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Jurisprudence related to asylum pronounced by the Court of Justice of the EU in 2024

For more information on legislative, policy and practical developments related to asylum in 2024, please consult the Asylum Report 2025 and related outputs (including the National Asylum Developments Database), which will be published in June 2025. Previous edition: Asylum Report 2024

As the guardian of EU law, the Court of Justice of the European Union (CJEU) ensures that "in the interpretation and application of the Treaties, the law is observed" (Treaty on the European Union, Article 19(1)). As part of its mission, the CJEU ensures the correct interpretation and application of primary and secondary EU laws; reviews the legality of acts of EU institutions; and decides whether Member States have fulfilled their obligations under primary and secondary laws. The CJEU also provides interpretations of EU law when requested by national judges. The court, thus, constitutes the judicial authority of the EU and, in cooperation with the courts and tribunals of Member States, ensures the uniform application and interpretation of EU law.

In matters of international protection, the CJEU interprets the provisions of the Common European Asylum System (CEAS), guiding asylum authorities and courts and tribunals of Member States towards a uniform interpretation and application of the relevant asylum provisions. The CJEU will continue to guide Member States in this process through general principles settled in its previous case law and through further interpretations after the implementation of the Pact on Migration and Asylum.

Key CJEU jurisprudence on asylum in 2024

In 2024, the CJEU issued approximately 20 judgments and orders interpreting various provisions of the Common European Asylum System (CEAS), covering topics related to:

- Dublin procedure
- Detention measures
- Safe country concepts
- Examination of subsequent applications
- Assessment of protection provided by UNRWA
- International protection needs arising *sur place*
- Gender-based persecution of women
- Secondary movements of beneficiaries of international protection
- The effects of refugee protection in extradition proceedings
- Family reunification for unaccompanied minors
- Temporary protection
- Return following a negative asylum decision
- Implementation of CJEU judgments concerning asylum procedures

The CJEU elaborated on its interpretation of the concept of systemic flaws in the asylum procedure and reception conditions in the responsible Member State, conditions which may preclude a Dublin transfer. Two judgments examined this concept in relation to a high influx of arrivals which affects the reception capacity of a Member State and leads to a unilateral suspension of Dublin transfers, and in relation to allegations of pushbacks to the external borders of the EU which preclude access to the asylum procedure. These judgments will serve as a parameter for the interpretation of corresponding provisions in the new EU Regulation on Asylum and Migration Management (AMMR).

The CJEU also delivered judgments interpreting the concepts of safe country of origin and safe third country, which are particularly relevant considering the amendments proposed by the European Commission on 16 April 2025[1] and referrals pending before the CJEU which raise further questions about implementing these concepts.

Importantly, in 2024 the CJEU ruled in three landmark cases concerning gender-based violence and persecution against women, clarifying and expanding the scope of protection provided to women and girls seeking international protection, while unequivocally establishing that women at risk of gender-based violence may be granted refugee status on account of their gender. The cases concerned physical, mental and sexual violence, identification with the value of equality between women and men, and state-imposed discriminatory measures against women.

Finally, the CJEU in Grand Chamber formation ruled that unaccompanied minors have the right to family reunification with their parents, and exceptionally with a seriously ill sibling, even if the minor reached the age of majority during the family reunification procedure. The judgment further strengthened the protection provided to unaccompanied minors, who are a vulnerable category in need of support.

[1] European Commission, *Press release: Commission proposes to frontload elements of the Pact on Migration and Asylum as well as a first EU list of safe countries of origin*, 16 April 2025.

1. Dublin procedure

Three judgments of the CJEU in 2024 concerned Dublin procedures. The first two cases raised a similar issue, namely the risk of being subjected to inhuman or degrading treatment following a Dublin transfer which may be a result of a systemic flaw in the asylum procedure and reception conditions provided in the responsible Member State, including from pushbacks to the external borders of the EU which preclude access to the asylum procedure. These two cases are relevant for situations when a Member State is designated as responsible under the Dublin III Regulation to examine an asylum application and is confronted with a high influx of arrivals which affects its reception capacity.

The third case concerned the application of the discretionary clause of Article 17(1) of the Dublin III Regulation and whether Member States must provide an effective remedy to challenge a decision that refuses to apply the discretionary clause. As this case leaves it to Member States to establish the conditions in which requests to apply the discretionary clause may be implemented and whether they provide a right to appeal or suspend a negative decision refusing to apply the clause, it will serve as a parameter for the interpretation of corresponding provisions in the new EU Regulation on Asylum and Migration Management (AMMR).

1.1. Systemic flaws in the asylum procedure and in the reception conditions of the responsible Member State

The judgment in the case *RL, QS* v *Bundesrepublik Deutschland* (C-185/24 and C-189/24, 19 December 2024) has, in general, implications for situations when the Member State designated as responsible under the Dublin III Regulation to examine an asylum application is confronted with a high influx of arrivals which affects its reception capacity, but also more specifically it has implications for appeals against decisions on Dublin transfers to Italy, since the Italian authorities continue to unilaterally suspend most incoming transfers.

The case arose in the context of the Italian Dublin Unit requesting Member States to temporarily suspend all transfers to Italy for technical reasons, subsequently confirmed to be the lack of reception places in Italy due to the high number of arrivals. Two Syrian nationals applied for asylum in Germany, while based on the Eurodac database, Italy was identified as the responsible Member State for examining the two applications. As Italy had unilaterally suspended incoming transfers, the referring German court requested the CJEU to clarify the interpretation of Article 3(2) of the Dublin III Regulation, which provides the two cumulative conditions that preclude a transfer due to systemic flaws in the Member State designated as responsible.

The CJEU ruled that a unilateral suspension of incoming transfers due to inadequate reception capacity did not, in itself, justify the finding of systemic flaws in the asylum procedure and the reception conditions of the responsible Member State, which would result in the prohibition of a transfer. In its judgment, the court reasoned, it must be presumed, based on the principle of mutual trust, that the treatment of applicants in all Member States complies with the requirements of the EU Charter, the Refugee Convention, and the European Convention on Human Rights (ECHR). However, the court highlighted that the Dublin III Regulation sets out two cumulative conditions that would preclude a transfer:

i) Systemic flaws, meaning flaws that remain in place and concern the asylum procedure and the reception conditions applicable to all applicants or to certain groups of

applicants for international protection and that attain a particularly high level of severity, which depend on the circumstances of the case; and

ii) Flaws which result in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.

The court held that a responsible Member State cannot unilaterally relieve itself of its obligations under the regulation, nor can the finding of systemic flaws be assumed merely on this basis, as this would undermine the functioning of CEAS, and in particular the Dublin III Regulation, and would encourage the secondary movements of asylum applicants by encouraging applicants to continue their journey to another Member State which they believe will offer more favourable conditions. Thus, it ruled that the two conditions mentioned above may be established only after an analysis carried out by the court or tribunal that hears an action challenging a transfer decision. Such an analysis must consider objective, reliable, specific and updated information, which involves a prospective component, as the competent court or tribunal must examine the risks that the individual would be exposed to at the very moment of the transfer, during the asylum procedure and following the asylum procedure.

Besides interpreting the concept of systemic flaws in relation to unilateral suspensions of Dublin transfers, the CJEU analysed in 2024 the practice of pushbacks as systemic flaws that would preclude a transfer to a responsible Member State. *X v State Secretary for Justice and Security* (C-392/22, 29 February 2024) concerned the transfer of a Syrian national from the Netherlands to Poland, where he had allegedly already been subjected on three occasions to pushbacks to Belarus, had to stay in the woods in unbearable living conditions and was detained at the border.

The court first noted that pushbacks are incompatible with the right to make an application for international protection under CEAS and with the principle of *non-refoulement* if it consists in sending people seeking asylum to a third country on whose territory they incur the risk of persecution. The court also reminded that third-country nationals should not be held in detention for the sole reason that they seek international protection. For these reasons, the court noted that pushbacks and detention at border control posts are incompatible with EU law and constitute serious flaws in the asylum procedure and the reception conditions for applicants.

However, the CJEU highlighted that the referring court must examine if these flaws are systemic and whether they give rise to a real risk of inhuman or degrading treatment, so as to preclude a Dublin transfer. The court ruled that a Dublin transfer must not take place if there are substantial grounds for believing that the applicant would, during or after the transfer, face a real risk of being subjected to pushbacks or detention that would place the person in a situation of extreme material poverty which would amount to inhuman or degrading treatment. The court also ruled that before carrying out the transfer, the Member State must:

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

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

Thus, these two judgments highlighted the conditions that must be fulfilled in order to consider that a transfer cannot take place due to systemic flaws in the asylum procedure and reception conditions in the responsible Member State.

1.2. Suspensive effect of an appeal lodged against a refusal to apply the discretionary clause

The third ruling on the Dublin III Regulation in 2024 concerned the possibility to appeal a decision refusing to apply the discretionary clause. This ruling may be relevant in guiding the implementation of the AMMR, specifically the interpretation of Article 35 on discretionary clauses and Article 43 on remedies against a transfer decision, in light of Recital 62 which provides in general for the right to an effective remedy to guarantee the protection of private and family life, the rights of the child and the protection against inhuman and degrading treatment because of a transfer.

In *AHY* v *Minister for Justice* (C-359/22, 18 April 2024), the High Court of Ireland referred questions to the CJEU for a preliminary ruling on the application of the discretionary clause of Article 17(1) of the Dublin III Regulation and the suspensive effect of an appeal lodged against a decision refusing to apply the discretionary clause. The case concerned a Somali national who applied for asylum in Ireland after his requests for asylum in Sweden had been rejected. After his application was rejected in Ireland, he requested the Irish authorities to apply the discretionary clause under Article 17(1) of the Dublin III Regulation. In its referral, the High Court noted the specificity of the Irish system, in which the decision on the Dublin transfer lies within the competence of the International Protection Office (IPO) (with an appeal before the International Protection Appeals Tribunal (IPAT)), which may become final by the time a request for the application of the discretionary clause is made, with the latter being within the competence of the Minister for Justice (with a judicial review of the lawfulness of administrative action before the High Court).

The CJEU ruled that Article 27(1) of the Dublin III Regulation does not require Member States to make an effective remedy available against a decision adopted under the discretionary clause in Article 17(1) of the Dublin III Regulation, and that Article 47 of the EU Charter does not preclude a Member State from implementing a decision on a Dublin transfer before the request or a judicial review of the application of the discretionary clause has been finalised. This ruling leaves it at the discretion of Member States to establish the conditions in which requests to apply the discretionary clause may be implemented and whether they provide a right to appeal or suspend a negative decision refusing to apply the clause. Thus, the ruling may also become relevant for the interpretation of corresponding provisions in the AMMR.

2. Detention measures

In *C.* v *State Secretary for Justice and Security [Bouskoura]* (C-387/24, 4 October 2024), the CJEU clarified the scope of the judicial review of consecutive detention measures when the first detention order to ensure the implementation of a Dublin transfer was declared unlawful but the person continued to be detained. The second detention order was being prepared to ensure the removal of the applicant to his country of origin after he withdrew the application for international protection. While Dutch law provided for a 48-hour maximum period to hold an applicant for international protection in detention after the expiration of the first detention measure based on the Dublin III Regulation, the applicant was held in detention for 3 days until the adoption of the detention order under the Return Directive. The Dutch authorities recognised the error and offered EUR 100 in damages for one day of unlawful detention.

The CJEU first stressed that any detention of a third country national, whether under Article 15(2) and (4) of the Return Directive, Article 9(3) of the Reception Conditions Directive or under Article 28(4) of the Dublin III Regulation, constitutes a serious interference with the right to liberty enshrined in Article 6 of the Charter and the power of the competent national authorities to use this measure is strictly limited by conditions and procedures governing such a measure. In addition, the court highlighted that when these conditions are no longer satisfied, the person must be released immediately.

The court further noted that a detention decision cannot be simultaneously taken, in the case of an asylum applicant, on grounds of the Return Directive, the recast Reception Conditions Directive and the Dublin III Regulation.

The CJEU ruled that EU law does not mandate national authorities to immediately release applicants detained under the Return Directive, even if their prior detention under the Dublin III Regulation was found unlawful. The reason for this limitation was noted in the court's previous jurisprudence (C-329/11 PPU, 2011) in which it was held that the objective of the Return Directive would be compromised if it were impossible for Member States to prevent, by using deprivation of liberty, a person suspected of staying illegally from fleeing before his/her situation could be clarified.

The court added that this interpretation is in line with Member States' obligation, under Article 47 of the EU Charter, to ensure effective judicial protection of rights derived from EU law, which includes the obligation for a judicial authority, competent to rule on all matters of fact and of law, to release the person as soon as it becomes apparent that the detention is not lawful. The court further nuanced that a finding that a detention measure is unlawful does not in every case imply the immediate release of the person, since it may not be possible to re-establish that person's rights when a new detention measure is properly substantiated on another legal basis. Therefore, compensation must be envisaged as a remedy for unlawful deprivation of liberty.

Lastly, as the referring court did not ask the CJEU to rule on the compatibility with EU law of the 48-hour period foreseen under Dutch law, the CJEU considered that it was not necessary to assess its compatibility with the obligation to immediately release the person, as provided in Article 9(3) of the Reception Conditions Directive and Article 28(4) of the Dublin III Regulation.

3. Safe country concepts

In Grand Chamber formation, on 4 October 2024 the CJEU delivered its first judgment interpreting the substance of the concept of safe country of origin and in another case decided on the same day, the court ruled on the application of the safe third country concept, in the first-ever request addressed by Greek courts to the CJEU for a preliminary ruling on asylum provisions.

These judgments are relevant as they provide important guiding principles for several referrals made by Italian courts on the compatibility of Italian law with EU law on the designation of safe countries of origin.[2] They focus on legislative competence, transparency of sources, a national court's ability to assess information drawn independently on the designation of a country as

[2] See a list of these referrals here in the EUAA Case Law Database.

safe in detention validation procedures, and the designation of countries as safe for specific categories of people. The referrals sent to the CJEU by the Tribunal of Rome and the Tribunal of Bologna, currently pending under C-758/24 [Alace] and C-759/24 [Canpelli], are set to be decided in an accelerated procedure. In these joined cases, Advocate General de la Tour issued an opinion on 10 April 2025 concluding that a Member State may designate safe countries of origin by a legislative act and must disclose, for the purpose of a judicial review, the sources of information upon which that designation is based.[3]

Besides these joined cases referred by Italian courts, the CJEU is also set to rule in case C-718/24 on a referral from the Administrative Court of Sofia City (Bulgaria) concerning the concept of safe third countries, with specific questions on the requirement to have a connection between the applicant and the safe third country and on whether the safe third country concept can be applied without a legislative provision, but with reference to general sources and a decision of an executive body.

All these judgments will have an effect on initiatives to externalise the asylum procedure to third countries and on the possibility to extend the application of the safe third country concept.

3.1. Safe country of origin

In its first judgment interpreting the substance of the concept of safe country of origin, *CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky* (C-406/22, 4 October 2024), the CJEU in Grand Chamber formation clarified the interpretation of Article 37 of the recast APD on the designation of a third country as safe country of origin when that country derogates from its obligations under the ECHR, pursuant to Article 15 (derogation in time of emergency) of the Convention. In this case a Moldovan national, who requested international protection in Czechia, had his application rejected on the ground that Moldova, with the exception of Transnistria, was designated as a safe country of origin and he was not able to demonstrate that this would not apply in his case. Moldova had derogated from the ECHR since 25 February 2022, on account of the energy crisis it was experiencing and extended the derogation on 28 April 2022, on account of the Russian invasion of Ukraine.

The CJEU held that a third country does not automatically lose its designation as a safe country of origin merely because it invokes a derogation under Article 15 of the ECHR. However, the Member State must evaluate whether the derogation impacts the country's compliance with safety criteria and in this context, the fact that the country invoked a derogation reveals "an appreciable risk of a significant change in the manner in which the rules on rights and freedoms are applied in the third country". Importantly, the CJEU also ruled that a third country cannot be designated as a safe country of origin if certain regions within it fail to meet the required safety conditions outlined in Annex I of the recast APD.

Notably, the CJEU ruled that courts must conduct a full and *ex nunc*[4] review of the case, considering *ex officio* any potential breaches of designation criteria, even if not explicitly

[3] Advocate General de la Tour, Opinion in Joined Cases C-758/24 [Alace] et C-759/24 [Canpelli], 10 April 2025.
[4] *Ex nunc* examination is defined in the EMN Glossary as follows: "In appeals procedures, a court's or tribunal's consideration of the evidence of the situation (all elements, facts and points of law) available at the moment of the decision, thus allowing courts or tribunals to take into account evidence of which the administration could not have been aware during the first instance procedure."

raised by the applicant. This judgment has already been applied by national courts in Italy[5], as in the context of the Italy-Albania protocol of 2023[6], applicants from safe countries of origin were channelled to the accelerated procedure and detained with a view to being sent to Albania for the processing of their applications and as noted above, further judgments on this matter are expected to be pronounced by the CJEU on referrals from Italian courts.

3.2. Safe third country

In *Greek Council for Refugees, Refugee Support Aegean* v *Minister for Foreign Affairs, Minister for Immigration and Asylum* (C-134/23, 4 October 2024), the CJEU clarified that Article 38 of the recast APD, read in conjunction with Article 18 of the EU Charter, does not preclude a Member State from classifying a third country as generally safe, even if it has suspended readmissions and there is no foreseeable change in that position. Specifically for this case, it means that Greece can classify Türkiye as a safe third country, even if in practice readmissions to Türkiye were suspended. However, if readmissions are not taking place in practice, Member States cannot reject asylum applications as inadmissible based on Article 33(2)(c) of the recast APD and cannot unjustifiably postpone the examination of asylum applications. They must ensure that that examination is conducted on an individual basis and in compliance with the time limits set out in Article 31.

A request for a preliminary ruling from Bulgaria is currently pending before the CJEU (C-718/24) concerning the designation of Türkiye as a safe third country for a minor Syrian national who had lived in Istanbul for 1 month, where two of his brothers and three of his sisters also lived. The decision of the administrative authority was based solely on a presumed connection between the applicant and the safe third country. The referring court asked whether the recast APD requires Member States to establish national criteria for determining whether there is a connection between the applicant and the third country. Regarding the first question, the CJEU previously ruled in *LH* (C-564/18, 19 March 2020) that the transit by an applicant for international protection through a third country cannot constitute a 'connection' within the meaning of Article 38(2)(a) of the recast APD. The Bulgarian court also asked the CJEU if the safe third concept can be applied without a legislative provision, but with reference to general sources and a decision of an executive body. Finally, the Bulgarian court asked the CJEU whether, if the national law does not provide for a judicial review, the court seized with the appeal must declare its jurisdiction to rule on the lawfulness of the decision taken by the administrative authority on the connection with the presumed safe third country.

4. Subsequent applications

The CJEU interpreted Article 33(2)(d) of the recast APD in two judgments which raised questions concerning two distinct aspects: 1) the admissibility of an application made in a second Member State when a request for protection in a first Member State was rejected as implicitly withdrawn but is not yet final and 2) whether a CJEU judgment may be considered a new element or finding justifying a fresh examination of the substance of an asylum application. Both judgments added relevant guiding principles for Member States to follow in their interpretation of the recast APD.

[5] See examples of such cases here in the EUAA Case Law Database.
[6] See the text of the Italian Law No 14 of 21 February 2024.

4.1. Mutual recognition of decisions on asylum applications

In *N.A.K. and Others* v *Federal Republic of Germany* (Joined Cases C-123/23 and C-202/23, 19 December 2024), the CJEU clarified the conditions under which an application made in one Member State can be rejected as inadmissible when the applicant already requested international protection in another Member State.

The case concerned three applicants who lodged asylum requests in Germany after having applied for asylum in Belgium, Poland and Spain, respectively. The outcome of their applications in these latter countries differed, from final rejection of the application as it was not demonstrated that there was a risk of persecution or serious harm in the country of origin to a discontinuation of the application based on its implicit withdrawal, without examining the merits and with the possibility of reopening the procedure by a specific time limit.

The court first observed that an application for international protection may be classified as a subsequent application and rejected as inadmissible in the absence of new elements or findings, even when the application was made to a Member State other than the one which took the final decision on the previous application. As the court noted, this is consistent with the principle of mutual trust between Member States, on which CEAS is based. The court added that when the decision was to discontinue the examination following an implicit withdrawal, a further application made in another Member State after the adoption of such a decision by the first Member State may also be classified as a subsequent application, as long as the decision is final and not subject to a reopening of the procedure or an appeal.

The CJEU thus distinguished between the two situations presented in the case, clarifying that Article 33(2)(d) of the recast APD, read in conjunction with Article 2(q), does not preclude Member States from rejecting a subsequent application as inadmissible when it was made after a previous application made in another Member State has been rejected by a final decision. However, it highlighted that Article 33(2)(d) of the recast APD precludes a Member State from rejecting a further application as inadmissible after the applicant requested international protection in another Member State that decided to discontinue the examination of the previous application due to its implicit withdrawal but the decision is not yet final.

4.2. New elements or findings in a subsequent application

In *A.A.* v *Federal Republic of Germany* (C-216/22, 8 February 2024), the CJEU in Grand Chamber formation interpreted the concept of new elements or findings in a subsequent application and ruled that its judgments, which significantly add to the likelihood of an asylum applicant qualifying as a beneficiary of refugee status or subsidiary protection, can constitute a new element justifying a fresh examination of the substance of the asylum application. In the case, a Syrian applicant was refused refugee protection in Germany and was granted subsidiary protection after he claimed that he feared forced conscription. He lodged a second application after the CJEU pronounced its judgment in *EZ* v *Federal Republic of Germany* (C-238/19, 19 November 2020).

In that judgment, the CJEU interpreted Article 9 of the recast QD and ruled that there is a strong presumption that, in the context of the Syrian civil war, a refusal to perform military service is connected to a reason which may give rise to refugee protection. The CJEU noted that the date on which its judgment was pronounced is irrelevant. However, it must significantly add to the likelihood that the applicant will qualify for refugee protection. The

court also added that Member States may authorise their courts or tribunals to rule themselves on the application and, where appropriate, grant refugee status.

5. Assessment of protection provided by UNWRA

One judgment pronounced in 2024 concerned protection provided by UNRWA in the Gaza Strip, clarifying the relevant time of the assessment of whether UNRWA's protection or assistance has ceased. In *LN, SN* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite (Deputy Chairperson of the State Agency for Refugees, Bulgaria)* (C-563/22, 13 June 2024), the CJEU interpreted Article 12(1)(a) of the recast QD and Article 40 of the recast APD in a case concerning subsequent applications submitted by stateless persons of Palestinian origin registered with UNRWA. The CJEU clarified that they should be granted refugee status if UNRWA's protection or assistance has ceased and UNRWA is unable to provide dignified living conditions or minimum security conditions, which the court noted as deteriorated in the Gaza Strip in an unprecedented way as a consequence of the events of 7 October 2023. However, the court noted that refugee protection must be refused if there are any grounds for exclusion under the recast QD.

Regarding the relevant time of the assessment, the court noted that the assessment of whether UNRWA's protection or assistance must be considered to have ceased must be done at the time from which the stateless person left the sector of UNRWA's area of operations to when the competent administrative authorities rule on the asylum application or when the competent court rules on an appeal against a negative decision.

6. International protection needs arising *sur place*

In *Federal Office for Immigration and Asylum (BFA)* v *JF* (C-222/22, 29 February 2024), the CJEU interpreted Article 5 recast Qualification Directive (QD), ruling that an asylum application based on religious conversion which took place after the person departed from the country of origin may not be rejected automatically as abusive of the international protection procedure. The applicant, an Iranian national, whose first request for international protection in Austria was rejected, was granted subsidiary protection after lodging a second application claiming that in the meantime he had converted to Christianity and, on that ground, he feared persecution in his country of origin. The national authority refused to grant him refugee status as national law provided that refugee protection cannot be granted following a subsequent application if the new circumstance which the applicant has created by his/her own decision did not constitute the expression and continuation of convictions held in the country of origin.

The CJEU held that such a presumption of abusive intent and abuse of procedure is not in line with the recast QD and that any subsequent application must be assessed on an individual basis. Where the applicant credibly demonstrated religious conversion "out of inner conviction" and actively practices that faith, which rules out an abusive intent or abuse of the procedure, the applicant must be provided refugee protection.

However, when a competent authority examining a subsequent application finds abusive intent and abuse of procedure, the Member State may refuse refugee status based on Article 5(3) of the recast QD, even when the applicant justified fears of being persecuted in the country of origin as a result of circumstances created by him/herself. In such a case, the applicant is nevertheless able to benefit from the rights guaranteed by the Refugee Convention, as provided for in Article 42(1) of the Convention and the guarantee against *non-refoulement* under Article 33(1) of the Convention.

7. Gender-based persecution of women

The CJEU ruled in three landmark cases in 2024 concerning gender-based violence and persecution against women, clarifying and expanding the scope of protection provided to women and girls. The cases concerned physical, mental and sexual violence, identification with the value of equality between women and men after a stay in the host country, and state-imposed discriminatory measures against women. Through these judgments, the court unequivocally established that women at risk of gender-based violence may be granted refugee status on account of their gender.

In the third case, the court departed from the need to provide an individualised assessment of an application for international protection. It highlighted that in cases concerning persecution applied systematically through an accumulation of gender-based discriminatory acts, Member States may adapt their assessment methods and may provide that establishing gender and nationality are sufficient to establish the risk of persecution.

For a detailed analysis of asylum case law on gender-based violence against women, see the EUAA's report *Jurisprudence related to Gender-Based Violence against Women. Analysis of Case Law from 2020-2024* (February 2025).

7.1. Violence against women

In *WS* v *State Agency for Refugees under the Council of Ministers (SAR)* (C-621/21, 16 January 2024), the CJEU in a Grand Chamber formation confirmed that women as a whole or groups of women who share a common characteristic may be regarded as belonging to a particular social group within the meaning of the recast QD and may qualify for refugee protection if they are exposed to physical or mental violence, including sexual violence and domestic violence, in their country of origin on account of their gender. For the first time, the CJEU applied two cumulative conditions provided in Article 10(1)(d) of the recast QD to establish a particular social group in the context of gender-based violence against women.

The case was referred to the CJEU by the Bulgarian Administrative Court of the City of Sofia and concerned a Turkish Muslim woman with Kurdish ethnicity who divorced her husband. She fled from Türkiye because she had been forced to marry at the age of 16 and was subjected to domestic violence by her husband, without being able to receive support from her own family, the husband's family and considering that a Turkish court had placed her in a house for women who are victims of violence, in which she claimed not to feel safe. She claimed that she feared the threats received from her husband and that there was a risk of honour killing as she had divorced and had another child from a second religious marriage.

The CJEU held that the recast QD must be interpreted consistently with both the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Istanbul Convention. The latter, which is binding on the EU, recognises in Article 60(1) that gender-based violence against women is a form of persecution. The court noted that Article 60(2) of the Istanbul Convention requires parties to ensure that a gender-sensitive interpretation is given to each of the reasons for persecution prescribed by the Refugee Convention.

The CJEU considered whether Article 10(1)(d) of the recast QD must be interpreted as meaning that women as a whole may be regarded as belonging to a particular social group depending on their country of origin or whether an additional common characteristic must be invoked to belong to such a group. The court noted that being a female constitutes an innate

characteristic and suffices to satisfy the first condition of assessing a particular social group. The court also noted that escaping from a forced marriage may be regarded as a "common background that cannot be changed" within the meaning of the first condition.

Regarding the second condition, the court remarked that women may be viewed as having a distinct identity from their surrounding society, based on "social, moral or legal norms in their country of origin". The court elaborated that this may also be the case for women who share an additional common characteristic. In the case of women who refuse a forced marriage and who transgress the social norm by ending the marriage, the court argued that they may be regarded as belonging to a social group with a distinct identity in their country of origin if, on account of that behaviour, they are stigmatised and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence.

Thus, the court held that Article 10(1)(d) of the recast QD must be interpreted as meaning that, depending on the circumstances in the country of origin, women in that country as a whole and also more restricted groups of women who share an additional common characteristic may be regarded as belonging to a particular social group, as a reason for persecution capable of leading to the recognition of refugee status.

The court followed the opinion of the Advocate General de la Tour, according to whom "women who refuse forced marriages, where such a practice may be regarded as a social norm within their society, or who transgress such a norm by ending that marriage, may be regarded as belonging to a social group with a distinct identity in their country of origin if, on account of that behaviour, they are stigmatised and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence".

The court added that, in accordance with Article 4(3) of the recast QD, the assessment of whether the fear invoked by an applicant is well-founded must be individual and carried out on a case-by-case basis. To this end, relevant country of origin information should be collected, such as information on the position of women before the law, their political, social and economic rights, the cultural and social mores of the country and consequences for non-adherence, the prevalence of harmful traditional practices, the incidence and forms of reported violence against women, availability of protection, penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making such a claim.

The Bulgarian court asked the CJEU whether the concept of serious harm under Article 15(a) and (b) of the recast QD may cover a real threat of violence that would be inflicted by a member of the applicant's family. The court noted that if the conditions for granting refugee protection are not satisfied, women may qualify for subsidiary protection as serious harm covers the real threat to the applicant of being killed or subjected to acts of violence inflicted by a member of their family or community due to the alleged transgression of cultural, religious or traditional norms.

7.2. Identification with the value of equality between women and men after a stay in a Member State

In *K and L v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (C-646/21, 11 June 2024), the CJEU in a Grand Chamber formation confirmed that identifying with the values of gender equality can be invoked as an additional element, complementary to the characteristic of being a woman, that would fulfil the second criterion

for membership of a particular social group. The case concerned two Iraqi sisters who moved to the Netherlands at an early age. Considering their long residence in the Netherlands, they claimed that they had adopted the norms, values and conduct of their peers, they valued gender equality, and wished to continue living in a way that allowed them to make their own choices about their relationships, marriage, studies, work, and political and religious views. As a consequence, they feared persecution and developmental harm if they were to be returned to Iraq. They argued that they were members of a particular social group within the meaning of Article 10(1)(d) of the recast QD.

The Dutch Court of The Hague seated in 's-Hertogenbosch asked the CJEU whether western norms, values and actual conduct, which were adopted in a society which formed a person's identity, should be regarded as a common background or a fundamental characteristic that cannot be changed, and thus whether this group should be seen as members of a particular social group within the meaning of Article 10(1)(d) of the recast QD. The CJEU rephrased the wording of the referring court, in line with the opinion of Advocate General Collins, and focused the terminology on women who identify with the value of equality between women and men.

As in C-621/21 (described above), the CJEU recalled that the recast QD must be interpreted in light of CEDAW and the Istanbul Convention and that being female constitutes an innate characteristic which suffices to satisfy the first condition for identifying a particular social group. In the same judgment, the court added that the existence of an additional innate characteristic or a common unchangeable background that women share, for example a characteristic or belief which is fundamental to their identity, may also satisfy that first condition.

In the present case (C-646/21), the CJEU noted that women, including minors, who share as a common characteristic the fact that they identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a particular social group, constituting a reason for persecution capable of leading to the recognition of refugee status. The court re-emphasised the importance of considering up-to-date country of origin information from various sources, such as the EUAA, UNHCR and international human rights organisations. The court also ruled on the obligation of the determining authority to individually assess the best interests of the child prior to adopting a decision on the application for international protection, in view of Article 24(2) of the EU Charter.

7.3. State-imposed discriminatory measures against women

In the third landmark ruling, *AH (C-608/22), FN (C-609/22) v Federal Office for Immigration and Asylum (BFA)* (4 October 2024), the court departed from the need for an individual assessment when there is systematic discrimination of women amounting to persecution. The court referred to Article 3 of the recast QD which permits Member States to apply more favourable standards when assessing the conditions under which refugee status is granted, allowing a Member State to deviate from Article 4.

The case concerned two Afghan women, AH, who claimed that she fled because her father wanted to subject her to a forced marriage, and FN, who never lived in Afghanistan but had fled from Iran. They both argued that the accumulation of measures imposed by the Taliban regime since they came to power in 2021 excluded and discriminated women in the Afghan society, which was sufficiently severe to amount to widespread persecution. The Austrian

referring court asked the CJEU whether the discriminatory measures, taken as a whole, can be classified as acts of persecution which may justify the recognition of refugee status, and secondly, whether the competent national authority, in the individual assessment of an application for asylum submitted by a woman of Afghan nationality, is required to take into consideration elements other than her nationality and gender.

The court clarified the differentiation between acts of sufficiently serious nature and repetition which constitute a severe violation of basic human rights under Article 9(1)(a) of the recast QD and those which under Article 9(1)(b) constitute acts of persecution through their cumulative nature. The court identified for instance forced marriage, which is comparable to a form of slavery, the lack of protection against gender-based violence and domestic violence as acts which must be classified by themselves as acts of persecution, amounting to inhuman and degrading treatment prohibited by Article 3 of the ECHR. By comparison, discriminatory restrictions imposed by the Taliban on access to healthcare, political life, education, the exercise of a professional or sporting activity, restrictions on the freedom of movement or requiring women to cover their entire body and face do not constitute individually a sufficiently serious breach of a fundamental right for the purposes of Article 9(1)(a); however, cumulatively they reach the threshold of severity to amount to acts of persecution in accordance with Article 9(1)(b). Thus, such an accumulation of discriminatory measures in respect of women undermines human dignity which is guaranteed by Article 1 of the EU Charter.

The second question asked by the Austrian referring court concerned the assessment of these cases, and whether Article 4(3) of the recast QD required taking into account in the individual assessment factors which are particular to the woman's personal circumstances other than those relating to her gender or nationality. In reply, the CJEU recalled that Article 4 is applicable to all applications for international protection, whatever the reasons for persecution. Nevertheless, the court noted that the competent authorities, while observing the rights guaranteed under the EU Charter, may adapt methods of assessing statements and evidence, taking into consideration the specific circumstances and characteristics of each application. Thus, they may introduce and retain more favourable standards and relax the conditions under which refugee status is granted, if those standards do not undermine the recast QD.

The CJEU considered the EUAA's Country Guidance: Afghanistan issued in January 2023, which highlights that a well-founded fear of persecution (within the meaning of Article 9 of the recast QD) is in general substantiated for Afghan women and girls as a result of the measures adopted by the Taliban regime since 2021, and UNHCR's statement of May 2023, which highlights a presumption of recognition of refugee status for Afghan women and girls. The court concluded that, once gender and nationality are established through an individual assessment for Afghan women and girls, it is not necessary to consider other factors to determine the risk of persecution. Thus, the CJEU ruled that an individual risk assessment is not necessary, beyond establishing gender and nationality, when state-imposed or tolerated discriminatory measures of women have a cumulative effect and are applied deliberately and systematically to undermine their human dignity, thus amounting to acts of persecution.

8. Secondary movements and admissibility of applications for international protection

In *QY* v *Bundesrepublik Deutschland* (C-753/22, 18 June 2024), the CJEU in Grand Chamber formation ruled that Member States are not required to automatically recognise refugee status granted in another Member State, although Member States may choose to do so. The case

concerned a Syrian national who obtained refugee protection in Greece and subsequently applied for international protection in Germany, as she risked being subjected to inhuman or degrading treatment due to the living conditions of refugees in Greece.

When the competent authority cannot reject as inadmissible (under Article 33(2)(a) of the recast APD) the asylum request of an applicant to whom another Member State granted protection, the court noted that it must carry out a new individual, full and up-to-date examination of the case. In the context of this examination, the authority must consider the decision of the other Member State that granted international protection and the elements on which that decision was based. To that end, it must, as soon as possible and in light of the EU principle of sincere cooperation, initiate an exchange of information with the authority that adopted the decision. If the applicant qualifies as a refugee, the authority must grant refugee status and it does not have any discretion.

9. The effects of refugee protection in proceedings concerning extradition to third countries

The CJEU clarified the binding effect in an extradition procedure of refugee status held in another Member State. In *A. v Generalstaatsanwaltschaft Hamm* (C-352/22, 18 June 2024) the CJEU in Grand Chamber formation held that a third-country national cannot be extradited to the country of origin if that person is recognised as having refugee status in another Member State. The case concerned a Turkish national of Kurdish origin who was recognised as a refugee in Italy in 2010 on the ground that he was at risk of political persecution by the Turkish authorities because he was suspected of murder while supporting the Kurdistan Workers' Party (PKK). For this reason, Türkiye requested Germany, his country of residency, to extradite him. The German court hearing the case requested a preliminary ruling from the CJEU.

The court noted that since extradition would effectively end refugee protection, it must be refused if the refugee status has not been revoked or withdrawn by the other Member State where refugee status was recognised. After contact with the competent authorities of the other Member State, if the refugee status is revoked or withdrawn, the Member State from which extradition is being requested must conclude that the person is no longer a refugee and there would be no serious risk, in the event of extradition, of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

10. Family reunification for unaccompanied minors

The CJEU added to its previous case law a further layer of protection for unaccompanied minors and their right to family reunification. In *CR, GF, TY v Landeshauptmann von Wien* (C-560/20, 30 January 2024), the CJEU in Grand Chamber formation ruled that an unaccompanied minor refugee has the right to family reunification with his/her parents, and exceptionally with the vulnerable sibling in need of permanent assistance from their parents on account of a serious illness, even if the unaccompanied minor reached the age of majority during the family reunification procedure. In this case, the vulnerable sibling was suffering from cerebral palsy and was in permanent need of a wheelchair and daily personal care, including assistance with eating. The court had previously ruled in *A and S* (C-550/16, 12 April 2018) that a minor who attains the age of majority in the course of the asylum procedure, and is thereafter granted refugee status must be regarded as a 'minor' for the purposes of the family reunification procedure.

In *CR, GF, TY* v *Landeshauptmann von Wien*, the CJEU held that Article 10(3)(a) of the Family Reunification Directive does not require the first-degree relatives in the direct ascending line of an unaccompanied minor refugee to submit the application for family reunification within a given period when the refugee is still a minor on the date on which the application is submitted and who reaches majority during the family reunification procedure. In the context of the exceptional circumstances of this case, the court added that, based on this article, the authorities must grant a residence permit to the adult sister of an unaccompanied minor refugee who is a third-country national and who is seriously ill and totally and permanently dependent on the parents.

In addition, Member States may not require the sponsor, an unaccompanied minor refugee or the first-degree relatives in the direct ascending line, to meet the conditions in Article 7(1) (accommodation, health insurance, stable and regular resources), irrespective of whether the application for family reunification was submitted within the 3 months provided by Article 12(1).

11. Temporary protection

The CJEU in Grand Chamber formation interpreted for the first time the Temporary Protection Directive and the Implementing Decision (EU) 2022/382. In *P (C-244/24, Kaduna), AI, ZY, BG (C-290/24, Abkez)* v *State Secretary for Justice and Security* (19 December 2024), the court ruled that a Member State which has extended temporary protection to certain categories of people, beyond what is required by EU law, may withdraw that protection from them without waiting for the temporary protection granted under EU law to end. The case concerned the extension of the temporary protection scheme for displaced persons from Ukraine to categories of persons other than those covered by EU law. The Dutch authorities had included holders of a Ukrainian temporary (not only permanent) residence permit. Subsequently, they withdrew the benefit of the optional protection.

The court held that a Member State which granted optional temporary protection to a category of people may withdraw that protection and may decide on its duration, provided that it does not begin before and does not end after the temporary protection granted by EU law. Additionally, the Member State must grant beneficiaries a residence permit for as long as that protection is not withdrawn and, thus, may not issue a return decision as long as the optional protection is in force.

12. Return following a negative asylum decision

The CJEU interpreted the Return Directive in two cases which highlighted the importance of the principle of *non-refoulement* and the rights of rejected asylum applicants who have been in a Member State for years without a national mechanism to regularise their stay. The court also issued an order in which it stressed that the Return Directive does not require a Member State to grant a residence permit to a third-country national staying illegally when a return decision or a removal measure cannot be adopted.

In *K, L, M, N* v *State Secretary for Justice and Security* (C-156/23, 17 October 2024), the CJEU ruled in a case concerning the lawfulness of the rejection of a residence permit application in the Netherlands and the enforcement of a prior return decision adopted during an international protection procedure. It clarified that under Article 5 of the Return Directive, in conjunction with Article 19(2) of the EU Charter, both administrative and judicial authorities must ensure compliance with the principle of *non-refoulement* when deciding on a residence permit and on the enforcement of a return decision respectively. Specifically, authorities must

review any prior return decision which was suspended during the international protection procedure to determine if enforcing it would breach the *non-refoulement* principle.

Notably, the CJEU ruled that Article 13 of the Return Directive, in conjunction with Articles 5, 19(2) and 47 of the EU Charter, obliged national courts to raise *ex officio* any potential violations of the *non-refoulement* principle when reviewing the legality of a decision rejecting a residence permit and lifting the suspension of a return decision.

In *LF v State Agency for Refugees (SAR)* (C-352/23, 12 September 2024), the CJEU ruled on the rights of rejected asylum applicants who have been in a Member State for years without a national mechanism to regularise their stay. The CJEU ruled that under Article 14(2) of the Return Directive, a Member State which is unable to remove a third-country national within the periods laid down under Article 8 must provide that person with a written confirmation that the return decision will temporarily not be enforced. In addition, irrespective of the duration of that person's stay in the territory, there is no obligation for a Member State, under Articles 1, 4 and 7 of the EU Charter and the Return Directive, to provide a right to stay on humanitarian grounds and the person may rely on the rights guaranteed by the Charter and Article 14(1) of the Return Directive. Furthermore, if that third-country national also has the status of an applicant for international protection and is authorised to remain in the territory of that Member State, he/she may also rely on the rights enshrined in the recast RCD.

The CJEU also issued an order in September 2024, following a referral for a preliminary ruling from the Belgian Court of First Instance of Liège (*PL v Belgium*, C-143/24). The CJEU considered that a reasoned order was sufficient, instead of a judgment, as the answer to the questions referred for a preliminary ruling could be clearly deduced from existing case law, specifically from its judgment of 22 November 2022 in *X v Staatssecretaris van Justitie en Veiligheid* (C-69/21). The CJEU had established that the Return Directive relates only to the adoption of return decisions and the enforcement of those decisions. The court held that the Return Directive is not intended to harmonise the rules of the Member States relating to the residence of foreign nationals and does not regulate either the manner in which a right of residence is to be granted to third-country nationals or the consequences of the illegal stay of third-country nationals in respect of whom no return decision to a third country may be adopted.

The CJEU also noted that Article 6(4) of the Return Directive is limited to allowing Member States to grant, for charitable or humanitarian reasons, a right of residence to illegally-staying, third-country nationals on the basis of their national law and not EU law. However, no provision of the Return Directive requires a Member State to grant a residence permit to a third-country national staying illegally when a return decision or a removal measure cannot be adopted due to the real risk that the person would be exposed in the country of destination to a rapid, significant and irremediable increase in the pain caused by his/her illness.

13. Implementation of CJEU judgments concerning asylum procedures

In *European Commission v Hungary* (C-123/22, 13 June 2024), the CJEU ordered Hungary to pay a lump sum of EUR 200 million and a penalty of EUR 1 million per day of delay for failing to comply with the CJEU judgment in *European Commission v Hungary* (C-808/18) pronounced on 17 December 2020. The earlier ruling found Hungary in breach of EU law on international protection procedures and the return of illegally-staying, third-country nationals. As Hungary did not comply with the 2020 judgment, the European Commission brought a new action for failure to comply with obligations, seeking the imposition of financial sanctions.

The CJEU confirmed that Hungary had not taken the necessary measures to address issues related to access to procedure, the right to remain during an appeal, and the removal of irregular, third-country nationals. It held that Hungary deliberately evaded the EU's common policy on international protection and the rules on removing illegally-staying, third-country nationals, disregarding the principle of sincere cooperation.

To read more case law related to asylum, consult the EUAA Case Law Database.

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