection proceedings, interpreted as meaning that its absence leads to the inadmissibility of the appeal, raised a question of compatibility with the principle of reasonableness under Article 3 of the Constitution.

Link: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1860

Assessment of applications

Safe countries of origin: Benin, Ghana and Senegal

France, Council of State [Conseil d'État], *Associations des avocats ELENA and others*, No 437141, 437142 and 437365, 2 July 2021.

The Council of State cancelled the deliberation of OFPRA's board of administration which maintained Benin, Ghana and Senegal on the list of safe countries of origin.

The Council noted that it appeared from the documents available that the situation in Benin had deteriorated in a worrying way due to serious political crisis, in particular since the legislative elections of April 2019, and there was a restriction of rights, freedoms and the independence of the judiciary. It was further observed that, as soon as there was a rapid deterioration of the situation in a country included in the list of safe countries of origin, the administration of the OFPRA could not legally limit itself to provide for the re-examination of the listing of this country at the end of a 6-month period without immediately drawing any consequences pursuant to Article L. 722-1(11) of the CESEDA.

For Ghana and Senegal, the Council concluded that it did not appear from the available documents that the OFPRA board of directors incorrectly assessed the general political situation in these countries, which have democratic institutions and conduct free and pluralist elections, guarantee the exercise of fundamental freedoms and are parties to the Convention against Torture and the International Covenant on Civil and Political Rights. However, given the existence of legislative provisions criminalising homosexual relations in Ghana and Senegal, OFPRA could

not, without committing an error of assessment, consider these states to be safe countries of origin in examining the requests presented by their nationals.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1896

Safe third country: Morocco

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant* (Syria) v *Ministry of Migration and Asylum (Ministre de l'Immigration et de l'Asile),* No 45916, 1 June 2021.

The Administrative Tribunal confirmed that Morocco was considered a safe third country in the case of an applicant married to a Moroccan national.

A Syrian national applied for international protection in Luxembourg after having applied previously, together with his wife, a Moroccan national, in Greece and Croatia. After communication with the Croat authorities, the Ministry decided that Luxembourg was responsible for the application for international protection. By a decision of 7 April 2021, the Ministry rejected his application as inadmissible because Morocco was considered a safe third country by Luxembourg and the legislation there allows for a residence permit for persons married to a Moroccan national. The applicant contested the negative decision and argued on the facts related to his identity documents and other issues, without contesting the possibility to be issued a residence permit in Morocco and the possibility to settle there. His appeal was rejected as unfounded by the Administrative Tribunal.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1902

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant (Syria)* v *Ministry of Immigration and Asylum (Ministre de l'Immigration et de l'Asile),* No 45865, 7 June 2021.

The Administrative Tribunal reversed an inadmissibility decision that considered Morocco a safe third country for an applicant married to a Moroccan national.

A Syrian national entered Luxembourg in January 2020 with his wife, a Moroccan national, and applied for international protection. Their applications were rejected on grounds that Morocco was a safe third country and it was possible for the applicant to enter Morocco as a family member of a Moroccan national. The applicant appealed the inadmissible decision on grounds that the analysis of Morocco as a safe third country was superficial and that the health care situation in the country would increase the vulnerability of an asylum applicant. The Administrative Tribunal ruled that the Ministry did not prove the existence of a link of the applicant to Morocco, which would guarantee that he would be able to obtain protection in that country and the enjoyment of his full rights. Therefore, the applicant's appeal was considered well-founded, and the inadmissible decision was annulled.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1846

UNRWA protection

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid),* NL20.17791, 3 June 2021.

The Court of the Hague ruled on the cessation of protection or assistance provided by UNRWA.

A Palestinian from the refugee camp in Ain Al Helwa in Lebanon applied for international

protection, and the application was rejected. He lodged a subsequent application, submitting additional evidence, to show that at the time of his departure there were circumstances beyond his control which forced him to leave his last residential area in which UNRWA operated and that UNRWA was unable to fulfil its mandate to provide protection or assistance. The subsequent application was rejected as inadmissible.

On appeal, the Court of the Hague noted that, according to the CJEU, a reason for the cessation of protection or assistance can be a situation of circumstances beyond the control of the applicant, which forced him/her to leave the area in which UNRWA operates. From the general information submitted by the parties, the court concluded that it appeared plausible that the applicant had no possibility to gain access to the camp, as his travel document expired after the previous rejection decision. The court considered the appeal well-founded and referred the case back to the State Secretary.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1862

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, No 202004766/1/V1, 14 July 2021.

The Council of State mandated the State Secretary to justify why it considered that UNRWA provides adequate protection to Palestinians in the Gaza Strip.

A request for international protection in the Netherlands by a Palestinian from the Gaza Strip was rejected by the State Secretary on the basis of the Refugee Convention, Article 1(D). The Council of State held that the State Secretary must pronounce a new decision, as the State Secretary did not properly substantiate that UNRWA was able to provide living conditions in the Gaza Strip that are consistent with its mission, so that the ground for exclusion of the recast Qualification Directive, Article 12 (1a) applied to the third-country national. The Council noted that the mission of UNRWA is to protect Palestinian refugees but also to serve their well-being and development, thus encompassing more than protecting Palestinian refugees from treatment contrary to the ECHR, Article 3. In the decision and at the hearing, the State Secretary did not provide any insight into the standard it uses to answer the question of the extent to which UNRWA is able to carry out its mission. The Council also noted that when taking a new decision, the State Secretary must take into account current developments in the Gaza Strip, including the recent resurgence of hostilities between Israel and Hamas and reports that the United States will resume some of its funding.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1879

Country of origin information

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *S. (Mali)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20029676, 15 June 2021.

The CNDA granted subsidiary protection to an applicant from Mali who would be exposed to indiscriminate violence if returned.

A national of Mali applied for international protection on grounds of a fear of persecution or serious harm by the Dogon ethnic group and as a result of the armed conflict in the region of Mopti, from which he originates. OFPRA rejected his application, and the applicant appealed the decision. The CNDA allowed the appeal and granted subsidiary protection. The CNDA concluded that the applicant would be personally exposed if returned to Mali, to a serious and individual threat to his life or person as a result of indiscriminate violence resulting from a situation of armed conflict. According to the sources of information

available, the court noted that since January 2012 the situation in Mali had been unstable and there were repeated episodes of violence due to the presence of numerous rebel armed groups. The court noted that there was no viable internal protection alternative for the applicant. The CNDA also noted that the COVID-19 outbreak had worsened an already critical situation, marked by malnutrition and water scarcity.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1861

Persecution due to military conscription

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant (Eritrea)* v *Federal Office for Migration and Refugees (BAMF)*, No A 13 S 403/20, 8 July 2021.

The Higher Administrative Court dismissed the request for international protection made by an Eritrean applicant claiming persecution due to military conscription.

The Regional Administrative Court confirmed BAMF's negative decision to an Eritrean applicant who alleged a fear of persecution due to conscription to the national military service. The court found the applicant's statements not to be credible with regard to a potential punishment for withdrawing from the Eritrean national service or a link between the departure from the country and conscription. It also held that the applicant was not eligible for international protection on grounds related to threats with persecution for having evaded national military service or to have to reckon with his conscription if returned, as the applicant did not demonstrate individual threats. The court noted that, regardless of the fact that the National Service also serves to spread the state ideology and is regarded as the "school of the nation" according to the EASO COI Report Eritrea National Service, exit, and return (September 2019), conscription with the national service in principle affects all Eritrean nationals. The Higher Administrative Court also referenced the CJEU judgment of *EZ v Bundesrepublik Deutschland (Federal Republic of Germany)*.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1976

Vulnerable groups (persons with HIV)

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *Applicant (Ivory Coast)* v *Commissaire général aux réfugiés et aux apatrides (CGRS)*, 2 August 2021.

The CALL granted refugee status to an HIV seropositive applicant from the Ivory Coast based on particular vulnerabilities and the situation in the country of origin for persons belonging to this group.

The Council of Aliens Law Litigation (CALL) extensively analysed the particular circumstances of an HIV seropositive applicant from the Ivory Coast, namely the history of sexual abuse and current serious psychological issues, and examined the situation in the country of origin to conclude that the applicant must be granted refugee status. The Council considered that persons in the applicant's situation, infected with HIV, form a particular social group in the Ivory Coast who are exposed to discrimination and stigmatisation, without effective protection from state actors.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1986

Human trafficking

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *A. (Nigeria)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20013918, 29 June 2021.

The CNDA ruled that a Nigerian woman from Lagos State, who left a prostitution network, should be provided subsidiary protection.

A Nigerian woman from Lagos applied for international protection, alleging that she had left a prostitution network and that she would not receive protection from the authorities upon her return to Nigeria. She alleged that her family in Nigeria were being threatened because she had stopped paying her debt to the prostitution network. OFPRA rejected the request and the applicant appealed. The CNDA allowed the appeal and provided subsidiary protection to the applicant. The court verified the effectiveness of the withdrawal of the applicant from the prostitution network and the resulting risks she would be exposed to in the event of her return to Nigeria.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1881

Subsidiary protection

European Union, Court of Justice of the European Union [CJEU], *CF and DN* v *Bundesrepublik Deutschland*, C-901/19, 10 June 2021.

The CJEU clarified the criteria to assess indiscriminate violence in the country of origin for the purposes of granting subsidiary protection.

When assessing the level of violence for the purpose of applying the recast Asylum Procedures Directive, Article 15(c) on granting subsidiary status, the court ruled that a quantitative criterion, namely the number of casualties in a population as a whole in a specific region was contrary to EU law and applying such a criterion may lead to refusing to grant international protection in breach of the Member States' obligation to identify persons genuinely in need of that protection. The court reiterated that subsidiary protection status shall be granted to a third-country national or stateless person who faces a real risk of suffering serious harm if returned to the country of origin or habitual residence, the serious and individual threat was not conditioned by the proof of factors particular to personal circumstances. Moreover, the degree of indiscriminate violence characterising the armed conflict shall reach such a high level as to believe that a civilian faces a real risk of being subject to a serious threat only by mere presence in the respective area.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1834

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M. and A. (Niger)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 21008772 and 21008773, 19 July 2021.

The CNDA granted subsidiary protection to applicants from Tillabéri (Niger) due to a situation of indiscriminate violence of exceptional intensity.

A married couple from a village in the department of Filingue (Tillabéri, Niger) of Hausa origin appealed the OFPRA decisions by which their requests for asylum were rejected. They had claimed a risk of being exposed to persecution due to their ethnic origin and the security situation in Niger. The applicants raised fears of persecution by armed groups who regularly and specifically looted Hausa traders, imposing a tax on them.

If returned, the CNDA ruled that the applicants would run a real risk of serious threat due to the situation of indiscriminate violence of exceptional intensity resulting from an internal armed conflict, without the possibility of protection from the authorities of the country.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1893

Deportation of applicants who have received international protection in another EU+ country

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant* v *BAMF*, No 12 A 3583/21, 29 June 2021.

The Regional Administrative Court stated that a delay of 1 year to await specific assurances for an applicant who received protection in Greece was not justified.

The applicant was granted international protection in Greece and then he applied for asylum in Germany, where BAMF delayed the processing of the application pending individual assurances from the Greek authorities for the applicant's transfer. The Regional Administrative Court found that BAMF erroneously delayed the processing, while sufficiently updated information was available on the situation of beneficiaries of international protection in Greece, including on the impact of COVID-19. It held that in the absence of a reply within 6 months, BAMF must proceed to examine the case.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1970

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *Applicant (Afghanistan)* v *Directorate of Immigration (Útlendingastofnun)*, No KNU21030045, 10 June 2021.

The Immigration Appeals Board revoked a transfer to Hungary of an Afghan national who received protection there for the re-examination of his medical situation and access to medical care in Hungary.

An Afghan national appealed the decision of the Directorate of Immigration to not consider his application for international protection in Iceland and to expel him from the country on grounds that he had been granted international protection in Hungary. The applicant appealed the decision on grounds that he was suffering from a serious illness and mental health issues and that in Hungary the authorities did not renew his residence permit and he did not receive assistance for his health problems.

The Immigration Appeals Board considered the situation in Hungary and noted that, although persons who receive international protection in Hungary have the right to access health care, there were various obstacles to the use of the service. The Board concluded that there was insufficient information available on the applicant's health needs. Therefore, the Board revoked the decision of the Directorate of Immigration and referred the case to the Directorate to reconsider the application.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1957

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant* v *State Secretary of Security and Justice*, ECLI:NL:RVS:2021:1869, 23 August 2021.

The Council of State confirmed previous jurisprudence on secondary movements from Greece.

The case concerned the situation of beneficiaries of international protection in Greece and the risk of being exposed to inhuman and degrading treatment due to the conditions offered to beneficiaries of protection. The Council of State annulled the inadmissibility decision issued against the applicant and reiterated that it already decided in cases *Applicant (Syria) v State Secretary of Security and Justice* and *Applicant (Syria) v State Secretary of Security and Justice* that the State Secretary has to provide further reasoning on why an applicant would not be exposed to the risk of inhuman and degrading treatment in Greece.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1960

Detention

Objective criteria for justifying detention

European Union, Court of Justice of the European Union [CJEU], *JA* v *Republic of Slovenia (Republika Slovenija)*, C-186/21 PPU, 3 June 2021.

The CJEU ruled on the objective criteria for justifying the detention of an asylum applicant.

The case concerned a national of Bosnia and Herzegovina who received a negative decision on his application for international protection. During the proceedings, he was convicted to a custodial sentence of 1 year and 3 months, and an entry ban to the territory for 3 years. He submitted a new application after having served the sentence and he was placed in administrative detention. He appealed against the administrative detention order, arguing that the national provision does not lay down objective criteria to assess whether he submitted a new application for international protection for the sole purpose of delaying the execution of his removal from the Slovenian territory.

The administrative court referred the case to the CJEU, within the urgent preliminary ruling procedure, requesting whether the national legislation provides for an 'objective criteria' within the meaning of the first subparagraph of Article 8(3d) of the recast Reception Conditions Directive. The CJEU held that the provision, although not defining the concept of 'objective criteria', provides as an example of a criterion the fact that the applicant has already had the possibility of accessing the asylum procedure. In this case, the competent national authorities can invoke this fact to justify that there are reasonable grounds to believe that the person concerned submitted the application for the sole purpose of delaying or preventing the execution of the return order.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1833

Detention pending a Dublin transfer

Council of Europe, European Court of Human Rights [ECtHR], *M.D. and A.D.* v *France*, No 57035/18, 22 July 2021.

The ECtHR found violations of the ECHR, Articles 3 and 5 for the detention pending a Dublin transfer of a mother and her child for 11 days in the Centre of Mesnil-Amelot No 2.

A mother and her 4-month-old daughter fled from Mali due to a fear of being subjected to FGM and forcibly married. After refusing to board a flight to Italy, they were placed in administrative detention in Mesnil-Amelot Administrative Detention Centre No 2.

The ECtHR found a violation of the ECHR, Article 3. It held that detaining a 4-month-old minor for 11 days was excessive and went beyond the severity threshold under Article 3 due to the ill treatment of the applicants who were held in inadequate conditions.

In addition, the court found a violation of the ECHR, Article 5 (1) and (4) as the national authorities had not verified that the initial detention was a measure of last resort for which there was no other alternative. None of the national courts had taken into account the minority of the second applicant.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1876

Content of protection

Family reunification

Council of Europe, European Court of Human Rights [ECtHR], *M.A.* v *Denmark*, No 6697/18, 9 July 2021.

The ECtHR ruled that a waiting period of 3 years in family reunification cases violated the European Convention, Article 8.

The court analysed whether the distinction imposed by the Danish authorities between beneficiaries of temporary protection and beneficiaries of international protection, in terms of a waiting period of 3 years for family reunification for the former but not the latter, was justified.

The court held that 3 years was a long time to separate a family, which would disrupt family life. It also noted that, with very limited exceptions, the Danish legislation did not allow an individualised assessment of the interest of family unity that would reduce the waiting period. In the applicant's case, there was no individualised assessment, which made the wait obligatory.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1870

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *A and B (Pakistan)* v *Finnish Immigration Service*, No 5630/2019, 22 June 2021.

The Supreme Administrative Court clarified the assessment criteria for issuance of a residence permit based on family reunification.

Two Pakistani nationals were refused family reunification on grounds related to insufficient means of subsistence. The Supreme Administrative Court annulled the contested decision and referred the case back for re-examination. It noted that the Finnish Immigration Service did not take into account the salary of the sponsor based on the employment contract, because the family gatherer has been granted a trader's residence permit. It also noted that, when a third-country national applied for a residence permit on the basis of family ties, the basis on which the family gatherer was granted a residence permit was irrelevant in this respect.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1857

Humanitarian protection

Special protection in Italy

Italy, Civil Court [Tribunali], *Applicant (India)* v *Ministry of the Interior (Ministero dell'interno),* No 8687/19, 18 June 2021.

The Court of Bari annulled the return of an Indian national as he would be in a situation of serious vulnerability and poverty, in part due to the spread of the COVID-19 pandemic.

The request for international protection of an Indian applicant from the Punjab region, who entered Italy as a seasonal worker, was rejected by the Territorial Commission of Bari. The applicant appealed the decision, arguing that the commission failed to assess humanitarian protection.

The Court of Bari granted special protection as the application was pending prior to the entry into force of Legislative Decree No 113/18. The court also noted that the likely situation in which the applicant would find himself in case of return would be one of serious vulnerability considering his integration in Italy, the spread of the COVID-19 pandemic in India and the family situation.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1889

Return

Compulsory COVID-19 PCR tests

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant (Azerbaijan)* v *Federal Office for Migration and Refugees (BAMF),* 4 L 472 / 21.MZ, 14 June 2021.

The Administrative Court of Mainz held that compulsory COVID-19 tests for carrying out deportations are permitted.

The application for international protection of an Azerbaijani national was rejected and a deportation order was issued. The applicant refused to undergo a compulsory COVID-19 test which was necessary to enforce the deportation. The Administrative Court of Mainz held that the compulsory test had a legal basis in the Residence Act, according to which, if necessary, for the preparation and implementation of a deportation measure, a medical examination can be ordered to determine the ability to travel. The court held that the conditions were met and a COVID-19 PCR test was compulsory, proportionate and necessary for the safety of fellow passengers. The court noted that the COVID-19 PCR test is a medical examination that is carried out by medical professionals and there was no evidence that the swab will not be taken according to medical rules.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1887

Medical conditions precluding deportation

Council of Europe, European Court of Human Rights [ECtHR], *Khachaturov* v *Armenia*, No 59687/17, 24 June 2021.

The ECtHR found a violation of the ECHR, Article 3 for an insufficient assessment of the risks of an extradition to Russia.

A Russian national of Armenian origin, whose request for asylum was rejected, faced extradition from the Armenian authorities to Russia, where criminal proceedings for attempted bribe-taking were pending against him. Relying on the ECHR, Articles 2 and 3, the applicant claimed that his medical condition did not render him fit for being transferred either by air or land. The court observed that the applicant had provided credible and detailed medical information from different doctors attesting to severe disorders of cardiovascular and nervous systems and the associated risks if he were to travel. Additionally, it noted that the domestic courts failed to properly assess the risks that the transfer could cause. The court concluded that there would be a violation of the ECHR, Article 3 if the applicant was extradited to Russia without the Armenian authorities having assessed the risk faced by him during his transfer in view of the information on his state of health.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1848

Return to Morocco

Council of Europe, European Court of Human Rights [ECtHR], *E.H.* v *France*, No 39126/18, 22 July 2021.

The ECtHR ruled on the return to Morocco of an applicant of Sahrawi origin.

The ECtHR found no violation of the ECHR, Article 13 read in conjunction with Article 3 in the event of return to Morocco of an applicant who claimed to be at risk of ill treatment due to his Sahrawi origins and activism in support of the Western Saharan independence. The court held that the evidence did not substantiate the applicant's allegations and that the proceedings, as a whole, had been effective in this case.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1877

Removal of unaccompanied minors

Spain, Administrative Courts [Juzgados de lo Contencioso-Administrativo], *Asociacion Barrios para el Seguimiento de Menores y Jovenes and Fundacion Raices* v *Government Delegation in Ceuta (Delegacion del Gobierno de Ceuta)*, No 0000137/2021, 16 August 2021.

The Administrative Court of Ceuta ordered the temporary cessation of removals of unaccompanied minors to Morocco.

The court adopted an urgent precautionary measure and ordered the cessation of removals to Morocco of 9 unaccompanied minors. For the repatriation of unaccompanied minors, the court recalled that the Spanish legislation requires an individual administrative file to be opened with essential data, such as information related to the minor's parents and their family and social circumstances in their country of origin. Likewise, the notification of the initiation of the procedure should be sent to the Public Prosecutor's Office and the authority responsible for their guardianship, in order for the latter to present, if necessary, for arguments within the legal time limit of 10 days. In the absence of all these procedures and safeguards, the court considered it sufficient to order the interim measure and temporarily stopped the removals.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1914