European Asylum Support Office

Compilation of jurisprudence

Asylum procedures and the principle of *non-refoulement*

EASO Professional Development Series for members of courts and tribunals

Produced by IARLJ-Europe under contract to EASO

July 2018

SUPPORT IS OUR MISSION

EASO professional development materials have been created in cooperation with members of courts and tribunals on the following topics:

- an introduction to the Common European Asylum System for courts and tribunals;
- qualification for international protection (Directive 2011/95/EU);
- asylum procedures and the principle of non-refoulement;
- evidence and credibility assessment in the context of the Common European Asylum System;
- Article 15(c) qualification directive (Directive 2011/95/EU);
- exclusion: Articles 12 and 17 qualification directive (Directive 2011/95/EU);
- ending international protection: Articles 11, 14, 16 and 19 Qualification Directive (Directive 2011/95/EU);
- a country of origin information.

The Professional Development Series comprises Judicial analyses, Judicial trainers' guidance notes and Compilations of jurisprudence for each topic covered, apart from Country of origin information which comprises a Judicial practical guide accompanied by a Compilation of jurisprudence. All materials are developed in English. For more information on publications, including on the availability of different language versions, please visit **www.easo.europa.eu/training-quality/courts-and-tribunals**.

European Asylum Support Office

Compilation of jurisprudence

Asylum procedures and the principle of *non-refoulement*

EASO Professional Development Series for members of courts and tribunals

July 2018

SUPPORT IS OUR MISSION

More information on the European Union is available on the internet (http://europa.eu).

Print ISBN 978-92-9494-752-9 doi:10.2847/065986 BZ-07-17-011-EN-C
PDF ISBN 978-92-9494-751-2 doi:10.2847/529423 BZ-07-17-011-EN-N

European Asylum Support Office

The European Asylum Support Office (EASO) is an agency of the European Union that plays a key role in the concrete development of the Common European Asylum System (CEAS). It was established with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need.

Article 6 of the EASO founding regulation ([1]) specifies that the agency shall establish and develop training available to members of courts and tribunals in the Member States. For this purpose, EASO shall take advantage of the expertise of academic institutions and other relevant organisations, and take into account the Union's existing cooperation in the field with full respect to the independence of national courts and tribunals.

The International Association of Refugee Law Judges

The International Association of Refugee Law Judges (IARLJ) is a transnational, non-profit association that seeks to foster recognition that protection from persecution on account of race, religion, nationality, political opinion or membership of a particular social group is an individual right established under international law and that the determination of refugee status and its cessation should be subject to the rule of law. Since its foundation in 1997, the association has been heavily involved in the training of judges around the world dealing with asylum cases. The European Chapter of the IARLJ (IARLJ-Europe) is the regional representative body for judges within Europe. One of IARLJ-Europe's specific objectives under its Constitution is 'to enhance knowledge and skills and to exchange views and experiences of judges on all matters concerning the application and functioning of the Common European Asylum System (CEAS)'.

Contributors

This compilation of jurisprudence has been developed by a two-component process: an editorial team (ET) of judges and tribunal members with overall responsibility for the final product, and a drafting team of experts.

In order to ensure the integrity of the principle of judicial independence and that the EASO *Professional Development Series for members of courts and tribunals (PDS)* is developed and delivered under judicial guidance, an ET composed of serving judges and tribunal members with extensive experience and expertise in the field of asylum law was selected under the auspices of a Joint Monitoring Group. The group is composed of representatives of the contracting parties, EASO and IARLJ-Europe. The ET reviewed drafts, gave detailed guidance to the drafting team, drafted amendments and was the final decision-making body as to the scope, structure, content and design of the work. The work of the ET was undertaken through a combination of face-to-face meetings in London in May 2017 and in Brussels in October 2017 as well as regular electronic/telephonic communication.

([1]) Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, pp. 11-28).

Editorial team of judges

The members of the ET were judges and tribunal members **Hugo Storey** (United Kingdom, Chair), **Hilkka Becker** (Ireland), **Jakub Camrda** (Czech Republic), **Katelijne Declerck** (Belgium), **Michael Hoppe** (Germany), **Liesbeth Steendijk** (Netherlands), **Florence Malvasio** (France) and **Boštjan Zalar** (Slovenia). The ET was supported and assisted in its task by Project Coordination Manager **Clara Odofin**.

Drafting team of experts

The drafting team consisted of lead expert **Professor Jens Vedsted-Hansen** (Aarhus University, Denmark), **Dr Céline Bauloz** (Global Migration Centre, Graduate Institute of International and Development Studies, Geneva, Switzerland), **Dr Constantin Hruschka** (University of Bielefeld, Germany), **Hana Lupačová** (Public Defender of Human Rights, Brno, Czech Republic), **Dr Dirk Sander** (Federal Administrative Court, Leipzig, Germany) and **Dr Louise Halleskov Storgaard** (Aarhus University, Denmark). Consultants **Frances Nicholson** and **Claire Thomas** provided editorial support.

Acknowledgements

Comments on the draft were received from Judge **Lars Bay Larsen** and **Yann Laurans** of the Court of Justice of the European Union (CJEU) and from Judge **Ledi Bianku** of the European Court of Human Rights (ECtHR), in their personal capacities.

Comments were also received from the following participants in the EASO network of court and tribunal members and in the EASO consultative forum: Ana Celeste Carvalho, appellate judge at the Central South Administrative Court and judicial trainer at the Centre for Judicial Studies, Lisbon, Portugal; Lars I. Magnusson, judge at the Administrative Court of Gothenburg, Sweden, and migration law representative at the Judicial Training Academy, Jönköping, Sweden; Catherine Koutsopoulou, judge at the Court of First Instance of Athens and member of the third Independent Appeal Committee, Athens, Greece; European Council on Refugees and Exiles, Brussels, Belgium; Koulocheris Spyros, head of legal research, Greek Council for Refugees, Athens, Greece; and Oikonomou Sypros-Vlad, legal and programmes intern, Greek Council for Refugees, Athens, Greece.

All these comments were taken into consideration by the ET in finalising the text for publication. The members of the ET and EASO are grateful to all those who have made comments, which have been very helpful in finalising this compilation of jurisprudence.

This compilation will be updated as necessary by EASO, in accordance with the methodology for the EASO *Professional Development Series for members of courts and tribunals*.

Compilation of jurisprudence

The purpose of this compilation of jurisprudence is to provide courts and tribunals in Member States with a helpful aid when hearing appeals or conducting reviews of decisions on applications for international protection cases. Contributors decided to include in this compilation jurisprudence from the CJEU and the ECtHR and national case-law from two Member States.

Compilation of jurisprudence

Court of Justice of the European Union jurisprudence

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*The Queen* v *Secretary of State for Transport, ex parte Factortame*, Case C-213/89, EU:C:1990:257. 19.6.1990	Judgment after a reference for a preliminary ruling from the United Kingdom relating to the rights derived from provisions of Community law. Community law — application for interim relief — existence of a national rule prohibiting that application from being granted — duties and powers of the court seised. **Para. 21:** 'It must be added that the full effectiveness of Community law would be just as much impaired if a rule of national law could prevent a court seised of a dispute governed by Community law from granting interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law. It follows that a court which in those circumstances would grant interim relief, if it were not for a rule of national law, is obliged to set aside that rule.'	
CJEU	*Virginie Pontin* v *T-Comalux SA*, Case C-63/08, EU:C:2009:666. 29.10.2009	Judgment after a reference for a preliminary ruling from the Tribunal du travail d'Esch-sur-Alzette (Luxembourg) relating to the restriction of remedies available to women dismissed during pregnancy. Judicial protection of rights enjoyed by individuals under Community law — equal treatment for men and women — less favourable treatment of a woman related to pregnancy or maternity leave — remedies available to women. **Para. 65:** 'However, even if that provision were to limit the effects of that case-law relating to the posting of the letter of dismissal, which, where necessary, it is for the referring court to decide, it would however be very difficult for a female worker dismissed during her pregnancy to obtain proper advice and, if appropriate, prepare and bring an action within the 15-day period.'	

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*Hassen El Dridi, alias Soufi Karim*, Case C-61/11 PPU, EU:C:2011:268. 28.4.2011	Judgment after a reference for a preliminary ruling from the Corte d'appello di Trento (Italy) relating to common standards and procedures in Member States for returning illegally staying third-country nationals. Return of illegally staying third-country nationals — Articles 15 and 16 of Directive 2008/115/EC — detention in the event of refusal to obey an order to leave the territory of a Member State. **Paras. 36-38:** '36. As part of that initial stage of the return procedure, priority is to be given, except where otherwise provided for, to voluntary compliance with the obligation resulting from that return decision, with Article 7(1) of Directive 2008/115/EC providing that the decision must provide for an appropriate period for voluntary departure of between seven and 30 days. 37. It follows from Article 7(3) and (4) of that directive that it is only in particular circumstances, such as where there is a risk of absconding, that Member States may, first, require the addressee of a return decision to report regularly to the authorities, deposit an adequate financial guarantee, submit documents or stay at a certain place or, second, grant a period shorter than 7 days for voluntary departure or even refrain from granting such a period. 38. In the latter situation, but also where the obligation to return has not been complied with within the period for voluntary departure, Article 8(1) and (4) of Directive 2008/115/EC provides that, in order to ensure effective return procedures, those provisions require the Member State which has issued a return decision against an illegally staying third-country national to carry out the removal by taking all necessary measures including, where appropriate, coercive measures, in a proportionate manner and with due respect for, inter alia, fundamental rights.' **Paras. 40-41:** '40. Under the second subparagraph of Article 15(1) of Directive 2008/115/EC, that deprivation of liberty must be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence. Under Article 15(3) and (4), such deprivation of liberty is subject to review at reasonable intervals of time and is to be terminated when it appears that a reasonable prospect of removal no longer exists. Article 15(5) and (6) fixes the maximum duration of detention at 18 months, a limit which is imposed on all Member States. Article 16(1) of that directive further requires that the persons concerned are to be placed in a specialised facility and, in any event, kept separated from ordinary prisoners. 41. It follows from the foregoing that the order in which the stages of the return procedure established by Directive 2008/115/EC are to take place corresponds to a gradation of the measures to be taken in order to enforce the return decision, a gradation which goes from the measure which allows the person concerned the most liberty, namely granting a period for his voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility; the principle of proportionality must be observed throughout those stages.' **Para. 58**: 'Consequently, the Member States may not, in order to remedy the failure of coercive measures adopted in order to carry out forced removal pursuant to Article 8(4) of that directive, provide for a custodial sentence, such as that provided for by Article 14(5b) of Legislative Decree No 286/1998, on the sole ground that a third-country national continues to stay illegally on the territory of a Member State after an order to leave the national territory was notified to him and the period granted in that order has expired; rather, they must pursue their efforts to enforce the return decision, which continues to produce its effects.'	

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*Brahim Samba Diouf* v *Ministre du Travail, de l'Emploi et de l'Immigration*, Case C-69/10, EU:C:2011:524. 28.7.2011	Judgment after a reference for a preliminary ruling from the Tribunal administratif (Luxembourg) concerning the interpretation of Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Minimum standards on procedures in Member States for granting and withdrawing refugee status — no remedy against the decision to deal with the application under an accelerated procedure — right to effective judicial review. **Paras. 41-43:** '41. In that regard, it is clear from the wording of Article 39(1)(a) of Directive 2005/85/EC and, in particular, from the non-exhaustive list of decisions contained therein, that the concept of a 'decision taken on [the] application for asylum' covers a series of decisions which, because they entail rejection of an application for asylum or are taken at the border, amount to a final decision rejecting the application on the substance. The same is true of the other decisions which, under Article 39(1)(b) to (e) of Directive 2005/85/EC, are expressly made subject to the right to an effective judicial remedy. 42. Accordingly, the decisions against which an applicant for asylum must have a remedy under Article 39(1) of Directive 2005/85/EC are those which entail rejection of the application for asylum for substantive reasons or, as the case may be, for formal or procedural reasons which preclude any decision on the substance. 43. It follows that decisions that are preparatory to the decision on the substance or decisions pertaining to the organisation of the procedure are not covered by that provision.' **Paras. 56-58:** '56. Accordingly, the absence of a remedy at that stage of the procedure does not constitute an infringement of the right to an effective remedy, provided, however, that the legality of the final decision adopted in an accelerated procedure — and, in particular, the reasons which led the competent authority to reject the application for asylum as unfounded — may be the subject of a thorough review by the national court, within the framework of an action against the decision rejecting the application. 57. As regards judicial review within the framework of a substantive action against the decision rejecting the application for international protection, the effectiveness of that action would not be guaranteed if — because of the impossibility of bringing an appeal under Article 20(5) of the law of 5 May 2006 — the reasons which led the Minister for Labour, Employment and Immigration to examine the merits of the application under an accelerated procedure could not be the subject of judicial review. In a situation such as that at issue in the main proceedings, the reasons relied on by that minister in order to use the accelerated procedure are in fact the same as those which led to that application being rejected. Such a situation would render review of the legality of the decision impossible, as regards both the facts and the law […]. 58. What is important, therefore, is that the reasons justifying the use of an accelerated procedure may be effectively challenged at a later stage before the national court and reviewed by it within the framework of the action that may be brought against the final decision closing the procedure relating to the application for asylum. It would not be compatible with EU law if national rules such as those deriving from Article 20(5) of the law of 5 May 2006 were to be construed as precluding all judicial review of the reasons which led the competent administrative authority to examine the application for asylum under an accelerated procedure.'	*Wilson* [2006], Case C-506/04 ECR I-8613, paragraphs 60-62.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
		Paras. 62-69: '62. With regard to the time limits for bringing proceedings and the possibility of two levels of jurisdiction, the referring court points to the differences between the accelerated procedure and the ordinary procedure for dealing with an application for asylum. In particular, it draws attention to the fact that the action against the final decision must be brought within a period of 15 days from notification of that decision, as opposed to within 1 month in the case of the ordinary procedure, and that the decisions of the Tribunal administratif taken in relation to an accelerated procedure are not open to appeal. 63. The governments that have submitted observations and the Commission maintain that a single court action satisfies the minimum required by the principle that effective judicial protection should be guaranteed and submit that a 15-day time limit, in this instance, does not amount to an infringement of that principle, either from the point of view of the case-law of the European Court of Human Rights or that of the Court of Justice. 64. It should be determined whether EU law precludes national rules such as those at issue in the main proceedings insofar as the selection of an accelerated procedure instead of the ordinary procedure entails differences the effect of which is, in essence, that a less favourable treatment is reserved for the applicant for asylum as regards the right to an effective remedy, since the applicant has only 15 days within which to bring an action and does not have the benefit of two levels of jurisdiction. 65. In that regard, it must be stated at the outset that the differences that exist, in the national rules, between the accelerated procedure and the ordinary procedure, the effect of which is that the time limit for bringing an action is shortened and that there is only one level of jurisdiction, are connected with the nature of the procedure put in place. The provisions at issue in the main proceedings are intended to ensure that unfounded or inadmissible applications for asylum are processed more quickly, in order that applications submitted by persons who have good grounds for benefiting from refugee status may be processed more efficiently. 66. As regards the fact that the time limit for bringing an action is 15 days in the case of an accelerated procedure, whilst it is 1 month in the case of a decision adopted under the ordinary procedure, the important point, as the advocate-general has stated in point 63 of his opinion, is that the period prescribed must be sufficient in practical terms to enable the applicant to prepare and bring an effective action. 67. With regard to abbreviated procedures, a 15-day time limit for bringing an action does not seem, generally, to be insufficient in practical terms to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved. 68. It is, however, for the national court to determine — should that time limit prove, in a given situation, to be insufficient in view of the circumstances — whether that element is such as to justify, on its own, upholding the action brought indirectly against the decision to examine the application for asylum under an accelerated procedure, so that, in upholding the action, the national court would order that the application be examined under the ordinary procedure. 69. As regards the fact that the applicant for asylum has the benefit of two levels of jurisdiction only in relation to a decision adopted under the ordinary procedure, Directive 2005/85/EC does not require there to be two levels of jurisdiction. All that matters is that there should be a remedy before a judicial body, as is guaranteed by Article 39 of Directive 2005/85/EC. The principle of effective judicial protection affords an individual a right of access to a court or tribunal but not to a number of levels of jurisdiction.'	

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	*N.S.* v *Secretary of State for the Home Department and M.E.and Others* v *Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, Joined Cases C-411/10 and C-493/10, EU:C:2011:865. 21.12.2011	Judgment after a reference for a preliminary ruling from the Court of Appeal (England and Wales) (civil division) (United Kingdom) and the High Court (Ireland) relating to the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. Common European Asylum System — Regulation (EC) No 343/2003 — transfer of an asylum seeker to the Member State responsible — concept of 'safe countries'. **Para. 69:** '... the decision by a Member State on the basis of Article 3(2) of Regulation No 343/2003 whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of that regulation, implements European Union law for the purposes of Article 6 TEU ([2]) and/or Article 51 of the charter.' **Para. 108:** 'The Member State in which the asylum seeker is present must, however, ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible, which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.' **Paras. 117-121:** '117. As noted by the EHRC ([3]), that question arises because of the position taken by the Secretary of State before the High Court of Justice (England and Wales) (Administrative Court) that the provisions of the charter do not apply in the United Kingdom. 118. Even if the Secretary of State no longer maintained that position before the Court of Appeal (England and Wales) (civil division), it must be noted that Protocol (No 30) provides, in Article 1(1), that the charter is not to extend the ability of the Court of Justice or any court or tribunal of Poland or of the United Kingdom to find that the laws, regulations administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it affirms. 119. According to the wording of that provision, as noted by the advocate-general in points 169 and 170 of her opinion in Case C-411/10, Protocol (No 30) does not call into question the applicability of the charter in the United Kingdom or in Poland, a position which is confirmed by the recitals in the preamble to that protocol. Thus, according to the third recital in the preamble to Protocol (No 30), Article 6 TEU requires the charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that article. In addition, according to the sixth recital in the preamble to that protocol, the charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles. 120. In those circumstances, Article 1(1) of Protocol (No 30) explains Article 51 of the charter with regard to the scope thereof and does not intend to exempt Poland or the United Kingdom from the obligation to comply with the provisions of the charter or to prevent a court of one of those Member States from ensuring compliance with those provisions. 121. Since the rights referred to in the cases in the main proceedings do not form part of Title IV of the charter, there is no need to rule on the interpretation of Article 1(2) of Protocol (No 30).'	

([2]) Treaty on European Union.
([3]) Equality and Human Rights Commission.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*Migrationsverket* v *Nurije Kastrati, Valdrina Kastrati and Others*, Case C-620/10, EU:C:2012:265. 3.5.2012	Judgment after a reference for a preliminary ruling from the Kammarrätten i Stockholm — Migrationsöverdomstolen (Sweden) relating to an asylum application being lodged in a Member State other than the state responsible but then withdrawn. Withdrawal of asylum application — prior to acceptance of take charge request — Dublin rules no longer applicable. **Para. 45:** '... in principle exhaustively, the situations in which the obligations on the Member State responsible for examining an asylum application to 'take charge' or 'take back' an applicant who has lodged an asylum application in a Member State other than the state responsible may cease. However, they presuppose the existence of an asylum application which the Member State responsible must examine, is in the process of examining or on which it has already taken a decision.' **Para. 47:** '... the withdrawal of an asylum application which occurs in circumstances such as those in the main proceedings in the present case, that is to say before the requested Member State has agreed to take charge of the asylum seeker, has the effect that Regulation No 343/2003 can no longer be applicable.'	
CJEU	*H. I. D. and B. A. v Refugee Applications Commissioner and Others*, Case C-175/11, EU:C:2013:45. 31.1.2013	Judgment after a reference for a preliminary ruling from the High Court (Ireland) concerning the interpretation of Articles 23 and 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Directive 2005/85/EC — Article 23 — possibility of prioritising the processing of asylum applications — right to an effective judicial remedy. **Paras. 72-73:** '72. In addition, as appears from recital 17 in the preamble to Directive 2005/85/EC, the European Union legislature introduced the concept of "safe country of origin" according to which, when a third country may be regarded as safe, Member States should be able to designate it as safe and presume that a particular applicant will be safe there. The European Union legislature therefore provided under Article 23(4)(c) of that directive that Member States may decide that an examination procedure be prioritised or accelerated in the case where the asylum application is considered unfounded because the applicant is from a safe country of origin within the terms of that directive. 73. It follows, as the advocate-general has noted in point 67 of his opinion, that the nationality of the applicant for asylum is an element which may be taken into consideration to justify the prioritised or accelerated processing of an asylum application.' **Para. 84:** 'It is common ground, regard being had to the observations submitted to the Court both by the applicants in the main proceedings and by the Member States and the institutions, that the Refugee Appeals Tribunal meets the criteria of establishment by law, permanence and application of rules of law.' **Paras. 89-91:** '89. In that regard, the ORAC's ([4]) participation as a party to the appeal proceedings before the Refugee Appeals Tribunal to defend the decision taken at first instance is not an absolute requirement. 90. By contrast, it is important to note that Section 16(5) of the refugee act provides that the Refugee Applications Commissioner must provide to the Refugee Appeals Tribunal copies of all reports, documents or representations in writing submitted to him under Section 11 of that act as well as a written indication of the nature and source of any other information concerning the application of which he has become aware in the course of his investigation. In accordance with Section 16(8), the Refugee Appeals Tribunal provides the applicant and his solicitor as well as the United Nations High Commissioner for Refugees, at its request, with copies of those documents. 91. Furthermore, in accordance with Section 16(10) and (11)(a) and (c) of the refugee act, the Refugee Appeals Tribunal may also hold a hearing during which it may direct any person whose evidence is required to attend, and hear both the applicant and the Refugee Applications Commissioner present their case in person or through a legal representative. As a consequence, each party has the opportunity to make the Refugee Appeals Tribunal aware of any information necessary to the success of the application for asylum or to the defence.' **Para. 93:** 'It follows that the Refugee Appeals Tribunal has a broad discretion, since it takes cognisance of both questions of fact and questions of law and rules on the evidence submitted to it, in relation to which it enjoys a discretion.'	

([4]) Office of the Refugee Applications Commissioner.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
		Paras. 97-101: '97. The Court has also stated that such guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for abstention, rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it. In that regard, in order to consider the condition regarding the independence of the body making the reference as met, the case-law requires, inter alia, that dismissals of members of that body should be determined by express legislative provisions (see order in Case C-109/07 *Pilato* [2008] ECR I-3503, paragraph 24 and the case-law cited). 98. In the present case, Section 15(2) of the refugee act provides that the Refugee Appeals Tribunal is independent in the performance of its functions. In addition, though the minister retains residual discretion to grant refugee status despite a negative decision on an asylum application, it should be noted that, where the Refugee Appeals Tribunal finds in favour of the applicant for asylum, the minister is bound by the decision of that tribunal and is therefore not empowered to review it. 99. As for the rules governing the appointment of members of the Refugee Appeals Tribunal, these are not capable of calling into question the independence of that tribunal. The members of the tribunal are appointed for a specific term from among persons with at least 5 years' experience as a practising barrister or a practising solicitor, and the circumstances of their appointment by the minister do not differ substantially from the practice in many other Member States. 100. With regard to the issue of the removal of members of the Refugee Appeals Tribunal, it follows from paragraph 7 of the second schedule to the refugee act that the ordinary members of that tribunal may be removed from office by the minister. The minister's decision must state the reasons for such removal. 101. As noted by the advocate-general at point 88 of his opinion, the cases in which the members of the Refugee Appeals Tribunal may be removed from office are not defined precisely by the refugee act. Nor does the refugee act specify whether the decision to remove a member of the Refugee Appeals Tribunal is amenable to judicial review.' **Para. 103:** 'In the present case, under Section 5 of the Illegal Immigrants (Trafficking) Act 2000, applicants for asylum may also question the validity of recommendations of the Refugee Applications Commissioner and decisions of the Refugee Appeals Tribunal before the High Court, the decisions of which may be appealed to the Supreme Court. The existence of these means of obtaining redress appear, in themselves, to be capable of protecting the Refugee Appeals Tribunal against potential temptations to give in to external intervention or pressure liable to jeopardise the independence of its members.'	
CJEU	*The Queen, on the application of MA and Others* v *Secretary of State for the Home Department*, Case C-648/11, EU:C:2013:367. 6.6.2013	Judgment after a reference for a preliminary ruling from the Court of Appeal (England and Wales) (civil division) (United Kingdom) relating to unaccompanied minors. Unaccompanied minor — responsible Member State is where a sibling or family member is legally present. **Paras. 46-48:** '46. The first of the criteria established in Chapter III of Regulation No 343/2003 is that laid down in Article 6, which serves to determine the Member State responsible for examining an application lodged by an unaccompanied minor within the meaning of Article 2(h) of that regulation. 47. As provided in the first paragraph of Article 6, the Member State responsible for examining an application lodged by an unaccompanied minor is to be that where a member of his family is legally present, provided that this is in the best interest of the minor. 48. In the present case it is apparent from the order for reference that no member of the families of the appellants in the main proceedings is legally present in a Member State, and the Member State responsible must therefore be designated on the basis of the second paragraph of Article 6 of Regulation No 343/2003, which provides that responsibility is to lie with the Member State "where the minor has lodged his or her application for asylum".'	

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	*European Commission and Others* v *Yassin Abdullah Kadi*, Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518. 18.7.2013	Judgment after a reference for a preliminary ruling from the European Commission, the Council of the European Union and the United Kingdom of Great Britain and Northern Ireland. Fundamental rights — right to effective judicial protection — respect for the rights of the defence. **Paras. 97-98:** '97. As stated by the General Court in paragraphs 125, 126 and 171 of the judgment under appeal, the Court held, in paragraph 326 of […], that the courts of the European Union must, in accordance with the powers conferred on them by the treaties, ensure the review, in principle the full review, of the lawfulness of all Union acts in the light of the fundamental rights forming an integral part of the European Union legal order, including review of such measures as are designed to give effect to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations […]. That obligation is expressly laid down by the second paragraph of Article 275 TFEU ([5]). 98. Those fundamental rights include, inter alia, respect for the rights of the defence and the right to effective judicial protection.' **Paras. 111-119:** '111. In proceedings relating to the adoption of the decision to list or maintain the listing of the name of an individual in Annex I to Regulation No 881/2002, respect for the rights of the defence and the right to effective judicial protection requires that the competent Union authority disclose to the individual concerned the evidence against that person available to that authority and relied on as the basis of its decision, that is to say, at the very least, the summary of reasons provided by the Sanctions Committee (see, to that effect, the *Kadi* judgment, paragraphs 336 and 337), so that that individual is in a position to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in bringing an action before the courts of the European Union. 112. When that disclosure takes place, the competent Union authority must ensure that that individual is placed in a position in which he or she may effectively make known his or her views on the grounds advanced against him or her […]. 113. As regards a decision whereby, as in this case, the name of the individual concerned is to be maintained on the list in Annex I to Regulation No 881/2002, compliance with that dual procedural obligation must, contrary to the position in respect of an initial listing (see, in that regard, the *Kadi* judgment, paragraphs 336 to 341 and 345 to 349, and […], precede the adoption of that decision (see *France* v *People's Mojahedin*, paragraph 62). It is not disputed that, in the present case, the Commission, the author of the contested regulation, complied with that obligation. 114. When comments are made by the individual concerned on the summary of reasons, the competent European Union authority is under an obligation to examine, carefully and impartially, whether the alleged reasons are well founded, in the light of those comments and any exculpatory evidence provided with those comments […]. 115. In that context, it is for that authority to assess, having regard, inter alia, to the content of any such comments, whether it is necessary to seek the assistance of the Sanctions Committee and, through that committee, the member of the UN which proposed the listing of the individual concerned on that committee's consolidated list, in order to obtain, in that spirit of effective cooperation which, under Article 220(1) TFEU, must govern relations between the Union and the organs of the United Nations in the fight against international terrorism, the disclosure of information or evidence, confidential or not, to enable it to discharge its duty of careful and impartial examination.	*Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008], C-402/05 P and C-415/05 P, ECR I-6351 (the *Kadi* judgment); *Hassan and Ayadi* v *Council and Commission*, paragraph 71; *Bank Melli Iran* v *Council*, paragraph 105; *Commission* v *Lisrestal and Others* [1996], Case C-32/95 P, ECR I-5373, paragraph 21; *Mediocurso* v *Commission* [2000], Case C-462/98 P, ECR I-7183, paragraph 36; *M.*, judgment of 22 November 2012, Case C-277/11 paragraph 87 and case-law cited;

([5]) Treaty on the Functioning of the European Union.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
		116. Lastly, without going so far as to require a detailed response to the comments made by the individual concerned […], the obligation to state reasons laid down in Article 296 TFEU entails in all circumstances, not least when the reasons stated for the European Union measure represent reasons stated by an international body, that that statement of reasons identifies the individual, specific and concrete reasons why the competent authorities consider that the individual concerned must be subject to restrictive measures […]. 117. As regards court proceedings, in the event that the person concerned challenges the lawfulness of the decision to list or maintain the listing of his or her name in Annex I to Regulation No 881/2002, the review by the courts of the European Union must extend to whether rules as to procedure and rules as to competence, including whether or not the legal basis is adequate, are observed (see, to that effect, the *Kadi* judgment, paragraphs 121 to 236; see also, by analogy […]). 118. The courts of the European Union must, further, determine whether the competent European Union authority has complied with the procedural safeguards set out in paragraphs 111 to 114 of this judgment and the obligation to state reasons laid down in Article 296 TFEU, as mentioned in paragraph 116 of this judgment, and, in particular, whether the reasons relied on are sufficiently detailed and specific. 119. The effectiveness of the judicial review guaranteed by Article 47 of the charter also requires that, as part of the review of the lawfulness of the grounds which are the basis of the decision to list or to maintain the listing of a given person in Annex I to Regulation No 881/2002 (the *Kadi* judgment, paragraph 336), the courts of the European Union are to ensure that that decision, which affects that person individually […], is taken on a sufficiently solid factual basis […]. That entails a verification of the factual allegations in the summary of reasons underpinning that decision (see to that effect, *E and F*, paragraph 57), with the consequence that judicial review cannot be restricted to an assessment of the cogency in the abstract of the reasons relied on, but must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated.'	*France* v *People's Mojahedin Organisation of Iran*, paragraph 61; *Technische Universität München* [1991], Case C-269/90, ECR I-5469, paragraph 14; *Spain* v *Lenzing* [2007], Case C-525/04 P, ECR I-9947, paragraph 58; *M.*, paragraph 88; *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 141; *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraphs 140 and 142; *Council* v *Bamba*, paragraphs 49-53; *Tay Za* v *Council*, Case C-376/10 P, paragraphs 46-72; *Gbagbo and Others* v *Council*, Joined Cases C-478/11 P to C-482/11 P, paragraph 56; *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, paragraph 68.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	*Bundesrepublik Deutschland* v *Kaveh Puid*, Case C-4/11, EU:C:2013:740. 14.11.2013	Judgment after a reference for a preliminary ruling from the Hessischer Verwaltungsgerichtshof (Germany) relating to the criteria for determining the Member State responsible. Procedure — reception conditions — responsible Member State — transfers. **Paras. 35-37:** '35. The Member State in which the asylum seeker is located must, however, ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of the regulation [...]. 36. In light of the foregoing, the answer to the question referred is that where the Member States cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible in accordance with the criteria set out in Chapter III of the regulation provide substantial grounds for believing that the asylum seeker concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, which is a matter for the referring court to verify, the Member State which is determining the Member State responsible is required not to transfer the asylum seeker to the Member State initially identified as responsible and, subject to the exercise of the right itself to examine the application, to continue to examine the criteria set out in that chapter in order to establish whether another Member State can be identified as responsible in accordance with one of those criteria or, if it cannot, under Article 13 of the regulation. 37. Conversely, in such a situation, a finding that it is impossible to transfer an asylum seeker to the Member State initially identified as responsible does not in itself mean that the Member State which is determining the Member State responsible is required itself, under Article 3(2) of the regulation, to examine the application for asylum.'	*N.S.* v *Secretary of State for the Home Department and M.E., A.S.M., M.T., K.P., E.H.* v *Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, Joined Cases C-411/10 and C-493/10, EU:C:2011:865.
CJEU	*Užsienio reikalų ministerija and Finansinių nusikaltimų tyrimo tarnyba* v *Vladimir Peftiev and Others*, Case C-314/13, EU:C:2014:1645. 12.6.2014	Judgment after a reference for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania), concerning the interpretation of Article 3(1)(b) of Council Regulation (EC) No 765/2006 relating to restrictive measures in respect of Belarus. Restrictive measures — freezing of funds and economic resources — exceptions. **Para. 28:** 'The requirement imposed by Article 19 of the Statute of the Court of Justice is based on a view of the lawyer's role as collaborating in the administration of justice and as being required to provide, in full independence and in the overriding interests of that cause, such legal assistance as the client needs [...]. Moreover, the Court has held previously that, as no provision is made in the Statute or Rules of Procedure of the Court of Justice for a derogation from or exception to that obligation, an application signed by the applicant himself or herself is insufficient for the purposes of instituting proceedings [...].' **Para. 34:** 'In the light of the foregoing, the answer to the first to third questions is: — Article 3(1)(b) of Regulation (EC) No 765/2006 must be interpreted as meaning that, when taking a decision on whether to grant a derogation requested under that provision with a view to bringing an action challenging the lawfulness of restrictive measures imposed by the European Union, the competent national authority does not enjoy an absolute discretion, but must exercise its powers in a manner which upholds the rights provided for in the second sentence of the second paragraph of Article 47 of the charter and observes the indispensable nature of legal representation in bringing such an action before the General Court. — The competent national authority may verify that the funds release of which is requested are intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services. It may also set the conditions it deems appropriate in order to guarantee, inter alia, that the objective of the sanction imposed is not frustrated and the derogation granted is not distorted.'	*AM and S Europe Limited* v *Commission*, Case C-155/79, EU:C:1982:157, paragraph 24; *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, Case C-550/07 P, EU:C:2010:512, paragraph 42; *Prezes Urzędu Komunikacji Elektronicznej and Poland* v *Commission*, Joined Cases C-422/11 P and C-423/11 P, EU:C:2012:553, paragraph 23; *Correia de Matos* v *Parliament*, Case C-502/06 P, EU:C:2007:696, paragraph 12.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*Sophie Mukarubega v Préfet de police and Préfet de la Seine-Saint-Denis*, Case C-166/13, EU:C:2014:2336. 5.11.2014	Judgment after a reference for a preliminary ruling from the Tribunal administratif de Melun (France) concerning the interpretation of Article 6 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Directive 2008/115/EC — return of illegally staying third-country nationals — procedure for the adoption of a return decision — principle of respect for the rights of the defence — right of an illegally staying third-country national to be heard before the adoption of a decision liable to affect his or her interests. **Paras. 42-46:** '42. In accordance with the Court's settled case-law, observance of the rights of the defence is a fundamental principle of EU law, in which the right to be heard in all proceedings is inherent […]. 43. The right to be heard in all proceedings is now affirmed not only in Articles 47 and 48 of the charter, which ensure respect for both the rights of the defence and the right to fair legal process in all judicial proceedings, but also in Article 41 of the charter, which guarantees the right to good administration. Article 41(2) of the charter provides that the right to good administration includes, inter alia, the right of every person to be heard before any individual measure which would affect him or her adversely is taken […]. 44. As the Court stated in paragraph 67 of the judgment in *YS and Others* (C-141/12 and C-372/12, EU:C:2014:2081), it is clear from the wording of Article 41 of the charter that it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union (see, to that effect, judgment in *Cicala*, C-482/10, EU:C:2011:868, paragraph 28). Consequently, an applicant for a resident permit cannot derive from Article 41(2)(a) of the charter a right to be heard in all proceedings relating to his or her application. 45. Such a right is, however, inherent in respect for the rights of the defence, which is a general principle of EU law. 46. The right to be heard guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely.'	*Sopropé*, C-349/07, EU:C:2008:746, paragraphs 33 and 36; *M.*, C-277/11, EU:C:2012:744, paragraphs 81 and 82; *Kamino International Logistics*, C-129/13, EU:C:2014:2041, paragraph 28; *M.*, EU:C:2012:744, paragraphs 82 and 83; *Kamino International Logistics*, EU:C:2014:2041, paragraph 29.
CJEU (Grand Chamber)	*A and Others v Staatssecretaris van Veiligheid en Justitie*, Joined Cases C-148/13 to C-150/13, EU:C:2014:2406. 2.12.2014	Judgment after a reference for a preliminary ruling from the Raad van State (Netherlands) concerning the interpretation of Article 4 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Methods of assessment — acceptance of evidence — fear of persecution on grounds of sexual orientation. **Paras. 62-66:** '62. While questions based on stereotyped notions may be a useful element at the disposal of competent authorities for the purposes of the assessment, the assessment of applications for the grant of refugee status on the basis solely of stereotyped notions associated with homosexuals does not, nevertheless, satisfy the requirements of the provisions referred to in the previous paragraph, in that it does not allow those authorities to take account of the individual situation and personal circumstances of the applicant for asylum concerned. 63. Therefore, the inability of the applicant for asylum to answer such questions cannot, in itself, constitute sufficient grounds for concluding that the applicant lacks credibility, inasmuch as such an approach would be contrary to the requirements of Article 4(3)(c) of Directive 2004/83/EC and of Article 13(3)(a) of Directive 2005/85/EC. 64. In the second place, while the national authorities are entitled to carry out, where appropriate, interviews in order to determine the facts and circumstances as regards the declared sexual orientation of an applicant for asylum, questions concerning details of the sexual practices of that applicant are contrary to the fundamental rights guaranteed by the charter and, in particular, to the right to respect for private and family life as affirmed in Article 7 thereof. 65. In relation, in the third place, to the option for the national authorities of allowing, as certain applicants in the main proceedings proposed, homosexual acts to be performed, the submission of the applicants to possible 'tests' in order to demonstrate their homosexuality or even the production by those applicants of evidence such as films of their intimate acts, it must be pointed out that, besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by Article 1 of the charter. 66. Furthermore, the effect of authorising or accepting such types of evidence would be to incite other applicants to offer the same and would lead, de facto, to requiring applicants to provide such evidence.'	

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*Centre public d'action sociale d'Ottignies-Louvain-la-Neuve* v *Moussa Abdida*, Case C-562/13, EU:C:2014:2453. 18.12.2014	Judgment after a reference for a preliminary ruling from the Cour du travail de Bruxelles (Belgium) relating to the minimum standards on procedures in Member States for granting and withdrawing refugee status. Refugee status — applicant suffering from a serious illness — no appropriate treatment available in the country of origin. **Para. 48:** 'In the very exceptional cases in which the removal of a third-country national suffering a serious illness to a country where appropriate treatment is not available would infringe the principle of *non-refoulement*, Member States cannot, therefore, as provided for in Article 5 of Directive 2008/115/EC, taken in conjunction with Article 19(2) of the charter, proceed with such removal.' **Para. 53:** 'It follows from the foregoing that Articles 5 and 13 of Directive 2008/115/EC, taken in conjunction with Articles 19(2) and 47 of the charter, must be interpreted as precluding national legislation which does not make provision for a remedy with suspensive effect in respect of a return decision whose enforcement may expose the third-country national concerned to a serious risk of grave and irreversible deterioration in his or her state of health.'	
CJEU	*Abdoulaye Amadou Tall* v *Centre public d'action sociale de Huy (CPAS de Huy)*, Case C-239/14, EU:C:2015:824. 17.12.2015	Judgment after a reference for a preliminary ruling from the Tribunal du travail de Liège (Belgium) referring to non-suspensory effect of an appeal against a decision of the competent national authority not to further examine a subsequent application for asylum. Right to an effective remedy — social protection. **Para. 46:** 'Furthermore, it should be borne in mind that, as is apparent from recital 15 to Directive 2005/85/EC, where an applicant for asylum makes a subsequent application for asylum without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new, full examination procedure and, in these cases, Member States should have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant.' **Paras. 56-58:** '56. The lack of suspensory effect of an appeal brought against such a decision is, in principle, compatible with Articles 19(2) and 47 of the charter. Although such a decision does not allow a third-country national to receive international protection, the enforcement of that decision cannot, as such, lead to that national's removal. 57. By contrast, if, in the context of the examination of an application for asylum which pre-dates or post-dates a decision such as the one at issue in the main proceedings, a Member State adopts a return decision against the third-country national concerned pursuant to Article 6 of Directive 2008/115/EC, that national must be able to exercise his or her right to an effective remedy against that decision in accordance with Article 13 of that directive. 58. In that regard, it follows from the case-law of the Court of Justice that, in any event, an appeal must necessarily have suspensory effect when it is brought against a return decision whose enforcement may expose the third-country national concerned to a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, thereby ensuring that the requirements of Articles 19(2) and 47 of the charter are met in respect of that third-country national […].'	*Abdida*, C-562/13, EU:C:2014:2453, paragraphs 52 and 53.
CJEU	*Shiraz Baig Mirza* v *Bevándorlási és Állampolgársági Hivatal*, Case C-695/15 PPU, EU:C:2016:188. 17.3.2016	Judgment after a reference for a preliminary ruling under Article 267 TFEU from the Debreceni közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Debrecen, Hungary) relating to the right of Member States to send an applicant to a safe third country. Dublin III regulation — explicit exception to the general principle — safe third country. **Para. 68:** […] Article 18(2) of the Dublin III regulation must be interpreted as not requiring that, in the event that an applicant for international protection is taken back, the procedure for examining that applicant's application be resumed at the stage at which it was discontinued.	

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	*Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*, Joined Cases C-404/15 and C-695/15 PPU, EU:C:2016:198. 5.4.2016	Judgment after a reference for a preliminary ruling from Hanseatisches Oberlandesgericht in Bremen — Higher Regional Court of Bremen, Germany, relating to the execution of European Arrest Warrants. Evidentiary assessment — European Arrest Warrant — grounds for refusal to execute. **Paras. 84-89:** '84. […] compliance with Article 4 of the charter, concerning the prohibition of inhuman or degrading treatment or punishment, is binding, as is stated in Article 51(1) of the charter, on the Member States and, consequently, on their courts, where they are implementing EU law, which is the case when the issuing judicial authority and the executing judicial authority are applying the provisions of national law adopted to transpose the framework decision […]. 85. As regards the prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the charter, that prohibition is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the charter […]. 86. That the right guaranteed by Article 4 of the charter is absolute is confirmed by Article 3 ECHR ([6]), to which Article 4 of the charter corresponds. As is stated in Article 15(2) ECHR, no derogation is possible from Article 3 ECHR. 87. Articles 1 and 4 of the charter and Article 3 ECHR enshrine one of the fundamental values of the Union and its Member States. That is why, in any circumstances, including those of the fight against terrorism and organised crime, the ECHR prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned […]. 88. It follows that, where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, having regard to the standard of protection of fundamental rights guaranteed by EU law and, in particular, by Article 4 of the charter […], that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment. 89. To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, which may affect certain groups of people or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN.'	*Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 72; *Peftiev and Others*, C-314/13, EU:C:2014:1645, paragraph 24; *Schmidberger*, C-112/00, EU:C:2003:333, paragraph 80; *Bouyid* v *Belgium*, No 23380/09 of 28 September 2015, paragraph 81; *Melloni*, C-399/11, EU:C:2013:107, paragraphs 59 and 63; Opinion 2/13, EU:C:2014:2454, paragraph 192.

([6]) European Convention on Human Rights.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*Mehrdad Ghezelbash* v *Staatssecretaris van Veiligheid en Justitie,* Case C-63/15, EU:C:2016:409, paragraph 45. 7.6.2016	Judgment after a reference for a preliminary ruling from Rechtbank Den Haag (District Court, The Hague, Netherlands) relating to the determination of the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. Member State responsible for examining an asylum application — the Dublin system. **Para. 45:** 'That conclusion is supported by the general thrust of the developments that have taken place in the system for determining the Member State responsible for examining an asylum application made in one of the Member States ('the Dublin system') as a result of the adoption of Regulation (EU) No 604/2013 and by the objectives of the regulation.' **Para. 48:** 'In the second place, Article 5(1), (3) and (6) of Regulation (EU) No 604/2013 provides that the Member State carrying out the determination of the Member State responsible must, in a timely manner and, in any event, before a transfer decision has been taken, conduct a personal interview with the asylum seeker and ensure that the applicant or the counsellor representing him or her has access to a written summary of the interview. Pursuant to Article 5(2) of the regulation, the interview does not have to take place if the applicant has already provided the information relevant to the determination of the Member State responsible and, in that case, the Member State in question must give the applicant the opportunity to present any further information which may be relevant for the correct determination of the Member State responsible before a decision is taken to transfer the applicant.' **Para. 53:** 'A restrictive interpretation of the scope of the remedy provided in Article 27(1) of Regulation (EU) No 604/2013 might, inter alia, thwart the attainment of that objective by depriving the other rights conferred on asylum seekers by that regulation of any practical effect. Thus, the requirements laid down in Article 5 of the regulation to give asylum seekers the opportunity to provide information to facilitate the correct application of the criteria for determining responsibility laid down by the regulation and to ensure that such persons are given access to written summaries of interviews prepared for that purpose would be in danger of being deprived of any practical effect if it were not possible for an incorrect application of those criteria — failing, for example, to take account of the information provided by the asylum seeker — to be subject to judicial scrutiny.'	
CJEU (Grand Chamber)	*George Karim* v *Migrationsverket*, Case C-155/15, EU:C:2016:410. 7.6.2016	Judgment after a reference for a preliminary ruling from the Kammarrätten i Stockholm — Migrationsöverdomstolen (Administrative Court of Appeal, Stockholm, Court of Appeal in Immigration Matters, Sweden) relating to cessation of responsibility. Evidence — authorities obliged to take into account any information provided by the applicant. **Para. 27:** 'Article 27(1) of Regulation (EU) No 604/2013, read in the light of recital 19 thereof, must be interpreted to the effect that, in a situation such as that at issue in the main proceedings, an asylum applicant may, in an action challenging a transfer decision made in respect of him or her, invoke an infringement of the rule set out in the second subparagraph of Article 19(2) of that regulation.'	

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU	*C.K. and Others v Republika Slovenija*, Case C-578/16 PPU, EU:C:2017:127. 16.2.2017	Judgment after a reference for a preliminary ruling from the Vrhovno sodišče (Supreme Court, Slovenia) relating to the transfer of a seriously ill asylum seeker to the state responsible for examining his or her application. Application for international protection — method should be based on objective, fair criteria — objective of speed. **Para. 54:** 'Article 17(1) of the Dublin III regulation must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law within the meaning of Article 267 TFEU.' **Para. 57:** 'The Dublin system, of which that regulation forms part, seeks, as is apparent from recitals 4 and 5 thereof, to make it possible, in particular, to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of processing applications for international protection expeditiously.' **Paras. 58-65:** '58. … Member State with which an asylum application has been lodged is required to follow the procedures laid down in Chapter VI of that regulation for the purposes of determining the Member State responsible for examining that application, to call upon that Member State to take charge of the applicant concerned and, once that request has been accepted, to transfer that person to the Member State. 59. However, in accordance with the settled case-law of the Court, the rules of secondary EU law, including the provisions of the Dublin III regulation, must be interpreted and applied in a manner consistent with the fundamental rights guaranteed by the charter […]. The prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the charter, is, in that regard, of fundamental importance, to the extent that it is absolute in that it is closely linked to respect for human dignity, which is the subject of Article 1 of the charter […]. 60. In its judgment of 21 December 2011, *N. S. and Others* […], the Court stressed that the transfer of asylum seekers within the framework of the Dublin system may, in certain circumstances, be incompatible with the prohibition laid down in Article 4 of the charter. It thus held that an asylum seeker would run a real risk of being subjected to inhuman or degrading treatment, within the meaning of that article, in the event of a transfer to a Member State in which there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the conditions for the reception of applicants. Consequently, in accordance with the prohibition laid down in that article, the Member States may not carry out transfers within the framework of the Dublin system to a Member State in the case where they cannot be unaware that such flaws exist in that Member State. 61. It follows from recital 9 of the Dublin III regulation that the EU legislature took note of the effects of the Dublin system on the fundamental rights of asylum seekers. It is again apparent that the EU legislature intended, by adopting that regulation, to make the necessary improvements, in the light of experience, not only to the effectiveness of that system, but also to the protection granted to asylum seekers under that system. 62. The Court has, therefore, already held that, with regard to the rights granted to asylum seekers, the Dublin III regulation differs in essential respects from the Dublin II regulation […]. 63. As regards the fundamental rights that are conferred on them, in addition to the codification, in Article 3(2) of the Dublin III regulation, of the case-law arising from the judgment of 21 December 2011, *N. S. and Others*, referred to in paragraph 60 of the present judgment, the EU legislature stressed, in recitals 32 and 39 of that regulation, that the Member States are bound, in the application of that regulation, by the case-law of the European Court of Human Rights and by Article 4 of the charter. 64. More specifically, as regards decisions to transfer, first, the EU legislature made their legality subject to the granting, inter alia, to the asylum seeker concerned, in Article 27 of the Dublin III regulation, of the right to an effective remedy before a court against that decision, the scope of which covers both the factual and legal circumstances surrounding it. Secondly, it set out, in Article 29 of that regulation, the rules for those transfers in greater detail, something which it had not done in the Dublin II regulation. 65. It follows from all of the preceding considerations that the transfer of an asylum seeker within the framework of the Dublin III regulation can take place only in conditions which preclude that transfer from resulting in a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of Article 4 of the charter.'	*N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 77 and 99; *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 85 and 86; *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 86-94 and 106; *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 34.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	*Tsegezab Mengesteab* v *Bundesrepublik Deutschland*, Case C-670/16, EU:C:2017:587. 26.7.2017	Judgment after a reference for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Minden (Administrative Court, Minden, Germany) concerning the interpretation of Article 17(1), Article 20(2), Article 21(1) and Article 22(7) of 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 (OJ L 180, 29.6.2013, pp. 31-59, 'the Dublin III regulation'). Determination of the Member State responsible for examining an application for international protection made in one of the Member States by a third-country national — Article 20 on lodging an application for international protection — Article 21(1) — time limits for making a take charge request — transfer of responsibility to another Member State — Article 27 — remedy. **Para. 45:** 'As regards that development, it should be borne in mind that the EU legislature did not confine itself, in that regulation, to introducing organisational rules governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum seekers in that process by obliging Member States to inform them of the criteria for determining responsibility and to provide them with an opportunity to submit information relevant to the correct interpretation of those criteria, and by conferring on asylum seekers the right to an effective remedy in respect of any transfer decision that may be taken at the conclusion of that process […].' **Paras. 75-76:** 'It should be noted at the outset that, according to the order for reference, the original of the certificate of registration as an asylum seeker, a copy of it or the main information contained therein reached the Office ([7]), which is the authority responsible for implementing, in Germany, the obligations arising from the Dublin III regulation, more than 3 months before the take charge request was made, whereas the lodging, by the third-country national concerned, of a formal asylum application occurred less than 3 months before that request was made. 76. In those circumstances, it must be considered that, by its fifth question, the referring court asks, in essence, whether Article 20(2) of that regulation must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority, or, on the contrary, if such an application is deemed to have been lodged only when a formal asylum application is lodged.' **Para. 103:** 'Article 20(2) of the Dublin III regulation must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority'.	*Ghezelbash*, C-63/15, EU:C:2016:409, paragraphs 47-51.

([7]) Federal Office for Migration and Refugees, Germany.

Court	Case name/ reference/date	Relevance/key words/main points	Cases cited
CJEU (Grand Chamber)	K v Bundesasylamt, Case C-245/11, EU:C:2012:685. 6.11.2012	ECtHR judgment. Humanitarian clause — obligation to normally keep family members together. **Paras. 46-53:** '46. … more precisely, to the obligation "normally" to keep together the asylum seeker and the "other" family member within the meaning of Article 15(2) of Regulation (EC) No 343/2003, this must be understood as meaning that a Member State may derogate from that obligation to keep the persons concerned together only if such a derogation is justified because an exceptional situation has arisen. It should, however, be noted that, in its reference for a preliminary ruling, the referring court did not refer to any such exceptional situation. 47. Where the conditions stated in Article 15(2) are satisfied, the Member State which, on the humanitarian grounds referred to in that provision, is obliged to take charge of an asylum seeker becomes the Member State responsible for the examination of the application for asylum. 48. In that regard, it should be added that the competent national authorities are under an obligation to ensure that the implementation of Regulation (EC) No 343/2003 is carried out in a manner which guarantees effective access to the procedures for determining refugee status and which does not compromise the objective of the rapid processing of an asylum application. 49. That objective of speed, which is apparent from recital 4 in the preamble to Regulation (EC) No 343/2003, must also be underlined where it is necessary, in the fourth place, with regard to the second part of the first question, to explain the reasons why, in circumstances such as those in the main proceedings, an application of Article 15(2) of Regulation (EC) No 343/2003 is justified even where the "Member State responsible" has not made a request to that effect in conformity with the second sentence of Article 15(1) of that regulation. 50. Next, with regard to the argument made by various governments which submitted observations to the Court in the present case, according to which a request by the "Member State responsible" is, in all circumstances, a prerequisite for the application of Article 15(2) of Regulation (EC) No 343/2003, it is important to note that that provision does not contain, unlike the second sentence of Article 15(1) of that regulation, any reference to a "request" originating from another Member State. 51. In that regard, it must be held that, where the asylum seeker and another member of his or her family who are present together on the territory of a Member State other than that which is responsible in the light of the criteria laid down in Chapter III of Regulation (EC) No 343/2003 have duly proved the existence of a situation of dependence within the meaning of Article 15(2) of that regulation, the competent authorities of that Member State may not ignore the existence of that particular situation, and the making of a request such as that provided for in the second sentence of Article 15(1) of the regulation becomes redundant. In those circumstances, such a requirement would be purely formal in nature. 52. In a situation such as that at issue in the main proceedings, where what is at issue is not the "bringing together" of family members within the meaning of Article 15(2) of Regulation (EC) No 343/2003 but "keeping" them together in the Member State in which they are present, the requirement of a request originating from the "Member State responsible" would run counter to the obligation to act speedily, because it would unnecessarily prolong the procedure for determining the Member State responsible. 53. Consequently, in a situation such as that at issue in the main proceedings, Article 15(2) of Regulation (EC) No 343/2003 may be applied even if the Member State in which the application for asylum is lodged did not receive a request to that effect from the "Member State responsible".'	

European Court of Human Rights jurisprudence

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ECtHR	*Bahaddar* v *the Netherlands*, application No 25894/94. 19.2.1998	ECtHR judgment. Exhaustion of domestic remedies — formal requirements and time limits in domestic law. **Application of principles, para. 45:** 'The Court notes at the outset that, although it has — as mentioned by the delegate of the Commission — held the prohibition of torture or inhuman or degrading treatment contained in Article 3 of the convention to be absolute in expulsion cases as in other cases (see, inter alia, the abovementioned *Chahal* judgment, p. 1 855, paragraph 80), applicants invoking that article are not for that reason dispensed as a matter of course from exhausting domestic remedies that are available and effective. It would not only run counter to the subsidiary character of the convention but also undermine the very purpose of the rule set out in Article 26 of the convention if the contracting states were to be denied the opportunity to put matters right through their own legal system. It follows that, even in cases of expulsion to a country where there is an alleged risk of ill-treatment contrary to Article 3, the formal requirements and time limits laid down in domestic law should normally be complied with such rules being designed to enable the national jurisdictions to discharge their caseload in an orderly manner. Whether there are special circumstances which absolve an applicant from the obligation to comply with such rules will depend on the facts of each case. It should be borne in mind in this regard that in applications for recognition of refugee status it may be difficult, if not impossible, for the person concerned to supply evidence within a short time, especially if — as in the present case — such evidence must be obtained from the country from which he or she claims to have fled. Accordingly, time limits should not be so short, or applied so inflexibly, as to deny an applicant for recognition of refugee status a realistic opportunity to prove his or her claim.'	*Chahal* v *the United Kingdom* [1996], ECHR 54.
ECtHR	*Čonka* v *Belgium*, application No 51564/99. 5.2.2002	ECtHR judgment. Article 13 ECHR — effective remedy — execution of deportation order. **Paras. 83-84:** '83. Secondly, even if the risk of error is in practice negligible — a point which the Court is unable to verify, in the absence of any reliable evidence — it should be noted that the requirements of Article 13, and of the other provisions of the convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement. That is one of the consequences of the rule of law, one of the fundamental principles of a democratic society, which is inherent in all the articles of the convention [...]. However, it appears that the authorities are not required to defer execution of the deportation order while an application under the extremely urgent procedure is pending, not even for a minimum reasonable period to enable the Conseil d'Etat to decide the application. Furthermore, the onus is in practice on the Conseil d'Etat to ascertain the authorities' intentions regarding the proposed expulsions and to act accordingly, but there does not appear to be any obligation on it to do so. Lastly, it is merely on the basis of internal directions that the registrar of the Conseil d'Etat, acting on the instructions of a judge, contacts the authorities for that purpose, and there is no indication of what the consequences might be should he or she omit to do so. Ultimately, the alien has no guarantee that the Conseil d'Etat and the authorities will comply in every case with that practice, that the Conseil d'Etat will deliver its decision or even hear the case, before his or her expulsion, or that the authorities will allow a minimum reasonable period of grace. Each of those factors makes the implementation of the remedy too uncertain to enable the requirements of Article 13 to be satisfied. 84. As to the overloading of the Conseil d'Etat's list and the risks of abuse of process, the Court considers that, as with Article 6 of the convention, Article 13 imposes on the contracting states the duty to organise their judicial systems in such a way that their courts can meet its requirements [...]. In that connection, the importance of Article 13 for preserving the subsidiary nature of the convention system must be stressed [...].'	*Iatridis* v *Greece* [GC], No 31107/96, ECHR 1999-II, paragraph 58; *Süßmann* v *Germany*, judgment of 16 September 1996, *Reports of judgments and decisions* 1996-IV, p. 1 174, paragraphs 55-57; *Kudła* v *Poland* [GC], No 30210/96, paragraph 152.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ECtHR	*Sultani* v *France*, application No 45223/05. 20.9.2007	ECtHR judgment. Collective expulsion of aliens — Article 4 ECHR. **Paras. 65 and 66:** '65. Ainsi, l'OFPRA a par deux fois examiné ses demandes d'asile (d'abord dans le cadre d'une procédure normale en 2003, puis dans celui d'une procédure de réexamen en 2005). Le simple fait que sa seconde demande ait été traitée selon une procédure prioritaire et donc dans un délai restreint ne saurait, à lui seul, permettre à la Cour de conclure à l'ineffectivité de l'examen mené. A cet égard, la Cour note que le requérant avait déjà bénéficié d'un premier examen complet de sa demande d'asile dans le cadre de la procédure normale. Ce premier examen a permis à l'OFPRA, puis à la commission des recours des réfugiés d'examiner l'ensemble des arguments du requérant, s'opposant selon lui à son retour vers l'Afghanistan, et de rejeter sa demande d'asile. L'existence de ce premier contrôle justifie la brièveté du délai d'examen de la seconde demande, dans le cadre duquel l'OFPRA se contente de vérifier, à l'occasion d'une procédure accélérée, s'il existe de nouveaux motifs propres à modifier sa décision de rejet préalable. 66. Les juridictions administratives se sont quant à elles prononcées à la suite du rejet de la seconde demande d'asile, tant en première instance qu'en appel. La décision de la cour administrative d'appel du 4 juillet 2006 apparaît à cet égard particulièrement motivée' ([8]).	
ECtHR	*NA* v *the United Kingdom*, application No 25904/07. 17.7.2008	ECtHR judgment. Article 3 ECHR — inhuman or degrading treatment. **Para. 112:** 'If the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court […]. A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Even though the historical position is of interest insofar as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities […].'	*Saadi* v *Italy* [GC], No 37201/06, paragraph 133; *Salah Sheekh* v *the Netherlands*, No 1948/04, paragraph 136.
ECtHR	*Abdolkhani and Karimnia* v *Turkey*, application No 30471/08. 22.9.2009	ECtHR judgment. Article 13 ECHR — effective domestic remedy — prevention from lodging an asylum claim and from challenging deportation. **Paras. 114-115**: '114. Moreover, the applicants were not given access to legal assistance when they were arrested and charged, despite the fact that they explicitly requested a lawyer. Their inability to have access to a lawyer continued following their placement in the police headquarters in Hasköy. The government did not contest the allegation that the director of the Muş branch of the Human Rights Association, an advocate, was refused authorisation by the police to meet the applicants on 30 June 2008. In these circumstances and having regard in particular to the fact that the applicants requested a lawyer as early as July 2008, the Court cannot accept the government's argument that they could have had access to legal assistance had they asked for it, at least as regards the period that the applicants spent in the Hasköy police headquarters. 115. A remedy must be effective in practice as well as in law in order to fulfil the requirements of Article 13 of the convention. In the present case, by failing to consider the applicants' requests for temporary asylum, to notify them of the reasons for not taking their asylum requests into consideration and to authorise them to have access to legal assistance while in Hasköy police headquarters, the national authorities prevented the applicants from raising their allegations under Article 3 within the framework of the temporary asylum procedure provided for by the 1994 regulation and Circular No 57.'	
ECtHR (Grand Chamber)	*M.S.S.* v *Belgium and Greece*, application No 30696/09. 21.1.2011	ECtHR judgment. Access to a fair and efficient asylum procedure — Article 13 in conjunction with Article 3 ECHR. **Reiteration of the general principles, para. 286:** 'In cases concerning the expulsion of asylum seekers, the Court has explained that it does not itself examine the actual asylum applications or verify how the states honour their obligations under the Geneva Convention. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled […].'	*T.I.* v *the United Kingdom* (dec.), No 43844/98, ECHR 2000-III, and *Müslim*, cited above, paragraphs 72-76.

([8]) Only available in French.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ECtHR	*I.M.* v *France*, application No 9152/09. 2.2.2012	ECtHR judgment. **Paras. 144-145:** '144. La Cour observe que le classement en procédure prioritaire de la demande du requérant a induit des conséquences substantielles quant au déroulement de la procédure. Ainsi, le délai imparti au requérant pour présenter sa demande a été réduit de vingt et un à cinq jours, sous peine, en cas de non-respect, de rejet pour tardiveté. La Cour relève le caractère particulièrement bref et contraignant d'un tel. délai, s'agissant pour le requérant de préparer, en rétention, une demande d'asile complète et documentée en langue française, soumise à des exigences identiques à celles prévues pour les demandes déposées hors rétention selon la procédure normale (voir également à ce sujet les recommandations du CPT ([9]) et du Commissaire aux droits de l'homme du Conseil de l'Europe, paragraphes 77 à 79). 145. De plus, pour la Cour, les difficultés rencontrées par le requérant ont été fortement aggravées par le facteur linguistique, aucune interprétation n'étant prise en charge à ce stade. La Cour constate que, si le requérant a eu recours à la CIMADE, seule association présente dans le centre de rétention administrative de Perpignan, celle-ci n'a pu fournir qu'une assistance limitée.' **Paras. 150-153:** '150. Toutefois, la Cour observe que le requérant s'est heurté en pratique à des obstacles conséquents dans le cadre de cette procédure. Avant tout, la Cour met en exergue le caractère extrêmement bref du délai de quarante-huit heures imparti au requérant pour préparer son recours, en particulier par rapport au délai de droit commun de deux mois en vigueur devant les tribunaux administratifs. 151. La Cour relève également que la brièveté de ce délai a contraint le requérant, alors en détention et n'ayant aucun accès à une assistance juridique et linguistique, à soumettre son recours sous la forme ' d'un courrier en langue arabe ' (voir paragraphe 26). Ce document comportait des arguments peu circonstanciés et dépourvus d'éléments de preuve. Devant le tribunal administratif de Montpellier, le requérant bénéficia de l'assistance d'un interprète et d'un avocat commis d'office, ce dernier reprenant, suite à un bref entretien avec le requérant, l'argumentation que celui-ci avait exposée par écrit, sans pouvoir ajouter d'éléments de preuve. Cette absence d'éléments probants motiva, pour l'essentiel, le rejet de la requête par le magistrat administratif. Ce dernier reprocha également au requérant de ne pas avoir préalablement introduit de demande d'asile, alors qu'il n'est pas démontré que le requérant, détenu, ait pu faire valoir une telle demande. 152. Par conséquent, eu égard à la procédure devant le magistrat administratif, la Cour souligne à nouveau les obstacles rencontrés par le requérant pour introduire une requête motivée et documentée dans un délai particulièrement court, avec l'assistance ponctuelle d'un avocat commis d'office rencontré peu de temps avant l'audience. 153. Au vu de ce qui précède, la Cour émet de sérieux doutes sur le fait que le requérant ait été en mesure de faire valoir efficacement ses griefs tirés de l'article 3 de la Convention devant le magistrat administratif' ([10]).	

([9]) European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
([10]) Only available in French.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ECtHR (Grand Chamber)	*Hirsi Jamaa and Others* v *Italy*, application No 27765/09. 23.2.2012	ECtHR judgment. *Non-refoulement* — Article 3 ECHR — standard of proof — assessment — late submission of evidence — credibility. **General principles governing jurisdiction within the meaning of Article 1 ECHR, para. 74:** 'Whenever the state, through its agents operating outside its territory, exercises control and authority over an individual, and thus jurisdiction, the state is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the convention that are relevant to the situation of that individual.' **Responsibility of contracting states in cases of expulsion, para. 133**: 'According to the Court's established case-law, contracting states have the right, as a matter of well-established international law and subject to their treaty obligations, including the convention, to control the entry, residence and expulsion of aliens (see, among many other authorities […]). The Court also notes that the right to political asylum is not contained in either the convention or its protocols.' **Paras. 202-205:** '202. The Court has found that the applicants had no access to a procedure to identify them and to assess their personal circumstances before they were returned to Libya. The government acknowledged that no provision was made for such procedures aboard the military ships onto which the applicants were made to embark. There were neither interpreters nor legal advisers among the personnel on board. 203. The Court observes that the applicants alleged that they were given no information by the Italian military personnel, who had led them to believe that they were being taken to Italy and who had not informed them as to the procedure to be followed to avoid being returned to Libya. Insofar as that circumstance is disputed by the government, the Court attaches more weight to the applicants' version because it is corroborated by a very large number of witness statements gathered by the UNHCR ([11]), the CPT and Human Rights Watch. 204. The Court has previously found that the lack of access to information is a major obstacle in accessing asylum procedures […]. It reiterates here the importance of guaranteeing anyone subject to a removal measure, the consequences of which are potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints. 205. Having regard to the circumstances of the instant case, the Court considers that the applicants were deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the convention and Article 4 of Protocol No 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.'	*Abdulaziz, Cabales and Balkandali* v *the United Kingdom*, 28 May 1985, paragraph 67, Series A No 94, and *Boujlifa* v *France*, 21 October 1997, paragraph 42, *Reports of judgments and decisions* 1997-VI; *M.S.S.* v *Belgium and Greece*, cited above, paragragh 304.

([11]) United Nations High Commissioner for Refugees.

Court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
ECtHR	*K.K.* v *France*, application No 18913/11. 10.10.2013	ECtHR judgment. **Paras. 69-70:** '69. En l'espèce, la Cour observe que, comme dans l'arrêt *I.M.* précité, le requérant est un primo-demandeur d'asile en France et que, du fait du classement en procédure prioritaire, il a bénéficié de délais de recours réduits pour préparer une demande d'asile complète et documentée en langue française, soumise à des exigences identiques à celles prévues pour les demandes déposées selon la procédure normale. La Cour relève cependant qu'à la différence de l'arrêt *I.M.*, le requérant a particulièrement tardé à former une demande d'asile en France. En effet, il n'a demandé l'asile que deux ans après sa première venue en France et plus de dix mois après avoir fait l'objet d'un arrêté de reconduite à la frontière. La Cour en déduit que le requérant a donc disposé de deux années pour présenter une demande d'asile, laquelle aurait bénéficié d'un examen complet dans le cadre de la procédure normale, ou, à tout le moins, pour se procurer les documents de nature à étayer une telle demande d'asile. La Cour note que le requérant a volontairement omis de préciser aux autorités françaises qu'il avait auparavant vainement sollicité l'asile auprès des autorités britanniques et grecques, ce qui a justifié le traitement de sa demande selon la procédure prioritaire. Ces précédentes demandes d'asile montrent que le requérant savait comment formuler une demande d'asile et avait conscience de la nécessité de documenter celle-ci. 70. La Cour souligne que le requérant, alors qu'il était libre et non en rétention, a pu former une demande d'asile devant l'OFPRA et un recours suspensif devant le tribunal administratif contre le second arrêté de reconduite à la frontière, bien que ces recours soient enfermés dans des délais brefs de, respectivement, cinq jours et quarante-huit heures. Eu égard aux précédentes demandes d'asile, au caractère particulièrement tardif de la demande d'asile présentée en France et, partant, à la possibilité qu'il avait de rassembler, au préalable, toute pièce utile pour documenter une telle demande, le requérant ne peut valablement soutenir que l'accessibilité des recours disponibles a été affectée par la brièveté des délais dans lesquels ils devaient être exercés et par les difficultés matérielles rencontrées pour obtenir les preuves nécessaires [...]' ([12]).	*M.E.* v *France*, No 50094/10, paragraphs 65-70, 6.6.2013.
ECtHR	*Tarakhel* v *Switzerland*, application No 29217/12. 4.11.2014	ECtHR judgment. Inhuman and degrading treatment — Article 3 ECHR — obtaining assurances from counterparts on reception conditions. **Reception conditions in the available facilities, para. 120**: '[...] in view of the current situation as regards the reception system in Italy, and although that situation is not comparable to the situation in Greece, which the Court examined in *M.S.S.*, the possibility that a significant number of asylum seekers removed to that country may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, is not unfounded. It is therefore incumbent on the Swiss authorities to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together.' **Para. 122:** 'It follows that, were the applicants to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together, there would be a violation of Article 3 of the convention.'	*M.S.S.* v *Belgium and Greece*, application No 30696/09.

([12]) Only available in French.

National

Member State/ court	Case name/ reference/date	Relevance/keywords/main points	Cases cited
Czech Republic Supreme Administrative Court	4 Azs 98/2016 -20, 24.5.2016	The rule on implicit withdrawal of appeal resulting in access to an effective remedy being hindered can be found in the Czech Republic.	
Constitutional Court (Belgium)	No 1/2014, no de rôle 5488, 16.1.2014	The Belgian Constitutional Court does not give suspensive effect to an appeal by rejected asylum seekers from 'safe countries of origin'.	EDAL English summary

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy:
  via EU Bookshop (http://bookshop.europa.eu);
- more than one copy or posters/maps:
  from the European Union's representations (http://ec.europa.eu/represent_en.htm);
  from the delegations in non-EU countries (http://eeas.europa.eu/delegations/index_en.htm);
  by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm) or
  calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*).

  (*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (http://bookshop.europa.eu).

BZ-07-17-011-EN-N