

Quarterly Overview of Asylum Case Law





Manuscript completed in March/2022

Neither the European Union Agency for Asylum (EUAA) nor any person acting on behalf of the EUAA is responsible for the use that might be made of the information contained within this publication.

© European Union Agency for Asylum (EUAA), 2022

Cover Photo: Stock illustration ID: 1227193799, © iStock (photographer: limeart), 27 May 2020, Concept Law, Justice.

Reproduction is authorised provided the source is acknowledged. For any use or reproduction of photos or other material that is not under the EUAA copyright, permission must be sought directly from the copyright holders.



Contents

List of abbreviations	6
Main highlights	8
Dublin procedure.....	11
Transfers to Malta.....	11
Transfers to Croatia.....	11
First instance procedure.....	12
Personal interview.....	12
Cost of legal assistance.....	12
Assessment of applications.....	13
Changes in the situation in the country of origin	13
Examination under the asylum procedure rather than through family reunification	13
Persecution for reasons of religion	14
Persecution for reasons of political opinion.....	15
Membership of a particular social group.....	17
Exclusion.....	19
Subsidiary protection	20
Internal protection alternative.....	21
Secondary movements when a person has received international protection in another EU+ country.....	21
Statelessness.....	23
Interest to be recognised as stateless.....	23
Statelessness status versus refugee status	23
Reception.....	24
Unlawful refusal to access employment.....	24
COVID-19 financial support.....	25
Temporary revocation of material reception assistance.....	25
Detention.....	26
Referral for a preliminary ruling before the CJEU.....	26
The ECtHR on length of detention	26
The ECtHR on the Hungarian Rösztke transit zone.....	27
Unlawful prohibition of exit measure.....	27
Detention pending return	27
Content of protection.....	28
Family reunification.....	28
Humanitarian protection.....	29
Special protection in Italy.....	29
Return.....	30





Referral to the CJEU.....	30
Judgments of the ECtHR (Articles 2, 3, 5 and 8).....	30
Suspension of the expulsion procedure.....	31
Entry and residence bans.....	31
Resettlement.....	32

Disclaimer: The summaries cover the main elements of the court’s decision. The full judgment is the only authoritative, original and accurate document. Please refer to the original source for the authentic text.



Note

The “EUAA Quarterly Overview of Asylum Case Law” is based on a selection of cases from the [EUAA Case Law Database](#), which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU), 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 quarterly overview.

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

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

To reproduce and/or translate all or part of this quarterly overview in print, online or in any other format, and for any other information, please contact: caselawdb@euaa.europa.eu

Introductory sessions on the content and functionalities of the database can be offered for interested stakeholders and you may contact us at: caselawdb@euaa.europa.eu

To subscribe to the quarterly overview, use this link:

<https://caselaw.euaa.europa.eu/pages/subscribe.aspx>





List of abbreviations

APD (recast)	Asylum procedures directive. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
BAMF	Federal Office for Migration and Refugees, Germany
CALL	Council for Alien Law Litigation, Belgium
CEAS	Common European Asylum System
Dublin III Regulation	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
CGRS	Commissioner General for Refugees and Stateless Persons, Belgium
CJEU	Court of Justice of the European Union
COI	Country of origin information
CNDA	Cour Nationale du Droit d'Asile (National Court of Asylum, France)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Agency for Asylum
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union and associated countries
FEDASIL	Federal Agency for the Reception of Asylum Seekers (Belgium)
FGM/C	Female genital mutilation/cutting
FIS	Finnish Immigration Service
LGBTIQ	Lesbian, gay, bisexual, trans, non-binary, intersex and queer
Member States	Member States of the European Union



NGO	Non-governmental organisation
OFII	Office for Immigration and Integration (<i>Office Français de l'Immigration et de l'Intégration</i> , France)
OFPRA	Office for the Protection of Refugees and Stateless Persons (<i>Office Français de Protection des Réfugiés et Apatrides</i> , France)
PTSD	Post-traumatic stress disorder
QD (recast)	Qualification directive. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
RCD (recast)	Reception conditions directive. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
Refugee Convention	The 1951 Convention relating to the status of refugees and its 1967 Protocol
SEM	State Secretariat for Migration, Switzerland
THB	Trafficking in human beings
UAMs	Unaccompanied minors
UNE	Immigration Appeals Board, Norway
UNHCR	United Nations High Commissioner for Refugees



Main highlights

The interim measures, decisions and judgments presented in this issue of the “EUAA Quarterly Overview of Asylum Case Law” were pronounced from December 2021 to February 2022.

Court of Justice of the European Union

Secondary movements and family unity

The CJEU interpreted the recast Asylum Procedures Directive with regard to secondary movements of beneficiaries of international protection and the right to respect for family life and the best interests of the child. Sitting in a Grand Chamber formation, the CJEU ruled that the recast Asylum Procedures Directive read in conjunction with the EU Charter, Article 7 and 24(2) does not preclude a Member State from exercising the option to reject an application as inadmissible when the applicant has already been granted refugee status by another Member State and the applicant is the father of a child who is an unaccompanied minor holding subsidiary protection in the first Member State, provided that the recast Qualification Directive, Article 23(2), which concerns maintaining family unity, is applied without prejudice ([XXXX v Commissaire général aux réfugiés et aux apatrides](#)).

European Court of Human Rights

Interim measure on the situation in Ukraine

On 1 March 2022, the ECtHR adopted interim measures following a request from the Ukrainian government and indicated to the Russian government to refrain from military attacks against civilian populations and civilian premises ([Ukraine v Russia, 1 March 2022](#)). Due to an increase of applications for interim measures from individuals concerning the Russian military operations in Ukraine, the ECtHR adopted a decision on 4 March 2022, to clarify that the interim measures of 1 March 2022 “*shall be considered to cover any request brought by persons falling into the above category of civilians who provide sufficient evidence showing that they face a serious and imminent risk of irreparable harm to their physical integrity and/or right to life*”¹.

Update on the situation at the border with Belarus

According to the ECtHR’s press release of 21 February 2022,² between 20 August 2021 and 18 February 2022, the court processed 69 requests for interim measures under Rule 39 of the Rules of the Court brought by 270 applicants at the borders with Belarus, and it ordered interim measures in 65 of these requests. The majority of the requests were against Poland, and the measures were lifted or not extended in 50 cases, because either the applicants lost contact with their lawyers, left Poland or there was a failure to respond to the court. In other cases against Poland, measures were lifted since December 2021 because applications for

¹ See the ECtHR Press Release of 3 March 2022: [Decision of the Court on requests for interim measures in individual applications concerning Russian military operations on Ukrainian territory \(coe.int\)](#)

² See the ECtHR Press Release of 21 February 2022: [Update on interim decisions concerning member States’ borders with Belarus \(coe.int\)](#).



international protection were being examined. Based on assurances received from the Lithuanian authorities in two cases, the court did not extend the measures.

Interim measures remained in force in 12 applications, including in the case [R.A. and Others v Poland](#), notification of which was given to the government of Poland in September 2021. The cases were included in the [EASO Newsletter on Asylum Case Law Issue No 3/2021](#), which concerned interim measures ordered against Poland on 25 August 2021. More information on interim measures adopted following the situation at the border with Belarus can be read in the [EASO Newsletter on Asylum Case Law Issue No 4/2021](#).

Alleged pushbacks

The ECtHR adopted [interim measures](#) on 15 February in a case concerning allegations of pushbacks in the Aegean Sea and extended its application till 28 February 2022. The Court indicated to the Greek authorities to refrain from removing the applicant.

Right to liberty and security

The ECtHR found a violation of Article 5(1f) of the European Convention in a case where serious delays in processing an asylum application, jointly with delays in the extradition procedure, resulted in an unlawful and lengthy detention ([Komissarov v Czech Republic](#)). The Court also found a violation of Article 5 in a case concerning the confinement of Afghan nationals in the Hungarian Rösztke transit zone ([M.B.K and Others v Hungary](#)).

Right to family life

In addition, the ECtHR ruled on the right to family life in cases involving the expulsion of applicants. An application submitted by a Moroccan applicant was rejected as inadmissible because a deportation from France would not infringe his rights to family life ([Alami v France](#)). In contrast, the expulsion of a Turkish applicant was considered to be in violation of the ECHR, Article 8 because he was a settled migrant in Denmark with close family members living there ([Savran v Denmark](#)).

National courts

Referrals for preliminary rulings before the CJEU

In Belgium, national courts lodged two preliminary questions to the CJEU on:

- The recast Qualification Directive, Article 14[(4)b] ([XXX v Commissaire général aux réfugiés et aux apatrides \(CGRS\)](#), 2 December 2021) – withdrawal of protection by establishing that the applicant constitutes a danger to the community; and
- The Return Directive, Article 6 and 7 ([UP v Centre public d'action sociale de Liège](#), 13 December 2021) - implicit withdrawal of a return decision adopted in an asylum procedure due to the examination of a temporary leave to remain for medical reasons.

The Lithuanian Supreme Court referred preliminary questions on interpretation of the recast Asylum Procedures Directive, Article 7(1) in relation to the recast Qualification Directive, Article 4(1) and the recast Reception Conditions Directive, Articles 8(2) and (3) in a case concerning the detention of an asylum applicant for illegally crossing the border during a state of emergency ([read more](#)).



In addition, the Dutch Court of the Hague is seeking interpretation of the recast Qualification Directive, Article 15 by the CJEU in an accelerated procedure ([read more](#)) As a similar question was referred by the same court in October 2021, the referring court requested to join the cases.

Ukraine

The armed conflict in Ukraine has already impacted the way courts decide on applications for international protection from Ukrainian nationals. For example, the Court of Bari decided on 24 February 2022 that a subsequent application can no longer be rejected as inadmissible and suspended the enforcement of a deportation measure, in light of the deteriorating situation in the country of origin ([read more](#)).³ The Higher Court in Spain granted subsidiary protection to a Ukrainian national considering the armed conflict and the impossibility of the national authorities to provide protection in any area in the country of origin ([read more](#)).

Religion based persecution

In the Netherlands, the Council of State ruled on stricter requirements in assessing asylum claims from applicants who alleged that they are apostates or atheists.⁴ Iranian applicants invoked the fact that they cannot return to their country of origin because they have turned away from Islam. The Council of State indicated that the State Secretary must have a clear working method to manage such cases, distinguishing between the different types of beliefs and clarifying the credibility assessment ([read more](#)).

Persecution based on political opinion

The Dutch Council of State submitted a request for a preliminary ruling on the interpretation of the recast Qualification Directive, Article 10 in terms of defining political opinion and the application of the notion when assessing an application for international protection ([read more](#)).

National courts analysed persecution based on political activities, and, for example, the Dutch Council of State granted refugee status to an Ethiopian national who claimed persecution based on participation in demonstrations in the Netherlands, while the CNDA in France granted refugee status based on political activities and Tigray origins ([read more](#)). Similarly, the Council of State in the Netherlands examined asylum applications submitted by Sudanese applicants who claimed persecution for political activities ([read more](#)).

Asylum procedure versus family reunification

Sitting in a Grand Board formation, the Immigration Appeals Board (UNE) in Norway ruled on an application submitted by a Nigerian woman whose daughter was granted asylum due to the risk of female genital mutilation upon return to the country of origin. The majority of the Grand Board stated that the case should be dealt with under Section 38 of the Immigration Act, thus the woman was granted asylum ([read more](#)).⁵

³ Meltingpot. (2022, February 24). [Conflitto in Ucraina – La richiesta di asilo non può essere ritenuta inammissibile. Il Giudice concede la sospensiva – Progetto Melting Pot Europa](#)

⁴ See the Council of State Press Release of 19 January 2022. [State Secretary J&V must improve the method of assessing asylum applications for apostates and atheists - Council of State \(raadvanstate.nl\)](#)

⁵ Immigration Appeal Board (*UNE) Press releases 21 January 2022: [Grand Board December 2021: Residence permit pursuant to section 38 where children have received independent protection -](#)



Dublin procedure

Transfers to Malta

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security*, 202104510/1/V3, ECLI:NL:RVS:2021:2791, 15 December 2021.

The Council of State held that the Secretary of State must conduct a proper investigation into Dublin transfers to Malta and into allegations of risk of treatment contrary to the ECHR, Article 3 due to detention, reception conditions and a lack of effective legal remedies.

A Sudanese national applied for asylum in the Netherlands after applying in Malta. The State Secretary ordered the Dublin transfer of the applicant, relying on the principle of mutual trust and legitimate expectations between Member States and assessing that the situation in Malta does not amount to treatment contrary to the ECHR, Article 3.

The Council of State held that the State Secretary gave inadequate reasons for considering that detention and the reception of Dublin returnees in Malta is in all cases compliant with the recast Reception Conditions Directive when reports showed a combination of serious shortcomings. The Council of State noted also that the applicant complained of the lack of access to legal assistance in Malta during the 9-month detention period. The

case was referred back for re-examination as the Council of State ruled that the State Secretary must provide adequate reasons, following proper investigation, that upon a transfer asylum applicants have effective access to legal remedies, and detention and reception practices are compliant with CEAS.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaseLaw.aspx?CaseLawID=2190>

Transfers to Croatia

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A, B v State Secretariat for Migration*, F-5675/2021, 6 January 2022

For the second time, the FAC annulled a Dublin transfer to Croatia and requested a proper examination of facts and allegations of pushbacks.

Afghan nationals applied for asylum in Switzerland after being previously rejected in Greece and allegedly pushed back on multiple occasions when attempting to cross the border to Croatia. The SEM rejected their application and ordered a Dublin transfer to Croatia. On appeal, the Federal Administrative Court considered Croatia not responsible to process the application because of credible allegations submitted by the applicants on torture, detention at the border and pushbacks. Moreover, the applicants proved with medical documentation to be suffering from serious health issues, PTSD and to be under treatment for psychological issues.

The court sent the case back for re-examination, indicating to the determining authority to properly investigate the facts, including the date of irregular entry to

[Immigration Appeals Board \(UNE\)](#) and 24 January 2022: [Grand Board December 2021: Residence permit pursuant to section 38 where children have received independent protection - Immigration Appeals Board \(UNE\)](#)



Croatia, for determining the state responsible according to the Dublin III Regulation. In addition, the determining authority must adequately assess allegations of pushbacks and systemic asylum flaws based on updated reports.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2273>



First instance procedure

Personal interview

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant v Finnish Immigration Service*, 1183/2020, ECLI: FI: KHO: 2021: 190, 23 December 2021.

The Supreme Administrative Court assessed a procedural error of not hearing a 12-year-old minor as not decisive

The case concerned Russian nationals whose application for international protection on grounds that they were at risk of persecution as Jehovah's witnesses was rejected. They appealed the decision and highlighted that the application of the oldest child of the family was assessed on his parent's statement, despite him having reached the age of 12.

The Supreme Administrative Court noted that the determining authority had an obligation to examine the matter by also giving the child the possibility to be heard. However, the Supreme Administrative Court found that this was a procedural

error and did not constitute a decisive factor in the overall assessment of the requirements for international protection.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2344>

Cost of legal assistance

Finland, Turku Regional Administrative Court [fi. hallinto-oikeus], *Applicant (No 2)*, H1525 / 2021, 29 December 2021.

*The Turku Administrative Court determined the law applicable for a request for reimbursement of a private legal assistant following legislative changes to the Legal Aid Act.*⁶

The court examined whether an hourly fee could be awarded to a new assistant in an international protection case on the basis of a claim made after the entry into force of the Act repealing Section 17a of the Legal Aid Act (738/2021). The Administrative Court held that the claims for the remuneration of the various assistants were separate claims for remuneration and the evaluation was carried out on a per-assistant basis. The decisive factor was related therefore to the moment when each assistant had requested his remuneration to be fixed, whether before or after the entry into force of the law repealing Section 17a of the Legal Aid Act.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2245>

⁶ See also Finland, Turku Regional Administrative Court [fi. hallinto-oikeus], *Applicant*, H1523 / 2021, 29 December 2021.



Assessment of applications

Changes in the situation in the country of origin

Ukraine

Inadmissibility decision suspended

Italy, Civil Court [Tribunali], Applicant, No 10902-2/2021 R.G., 24 February 2022.

The Tribunal of Bari suspended a decision of inadmissibility for a Ukrainian citizen due to the deterioration of the situation in the country of origin.

Due to the deteriorating situation in Ukraine as a result of armed conflict, the Tribunal of Bari decided to suspend an inadmissibility decision adopted on a subsequent application lodged by a Ukrainian national.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2403>

Subsidiary protection granted

Spain, National High Court [Audencia Nacional], Applicants, 25 February 2022.

The National High Court provided subsidiary protection to a Ukrainian family due to the armed conflict in the country of origin.

The National High Court in Spain rejected the asylum application lodged by Ukrainian nationals but granted subsidiary protection instead due to the volatile situation in the country of origin. The court noted that the

Ukrainian authorities cannot offer protection in any area of the country and the necessary conditions for being granted subsidiary protection were met.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2404>

Examination under the asylum procedure rather than through family reunification

Norway, Immigration Appeals Board [Utlendingsnemnda (UNE)], Applicant v UDI, N2205490120, 15 December 2021.

The Grand Board of the UNE ruled that a Nigerian woman, the mother of a girl granted refugee status, must be granted asylum as well and not referred to apply for family reunification.

The case concerned a Nigerian woman whose minor daughter was granted asylum in Norway due to the risk of female genital mutilation upon return to the country of origin. Sitting in Grand Board formation, the UNE ruled that the applicant must be granted international protection pursuant to the Immigration Act, Section 38 and not be referred to apply for family reunification with her daughter.

The Grand Board also took into consideration the best interests of the child since the applicant was her only carer in Norway. The Grand Board also made a detailed comparative analysis of the two procedures, asylum provided by Section 38 and family reunification provided by Section 43, finding various inconveniences of the family reunification procedure.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2402>



Persecution for reasons of religion

Atheism

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), ECLI:NL:RVS:2022:93, 19 January 2022.

The Council of State ruled that the State Secretary had insufficiently investigated and reasoned on the situation of apostasy and atheists in Iran.

The case concerned an Iranian applicant who claimed asylum on the basis of apostasy, alleging a risk of persecution upon return also due to atheism. The State Secretary rejected the application, finding the applicant's statements on organising strikes as not credible. The State Secretary also considered that the applicant was an apostate but not an atheist and that he would not face persecution upon return. The Council of State allowed the appeal and ruled that the State Secretary failed to properly and clearly reason the decision with regard to the situation of apostates and atheists in Iran, as well as on the criteria to assess credibility of claims. The Council of State requested a re-examination of the case based on clearer methods.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2395>

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], Applicant (No 2) v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), 202102293/1/V2, ECLI:NL:RVS:2022:94, 19 January 2022.

The Council of State ruled on an assessment of apostasy as an individual claim for asylum.

The case concerned an Iranian national who claimed asylum based on apostasy and further conversion to Christianity. The State Secretary rejected the application and considered that the applicant's statements, although credible with regard to abandoning Islam, seemed implausible for a risk of persecution upon return, especially because the applicant legally left the country. The Council of State found that the determining authority did not have an effective and concrete method to assess the credibility of the apostasy as grounds for asylum. The Council of State indicated that the State Secretary must design and apply a clear working method, similar to the one applied for conversion cases.

The Council of State annulled the negative decision due to insufficient investigation, and the case was sent back to the State Secretary for re-examination. The Council of State indicated that the determining authority must re-assess the risk of persecution or inhuman treatment for apostasy or imputed apostasy upon a return to Iran.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2397>

Conversion

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], Applicant v Finnish Immigration Service, ECLI:FI:KHO:021:195, 31 December 2021.

The Supreme Administrative Court ruled on the assessment of conversion to Christianity and granted refugee status to an Iraqi national.

An Iraqi national whose application had been rejected submitted a subsequent



application based on his conversion to Christianity as a new ground for protection, which was rejected as it was deemed not credible. On appeal, the Supreme Administrative Court considered that the applicant's account of his personal convictions had been consistent with his participation in church activities. The court overturned the decision of the lower court and the Immigration Service and referred the case back to be granted asylum status.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2205>

Religion and ethnicity

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], A v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 21058817, 27 January 2022.

The CNDA granted refugee status to a stateless person from Myanmar (former Burma).

The case concerned an applicant from Myanmar, province of Rakhine, who claimed a fear of persecution based on ethnic origins, Rohingya, and Muslim religion. The CNDA overturned the negative decision of OFPRA and granted refugee status after having consulted reports of international human rights organisations but also the UN general Assembly resolution of 16 December 2021. The CNDA underlined the history and fate of the Muslim communities settled in the Rakhine State, in particular the Rohingya minority, deprived of Burmese nationality and victim since 2017 of severe repression to conclude that the applicant fear of persecution is well founded.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2426>

Persecution for reasons of political opinion

Request for a preliminary ruling from the CJEU

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], Applicant v State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid), 202003129/1/V2 and 202004875/1/V2, 16 February 2022.

The Council of State referred questions to the CJEU on an interpretation of the recast Qualification Directive, Article 10 for persecution based on political opinion.

The applicant requested asylum based on political opinion and the determining authority considered that a political opinion and related activities are relevant for international protection if they are fundamental to the identity or moral integrity of a third-country national and that he/she must hide the activities and beliefs. The Council of State decided to suspend the proceedings and sought an interpretation from the CJEU. It asked whether a political opinion is sufficient to be invoked as a motive for persecution and what weight should be given to the strength or the importance of that political opinion or thought in the assessment of an application for international protection. Moreover, the Council of State asked about the criterion to be applied and whether the political opinion must be deeply-rooted and the applicant would be expected to refrain from expressing it if returned to the country of origin in order not to trigger a negative attention from an actor of persecution.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2407>



Political opinion and ethnicity

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL21.10395 and NL21.16281, ECLI:NL:RBDHA:2021:13316, 3 December 2021.

The Court of the Hague granted asylum to an Ethiopian applicant based on her political convictions and ethnicity.

An Ethiopian national requested international protection claiming to fear persecution by Ethiopian authorities based on her political activities, including participation in demonstrations in the Netherlands, online activities and membership in the Oromo association. The Court of the Hague overturned the negative decision and granted the applicant refugee protection. It found that her activities were uncontested and held that country of origin reports indicated that persons belonging to the Oromo population are still experiencing issues, because of their political expression or their ethnic background, and state authorities cannot offer protection.

Link:
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2229>

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *D. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 17051846, 3 December 2021.

The CNDA provided refugee status to an Ethiopian national of Tigrayan ethnicity due to the fear of persecution for imputed political views favourable to the Tigrayan rebels.

The case concerned an Ethiopian woman of Tigray ethnicity who claimed asylum in

France for a fear of persecution on the basis of her political views and on safety reasons, since she originated from the Tigray region, which was characterised by violent conflict between governmental forces and the Liberation Front of the People of Tigray. The CNDA overturned the negative decision and granted her asylum, considering that her ethnicity, her political opinions and her origin from the Tigray region would expose her to persecution upon return.

Link:
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2219>

Sudan

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) (No 2)*, 202005052/1/V2, ECLI:NL:RVS:2021:2793, 15 December 2021.

The District Court of the Hague overturned a negative decision for an insufficient investigation of the risk incurred upon a return of a Sudanese applicant due to his political activities.

A Sudanese national invoked a fear of persecution upon return to his country of origin due to his participation in demonstrations in the Netherlands against the Sudanese rulers.

Although there are indications that the civilian branch of the transition government is undergoing reforms in the area of political freedoms, the Council of State noted that there are also indications that serious human rights violations against political activists are still taking place and that the military branch still directs the army to act with violence against them, especially if these political activists are



critical to the military branch. The Council of State noted a lack of information on various aspects, including the balance of power in the transition government, the extent of civil branch influence, the monitoring mechanism of security services over diaspora and the attitude of the transition government towards political activists living abroad.

The Council of State held that these unclear aspects lead to the conclusion that the applicant raised doubts about the State Secretary's position on the situation in Sudan, and in light of the duty of cooperation, it was for the State Secretary to dispel this doubt, which the latter had not done before the court. The negative decision was overturned, and the case was referred back for re-examination.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2227>

Military evasion

Germany, High Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), Applicant v Federal Office for Migration and Refugees (BAMF), 5 A 1402/18.A, 21 January 2022.

The High Administrative Court found no indications of possible political persecution for a Syrian applicant alleging a risk of conscription to military service.

A Syrian applicant appealed against a negative decision on his asylum application alleging a fear of persecution based on his father's opposition activities against the Syrian regime and a risk based on conscription to military service. Based on an EASO report [Syria Situation of Returnees from abroad](#) from June 2021 and on the applicant's evidence, the High Administrative Court found that there were no credible indications that upon return the applicant would be subject to threats, targeted persecution or torture. In addition,

the High Administrative Court held that combat activities in Syria have decreased and there was no significant chance of being obliged to perform military service and commit war crimes.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2393>

Membership of a particular social group

Forced marriage France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], Applicants v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 21022972, 8 December 2021.

The CNDA recognised granted refugee status to an Afghan woman and her minor children exposed to persecution for having refused to submit to a levirate marriage (marrying the brother of her deceased husband).

An Afghan woman applied for international protection invoking a fear of persecution by the government and her family for having refused to marry the brother of her deceased husband who is in the Taliban. The OFPRA rejected the request, but the CNDA considered that she belongs to a particular social group on the basis of her behaviour is contradicting social norms in her country of origin. The applicant would risk persecution due to her religious beliefs and application of Sharia law for refusing to submit to the practice of levirate marriage.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2220>

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], A. v Finnish Immigration Service, 2200/2020,



ECLI:FI:KHO:2021:187, 21 December 2021.

The Supreme Administrative Court annulled a negative decision for a Somali minor alleging a risk of forced marriage upon return.

The Finnish Immigration Service refused refugee status but granted subsidiary protection to a minor Somali national who invoked a risk of forced marriage upon return. Based on updated country of origin information, the Supreme Administrative Court found on appeal that women in Somalia who refuse to engage in an arranged marriage are at the risk of being subject to violence. The court considered the claim of the applicant credible and referred the case for re-examination by the Finnish Immigration Service in light of updated country of origin reports and the best interests of the child.

Link:
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2196>

Iraq

Germany, High Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), Applicant v Lüneburg Higher Administrative Court, 9 LA 29/20, ECLI:DE:OVGNI:2022:0127.9LA29.20.00, 27 January 2022.

The Lower Saxony Higher Administrative Court ruled that Iraqi nationals who are Sunni Kurds from the province of Al-Anbar do not constitute a particular social group.

The asylum application of an Iraqi national of Sunni religion and Kurdish ethnicity, originating from the province of Al-Anbar, was rejected. On appeal, the Lower Saxony Higher Administrative Court ruled that the applicant did not demonstrate that members of this particular social group are always considered as opposition members

and targets of persecution and upheld the negative decision.

Link:
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2396>

Sexual orientation

Netherlands, Court of The Hague [Rechtbank Den Haag], Applicant v State Secretary for Security and Justice Netherlands (Staatssecretaris Van Veiligheid en Justitie), 202104511/1/V1, ECLI:NL:RVS:2022:348, 2 February 2022.

The Court of the Hague referred an asylum claim based on sexual orientation for re-examination.

A Ugandan national claimed asylum based on her sexual orientation, and the Court of the Hague referred the case back for re-examination in order for the determining authority to take into consideration an expert report on “LGBT Asylum Support”.

Link:
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2368>

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], MS v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 21035853, 3 January 2022.

The CNDA recognised refugee status for a Tanzanian national from Zanzibar because of his homosexual orientation.

The CNDA granted refugee status to an applicant from Tanzania, originating from Zanzibar, of Shirazi ethnicity and Muslim faith, by considering that homosexuals constitute a social group under persecution in Tanzania. The court noted the specific criminal law in Zanzibar which is different from the law in Tanzania and is stricter since 2018. The applicant justified a



well-founded fear of persecution on the basis of his sexual orientation.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2325>

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], G. v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 21036532, 13 December 2021.

The CNDA granted refugee status to a Venezuelan national who was a victim of serious abuses by the security forces due to political opinion and sexual orientation.

A Venezuelan national requested asylum due to the fear of being persecuted by security forces and by his family because of his political opinions (opposing the regime of President Maduro) and sexual orientation. The Office for the Protection of Refugees and Stateless Persons (OFPRA) rejected the request.

On appeal, the CNDA considered that the harassment suffered by the applicant at the hands of members of the national guard after his arrest in an opposition demonstration was amplified by the discovery of his homosexuality by the security forces. The CNDA updated the identification made in 2018 of the social group of homosexual people in Venezuela and detailed the risks incurred by opponents of the regime or by those perceived as such.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2326>

Exclusion

War crimes in Congo

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], MM v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 21021032, 17 January 2022.

On the basis of the Geneva Convention, Article 1Fa), the CNDA excluded a senior army officer guilty of war crimes during the conflicts in Congo between 1992 and 1997.

A Congolese applicant, former high-ranking soldier, and close collaborator of the former President had been refused asylum under the exclusion clause of the Geneva Convention, Article 1Fa). Under appeal, the CNDA found that abuses committed against civilian populations by pro-governmental militia placed under his command in the internal conflict in Congo between 1992 and 1997 qualify as war crimes. The CNDA also took into consideration the personal responsibility of the applicant and concluded that he committed excludable acts.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2324>

Fairness of trial and death penalty

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], Applicant v Finnish Immigration Service, ECLI:FI:KHO:2022:15, 20 January 2022.

The Supreme Administrative Court overturned the FIS decision to exclude an applicant from subsidiary protection.

The case concerned the revocation of refugee status and the residence permit of an applicant who provided false information during the international protection procedure. He was instead granted a 1-year residence permit, under



national protection. The Finnish Immigration Service took this decision because it noted the applicant was sentenced to a death penalty in his country of origin but considered that he should be excluded from subsidiary protection for having committed a serious crime within the meaning of the Aliens Act. The applicant argued about the fairness of the trial in his home country and contested the FIS decision.

The Supreme Administrative Court ruled that fairness of judicial proceedings should have been thoroughly analysed by the determining authority, as such claims are comparable to cases from the ECtHR, for example *Öcalan v Turkey* or *Othman (Abu Qatada) v the United Kingdom*, where evidence was obtained through torture. The Supreme Administrative Court considered that the exclusion clause was erroneously applied and subsidiary protection should not have been rejected without sufficient investigation, clarification on the death penalty and the fairness of the trial.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2276>

Withdrawal of protection on basis of danger to the community

Belgium, Council of State [Raad van State - Conseil d'État], *XXX v Commissaire général aux réfugiés et aux apatrides (CGRS)*, 2 December 2021.

The Council of State referred questions to the CJEU on the withdrawal of protection and conditions to assess whether an applicant constitutes a danger to the community.

The CGRS withdrew the refugee status of an applicant based on his conviction in Belgium to 25 years imprisonment for a serious crime. The applicant contested the

decision and alleged that a withdrawal of protection cannot be solely based on a conviction and that an assessment should be conducted by the determining authority to examine if the person concerned constitutes a danger to the community.

The Council of State addressed to the CJEU seeking an interpretation of the recast Qualification Directive, Article 14(4b). The Council of State questioned whether national authorities could establish a danger to the community by the mere fact that the status holder has been convicted by a final judgment or if the Member State has to assess if the danger is genuine and present or that a potential threat is sufficient. The court also sought clarification on the application of the proportionality principle in such cases.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2400>

Subsidiary protection

Referral for preliminary ruling before the CJEU

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid)*, NL20.16879 and NL20.16880, ECLI:EN:RBDHA:2022:1329, 22 February 2022.

The Court of the Hague referred questions to the CJEU on the assessment to be conducted under Article 15 of the recast Qualifications Directive.

A family from Libya with six minor children sought international protection in the Netherlands. The Court of the Hague analysed the case under subsidiary protection conditions by taking into account the individual circumstances, the level of indiscriminate violence in Tripoli



and the humanitarian conditions as a result of the violence.

The Court of the Hague decided to stay the proceedings and requested, under an accelerated procedure, clarifications from the CJEU on the interpretation and application of the recast QD, Article 15. The referring court asked if the directive requires for a first determination of the type of serious harm an applicant fears, how the individual circumstances should be taken into account in Article 15c and whether a sliding scale should also be applied to Article 15b. In addition, the referring court asked whether the humanitarian conditions resulting from the violence caused by an actor of serious harm are to be taken into considerations under the assessment for subsidiary protection. Based on similarity, it was requested to join this case to a previously submitted one to the CJEU by the same court in October 2020.⁷

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2409>

Internal protection alternative

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant v Finnish Immigration Service*, ECLI:FI:KHO:2021:184, 20 December 2021.

The Supreme Administrative Court overturned a negative decision and granted asylum for an applicant risking persecution by local authorities in Ingushetia (Russian Federation) in the absence of internal protection alternative.

The case concerned an applicant from Ingushetia, whose application was rejected on grounds that there was an internal flight alternative in Moscow. The Supreme Administrative Court ruled that, for properly assessing an internal flight alternative, it should be considered whether the Ingushetian authorities had powers or possibilities to persecute the applicant in other areas of the Russian Federation, including Moscow. In view of the insufficient investigation by the lower courts, the Supreme Administrative Court overturned the negative decision and granted asylum to the applicant on grounds that an internal protection alternative was not available according to the circumstances of the country and the applicant.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2232>

Secondary movements when a person has received international protection in another EU+ country

CJEU judgment on respect for family life

European Union, Court of Justice of the European Union [CJEU], *XXXX v Commissaire général aux réfugiés et aux apatrides*, C-483/20, ECLI:EU:C:2022:103, 22 February 2022.

The Grand Chamber of the CJEU ruled on secondary movements and family unity.

The applicant was granted refugee status in Austria in 2015 but moved to Belgium at the beginning of 2016 to join his two daughters where the latter were granted

⁷ Netherlands, Court of The Hague [Rechtbank Den Haag], [F, A, G, H and I v State Secretary for](#)

[Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 19 October 2020.



subsidiary protection in December 2016. The applicant submitted an application for international protection in Belgium and it was rejected as inadmissible because he had been granted protection in another Member State. The applicant appealed against the decision and invoked the right to family life and the best interests of the child as reasons to prevent Belgium from rejecting the application as inadmissible.

In Grand Chamber formation, the court ruled that the APD, read in light of Articles 7 and 24(2) of the EU Charter, does not preclude a Member State from exercising that option on the ground that the applicant has already been granted refugee status by another Member State, where that applicant is the father of a child who is an unaccompanied minor who has been granted subsidiary protection in the first Member State, without prejudice to the application of the QD, Article 23(2), which concerns maintaining family unity. The court clarified that Member States are not obliged to verify whether the applicant fulfils the conditions for international protection under the QD where such protection is already provided in another Member State. In addition, the court stated that the QD requires Member States to ensure that family unity is maintained by establishing a certain number of benefits in favour of family members of a beneficiary of international protection.

Link:
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2374>

No impediments on deportation to Bulgaria

Germany, High Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), Federal Office for Migration and Refugees (BAMF) v Applicant, 10 LB 257/20, ECLI:DE:OVGNI:2021:1207.10LB257.20.00, 7 December 2021

The Higher Administrative Court ruled on no prohibition of deportation to Bulgaria of a single able-bodied healthy applicant who holds refugee status there.

A Syrian national was granted refugee status in Bulgaria and further claimed asylum in Germany, where his request was dismissed as inadmissible. The applicant argued that he would face poor conditions in Bulgaria, amounting to a risk of violation of the ECHR, Article 3. Based on various reports and by reference to the CJEU [Ibrahim](#) judgment, the High Administrative Court held that healthy beneficiaries of international protection who are fit to work are less probable to be exposed to inhuman or degrading treatment, unlike families with minors or single parents.

Link:
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2354>

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], State Secretary v Applicants, 202005713/1/V3, ECLI:NL:RVS:2021:2857, 16 December 2021.

The Council of State confirmed that applicants granted protection in Bulgaria can be returned there as there are no risks of inhuman and degrading treatment.

Four Syrian nationals submitted asylum applications in the Netherlands after being granted international protection in Bulgaria. The State Secretary relied on the principle of inter-state mutual trust and the CJEU [Ibrahim](#) judgment to reject the applications as inadmissible. The State Secretary considered that the situation of beneficiaries of protection in Bulgaria is equal to the situation of citizens, without substantial legal or factual differences, and the applicants were not particularly vulnerable.



On second appeal, the Council of State noted that beneficiaries of international protection in Bulgaria are able to build an independent life in the country, and although the situation in Bulgaria is characterised by uncertainty and a significant deterioration of the living conditions, they are insufficient to overcome the threshold set in the Ibrahim judgment. The Council of State concluded that the State Secretary correctly relied on the inter-state principle of mutual trust.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2265>

Effectiveness of refugee protection previously obtained in Poland

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *Applicants v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, Nos 20038554, 20038555, 20038557 and 20038553, 7 December 2021.

The CNDA held that protection resulting from the recognition of refugee status granted in 2011 by the Polish authorities for a Russian national of Chechen origin and her children is still effective.

A Russian national of Chechen ethnicity was granted refugee status in Poland in 2011 and he further unsuccessfully claimed international protection in France in 2012. In 2019, the applicant requested the review of the negative decision by arguing on the alleged ineffectiveness of protection granted by Poland. In appeal, the CNDA confirmed the negative outcome of the review, because the Polish authorities duly informed the applicant can be re-admitted and can enjoy refugee status, thus the protection was still effective in Poland. Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2215>



Statelessness

Interest to be recognised as stateless

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A v State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, F-1297/2017, 22 December 2021.

The FAC recognised stateless status and clarified the interest in the proceedings.

The case concerned an applicant who was born in Syria and fled the country in 2011. He was included in the refugee status granted to his spouse. In the meantime, he applied to be recognised as stateless person. The State Secretariat for Migration denied his application on grounds that he could have acquired Syrian nationality before leaving the country in 2011.

The Federal Administrative Court found that the applicant had no nationality and that he has never had one. Considering his refugee status, the Federal Administrative Court noted that he cannot reasonably be expected to apply to the Syrian authorities for naturalisation and granted him the status of a stateless person.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2210>

Statelessness status versus refugee status

Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], *Applicant v Czech Ministry of Interior (Ministerstvo*



vnitra), 4 Azs 149/2020-64, 21 December 2021.

The Supreme Administrative Court ruled that recognition of stateless person status does not grant a permanent residence card and the same rights that are granted with refugee status.

The case concerned an applicant who had received statelessness status but was not issued a permanent residence card. The applicant appealed the decision on grounds that his application should be regarded in the same way as an applicant for international protection, and therefore, he should be entitled to an official residence permit card under the same conditions as a refugee.

The Supreme Administrative Court ruled that applications for statelessness are dealt with in accordance with the Asylum Act for a reason of practicality due to the low number of cases. Stateless people are regarded as foreign nationals under the Act on the Residence of Foreign Nationals and their residence status is not processed under the Asylum Act.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2239>



Reception

Unlawful refusal to access employment

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], Applicant v Federal Minister for Labour, E 2420/2020-21, 15 December 2021.

The Constitutional Court found an unlawful application of an unconstitutional decree on the right and condition of an applicant to access employment.

The applicant submitted a request to work as an apprentice, pending appeal against a negative asylum decision. The Ministry of Labour rejected the request based on an ordinance conditioning access to employment to a unanimous approval by a Regional Advisory Council. The Constitutional Court noted the respective ordinance was previously annulled as unlawful on 23 June 2021, thus rendering the contested decision unlawful since the lower court applied an unconstitutional provision of law.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2392>

Conditional proof of status for accessing reception

Belgium, Labour Court [Tribunal du travail/Arbeidsrechtbanken], Applicant v Federal Agency for the Reception of Asylum Seekers (Fedasil), 21/881/K, 10 December 2021.

The court underlined that proof of the applicant's status is required to ask the



court to order the reception authority to provide material reception conditions.

The applicant sent an e-mail to the Immigration Office to register his asylum application and to Fedasil to be granted material reception conditions. Neither authority replied to these messages. Before the court, it was held that the application had not yet been registered and the status of the applicant had not been established, a pre-condition to request material reception. Furthermore, there was no evidence to suggest that it was impossible to submit an asylum application and the applicant had not requested the court to order the Immigration Officer to register the application. The request focused merely on the establishment of reception rights and the court rejected the request.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2303>

COVID-19 financial support

Italy, Civil Court [Tribunali], *Applicant v Poste Italiane SPA*, n. 63219/2021 r.g., 27 January 2022.

The Tribunal of Rome recognised and ordered the payment of COVID-19 financial support to an asylum applicant.

The case concerned an asylum applicant who received a Postpay card for a COVID-19 financial bonus that the Italian post refused to activate, invoking a lack of proper identity documents. The Tribunal of Rome considered that the applicant, holder of a provisional residence document, was entitled to receive the COVID-19 bonus, which was an emergency measure to ensure basic needs for Italian and foreign nationals most affected by the health emergency.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2399>

Temporary revocation of material reception assistance

Belgium, Labour Court [Tribunal du travail/Arbeidsrechtbanken], *Applicant v FEDASIL*, 2022/ft 0 '0882, 21 February 2022

The Labour Court ordered immediate return of the applicant in Fedasil reception center, finding revocation of material assistance contrary to EU law

An Afghan national, who has resided for 16 years in a Fedasil reception center was temporarily revoked the right to material reception assistance. Upon request for interlocutory proceedings, the Labour Court ordered the immediate return of the applicant based on his precarious situation and stated that the measure was contrary to EU law and CJEU Haqbin judgement.

The same Court [issued](#) a similar order in another case concerning the withdrawal of material reception assistance to an Afghan national.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2433>



Detention

Referral for a preliminary ruling before the CJEU

Lithuania, Supreme Administrative Court of Lithuania [Lietuvos vyriausios administracinės teismas], Applicant, A-1091-822/2022, 15 February 2022.

The Supreme Administrative Court of Lithuania referred a preliminary question to the CJEU on the compatibility of EU law with the detention of a foreign national for illegally crossing the border while an emergency situation was declared due to a high influx of foreign nationals and considering that the person applied for asylum.

The case concerned an applicant who was detained by the Polish border guards after having crossed the border from Lithuania. Moreover, the applicant was detained in Lithuania based on illegally crossing the border during a declared state of emergency due to a high influx of migrants. The applicant claimed to have unsuccessfully submitted an asylum application (verbally and in written) to the Migration Department of Lithuania. He appealed against the detention order, which was confirmed by a district court. The Supreme Administrative Court stayed the proceedings and requested the CJEU if such a rule is compatible with the recast APD, Article 7(1) in relation to the recast QD, Article 4(1) and the recast RCD, Articles 8(2) and (3).

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2405>

The ECtHR on length of detention

Council of Europe, European Court of Human Rights [ECtHR], Komissarov v Czech Republic, No 20611/17, 3 February 2022.

The ECtHR found that serious delays in processing an asylum application and delays in an extradition procedure led to unlawful detention.

The case concerned a Russian national who was detained in Czechia, pending extradition to his country of origin. The applicant submitted an asylum application which was processed by national authorities with significant delays, as the negative decision was adopted after 8 months, which is four times more than the maximum allowed by domestic legislation. The case was further examined at two levels of jurisdiction, resulting in 17 months for a final decision instead of 6 months as allowed by national law. Moreover, the detention pending extradition was also excessively lengthy.

The court analysed the applicant's complaint under lawfulness of detention by taking into account two relevant elements: the time limit for the detention pending extradition and the time limit for dealing with the asylum claim. According to the court findings, both time limits are inextricably linked – the time limit to consider the asylum claim is intended, in the circumstances of the case, to ensure that the overall length of detention is not excessive. In light of the excessive length of processing the asylum application and the detention pending extradition, the court concluded that there was a violation of the ECHR, Article 5(1f).

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2369>



The ECtHR on the Hungarian Rösztke transit zone

Council of Europe, European Court of Human Rights [ECtHR], *M.B.K and Others v Hungary*, No 73860/17, 24 February 2022.

The ECtHR found a violation of Article 5 of the European Convention due to the confinement of Afghan applicants in the Rösztke transit zone.

The case concerned the confinement of an Afghan family in the Rösztke transit zone at the border of Hungary and Serbia between 30 March 2017 and 24 October 2017. The applicants complained of detention conditions, but the court found that the threshold of the ECHR, Article 3 was not attained and referred to the case [R.R. and others \(Iran and Afghanistan\) v Hungary](#) of 2 March 2021 to conclude that there was a violation of the ECHR, Articles 5(1) and (4).

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2406>

Unlawful prohibition of exit measure

Greece, Administrative Court [Διοικητικό Πρωτοδικείο], *Objections (on detention) before the Administrative Court of First Instance of Syros*, AP 36 /17-12-2021, 17 December 2021.

The Administrative Court of First Instance of Syros confirmed the unlawful character of the prohibition of exit imposed on residents of the recently operationalised Closed Controlled Access Facilities.

In a first judgment analysing the legality of exit bans imposed on residents of the newly-operationalised Closed Controlled Access Facilities in Samos, the Administrative Court of First Instance of Syros declared the measure unlawful in the

absence of a decision issued by the police as provided by law. The court considered that the Commander of the Closed Controlled Access Center of Samos illegally took the measure in question (exit ban) and ordered the lifting of the measure from the Closed Controlled Centre of Samos.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2351>

Detention pending return

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary v Applicant*, ECLI:NL:RVS:2022:28, 12 January 2022.

The Council of State confirmed the detention pending implementation of a return order for an applicant granted refugee status in another country, following a CJEU judgement.

The case concerned an applicant who had been granted international protection in Germany and was ordered by the State Secretary to be removed. The applicant was detained in view of the forced removal, and in appeal, the Council of State sought interpretation from the CJEU. After the CJEU pronounced the judgment in the case of [M. and others v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), C-673/19 on 24 February 2021, procedures at the national level have been reopened and the present decision issued.

The Council of State assessed the lawfulness of detention of the applicant and stated that an individual examination on facts and circumstances was carried out, along with an analysis of the necessity and proportionality of the measure. In addition, since the applicant refused to return to Germany and to cooperate with the authorities, the measure was found lawful.



Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2269>

Sweden, Migration Court of Appeal [Migrationsöverdomstolen], *Swedish Migration Agency (Migrationsverket) v JB*, UM5998-21, 20 December 2021.

The Migration Court of Appeal confirmed a decision to annul a detention order considered incompatible with the recast Reception Conditions Directive, Article 8(3e).

The case concerned an appeal of the Swedish Migration Agency against a ruling which overturned a detention decision. The applicant was subject to an expulsion order and invoked impediments to enforcement as he applied and was granted a re-examination of his application for residence and a work permit. The Migration Court of Appeal found that a new examination of a residence permit constitutes a temporary impediment to enforcement and that it was a question of preparing or implementing the execution of a deportation decision. The court further noted that the applicant had not been charged with offences which could constitute a real and sufficiently serious threat to security or public order and therefore rejected the appeal of the Swedish Migration Agency.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2240>



Content of protection

Family reunification

Validity of marriage

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *A and B v Finnish Immigration Service*, 1871/2020, ECLI:FI:KHO:2022:9, 14 January 2022.

The Supreme Administrative Court considered that a proxy marriage could be considered valid for a family reunification procedure and referred the case back for re-examination.

The case concerned a request for family reunification submitted by Pakistan nationals whose marriage was concluded by telephone while one spouse was in Pakistan and the other (who was the family reunification sponsor) in Finland. Such proxy marriages are legal in the country of origin and can be accepted under the Finnish Marriage Act when special reasons are invoked.

The Supreme Administrative Court noted that the spouses indicated a clear intention to establish a family, that the marriage was characterised by stability and there were no other indications to have been contracted for other purposes than family life. The case was referred back to the determining authority for re-examination.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2367>

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *A and B v*



Finnish Immigration Service, 2594/2020, ECLI:FI:KHO:2022:8, 14 January 2022.

The Supreme Administrative Court, in family reunification proceedings, considered valid a marriage that took place remotely by video between Afghan nationals.

Two Afghan nationals married through video while one was in Finland and the other in Afghanistan, the marriage being valid there and also registered in Finland. The Finnish Immigration Service rejected the request for family reunification assessing that the marriage as not valid. The Supreme Administrative Court overturned the decision and found that the family reunification sponsor participated in the wedding ceremony after the video marriage, that spouses demonstrated by their actions and behaviour that the marriage was contracted for family reasons, and thus the marriage was deemed valid and meeting the requirements to be considered within the family reunification procedure.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2371>



Humanitarian protection

Special protection in Italy

Italy, Civil Court [Tribunali], Applicants v Ministry of Foreign Affairs, the Prime Minister and the Minister of the Interior, N. R.G. 62652/2021, 21 December 2021.

The Court of Rome ordered the Ministry of Foreign Affairs to issue humanitarian visas for two Afghan applicants whose lives were considered in danger under the Taliban regime.

The Court of Rome ordered the issuance of a humanitarian visa to Afghan nationals to allow them to arrive safely in Italy from a third country and apply for international protection. The Ministry of Foreign Affairs was ordered to issue the visas through the Italian embassy in Islamabad, pursuant to Article 25 of the Visa Code of the European Union.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2360>



Return

Referral to the CJEU

Belgium, Court of Cassation [Cour de Cassation], UP v Centre public d'action sociale de Liège, 13 December 2021.

The Court of Cassation referred a question to the CJEU on the interpretation of the Return Directive and implicit withdrawal of a return decision by granting a leave to remain.

The case concerned an applicant who was rejected asylum, and pending appeal, he was granted leave to remain on a medical basis. Consequently, an entitlement to social financial assistance and a residence registration certificate were given. The CALL confirmed the negative decision on asylum on 22 July 2015, and on 20 April 2016 the Immigration Office declared the application unfounded to remain on medical grounds. Her temporary leave to remain ceased, and her social assistance was withdrawn as of 1 May 2016.

An action before the Labour Court Liege was rejected and the applicant further contested it by claiming that a residence permit registration certificate allows a person to remain for medical purposes and results in an indirect withdrawal of the order to leave the territory which was issued with the negative decision on asylum. The Court of Cassation stayed the proceedings and sought interpretation by the CJEU on the Return Directive, Articles 6 and 8 and asked whether the directive precludes a national rule, precisely granting authorisation conferring a right to remain for medical purposes, which has the consequence of implicit withdrawal of the return decision

previously adopted in the asylum procedure, pending examination of the application on temporary leave to remain.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2401>

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

Council of Europe, European Court of Human Rights [ECtHR], Savran v Denmark, 57467/15, 07 December 2021.

The ECtHR found a violation of the right to family right in a case concerning the expulsion of a Turkish applicant.

A Turkish national moved to Denmark when he was 6 years old and suffers from paranoid schizophrenia. He was convicted for assault but exempted from punishment based on his mental illness. In 2019, an expulsion order was issued against him, and his deportation as implemented in 2015 following an unsuccessful appeal on points of law. The applicant complained under the ambit of the ECHR, Article 3 that the Danish authorities failed to obtain individual and sufficient assurances concerning his medical treatment in Turkey. On 1 October 2019, the ECtHR (Fourth Section) held that expulsion without the Danish authorities having obtained individual and sufficient assurances would constitute a violation of Article 3. The case was subsequently referred to the Grand Chamber.

The Grand Chamber noted that the standard and principle were set up in its judgment [Paposhvili v Belgium](#), with a high threshold. The court held that schizophrenia was a serious mental illness, but the applicant did not put forward convincing and substantial grounds that, in the absence of adequate medical treatment in Turkey or lack of such treatment, he would be in risk of “intense



suffering” or “significant reduction of life expectancy”, comparable to the situation in Paposhvili. Therefore, no violation of Article 3 was found.

With regard to a potential violation of Article 8, the applicant complained that the implementation of the expulsion order entailed consequences on the permanent ban on entry. The applicant was a settled migrant in Denmark since the age of 6, pursued studies there, all close family members lived there and he also worked in Denmark for 4 years. Based on these elements and the fact that no court made an individual assessment of the permanent and irreducible entry ban, the court considered that there was an interference with his right to private life, thus there was a violation of Article 8.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2370>

Council of Europe, European Court of Human Rights [ECtHR], *Alami v France*, 43084/19, ECLI:CE:ECHR:2021:1125DEC004308419, 16 December 2021.

The ECtHR ruled that the deportation of a Moroccan applicant does not infringe his right to family life.

The French authorities decided to deport a Moroccan applicant because he had committed serious criminal offences and he represented a serious threat to public safety. The applicant complained that the measure would violate his right to family life. The court held that the domestic courts had thoroughly analysed the necessity and proportionality of the measure. National authorities have a wide margin of appreciation, and a fair balance was struck between the various interests at stake to conclude that there were no serious grounds for considering that the deportation would infringe the applicant's

right to family life. The case was rejected as inadmissible.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2391>

Suspension of the expulsion procedure

Spain, Supreme Court [Tribunal Supremo], *Administración General del Estado v Bethzabé Murillo Cahuaza*, No 7863/2020, 13 December 2021.

The Supreme Court held that an application for international protection implies the automatic suspension of an expulsion procedure for an irregular stay.

The Supreme Court held that an application for international protection implies the automatic suspension of an expulsion procedure for an irregular stay, which the applicant can enjoy until the administrative authorities issue a decision rejecting or declaring the request inadmissible. This affects the execution of the expulsion or return order as it is not possible to classify the stay as irregular when international protection has been requested and until the request is rejected or declared inadmissible.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2248>

Entry and residence bans

Germany, Federal Administrative Court [Bundesverwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (BAMF)*, BVerwG 1 C 6.21, 16 February 2022.

The Federal Administrative Court ruled on the lawfulness of a deportation and its issuance within the asylum procedure.



The case concerned a Turkish applicant who was convicted for narcotics trafficking and an expulsion order was issued against him jointly with a 3-year entry and residence ban. The case reached the Federal Administrative Court which validated the entry and residence ban, in an appeal on points of law. The Federal Administrative Court clarified that a threat of deportation can be deemed a return decision within the asylum procedure, in line with the scope of the Return Directive.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2373>

Germany, Federal Administrative Court [Bundesverwaltungsgericht], Applicant v Federal Office for Migration and Refugees (BAMF), BVerwG 1 C 60.20 , 16 December 2021.

The Federal Administrative Court ruled on an entry ban, expulsion and right to family life.

A Turkish applicant, married with an EU citizen with whom he has three children, lost his entry and residence permit due to a long-term prison sentence for multiple offences related to trafficking of narcotics. The applicant challenged the order and invoked a risk of being sentenced in Turkey for the same offence, plus inhuman and degrading detention conditions as well as serious consequences affecting his family life.

The Federal Administrative Court ruled that despite the serious offences and the risk of further offences constituting a threat to public order and security, the lower courts failed to properly assess the risk of prolonged separation of the applicant from his family, due to the entry ban and the risk of being long term imprisoned in Turkey.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2376>



Resettlement

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], Applicants v French Office for the Protection of Refugees and Stateless Persons (OFPRA), Nos 19014405, 19014406, 19014407 and 19014408, 21 December 2021.

The CNDA held that the admission of an asylum seeker to a resettlement programme in which UNHCR takes part in Turkey does not imply that he or she is placed under the strict mandate of the UNHCR.

The case concerned a Syrian family who was resettled to France from Turkey and then granted subsidiary protection by OFPRA. The applicants applied to the CNDA for automatic recognition of refugee status in France on the grounds that they had been placed under the "strict mandate" of the UNHCR. The court ruled that admission to the resettlement programme does not imply being under the strict mandate of the UNHCR and that the resettlement procedure had no impact on OFPRA's competence to determine the protection status corresponding to the observed need for protection.

Link:

<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2327>



