EASO Newsletter on Asylum Case Law

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Contents

Note

The "EASO Newsletter on Asylum Case Law" is based on the EASO Case Law Database which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU), the European Court of Human Rights (ECtHR), the UN Committee on the Rights of the Child (UN CRC) and UN Committee on the Rights of Persons with Disabilities (UN CRPD). The database presents more extensive summaries of the cases than what is published in this newsletter.

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

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

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Main highlights from September-November 2021

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

CJEU

The CJEU found Hungary in breach of EU law for failing to fulfil its obligations under the recast Asylum Procedures Directive and the recast Reception Conditions Directive by criminalising activities which facilitate the making or lodging of an asylum application when that person was aware that the application would be rejected (*European Commission v Hungary*).

The CJEU interpreted the concept of 'new elements or facts' within the meaning of the recast Asylum Procedures Directive, in subsequent applications (*XY*).

The CJEU also interpreted the conformity with EU law of the 10-day time limit for an appeal against decisions issued following subsequent applications in Belgium, in the specific situation where the notification of the first instance decision is done for the applicant at the head office of the determining authority (*JP v General Commissioner for Refugees and Stateless persons*).

In addition, the CJEU explained the conditions under which CEAS does not preclude an automatic extension of refugee status to minors whose parents benefit from that status in a Member State (*LW v Bundesrepublik Deutschland*).

The CJEU ruled on the non-discrimination of beneficiaries of international protection and the compatibility of discount cards with the recast Qualification Directive, Article 29 (social welfare), where such discounts are not provided for non-nationals of Member States (*ASGI and others*).

Related to violence against women and domestic violence, the CJEU pronounced an opinion regarding the EU's accession to the Council of Europe's Istanbul Convention (Opinion 1/19).

ECtHR

According to the ECtHR's press release of 6 December 2021,[1] between 20 August 2021 and 3 December 2021, the court processed 47 requests for interim measures under Rule 39 of the Rules of the Court brought by 198 applicants at the borders with Belarus, and it ordered interim measures in 43 of these requests. The majority of the requests were received in November and December 2021 against Poland. One request was lodged against Lithuania and two against Latvia. In the majority of cases, the court requested the national authorities to provide the applicants with basic needs, shelter and medical care and underlined that the measures do not envisage a request to let applicants enter their territories.

This newsletter includes the request lodged against Lithuania. In this case, the ECtHR issued interim measures for an Afghan national stranded at the border of Belarus with Lithuania. On 29 September 2021, the ECtHR decided not to extend the measures because the government provided assurances that applicants would not be expelled from Lithuania until their asylum requests had been examined.

[1] See the ECtHR Press Release of 6 December 2021: Requests for interim measures concerning the situation at the Polish-Belarusian border.

In another case, (No 42120/21), included in the EASO Newsletter on Asylum Case Law Issue No 3/2021, in which interim measures were ordered against Poland on 25 August 2021,[2] the ECtHR decided to extend the measures until further notice and the court further requested the Polish authorities to facilitate contact between the applicants and their lawyers. Furthermore, in a case against Latvia (No 42165/21), also included in the previous edition of the newsletter, the ECtHR decided to lift the interim measure as some of the applicants had been admitted onto Latvian territory and others no longer appeared to be at or near the border zone.

In other cases where interim measures were requested against Poland, the court addressed questions to the government seeking clarifications on the case and requested Poland to refrain from removing applicants when they were present on its territory.[3]

The ECtHR also found that Croatia violated the European Convention when the daughter of an Afghan family died at the Croatian border (*M.H. and Others v Croatia*).

National courts

In Belgium, Council for Alien Law Litigation (CALL) decided not to apply the exclusion clause to a Syrian applicant who had sexual relations with his wife when they were both minors (read more). CALL also provided refugee status to a Senegalese woman who carried out a clandestine abortion in her country of origin, considering that she belongs to a particular social group (read more).

In Finland, the Supreme Administrative Court decided on a case about the right to interpretation and its importance for correctly assessing a person's religious beliefs (read more).

In France, the National Court of Asylum (CNDA) analysed the general risks to which the Hazara community is exposed in Afghanistan in the current context of the Taliban takeover of power (read more).

In the Netherlands, national courts lodged several preliminary questions to the CJEU on:

- The Dublin III Regulation, Articles 27(3) and 29 (*State Secretary for Justice and Security v Applicants*, 1 September 2021);
- The principle of mutual trust in the Dublin procedure (*Applicant v State Secretary for Justice and Security*, 4 October 2021); and
- The recast Qualification Directive, Article 10, with regard to whether westernised children may be considered members of a particular social group (*Applicants v State Secretary for Justice and Security*, 22 October 2021).

Also, the Dutch Council of State allowed a request for the compensation of damages suffered by a rejected asylum applicant who was subjected to inhuman and degrading treatment after being deported to Russia (read more).

[2] See EASO Newsletter on Asylum Case Law Issue 3/2021, September 2021.
[3] See the ECtHR Press Release of 6 December 2021: Requests for interim measures concerning the situation at the Polish-Belarusian border.

Access to the asylum procedure

ECtHR interim measures for the situation at the border with Belarus

Council of Europe, European Court of Human Rights [ECtHR], *Sadeed and Others* v *Lithuania*, No 44205/21, 8 September 2021

The ECtHR indicated interim measures for five Afghan nationals stranded at the border between Lithuania and Belarus.

The ECtHR indicated interim measures for five Afghan nationals who arrived in Belarus in August 2021 and attempted to enter Lithuania with the aim to seek international protection. The applicants alleged to have fled their country due to fear of Taliban reprisals because they are westernised and educated. The applicants were stranded at the border and complained before the court under Articles 2, 3 and 13, as well as under Article 4 of Protocol 4, seeking to halt their removal to Belarus.

The court decided to apply Rule 39 until 29 September 2019 and indicated to the Lithuanian government not to remove the applicants to Belarus, provided that they are already on Lithuanian territory. After this date, the court decided not to extend the measure as the Lithuanian government assured the court that the applicants would not be expelled from Lithuania without an examination of their asylum applications.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1984

CJEU judgment on criminalising activities facilitating the lodging of an asylum application

European Union, Court of Justice of the European Union [CJEU], *European Commission* v *Hungary*, C-821/19, 16 November 2021

The CJEU held that Hungary infringed EU law by criminalising activities in relation to the initiation of a procedure for international protection by persons not fulfilling the national criteria for international protection.

In 2018, Hungary amended laws on measures against illegal immigration and enacted provisions which, first, added a further ground of inadmissibility of an application for international protection and, second, criminalised organising activities which facilitate the lodging of asylum applications by persons who are not entitled to asylum under Hungarian law, and provided for restrictions on the freedom of movement for persons suspected of having committed such an offence. Considering that Hungary had failed to fulfil its obligations under the recast Asylum Procedures and the recast Reception Conditions Directives, the European Commission brought an action for failure to fulfil obligations before the Court of Justice. The court, sitting as the Grand Chamber, upheld for the most part the Commission's action.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2109

ECtHR judgment on the death of a minor during collective expulsions to Serbia

Council of Europe, European Court of Human Rights [ECtHR], *M.H. and Others* v *Croatia*, Nos 15670/18 and 43115/18, 18 November 2021

The ECtHR found violations of Articles 2, 3 and 5 of the European Convention when the daughter of an Afghan family died at the Croatian border.

The case concerned the death of a 6-year-old Afghan child who was hit by a train after allegedly having been denied the opportunity to seek asylum by the Croatian authorities and ordered to return to Serbia across the tracks. The case also concerned the applicants' detention while seeking international protection. Relying on Article 2 (right to life), the applicants complained that Croatia had been responsible for the death of their daughter and sister and that the investigation into her death had been ineffective. They also complained of violations of several other articles of the Convention and Protocol No 4, Article 4.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2117

Dublin procedure

Referral to the CJEU on the interpretation of the Dublin III Regulation, Articles 27(3) and 29

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security* v *Applicants*, 202001503/1/V1, 202005113/3/V1 and 202102273/1/V1, 1 September 2021

The Council of State submitted a preliminary question to the CJEU on the suspension of the time limit for a transfer after an interim order in an asylum case.

The Administrative Jurisdiction Division of the Council of State of the Netherlands (Division) referred questions for a preliminary ruling to the CJEU in three cases about the time limit of a Dublin transfer. The Division asked whether the suspension of the time limit, after an interim order had been issued by the Division at the request of the State Secretary, is contrary to the Dublin III Regulation (specifically, how Articles 27(3) and 29 of the Dublin III Regulation should be interpreted with regard to this question). The request is registered under C-556/21 before the CJEU.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2032

Referral to the CJEU on the interpretation of the principle of mutual trust in the Dublin procedure

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant* v *State Secretary for Justice and Security*, NL21.4376, 4 October 2021

The District Court of the Hague referred a case to the CJEU to interpret the principle of mutual trust in the Dublin procedure.

The case concerned the transfer of a Sudanese applicant to Malta under the Dublin III Regulation. The District Court of the Hague referred the case to the CJEU asking whether human rights violations, precisely pushbacks and the use of detention, by the responsible Member State should result in a prohibition of the transfer, or whether the transferring Member State cannot rely on this principle and must be given the burden of proof to demonstrate that, after the transfer, the applicant will not be placed in a situation contrary to Article 4 of the EU Charter. In addition, the referring court sought guidance on the burden and standard of proof if it is alleged that Article 3(2) of the Dublin III Regulation precludes the transfer, whether there is an obligation to cooperate in Dublin procedures and whether, in the event of serious and systemic infringements of fundamental rights with respect to third-country nationals, the transferring Member State must request individual guarantees.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2035

Transfers to Italy

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A and B* v *State Secretariat for Migration*, No F-6330/2020, 18 October 2021

The Federal Administrative Court ruled that considering recent legislative changes a Dublin transfer to Italy is possible for a single mother and her child.

The Federal Administrative Court ruled that Dublin transfers to Italy of families with minors can be resumed following the changes of the Law No 132 of 2018 (known as the Salvini Decree). The State Secretariat for Migration noted that, by the new Decree 130/2020, Italy has repealed a large number of legislative provisions and currently applicants transferred within the Dublin procedure have access to a second-level reception system (*sistema di accoglienza e integrazione*), including access to particular assistance when needed and having priority for a transfer to first reception centres. The court confirmed in this case that the Dublin transfer is possible in light of the legislative changes with regard to a single mother and her son.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2060

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicants* v *State Secretary for Justice and Security*, NL21.5425 and NL21.5428, 12 November 2021

The District Court of the Hague rejected an appeal against a Dublin transfer to Italy, finding no risks of treatment contrary to Article 3 of the European Convention.

The applicants appealed against the decision of the State Secretary not to consider their applications for international protection because Italy was the state responsible according to the Dublin III Regulation. The District Court of the Hague rejected the appeal and, based on various country reports and jurisprudence from the German Higher Administrative Court and of the ECtHR (*M.T. v the Netherlands*), found that the applicants would have access to primary care (*centri di accoglienza straordinaria,* CAS) of sufficient quality. With regard to the asylum procedure in Italy, the court held that the information

submitted by the claimants does not provide sufficient grounds for the conclusion that there are systematic shortcomings in the asylum procedure and the Italian authorities gave guarantees to process the applicants' requests for international protection by respecting the obligations under EU law.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2149

Transfers to Romania

Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], *M.L.I.* v *Police of the Czech Republic*, 4 Azs 102/2021 - 29, 15 September 2021

The Supreme Administrative Court rejected an appeal against a Dublin transfer to Romania, holding that the evidence did not suggest systemic deficiencies in the asylum procedure and reception conditions.

The applicant received a transfer decision to Romania under the Dublin procedure and to be held in detention for 30 days awaiting the transfer. He appealed, arguing that Romania was unable to ensure the proper conduct of the asylum procedure and that there were systematic deficiencies in the Romanian asylum system. The Supreme Administrative Court noted that the court was not aware of any evidence suggesting shortcomings in the Romanian asylum procedure or in reception conditions. Additionally, the applicant did not put forward any evidence prior to the initial decision and the shortcomings indicated at the appeal stage did not amount to torture or inhuman treatment, nor constitute systemic deficiencies.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2002

Italy, Civil Court [Tribunali], *Applicant* v *Dublin Unit of the Ministry of the Interior*, 12 October 2021

The Tribunal of Genova annulled a Dublin transfer to Romania on grounds that the applicant could be subject to inhuman and degrading treatment.

An applicant from Afghanistan appealed against a decision ordering her and her family's transfer from Italy to Romania. The tribunal noted that there were still significant systemic deficiencies in the reception system in Romania and ruled that in this case the applicant, together with her son, would be subject to inhuman and degrading treatment upon a transfer to Romania.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2164

First instance procedures

CJEU judgment on 'new elements or facts' in a subsequent application

European Union, Court of Justice of the European Union [CJEU], *XY*, C-18/20, 9 September 2021

The CJEU interpreted the meaning of the concept of 'new elements or facts' in a subsequent application under the recast Asylum Procedures Directive, Article 40.

An Iraqi national applied for international protection on grounds that he feared persecution as he refused to fight for Shiite militias and that his country was still at war. His request was rejected, and he subsequently lodged another application in which he argued that he in fact feared persecution due to his sexual orientation. The subsequent application was rejected as inadmissible.

The Administrative Court requested the CJEU to determine whether the concept of new elements or facts which have arisen or have been presented by the applicant must be understood as meaning that it relates only to elements or facts which have recently arisen or that it also includes the allegation by an applicant of elements or facts which already existed before the final closure of an earlier proceeding. The CJEU interpreted the recast Asylum Procedures Directive, Article 40(4) as meaning that it does not allow a Member State to refuse to examine a subsequent request even if new elements or facts existed at the time of the previous proceedings and were not presented due to a fault attributable to the applicant.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1995

Second instance procedures

CJEU judgment on time limits for an appeal on a subsequent application

European Union, Court of Justice of the European Union [CJEU], *JP* v *General Commissioner for Refugees and Stateless persons (Commissaire général aux réfugiés et aux apatrides, CGRS)*, C-651/19, 9 September 2021

The CJEU ruled on procedural safeguards related to appeals against an inadmissibility decision pronounced for a subsequent application.

The applicant submitted a subsequent application, which was rejected as inadmissible by the CGRS. The applicant had not specified an address for delivery of communication in Belgium, thus notice of the contested decision was sent to him to the head office of the CGRS. The Belgian law provides a time limit of 10 days to bring an action against that decision, but the applicant received the notice after the expiry of this time limit, when he was present at the head office of the CGRS. His appeal was rejected as time barred.

The CJEU ruled that Article 46 of the recast Asylum Procedures Directive must be interpreted as not precluding legislation of a Member State which provides that proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible are subject to a limitation period of 10 days, even where that service is made at the head office of the national authority responsible for the examination of those applications, in compliance with a number of requirements. It is for the referring court to determine whether the national legislation at issue in the main proceedings meets those requirements.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2114

The right to interpretation

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant* v *Immigration Service*, 2505/2020, 29 November 2021

The Supreme Administrative Court referred a case back to the lower court due to procedural errors concerning interpretation.

An Iraqi national applied for international protection on grounds related to religious conversion, but the Finnish Immigration Service rejected the application and ordered a return to his country of origin. He submitted a subsequent application, which was rejected due to a lack of new elements. In the appeal before the Supreme Administrative Court, the applicant argued that the interpreter assigned did not know the language of the applicant. He submitted as evidence a statement of the interpreter, which testified that he was not performing sufficiently due to the language barrier, and the consistency of the applicant's responses had been severely affected by the interpretation.

The court annulled all previous decisions and held that, when assessing a person's religious beliefs, the accuracy of the person's expression and the transmission of individual nuances are significant. The lower courts must ensure that the interpretation is sufficiently professional for the terms used by the person being heard to be understood correctly.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2153

Assessment of applications

Safe country of origin (Tunisia)

Italy, Civil Court [Tribunali], *Applicant* v *Territorial Commission for the Recognition of International Protection (Bologna)*, 7 September 2021

The Tribunal of Bologna does not consider Tunisia as a safe country of origin based on the most up-to-date country of origin information.

In a case concerning a citizen of Tunisia who arrived in Italy and requested international protection, the Tribunal of Bologna, after examination of the most recent and up-to-date country of origin information, considered that the situation in Tunisia was one of instability and constantly evolving, due to the decision of the president to freeze the Parliament and dismiss the government. There were violent protests in the capital and the deployment of the army. Therefore, the Tribunal ruled that for the time being Tunisia was not a safe country of origin.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2026

Country of origin information

Colombia

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *G.* v *Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20037456, 17 September 2021

The CNDA held that the violence associated with criminal groups that are rampant in Colombia in the department of Risaralda cannot be equated with indiscriminate violence

resulting from an internal or international armed conflict.

A national of Colombia from Pereira in the department of Risaralda requested international protection claiming that he feared being exposed to serious harm if returned to his country of origin, by members of a criminal organisation and due to the context of indiscriminate violence of exceptional intensity prevailing in Colombia. The CNDA rejected his application as not credible and noted that, although the conflict between the Colombian authorities and several dissident branches of the (Revolutionary Armed Forces of Colombia) FARC continued, the resulting violence did not reach an exceptional level of intensity in any of the regions concerned. The court also noted that in the department of Risaralda, where the applicant had his centres of interest, no dissident structure of the FARC is active and, although the department is affected by criminal groups which succeeded the FARC and other paramilitary groups, the situation does not amount to indiscriminate violence resulting from an internal armed conflict.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2065

Venezuela

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *Applicant* v *Directorate of Immigration* [Útlendingastofnun], No 453/2021, 16 September 2021

The Immigration Appeals Board ruled to grant international protection to a Venezuelan applicant due to the security situation in the country of origin.

A Venezuelan national requested international protection on grounds that she was in danger in her home country because of her membership in a particular social group. The Directorate of Immigration rejected the application and ordered the applicant's deportation to her country of origin as it considered that the situation in Venezuela had improved. On appeal, the applicant provided evidence to demonstrate that, on the contrary, the authorities continued to commit similar crimes and that therefore Venezuelan nationals are still at risk. Taking into account country of origin reports, the Immigration Appeals Board considered it clear that the security situation and general conditions in Venezuela had not improved in recent years and that there was widespread and indiscriminate violence in the country.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2027

Burkina Faso

Luxembourg, Administrative Court [Cour Administrative], *A.* v *Ministry of Immigration and Asylum (Ministere de l'Immigration et de l'Asile)*, No 46223C, 7 October 2021

The Administrative Court examined the security situation in Burkina Faso.

An applicant from Burkina Faso requested international protection on grounds that he was a victim of persecution and was attacked due to his brother's and father's association with the Koglweogo, a militia group. On appeal against the refusal of his request, the Administrative Court held that it was not proven that the assaults targeted him personally and that he would still be subject to such a risk in case of return, since he is not himself a member of the Koglweogo. The court noted that, while the general security situation in Burkina Faso was deteriorating in some regions, this violence mainly affected the north and centre-north of the country, in the Sahel region, while the applicant comes from central-eastern Burkina Faso. Thus, the court concluded that the fears expressed by the applicant were not well-founded.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2033

Persecution based on Hazara ethnicity

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *S.* v *Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20025121, 5 November 2021

The CNDA recognised refugee status for an Afghan national of Hazara origin on the grounds of his ethnicity.

The CNDA allowed the appeal lodged by an Afghan applicant of Hazara ethnicity. The court analysed the general risks to which the Hazara community were exposed in Afghanistan. It noted that the new government and the key positions were occupied by Taliban men, the majority with a clerical background and belonging to the Pashtun. Only one position, that of the Minister of Health, had been occupied by a Hazara ethnic, following pressures by the international community. The court further noted that there was evidence of abuses, including killings and torture, against the Hazara, in particular in Ghazni after the Taliban take over.

It concluded that the power takeover of the entire country by the Taliban revived the serious and high risks of persecution targeting the Hazara, already traditionally marginalised in Afghanistan. The court held that the risks for the Hazara community arose within a broader context of violence to which members of the Shiite community are victims, who faced targeted persecution recently illustrated by attacks perpetrated by the Islamic State in Kunduz and Kandahar.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2162

Persecution for reasons of religion

Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], *K.T., Y.A. and A.T.* v *Ministry of Interior (Ministerstvo vnitra)*, 6 Azs 37/2020 - 54, 2 September 2021

The Supreme Administrative Court ruled on an incorrect assessment of the risk of persecution of Christians in Kazakhstan.

The applicants, Kazakh nationals, requested international protection on grounds of being targeted by the authorities because of their Christian faith and the husband's role as a representative of the church. The Supreme Administrative Court considered country of origin information on Kazakhstan and found that the evidence points to persecution against representatives of Christian churches. It ruled that the City Court did not sufficiently assess the situation of the applicant and the impact on the whole family and their grounds for applying for international protection. It referred the case back for further assessment.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2005

Persecution for reasons of political opinion

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *L.* v *Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 19022539, 1 October 2021

The CNDA ruled that criminal proceedings against a person accused of being linked to attacks committed by the Peruvian Shining Path do not amount to persecution or serious harm.

A national of Peru requested international protection claiming to fear persecution by the Peruvian government based on his political opinions. The applicant was a sympathiser of the Shining Path and was convicted once for high treason and once for his involvement in a

terrorist attack. The court did not consider disproportionate the sentence incurred by the applicant. The CNDA held that the criminal proceedings cannot be regarded as constituting persecution, since no element in the claim established that they were discriminatory or disproportionate measures or initiated as a result of political opinions.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2063

Membership of a particular social group

Senegalese women

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *X* v *Commissaire général aux réfugiés et aux apatrides (CGRS)*, 262 192, 13 October 2021

CALL granted refugee status to a Senegalese national based on fears of persecution following her abortion, considering that she belongs to a particular social group.

A Senegalese woman applied for international protection alleging that her former partner threatened her after she had an abortion and reported her to the Senegalese authorities. The application was rejected, and the applicant submitted a subsequent application in 2020, which was rejected as inadmissible. On appeal, the Council recognised that the applicant's fears of persecution were well-founded and granted her request for refugee status, because of the threats and violence she suffered as a result of her decision to have an abortion in Senegal and of her belonging to a particular social group, namely that of Senegalese women. The Council also considered that the psychological and psychiatric follow-up of the applicant demonstrated her particular vulnerability.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2151

Referral to the CJEU on westernised children as a particular social group

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicants* v *State Secretary for Justice and Security*, NL20.22045 and NL20.22047, 22 October 2021

The District Court of the Hague referred questions to the CJEU on westernisation and best interests of the child.

The District Court of the Hague referred preliminary questions to the Court of Justice about westernisation, rooting and the best interests of the child in the assessment of eligibility for international protection of Iraqi nationals. The referral concerned minor children who arrived in the Netherlands with their father, mother and aunt, and claimed to be part of a social group as referred to in Article 10 of the recast Qualification Directive and to be rooted in the Netherlands as a result of long *de facto* residence and claimed that a removal would lead to developmental damage and inability to adapt to cultural norms in the country of origin.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2132

Stereotypes about sexual orientation

Italy, Supreme Court of Cassation - Civil section [Corte Supreme di Cassazione], *Applicant* v *Territorial Commission for the Recognition of International Protection (Bari)*, R.G.N. 3453/2020, 29 October 2021

The Court of Cassation reiterated that the authorities must not rely on stereotyped concepts and secondary details in cases of persecution due to sexual orientation.

A Nigerian applicant claimed to have left his country on grounds that he was persecuted because of his sexual orientation. The Court of Appeal argued that the story was not credible because of several inaccuracies. On appeal, the Supreme Court of Cassation noted that the

assessment of the lack of credibility was based on secondary details and stereotyped notions connected to the sexual orientation of the applicant, and it did not take into account the difficulties the applicant had in telling the intimate details of his story. Additionally, no reference was made to the situation of LGBTIQ people in the country of origin.

Link: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2152

Vulnerable groups

CJEU judgment on refugee status as a derived right for minors

European Union, Court of Justice of the European Union [CJEU], *LW* v *Bundesrepublik Deutschland*, C-91/20, 9 November 2021

The CJEU ruled that CEAS does not preclude an automatic extension of refugee status to the minor child of a parent who has been granted that status.

A Tunisian minor applicant born in 2017 in Germany to a Tunisian mother (whose application for asylum was unsuccessful) and a Syrian father (who was granted refugee status in 2015) was refused international protection in Germany, as the minor could enjoy effective protection as a national of Tunisia. On appeal, the referring court noted that the minor fulfilled the conditions laid down by national law for recognition of refugee status as a derived right and, for the purposes of maintaining family unity in the context of asylum, as a minor child of a parent who had been granted refugee status. The CJEU held that the compatibility of national provisions with CEAS does not depend on the minor's ability to settle in Tunisia, and that the recast Qualification Directive, Article 23 (maintaining family unity), is intended to enable a refugee to enjoy the rights which that status confers, while maintaining family unity in the host Member State.

Link: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2104

Failure to hear a minor during the proceedings

United Nations, Committee on the Rights of the Child [CRC], *M.K.A.H.* v *Switzerland*, Communication No 95/2019, 22 September 2021

The UN CRC condemned Switzerland for multiple violations for a decision to return a mother and her child to Bulgaria without considering the best interests of the child and failing to provide certain safeguards.

A minor born in Damascus, in the Yarmouk refugee camp in Syria, arrived with his mother to Bulgaria where they were detained for 3 days in poor conditions and were then granted subsidiary protection. They later applied for international protection and family reunification in Switzerland. The minor was not heard during the Swiss proceedings. The applicants complained before the UNCRC of a risk of being exposed to inhuman and degrading treatment if returned to Bulgaria and of the failure of Swiss authorities to take into consideration the best interests of the child.

The UN CRC concluded that there was a violation of several articles of the UN Convention on the Rights of the Child and requested Switzerland to re-examine the decision to return the applicants to Bulgaria; to re-examine urgently the asylum application in light of the best interests of the child and the obligation to hear the minor applicant according to Article 12; to take into account the risk for the minor to remain stateless while the application for asylum is being reviewed; and to offer qualified psychological assistance for the rehabilitation of the applicants. Moreover, the UNCRC ordered Switzerland to take all appropriate measures to prevent similar violations in the future.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2072

CJEU opinion on the EU's accession to the Council of Europe's Istanbul Convention

European Union, Court of Justice of the European Union [CJEU], *Opinion 1/19*, 6 October 2021

The CJEU pronounced an opinion on the EU's accession to the Council of Europe's Istanbul Convention.

At the request of the European Parliament, the CJEU pronounced an opinion on the EU's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention"). The CJEU opinion also concerned asylum and *non-refoulement*. The opinion addressed whether the Council of the EU can wait, before adopting a decision, for the 'common accord' of the Member States to be bound by the Istanbul Convention. The CJEU held that the Council of the EU can wait for a 'common accord' of the Member States to be bound by that convention in the fields falling within their competences.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2069

Victims of human trafficking

Italy, Civil Court [Tribunali], *Applicant* v *Territorial Commission for the Recognition of International Protection (Perugia)*, R.G. 3721/2019, 29 October 2021

The Tribunal of Perugia held that the lack of collaboration of the applicant in the personal interview can be an indicator of trafficking in human beings.

A Nigerian national, victim of violence and sexual violence in her family, escaped when she was offered a job in Italy. On her way to Italy, she was kidnapped in Libya, where she was a victim of repeated sexual violence and was forced into prostitution. In Italy, the applicant stated that she was a victim of trafficking in human beings only during a second interview. This fact had not emerged during the discussions with the anti-trafficking agency following the referral procedure.

The Tribunal held that the statements made about the applicant's journey to Italy were consistent with trafficking in human beings. It noted that the lack of the applicant's collaboration during the interviews was particularly significant, as well as the lack of family networks and the condition of women and victims of trafficking in Nigeria. The court ruled to grant refugee status to the applicant.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2134

Persons with mental disorders

United Nations, Committee on the Rights of Persons with Disabilities [CRPD], *Z.H.* v *Sweden*, Communication No 58/2019, 6 September 2021

The UN CRPD decided that the deportation of an Afghan national to his country of origin would deteriorate his mental state.

An Afghan national who applied for international protection in Sweden presented a medical report with a diagnosis of PTSD, psychotic mental health problems and suicide risk due to death threats received in Afghanistan. The Swedish Migration Agency rejected his request and noted that the applicant could receive psychiatric treatment and medication in Kabul.

Based on health care reports on Afghanistan, the CRPD held that there was a lack of resources, trained professionals and infrastructure to adequately care for mental health. It noted that Sweden should have required individual assurances as the applicant had left Afghanistan at a young age and could face difficulties in accessing health care

services. The CRPD concluded that the applicant's removal to Afghanistan would, if implemented, violate his rights under Article 15 of the UN Convention on the Rights of Persons with Disabilities.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2055

Slovenia, Administrative Court [Upravno sodišče], *Applicant* v *Ministry of the Interior*, UP00049855, 6 September 2021

The Administrative Court annulled a negative decision for failure to establish the legal capacity of an applicant who suffers from serious mental problems.

The applicant who suffers from serious psychiatric and mental disorders was rejected international protection for not meeting the legal requirements for refugee or subsidiary protection. Although acknowledging the mental disorders, the determining authority did not allow for the appointment of a psychiatric expert to evaluate if the applicant had the legal capacity to understand the importance of the proceedings.

On appeal, the administrative court annulled the negative decision and referred the case for re-examination due to a substantial violation of the administrative procedure. The court appointed a psychiatric expert who stated that the applicant had an underlying mental disorder, paranoid forms of schizophrenia, thus the applicant cannot independently understand the aim and content of the procedure and cannot reasonably form and express her will or answer questions about her past.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2166

Subsidiary protection

Cuba

Czechia, Supreme Administrative Court [Nejvyšší správní soud], *Y.d.C.J.F.* v *Ministry of the Interior*, 6 Azs 173/2020 - 53, 2 September 2021

The Supreme Administrative Court ruled that further assessment of the political and security situation in Cuba was required to decide on the renewal of subsidiary protection.

A national of Cuba was granted subsidiary protection in 2015 on grounds that there was a risk of serious harm upon her return to Cuba due to the fact that she had exceeded the period of time for which she had been authorised to travel outside Cuba. She was refused an extension of that status. The Prague City Court considered that since protection was first granted, there had been substantial changes in the migration law and Cuban citizens' ability to travel and return to their country.

The Supreme Administrative Court noted that the procedure for extending subsidiary protection is based on an assessment of whether the circumstances in respect of which the applicant was granted subsidiary protection have changed significantly and for a long time. Considering country of origin information, it ruled that the situation in Cuba did not guarantee the safe return of the applicant and referred the case back for another assessment.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2004

Iraq

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], A. v Finnish Immigration Service, 1331/2020, 22 September 2021

The Supreme Administrative Court referred a case back for re-examination in light of requirements for subsidiary protection based on changes in the security situation in the Diyala region in Iraq.

The Finnish Immigration Service (FIS) rejected a request for international protection made by an Iraqi national of Kurdish ethnicity and Yarsan religion and ordered his return to his country of origin. On appeal, the Supreme Administrative Court noted that the security situation in the Diyala region was unstable. Considering the applicant's Kurdish Kakai identity and country of origin information, it further noted that there were serious grounds for believing that he would face a real risk of serious harm as a result of indiscriminate violence if returned to Iraq. The court referred the case back for a full re-examination, indicating that due attention should be given both to the security situation and personal circumstances when assessing requirements for subsidiary protection.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2066

Afghanistan

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *A.* v *Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 18037855, 21 September 2021

The CNDA granted subsidiary protection to an Afghan applicant because of the risk of inhuman treatment due to a particular vulnerability if returned to Afghanistan.

An Afghan national had his request rejected by OFPRA. On appeal, the CNDA ruled, based on recent, available public sources, that the victory of the Taliban combined with the flight of members of the government and the withdrawal of foreign forces, put an end to the armed conflict that had affected the country for 20 years. As a result, the applicant could not claim the benefit of subsidiary protection applicable to civilians in the context of a situation of armed conflict.

However, protection was granted because of the risks of inhuman and degrading treatment to which he would be exposed if he returned to Afghanistan, considering his young age, his social and family isolation, having spent 6 years abroad, and his psychological and physical problems, in the context of the general disorganisation which affected the country since the Taliban took power.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2019

Family unity and derived rights of family members of a beneficiary of subsidiary protection

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *Applicants* v *Office for the Protection of Refugees and Stateless Persons (OFPRA),* Nos 21018964, 21018965, 21018966 and 21018967, 14 October 2021

The CNDA ruled that all minor children of a beneficiary of subsidiary protection must be able to benefit from this same protection, including those born after the protection was granted.

Sri Lankan children of a beneficiary of subsidiary protection were born after the beneficiary received international protection. They requested asylum themselves before OFPRA, which rejected their request. On appeal, the CNDA held that all minor children of a beneficiary of subsidiary protection must be able to benefit from the same protection, including those born after the protection was granted.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2062

Actors of protection

Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], *A.B.* v *Ministry of the Interior (Ministerstvo vnitra),* 6 Azs 40/2020 - 37, 2 September 2021

The Supreme Administrative Court considered that Ukrainian authorities are actors of protection for minorities based on sexual orientation and political opponents.

A Ukrainian national requested international protection on grounds of his alleged support for pro-Russian separatists and his bisexual orientation. The Supreme Administrative Court noted that for both reasons invoked the applicant faced problems with private individuals which cannot amount to persecution or serious harm relevant for international protection. The court held that the applicant could avail himself of the protection of the Ukrainian authorities in the Sum region from which he originates.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2003

Exclusion

Underage marriage

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *Applicant* v *Commissioner General for Refugees and Stateless Persons (CGRS),* No 260333, 7 September 2021

CALL decided not to apply the exclusion clause to a Syrian applicant who had sexual relations with his wife when they were both minors.

A Syrian national claimed asylum with his wife and child after fleeing compulsory military conscription in Syria. Although the authorities determined that avoidance of military conscription would constitute a well-founded fear of persecution, they concluded that Article 1F of the Geneva Convention excluded the applicant from protection because of his marriage and sexual relations with his wife when she was a minor, which constituted a serious non-political crime.

CALL held that the applicant did not fall within the scope of Article 1F as the applicant himself was a minor at the time of the marriage. Furthermore, the marriage was arranged by their parents due to the circumstances they faced in Lebanon, where the wife, still a minor, risked being raped if she was unmarried. Also, any pressure to engage in a sexual relationship came from the families rather than from the applicant. CALL also looked at the current situation of the couple, still married, living and raising their child together. Thus, the Council allowed the request for refugee status.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2056

Genocide and war crimes

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *N.* v *Office for the Protection of Refugees and Stateless Persons (OFPRA),* No 20030019, 23 September 2021

The CNDA ruled on the basis of Article 1F(a) of the Geneva Convention on exclusion of a former senior member of the Rwandan Armed Forces (FAR) involved in the genocide perpetrated in Rwanda in 1994.

A Rwandan national requested international protection claiming that he feared being exposed to persecution or serious harm by Rwandan authorities if he returns to his country of origin, due to his ex-military status in the FAR, his political opinions and his Hutu ethnic origin. The CNDA upheld the OFPRA decision to reject the applicant's request for international protection. Although direct participation was not demonstrated, the CNDA considered that he should have prevented or mitigated the massacres, as he exercised direct command of military units. The court concluded that he contributed, facilitated or

witnessed genocide without seeking to prevent or dissociate himself from it.

Also, there were serious reasons to believe that he also participated in the commission of a war crime, not by committing the acts but by covering up (or denying) abuses committed by men under his command as president of the Democratic Liberation Forces of Rwanda in Eastern DRC.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2064

Use of classified information

Slovenia, Supreme Court [Vrhovno sodišče], *Applicant*, VS00050319, 13 October 2021

The Supreme Court granted leave to revise a decision not to extend subsidiary protection based on an exclusion clause and stressed the importance of clarifying compliance with procedural guarantees when access to classified information is not allowed.

The applicant's request to have his subsidiary protection extended was rejected. The Administrative Court confirmed the negative decision, based on classified information to which the applicant did not have access and considered the proceedings lawful, although the applicant was not given the possibility to be heard. Upon request for a revision of the decision, the Supreme Court held that it is important to clarify through jurisprudence whether in such cases national legislation is compliant with the recast Asylum Procedures Directive and whether the applicant, who does not have access to classified information, should have had access to legal aid and procedural safeguards to ensure his right to defence.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2163

Inadmissibility of applications when the person received international protection in another EU+ country

Procedures suspended pending a CJEU judgment on respect for family life where international protection was obtained in another Member State

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant* v *State Secretary for Justice and Security*, NL21.14874, 22 November 2021

The District Court of the Hague suspended proceedings pending a judgment by the CJEU in a case regarding best interests of the child and family life where international protection was obtained in another Member State.

An Eritrean national was granted international protection in Germany in 2015 but further applied in the Netherlands. He argued that he had stronger ties with the latter because his wife and daughter were Dutch nationals and he was involved in the care of his child, thus needing to live with his family without travelling to Germany. His request was dismissed as inadmissible. The District Court of the Hague allowed his interim request and stayed the proceedings pending the outcome in a similar case where questions had been addressed to the CJEU regarding the best interests of the child and the right to family life when assessing whether an application can be declared inadmissible because the applicant had already obtained international protection in a Member State other than the Member State where the family resides.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2158

Removal to Greece and access to health care for an applicant with physical and mental illness

Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *Applicant* v *Directorate of Immigration*, 429/2021, 9 September 2021

The Immigration Appeals Board annulled a removal to Greece due to the lack of access to health care and the applicant's medical condition.

The application for international protection of a national of Iraq was rejected by the Directorate of Immigration on grounds that he was already a beneficiary of protection in Greece. The applicant appealed the decision on grounds that he suffered from serious mental and physical illness, he was confined to a wheelchair and that he would not receive the necessary support and health care in Greece.

The board noted that the applicant would receive lower access to services and care and considered that he does not have a support network in Greece. In view of the applicant's individual circumstances, in particular his need for health and social services, the board concluded that he would receive better care in Iceland and annulled the decision of the Directorate of Immigration.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2050

Reception

Belgium, Council of State [Raad van State - Conseil d'État], *Fedasil* v *Mayor of the City of Spa*, No 252.033, 2 November 2021

The Council of State ruled on a request from Fedasil regarding the mayor's decision to partially close a reception centre for asylum applicants.

Fedasil requested the Council of State to suspend and annul a decision of the Mayor of the City of Spa to halve the capacity of the Sol Cress reception centre for asylum seekers established on the territory of this municipality and managed by the company Svasta on behalf of Fedasil. The decision of the mayor was based on public safety, fire safety and health security observed in the reception centre. The Council of State rejected the request for a suspension of the decision for extreme urgency submitted by Fedasil and rejected Fedasil's argument concerning the risk of not being able to relocate residents who had to leave the Spa centre.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2115

Detention

Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *O.C.M. v Republic of Cyprus, through Director of the Civil Registry and Migration Department*, Case No PD 86/2021, 14 September 2021

The Administrative Court of International Protection confirmed a detention order against a Nigerian applicant for threat to public order.

A Nigerian applicant contested a detention decision based on threats to the public order. The Administrative Court of International Protection found that the applicant was sentenced to 3 months imprisonment shortly after entering Cyprus for assault and causing bodily injury. The court confirmed that the detention decision was justified and reasonable in light of the circumstances and the offence, and the applicant had posed a threat to public order.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2112

Content of protection

CJEU judgment on non-discrimination of beneficiaries of international protection

European Union, Court of Justice of the European Union [CJEU], *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Avvocati per niente onlus (APN), Associazione NAGA – Organizzazione di volontariato per l'Assistenza Socio-Sanitaria e per i Diritti di Cittadini Stranieri, Rom e Sinti v Presidenza del Consiglio dei Ministri – Dipartimento per le politiche della famiglia, Ministero dell'Economia e delle Finanze*, C-462/20, 28 October 2021

The CJEU ruled that a family discount card that cannot be used by beneficiaries of international protection is contrary to EU law.

The Tribunal of Milan asked the CJEU whether several EU law provisions, including the recast Qualification Directive, Article 29 (social welfare), must be interpreted as being opposed to a regulation of a Member State which excludes third-country nationals from the benefit of a family card to obtain discounts when purchasing goods and services provided by public or private entities having concluded an agreement with the government of that Member State. The CJEU concluded that the exclusion of beneficiaries of international protection from benefiting from the family card, insofar as it deprives them of access to these goods and services as well as their supply in the same conditions as those enjoyed by Italian nationals, constituted unequal treatment contrary to EU law.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2074

Family reunification

France, Council of State [Conseil d'État], *M.B. and others*, No 455751, 8 September 2021

The Council of State rejected an urgent request for interim measures to facilitate the family reunification of two Afghan nationals.

Two Afghan nationals benefiting from subsidiary protection appealed to the Conseil d'État as part of an urgent application to obtain visas for family reunification for their spouses and children. The investigation showed that security problems and growing instability in Afghanistan had forced France to close the visa service of its embassy in Kabul to the public and subsequently also in the embassy in Islamabad (Pakistan), where they were initially transferred. In May 2021, an order was issued to allow the services of the French embassies in Iran and India to process visa applications from Afghan nationals. In this very uncertain context, the judge for interim measures considered that there was no reason to order the administration to take additional measures.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2070

Humanitarian protection

Special protection in Italy

Italy, Supreme Court of Cassation - Civil section [Corte Supreme di Cassazione], *Applicant* v *Territorial Commission for the Recognition of International Protection (Crotone)*, No 28170, 14 October 2021

The Court of Cassation held that arriving in Italy as a minor should be considered a condition of vulnerability in decisions to grant humanitarian protection.

A national of Senegal arrived in Italy when he was still a minor, after spending 4 months in a camp in Libya. The tribunal rejected his request for refugee status on the basis that his story was not credible and considered that the requirements for subsidiary protection were not present. The Supreme Court held that the tribunal did not consider the violence the applicant was subjected to in the detention camp in Libya and that it did not consider his vulnerabilities when he arrived in Italy as a minor. The court referred the case back to the Tribunal of Catanzaro for further assessment.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2133

Return

Judgments of the ECtHR (Articles 2, 3, 5 and 8)

Council of Europe, European Court of Human Rights [ECtHR], *M.D. and others* v *Russia*, No 71321/17 and 9 others, 14 September 2021

The ECtHR found multiple violations in the case of expulsion of eight Syrians.

Between 2011 and 2014, the applicants, 11 Syrian nationals entered the Russian Federation and overstayed their visas. The case concerned their arrest and detention, the immigration charges brought against them individually, and subsequent orders for their expulsion. Relying on Articles 2 and 3 of the European Convention, the applicants complained that their expulsion to Syria would put them at grave physical risk.

The court found a violation of Articles 2 and 3 in respect of eight applicants, a violation of Article 5 (1) in respect of two of the applicants, and a violation of Article 5(4) in respect of two applicants and ordered interim measures until the present judgment became final or until further notice as regards eight of the applicants.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1992

Council of Europe, European Court of Human Rights [ECtHR], *Abdi* v *Denmark*, No 41634/19, 14 September 2021

The ECtHR found a violation of Article 8 in the case of expulsion of a Somali applicant.

The Danish authorities ruled to expel the applicant, with a permanent ban on his re-entry to the country, following his conviction of possessing a firearm. Relying on Article 8 of the European Convention, the applicant submitted that, in their decisions, the Danish courts failed to weigh in the balance that he did not have a significant criminal past, that he had never been issued a warning that he might be expelled, and that he had strong ties to Denmark where he has lived with his family since he was 4 years old. The ECtHR found a violation of Article 8 of the European Convention.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1991

Compensation for misjudgement and damages suffered after deportation

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security* v *Applicant*, 201907823/1/A2, 3 November 2021

The Council of State ruled that the State Secretary must pay compensation for damages suffered by a rejected asylum applicant who was subjected to inhuman and degrading treatment after being deported to Russia.

The case concerned a Russian applicant whose asylum application was rejected and who was deported to her country of origin, where she was immediately arrested, assaulted and raped. The Council of State held that the State Secretary be deemed liable to compensate for the damages suffered by the applicant, although national courts found the negative decision against the applicant to be lawful, prior to her deportation.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2155

The principle of proportionality in assessing the lifting of an entry ban

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security* v *Applicant*, 202006886/1/V2, 4 October 2021

The Council of State referred a case back for insufficient assessment of proportionality in a decision to lift the entry ban of an applicant who was excluded from international protection.

The applicant was excluded from international protection based on Article 1F of the Geneva Convention due to crimes and conduct from 1980 to 1986, and an entry ban was ordered against him. The State Secretary rejected the request to lift the entry ban.

The District Court of the Hague referred the case back for re-examination in light of the principle of proportionality and to evaluate the individual circumstances of the applicant, namely age and health condition. The Council of State noted that the lower court rightly referred to the CJEU judgement K. and HF and held that the State Secretary must assess whether the entry ban is still suitable for safeguarding the intended purpose and does not go further than necessary. For this particular case, the Council also noted that, due to his age and medical condition, the applicant may not be able to return to Afghanistan.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2154

Lack of reasonable prospects of returns to Algeria

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security*, 202102278/1/V3, 17 September 2021

The Council of State held that there are no reasonable prospects of deportations to Algeria and allowed the appeal against the decision to detain the applicant.

An Algerian national contested the detention decision against him, and the Council of State allowed the appeal and found that Algerian authorities were not issuing laissez-passer documents and deportations had not been implemented for over 1 year for any Algerian national. The Council of State concluded that there were no prospects of deportation of the applicant in the absence of sufficient clarity over the situation and possible improvements.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2161