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Quarterly Overview of Asylum Case Law

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Contents

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.

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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)
BFA	Federal Office for Immigration and Asylum | Bundesamt für Fremdenwesen und Asyl (Austria)
BMI	Federal Ministry of the Interior and Homeland (Germany)
CALL	Council for Alien Law Litigation (Belgium)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
COI	Country of origin information
CNDA	National Court of Asylum | Cour Nationale du Droit d'Asile (France)
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)
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
FAC	Federal Administrative Court (Switzerland)
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
FGM/C	Female genital mutilation/cutting
FIS	Finnish Immigration Service
IPAT	International Protection Appeals Tribunal (Ireland)

Member States	Member States of the European Union
NGO	Non-governmental organisation
OFII	Office for Immigration and Integration | Office Français de l'Immigration et de l'Intégration (France)
OFPRA	Office for the Protection of Refugees and Stateless Persons | Office Français de Protection des Réfugiés et Apatrides (France)
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)
UAMs	Unaccompanied minors
UNHCR	United Nations High Commissioner for Refugees
UNWRA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

Main highlights

The interim measures, decisions and judgments presented in this issue of the "EUAA Quarterly Overview of Asylum Case Law, Issue No 2" were pronounced from March to May 2022.

Court of Justice of the European Union

The CJEU interpreted the Dublin III Regulation, Article 29(2)

On 31 March 2022, in *IA v Austrian Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl- BFA)*, the CJEU clarified that non-voluntary committal of an asylum seeker to a psychiatric hospital does not constitute detention under the Dublin III Regulation, Article 29(2).

Interpretation of the recast Qualification Directive (QD)

On 3 March 2022, the CJEU ruled in *NB, AB v Secretary of State for the Home Department (UK)* on the interpretation of the recast QD, Article 12(1a) on the assessment of the cessation or end of UNRWA's assistance or protection.

Interpretation of the recast Reception Conditions Directive (RCD)

On 10 March 2022, in *K v Landkreis Gifhorn*, the CJEU ruled on detaining third-country nationals pending a return. The court noted that detention in prison is only possible if there are exceptionally-high numbers in specialised detention centres and there are no vulnerabilities. The measure must be distinguished from detention applicable to persons convicted of criminal offences.

On 3 March 2022, in *UN v Subdelegación del Gobierno en Pontevedra*, the CJEU interpreted the Return Directive and the possibility for illegally-staying third-country nationals to regularise their stay.

European Court of Human Rights

Interim measures under Rule 39

On 1 April 2022, the ECtHR enlarged the interim measures indicated to the government of Russia concerning the armed conflict in Ukraine. The court had previously indicated that Russia should guarantee free access of the civilian population to safe evacuation corridors, medical care, food and other essential resources, as well as rapid and unhindered access to aid and humanitarian workers. The further measures indicated that evacuation corridors must allow civilians to seek refuge in safer parts of Ukraine.[1]

Access to procedures

In *A.A. and others v North Macedonia*, the ECtHR ruled on collective expulsions and pushbacks from North Macedonia to Greece. The court held that there had been no violation

[1] ECtHR Press release of 1 April 2022, https://hudoc.echr.coe.int/eng-press?i=003-7301031-9954338

of Article 4 Protocol No 4 to the Convention alone and in conjunction with the ECHR, Article 13 for the removal of Afghan, Iraqi and Syrian nationals who had arrived in large groups in North Macedonia and circumvented genuine and effective legal entry procedures.

Placement of minor siblings in separate reception facilities

In *A.J. v Greece*, the ECtHR dismissed complaints of a minor applicant who had been temporarily placed in facilities separate from his siblings. Although their separation constituted an interference with the right to respect for family life, the court held that the measure was temporary and the children were reunited without delay.

Detention pending expulsion

In *Ali Reza v Bulgaria*, the ECtHR found a violation of the ECHR, Article 5(1) for the detention of a former beneficiary of subsidiary protection pending expulsion to Iraq.

Returns to the country of origin (Kyrgyzstan, Pakistan and Tajikistan)

In *Khasanov and Rakhmanov v Russia*, the ECtHR held that there was no real individual risk of ill treatment if ethnic Uzbeks are extradited to Kyrgyzstan.

In *M.A.M. v Switzerland*, the ECtHR found that there would be a violation of the ECHR, Articles 2 and 3 if the situation of Christian converts in Pakistan was not sufficiently examined prior to a removal.

In *T.K. and others v Lithuania*, the ECtHR held that there would be a violation of the ECHR, Article 3 if the applicants were returned to Tajikistan without a new assessment of existing ill treatment in the country of origin.

National courts

Referrals for a preliminary ruling

The French Council of State referred two questions for a preliminary ruling to the CJEU on the interpretation of the recast QD, Article 12(1a) in the case of a Palestinian with serious medical problems.

The Court of the Hague referred questions for a preliminary ruling to the CJEU on the principle of mutual trust in the Dublin procedure for a transfer to Croatia.

The Court of the Hague referred questions for a preliminary ruling to the CJEU on whether the Dublin III Regulation should be interpreted as meaning that serious and systematic violations of EU law committed by the possibly responsible Member State should preclude a transfer of an applicant who is not (yet) a Dublin returnee.

Access to the asylum procedure

The Austrian Supreme Administrative Court confirmed two decisions of a lower court (Ra 2022/21/0074-6 and Ra 2021/21/0274) which found that there was unlawful deportation and denial of access to the procedure in the case of two applicants who had crossed from Slovenia into Austria and had repeatedly used the word ‘asylum’ during the interrogations by security officers.

Unaccompanied minors

The Administrative Court of Luxembourg analysed the conditions in which a minor is considered unaccompanied, in light of the CJEU judgment of *A and S* (C-550/16).

Dublin transfers affected by the war in Ukraine

The German Regional Administrative Court of Aachen cancelled a Dublin transfer to Poland as Poland requested to suspend Dublin transfers due to the influx of displaced persons from Ukraine.

Transfers from Switzerland to other Member States

In Switzerland, the Federal Administrative Court clarified that it is no longer necessary to request individual guarantees in each case for take charge requests for Dublin transfers to Italy. The same court clarified the stricter criteria in assessing the transfer of vulnerable beneficiaries of international protection to Greece.

Membership of a particular social group

In France, the CNDA granted refugee protection to an Ethiopian woman from the Oromia region who fled her country of origin due to the risk of being subjected to child marriage and female genital mutilation/cutting (FGM/C).

Second instance procedures

In Malta, the First Hall Civil Court (Constitutional Jurisdiction) held that the automatic review procedure in the case of manifestly-unfounded applications is not compatible with the right to a fair hearing.

Access to the asylum procedure

Prohibition of collective expulsion

Council of Europe, European Court of Human Rights [ECtHR], *A.A. and others v North Macedonia*, 55798/16, 55808/16, 55817/16, 5 April 2022.

The ECtHR ruled on collective expulsions and pushbacks from North Macedonia to Greece.

The ECtHR held that there had been no violation of Protocol No 4, Article 4, alone and in conjunction with the ECHR, Article 13, for the removal of Afghan, Iraqi and Syrian nationals who had arrived in large groups in North Macedonia and circumvented genuine and effective legal entry procedures.

Despite shortcomings in the asylum procedure and reported pushbacks, the court noted that there was no evidence that potential asylum applicants had been in any way prevented from approaching border crossing points and lodging asylum applications or that they had attempted to claim asylum and they had been turned away.

Council of Europe, European Court of Human Rights [ECtHR], *M.A. and others v Latvia*, No 25564/18, 29 March 2022.

The ECtHR dismissed a complaint lodged by Chechen applicants alleging pushbacks and collective expulsions to Belarus.

The ECtHR ruled on a case concerning a Chechen family who, upon arrival in Latvia, was issued with decisions refusing their entry and were returned to Belarus. The applicants complained that their asylum claims were not reviewed by the Latvian authorities, in breach of the ECHR, Articles 3 and 13 and Protocol No 4, Article 4.

The court rejected the complaints under the ECHR, Articles 3 and 13 as manifestly ill-founded, as the applicants had not provided sufficient evidence of having applied to the Latvian authorities for asylum. Under Protocol No 4, Article 4, the court noted that the applicants had not submitted individual asylum applications despite sufficient opportunity to submit their arguments individually to the national authorities. In addition, they did not raise arguments relating to their fear of ill treatment upon return and a simultaneous removal of all the applicants cannot be considered as a “collective” expulsion within the meaning of Protocol No 4, Article 4.

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], *Styrian Provincial Police Headquarters*, Ra 2022/21/0074-6, 19 May 2022 and *Styrian Provincial Police Headquarters*, Ra 2021/21/0274, 5 May 2022.

The Supreme Administrative Court confirmed decisions of the lower court which found that there was unlawful deportation and denial of access to the asylum procedure.

The Austrian Supreme Administrative Court rejected requests for revision of decisions pronounced by the Styrian Regional Administrative Court, which had found the deportation to Slovenia of two applicants from Somalia and from Morocco to be unlawful. The applicants had crossed into Austria with a group of third-country nationals, at the border with Slovenia. They had used the word 'asylum' in English several times during the investigation by the security guards but without any reaction from the latter.

The Styrian Administrative Court noted that their deportation was unlawful since they had *de facto* protection against deportation in accordance with the Asylum Act of 2005, Section 1(1). The same court also noted that security guards had the obligation to ascertain whether an application for international protection was being made and that in this specific case, the use of the word 'asylum; did not create any ambiguity and that the interrogation by security officers gave the court the impression that pushbacks were often used.

Dublin procedure

The CJEU interpreted the Dublin III Regulation, Article 29(2)

European Union, Court of Justice of the European Union [CJEU], *IA v Austrian Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl- BFA)*, C-231/21, 31 March 2022.

The CJEU clarified that non-voluntary committal of an asylum seeker to a psychiatric hospital does not constitute detention under the Dublin III Regulation, Article 29(2).

The CJEU ruled that under the Dublin III Regulation, Article 29(2), the concept of imprisonment "is not applicable to the non-voluntary committal of an asylum seeker to a hospital's psychiatric department, which has been authorised by a judicial decision, on the ground that the person is a serious danger to him- or herself or to society due to a mental illness".

Questions referred to the CJEU for a preliminary ruling

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Security and Justice (Staatssecretaris Van Veiligheid en Justitie)*, NL22.1282, 18 March 2022.

The Court of the Hague referred questions for a preliminary ruling to the CJEU on the principle of mutual trust in the Dublin procedure for a transfer to Croatia.

The Court of the Hague decided to refer questions for a preliminary ruling to the CJEU on whether the Dublin III Regulation should be interpreted as meaning that the principle of inter-State trust is not divisible, so that serious and systematic violations of EU law committed by the possibly responsible Member State, before transfer, precludes the transfer of an applicant who is not (yet) a Dublin returnee. The same questions were submitted by the court on 4 October 2021 in a case of a Dublin transfer to Malta. In addition, the court asked a question specifically related to the consequences of the impossibility to effectively appeal in Croatia to the (higher) authorities and courts.

Italy, Civil Court [Tribunali], *OV v Ministry of the Interior - Dublin Unit (Ministero dell'Interno – Unità Dublino)*, 24 March 2022.

The Bologna Tribunal referred questions for a preliminary ruling to the CJEU on the interpretation of the Dublin III Regulation, Articles 4 and 5.

The Bologna Tribunal referred questions for a preliminary ruling to the CJEU, asking whether under the Dublin III Regulation an applicant challenging a transfer decision in the requesting country in the context of a take back procedure under Article 18(1b) may invoke an infringement of the duty to provide information (under Article 4) and a personal interview (under Article 5). The case was registered before the CJEU under C-217/22.

Duty to cooperate in the implementation of a Dublin transfer

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Security and Justice (Staatssecretaris Van Veiligheid en Justitie)*, NL22.2599, 4 March 2022.

The Court of the Hague ruled that the refusal to take a COVID-19 test for a Dublin transfer does not result in lifting the detention measure.

An applicant who refused to undergo a COVID-19 test prior to the flight for his Dublin transfer claimed compensation for an alleged unlawful detention for 1 day pending his transfer. The court ruled that a refusal to take the test does not result in the immediate lifting of the detention measure and that he was not entitled to compensation as he had the obligation to cooperate in the implementation of his transfer. The detention was considered lawful.

Insufficient investigations of the risk of pushbacks after Dublin transfers to Croatia

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid)*, 202104072/1/V3, 13 April 2022.

The Council of State annulled a Dublin transfer to Croatia for insufficient investigation of an alleged risk of pushbacks and stated that the inter-state principle of mutual trust can be confirmed through further investigation.

The case concerned an appeal lodged against a Dublin transfer to Croatia by an Algerian applicant who alleged a risk of a violation of the EU Charter, Article 4 due to systematic pushbacks and problems in accessing the asylum procedure and reception in Croatia.

Although the State Secretary argued that the principle of inter-state mutual trust is applicable in the case, the Council of State made a thorough analysis of the applicability of the principle in Dublin transfers. The Council considered that both the applicant and the State Secretary

relied on the same objective information on the situation in Croatia and it was for the State Secretary to demonstrate that the principle of mutual trust can be applied, including by carrying out an investigation in the requested Member State, to justify that systemic errors in the asylum procedure and/or reception system are not fundamental or do not reach the threshold of severity under the ECHR, Article 3.

The Council of State further elaborated that pushbacks in Croatia constitute a fundamental systemic error in the asylum procedure, reaching the high threshold of severity of ill treatment contrary to the ECHR, Article 3. The Council of State annulled the contested decision and ruled that the State Secretary should have conducted further investigations into the transfer to Croatia in view of the nature, extent and duration of the fundamental systemic error that reached a high level of severity.

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Security and Justice (Staatssecretaris Van Veiligheid en Justitie)*, 202102939/1/V3, 13 April 2022.

The Council of State held that the State Secretary for Justice and Security must better motivate the Dublin transfer of third-country nationals to Croatia.

An Egyptian applicant contested a Dublin transfer to Croatia, alleging a risk of inhuman and degrading treatment if the transfer were to be enforced. Despite the principle of mutual trust between Member States, the Council of State noted that there may be doubts on the situation of asylum in another Member State and in this case further investigations were needed of allegations of pushbacks from Croatia. The Council of State annulled the Dublin transfer and ruled that the State Secretary must carry out a detailed examination and better reason and justify the application of the principle of mutual trust between Member States.

Easing requirements for Dublin transfers to Italy

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A and B v Swiss State Secretariat for Migration (SEM)*, D-4235/2021, 19 April 2022.

The Federal Administrative Court clarified that no individual guarantees are necessary to be requested for take charge requests for Dublin transfers to Italy.

In the context of a take charge transfer based on the Dublin III Regulation, the Federal Administrative Court decided that the Swiss authorities were no longer obliged to request preliminary guarantees, including for persons with serious health problems who have not yet applied for asylum in Italy. The court made a distinction between take charge requests, when the person has not yet requested asylum in Italy, and take back requests, when the person submitted an asylum application or whose application was denied.

The court noted that asylum and reception conditions have improved in Italy, in particular for vulnerable persons, and it may be assumed that Italy guarantees their access to appropriate medical assistance and accommodation. However, in take back cases, the Swiss authorities are still required to demand sufficient individual guarantees from the Italian authorities.

Dublin transfer to Malta annulled due to the risk of inhuman or degrading treatment

Italy, Civil Court [Tribunali], *Applicant v Dublin Unit of the Ministry of the Interior (Unita di Dublino, Ministero dell'Interno)*, R.G. 4597/2022, 7 April 2022.

The Tribunal of Rome annulled a Dublin transfer to Malta.

The Tribunal of Rome annulled the Dublin transfer to Malta of an applicant from Bangladesh who was detained in Malta for 16 months. Due to inhuman and degrading conditions in the detention centre, he fell ill and was hospitalised for 2 months.

The Tribunal of Rome noted that the risk of inhuman or degrading treatment upon a transfer to Malta was well-founded, taking into consideration reports from the European Council for Refugees and Exiles (ECRE), Amnesty International, the US Department of State and UNHCR. The Tribunal noted that the transfer was in violation of the Dublin III Regulation, Articles 3(2), 4, 5 and 17.

Suspension of Dublin transfers to Poland due to the war in Ukraine

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant v Federal Office for Migration and Refugees (BAMF)*, 6 L 156/22.A, 18 March 2022.

Considering Poland's request to suspend Dublin transfers due to the influx of displaced persons from Ukraine, the Regional Administrative Court of Aachen cancelled a Dublin transfer to Poland.

The Administrative Court of Aachen cancelled a Dublin transfer to Poland as the latter informed all EU Dublin authorities, by a circular of 25 February 2022, that all incoming Dublin requests were suspended until further notice due to the war in Ukraine. The Regional Administrative Court also took into consideration the lack of prospects that Poland would willingly readmit the applicants within the framework of the Dublin III Regulation.

Assessment of applications

Ukraine removed as a safe country of origin

Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], *Applicant v Czech Ministry of the Interior (Ministerstvo vnitra)*, 10 Azs 537/2021-31, 10 March 2022.

The Supreme Administrative Court annulled a decision concerning a Ukrainian citizen, as Ukraine was no longer considered to be a safe country of origin.

A Russian-speaking citizen of Ukraine, who politically supported the pro-Russian side, left the country after 2014 for fear of persecution by the new government due to his political ideology. His asylum application was rejected in December 2021 as Ukraine was considered a safe country of origin. On review, the Supreme Administrative Court noted that after 24 February 2022 the circumstances had changed and referred the case back for further examination.

Persecution for reasons of religion

Council of Europe, European Court of Human Rights [ECtHR], *M.A.M. v Switzerland*, No 29836/20, 26 April 2022.

The ECtHR found that there would be a violation of the ECHR, Articles 2 and 3 for insufficient examination of the situation of Christian converts in Pakistan if a removal to the country of origin would take place.

The court held that the Swiss Federal Administrative Court had failed to conduct a sufficiently-detailed examination of the situation of Christian converts in Pakistan when the applicant had converted to Christianity in Switzerland. The Swiss authorities had not adequately assessed the risk to which the applicant would have been exposed if he had been removed to Pakistan. In addition, his asylum application on the grounds of his conversion should have been assessed in greater detail.

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], *BFA v Applicant*, Ro 2020/01/0023 (EU 2022/0001), 16 March 2022.

The Supreme Administrative Court referred a question for a preliminary ruling to the CJEU on the interpretation of the recast QD, Article 5(3).

An Iranian national lodged a subsequent application for international protection claiming a fear of persecution if returned to Iran due to his conversion to Christianity. The Federal Office for Immigration and Asylum (BFA) considered that the conversion was credible and there were risks upon return and granted subsidiary protection.

In the first appeal, the Federal Administrative Court overturned the decision and granted refugee status. The Supreme Administrative Court asked the CJEU whether international protection can be granted based on the recast QD, Article 5(3), when the applicant personally created the circumstances that triggered a risk of persecution after leaving the country of origin, unless the activities concerned are permitted in Austria, which are demonstrably the expression and continuation of a belief already existing in the country of origin.

Norway, Supreme Court [Noregs Høgsterett], *The State v A., Norwegian Organization for Asylum Seekers (NOAS)*, No 21-149678SIV-HRET, 5 May 2022.

The Supreme Court provided guidelines on assessing religious persecution claims and future-oriented analyses of the risk of religious persecution upon return to the country of origin.

An Iranian national converted to Christianity in Norway and applied several times for asylum on the grounds of a well-founded fear of persecution of Christian converts in his country of origin.

The Supreme Court held that the courts can fully review the administrative body's future-oriented risk assessment of persecution due to religion. The decision also provided guidance on which evidentiary requirement is to be used as a basis for the assessment.

Persecution for reasons of political opinion

Denmark, Refugee Appeals Board [Flygtningenævnet], *Applicant v Danish Immigration Service*, 2022/69, May 2022.

The Refugee Appeals Board granted international protection due to the involvement of the applicant's parents in sur place political activities.

In a procedure to withdraw refugee protection from an applicant who was from Damascus in Syria, the Refugee Appeals Board considered that the applicant would be at a risk of persecution due to her parents' activities in Denmark, specifically publishing broadcasts criticising the Syrian regime.

Latvia, District Administrative Court [Administratīvā rajona tiesa], *Applicant v Office for Citizenship and Migration Affairs*, A42-01241-22/12, 5 April 2022.

The District Administrative Court granted refugee status to a Russian citizen on grounds that criminal proceedings were initiated against him for political reasons.

A Russian national, who had a residence permit in Latvia until 2020, applied for international protection claiming that criminal proceedings were initiated against him to force him to provide false statements against his employers, who were being persecuted for political reasons. While his application was rejected in first instance proceedings due to the lack of credibility, on appeal, the court analysed country of origin information on practices in Russia, including evidence from similar cases, decisions of the Commission for the Control of Interpol's Files, and evidence on the political context and criminal proceedings.

The court granted refugee status, noting that the evidence and statements provided by the applicant were detailed and credible, and consistent with the country of origin information available.

France, Council of State [Conseil d'État], *D.A. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 447581, 29 April 2022.

The Council of State interpreted the concept of imputed political opinions due to being employed in a state institution.

A former employee of the Afghan police requested asylum in France. The Council of State noted that political opinions likely to give rise to the right to international protection, according to the recast QD, can be regarded as resulting solely from being a member of a state institution when the institution makes access conditional upon adhering to such opinions, or act on their sole basis, or fight exclusively all those who oppose them. In addition, refugee status is likely to be granted to an applicant who has a well-founded fear of suffering acts of persecution in the country of origin because of past activities within the state institution.

In this case, the Council held that the CNDA, in recognising refugee status, did not seek the existence of a link between the persecution alleged by the applicant and the political opinions that the Taliban would attribute to him personally. The Council annulled the contested decision and sent the case back to the CNDA.

Membership of a particular social group

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *J. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 21038022, 17 May 2022.

The CNDA granted refugee protection to an Ethiopian woman from the Oromia region who fled her country of origin due to the risk of being subjected to child marriage and FGM/C.

The CNDA granted international protection to an Ethiopian woman from the Oromia region, of Amhara ethnicity and Muslim faith, after being forced to flee her country while still a minor because of marriage plans decided by her father and the desire of her suitor to see her undergo FGM/C before the marriage. The court held that she belonged to the particular social group of Ethiopian women and girls who escaped forced marriage and the particular social group of children, adolescents and Ethiopian women of Amhara ethnicity at risk of being exposed to FGM/C. This group share a common history and a specific identity perceived as being different by the surrounding society.

The court highlighted the context prevailing in Ethiopia where, although prohibited by law, early and forced marriages as well as FGM/C persist, in particular in the Oromia region and within the Amhara ethnic group, in the absence of effective protection from the federal and regional authorities.

Vulnerable groups: unaccompanied minors

Luxembourg, Administrative Court [Cour Administrative], *Applicants v Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, No 46806C, 21 April 2022.

The Administrative Court analysed the conditions in which a minor is considered unaccompanied, in light of the CJEU judgment of A and S (C-550/16).

The court referred to the CJEU judgment of *A and S* (C-550/16) in determining whether the minor R, whose brother was designated as her guardian, was an unaccompanied minor. This would exempt her from conditions for family reunification with her parents as laid down in the domestic law (e.g. having stable, regular and sufficient resources, accommodation and sickness insurance cover, or that the direct relatives in the ascending line are dependent on her and deprived of the necessary family support in their country of origin).

The CJEU judgment stated that the date of lodging the application for international protection determines whether a refugee can be recognised as an unaccompanied minor. In addition, in certain cases, subsequent circumstances must also be taken into account, so that an unaccompanied minor at the time of entry, who is then taken into care by an adult by law or custom, will not be considered unaccompanied, whereas an initially-accompanied minor who is then left alone is to be considered as unaccompanied.

The Administrative Court confirmed that the applicant minor was no longer unaccompanied, but the Minister disproportionately violated her right to respect for private and family life as particular circumstances of the case were not taken into account (the family life between the parties, the young age of R, her vulnerability as a refugee, the circumstances which led her to flee her country of origin, and her psychological distress since her separation from her parents) and disregarded the best interests of the child, protected by the EU Charter, Article 24 and the Family Reunification Directive, Article 5.

Subsidiary protection

Subsidiary protection granted due to the war in Ukraine

Italy, Civil Court [Tribunali], *Applicant v Ministry of the Interior (Ministero dell'Interno)*, 22 April 2022.

The Genova Tribunal provided subsidiary protection to an applicant from Ukraine.

The Territorial Commission of Turin rejected an applicant's request for international protection as she had arrived in Italy as an economic migrant. On appeal, the Genova Tribunal granted subsidiary protection due to the Russian invasion of Ukraine and the risk that, in the event of return, she would suffer a serious and individual threat to life due to indiscriminate violence in her country of origin.

The situation in Sudan is not considered one of armed conflict

Luxembourg, Administrative Court [Cour Administrative], *Applicant v Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, No 47157C, 10 May 2022.

While the situation in Sudan remains problematic, the Administrative Court held that it does not justify granting subsidiary protection.

A Sudanese national requested international protection by alleging a well-founded fear of persecution due to attacks suffered in 2013 and a lack of state protection. The Administrative Court held that the risks invoked by the applicant and the fears of persecution must be assessed in light of the political changes in Sudan since April 2019, in particular following the dismissal of President al-Bachir, the establishment of a 3-year transitional government composed of civilians and military, and the Juba Agreement, signed in 2020 between the transitional government and several rebel groups.

The court also noted that the applicant was no longer actively sought in Sudan as a result of the political opinions or ties attributed to him, and there was no risk of similar events. The court also held that the applicant did not justify the persistence of the risk despite the overthrow of the regime which was hostile to him and he failed to provide sufficient evidence to establish that the situation in Sudan in general or even in his region was characterised by indiscriminate violence. The court concluded that the general security situation in Sudan remains problematic, with tensions between different communities, but not that of a situation of armed conflict.

Exclusion

The CJEU ruled on the interpretation of the Qualification Directive, Article 12(1a)

European Union, Court of Justice of the European Union [CJEU], *NB, AB v Secretary of State for the Home Department (UK)*, C-349/20, 3 March 2022.

The CJEU ruled on the assessment of the cessation or end of UNRWA's assistance or protection.

The case concerned a couple and their minor children, residents in the UK since 2015, and all, except the youngest child, registered with UNRWA. They claimed refugee status on grounds that the protection from UNRWA ceased for reasons beyond their control and will. One of their children, with a severe disability, did not have access to appropriate education and medical assistance in the Al Bass camp and they all experienced discrimination. The First-Tier Tribunal (Immigration and Asylum Chamber) decided to stay the proceedings and to refer questions for a preliminary ruling to the CJEU.

The CJEU ruled that the assessment should take into account circumstances prevailing at the time of the examination by the competent authorities and not solely at the time of the applicant's departure. The Member State must prove that a return to the area is possible and the applicant will benefit from protection or assistance. In addition, the assistance provided by civil society organisations can be considered, provided that UNRWA has a formal and stable cooperative relationship with them for the fulfilment of its mandate.

Preliminary questions referred to the CJEU on the interpretation of the recast Qualification Directive, Article 12(1a)

France, Council of State [Conseil d'État], *Applicant v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 449551, 22 March 2022.

The French Council of State referred two questions for a preliminary ruling to the CJEU on the interpretation of the recast Qualification Directive, Article 12(1a) in the case of a Palestinian applicant with serious medical issues.

The Council of State suspended proceedings and referred two questions to the CJEU to determine whether UNRWA is unable to provide living conditions consistent with its mission to a Palestinian from Lebanon who suffers from a genetic disease affecting haemoglobin production and requiring special medical care:

> 1. Irrespective of the provisions of national law authorising, subject to certain conditions, a foreign national's stay on account of his state of health and, where appropriate, protecting him from expulsion, are the provisions of Article 12(1)(a) of Directive 2011/95/EU to be interpreted as meaning that a sick Palestinian refugee who, after actually availing himself of UNRWA's protection or assistance, leaves the State or territory situated in the area of operation of that agency in which he was habitually resident on the ground that there can be no sufficient access to the care and treatment required by his state of health and that that failure to take charge entails a real risk to his life or physical integrity, may be regarded as being in a personal state of serious insecurity and in a situation where UNRWA is unable to provide it with living conditions consistent with its mission?
>
> 2. If so, what criteria — relating, for example, to the seriousness of the illness or the nature of the care needed — make it possible to identify such a situation?

Exclusion due to serious non-political crimes

Denmark, Refugee Appeals Board [Flygtningenævnet], *Applicant v Danish Immigration Service*, 2022/11, April 2022.

The Refugee Appeals Board excluded from protection a Somali applicant due to committing serious non-political crimes.

An applicant from Mogadishu claimed to be at risk of persecution if returned to Somalia due to his psychological problems and being an atheist. The Refugee Appeals Board considered that the applicant suffered from mental illness, he did not have any family members in Somalia who could assist him and his return to Mogadishu would be contrary to the ECHR, Article 3.

However, as the applicant had previously been jailed in Denmark for 3 years and 9 months for committing serious non-political crimes (rape, threats and robbery), he was excluded from international protection.

Mental instability as an element to be considered while assessing whether a person is a threat to public order and security

France, Council of State [Conseil d'État], *N.I. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 455520, 22 April 2022.

The Council of State held that mental instability may be taken into consideration when assessing whether a person is a threat to public order and security.

An Afghan national with mental health issues was granted subsidiary protection by the National Court of Asylum. The OFPRA appealed the decision before the Council of State as the person had threatened and was violent against the staff of a communal reception centre, threatened to set fire to the premises and

made insulting statements against France. He was hospitalised without consent and his release was ordered by the judge after 1 week due to a procedural issue, while the competent psychiatrist proposed the maintenance of the measure.

The Council of State held that in order to assess whether the activity of the asylum seeker on the territory constitutes a serious threat to public order and security justifying the exclusion from international protection, the authorities must take into account all the actions attributable to the person, including any psychological instability, without the necessity of seeking to establish material and intentional elements specific to the commission of a crime. The Council of State concluded that he was a threat to public order and security.

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

Conditions for beneficiaries of international protection in Italy

Germany, Federal Administrative Court [Bundesverwaltungsgericht], *BAMF v Applicant*, 1 B 16.22, 7 March 2022.

The Federal Administrative Court rejected an appeal on points of law in a secondary movement case concerning a young and healthy applicant who did not prove a lack of access to employment in Italy.

The applicant's request for international protection was dismissed as he had already been granted international protection in Italy. The court clarified that for non-vulnerable applicants the threshold for considering a risk of treatment contrary to the ECHR, Article 3 implies that an applicant is not able to ensure a minimum livelihood despite all reasonable efforts that are to be expected from a young and healthy person. The applicant is expected to develop a high degree of initiative, to make all reasonable efforts to ensure basic existential needs, including the submission of applications to authorities and courts, and actively seek and avail themselves of the support of civil society organisations.

Stricter criteria for the transfer of vulnerable persons to Greece

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A, B, C, D, E and F v State Secretary for Migration*, E-3427/2021, E-3431/2021, 28 March 2022.

The Federal Administrative Court clarified the stricter criteria when assessing the transfer of vulnerable beneficiaries of international protection to Greece.

An Afghan family with three minor children were granted refugee protection in Greece but later applied for asylum in Switzerland. They claimed they did not have access to medical care in Greece.

Despite shortcomings, the Federal Administrative Court considered that the reception system in Greece could not be assessed as dysfunctional and that the situation did not reach the level of a risk of treatment contrary to international law. For families with children, despite being considered vulnerable, the court deemed it reasonable to execute the expulsion if favourable conditions or circumstances were met, especially if the applicants had established networks in Greece. In addition, the transfer of unaccompanied minors and seriously ill applicants would be unreasonable unless there were exceptionally favourable circumstances.

The Federal Administrative Court ruled that the State Secretary for Migration should conduct a more detailed investigation into the medical conditions of the applicants and services they would receive in Greece.

Checking whether protection is still valid in the Member State that provided protection before pronouncing an inadmissibility decision

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid)*, 202200020/1/V3, 7 March 2022.

The Council of State found that there was no reason to consider that subsidiary protection granted in Poland to the applicant and her son were no longer valid.

The State Secretary rejected an application for international protection as inadmissible which was submitted by an applicant and her son, both of Chechen origin, who were previously granted subsidiary protection in Poland. The Court of the Hague overturned the decision as it considered that the applicants no longer had subsidiary status in Poland and ordered a new examination. The Council of State annulled the decision, finding that the applicant held a valid residence permit in Poland and there was no indication that Polish authorities would intend to revoke subsidiary protection.

Second instance procedures

Provision of a personal hearing on appeal

Ireland, High Court, *T.B. v International Protection Appeals Tribunal and Anor*, [2022] IEHC 275, 13 May 2022.

The High Court quashed a decision of the IPAT for failing to adequately consider the need for an oral hearing of an applicant who alleged a fear of persecution as a victim of domestic violence.

A Georgian national requested international protection due to her fear of persecution in Georgia as a victim of domestic violence at the hands of her partner, who she suspected to be part of organised crime and who had allegedly threatened to kill her. Her application was rejected by the administrative authority and subsequently by the International Protection Appeals Tribunal (IPAT) due to a number of credibility issues and without a personal hearing on appeal. In addition, the IPAT did not reply to the applicant's request to submit medical evidence.

The High Court quashed the decision of the IPAT. While it was at the discretion of the IPAT whether or not to hold a hearing, the court held that there was no automatic statutory entitlement to an oral hearing since Georgia was a safe country of origin, but an oral hearing should take place if this would be in the interest of justice.

The court further noted that the IPAT made adverse findings on the applicant's account but failed to present them to the applicant for clarification during a hearing.

The court added that while the IPAT recognised the inherent subjectiveness of the claims brought by the applicant, the IPAT did not address whether its task could fairly be achieved without an oral hearing in the circumstances of this case considering that the applicant's credibility was a key aspect.

The court concluded that the IPAT did not correctly assess whether a hearing was necessary in the case and omitted to reply to the applicant's request to submit medical evidence, which raised further questions about the fairness of the decision-making process before the IPAT.

Effective remedy in the accelerated procedure

Malta, First Hall Civil Court, *Mariama Ngady Parsons v International Protection Agency, International Protection Appeals Tribunal, Minister for Home Affairs, National Security and Law Enforcement, and the state Advocate*, 318/2020 TA, 1 March 2022.

The First Hall Civil Court (Constitutional Jurisdiction) held that the automatic review procedure in the case of manifestly-unfounded applications is not compatible with the right to a fair hearing.

An applicant from Sierra Leone, whose application was rejected as manifestly unfounded, appealed the decision on grounds that the automatic review process as outlined in the International Protection Act, Article 23, violated the right to a fair hearing. The court upheld the claim of the applicant that Article 23 is not compatible with the right to a fair hearing, breaching the Constitution, Article 39(2) and the EU Charter, Article 47. The court referred the case back to the International Protection Appeals Tribunal for further assessment. The judgment is not final, as it was appealed before the Constitutional Court.

Reception

Temporary placement of siblings in separate facilities

Council of Europe, European Court of Human Rights [ECtHR], *A.J. v Greece*, No 34298/18, 26 April 2022.

The ECtHR dismissed the complaints of a minor applicant about temporary placement in facilities separate from his siblings.

A stateless Palestinian unaccompanied minor complained under the ECHR, Articles 8 and 13 about his placement away from his siblings during the appointment of a guardian. The court did not find the separation of the children to be unreasonable. Although the placement in different cities constituted an interference with the right to respect for family life, the measure was temporary, at least one visit was organised and the children were reunited without delay.

Conditions in Greece for an unaccompanied minor

Denmark, Refugee Appeals Board [Flygtningenævnet], *Applicant v Danish Immigration Service*, 2022/1, May 2022.

The Refugee Appeals Board held that an unaccompanied minor who was granted protection in Greece would not benefit from adequate conditions if returned.

The case concerned an unaccompanied minor who had received international protection status in Greece. The Immigration Service ruled to reject his application as he had previously been granted protection in Greece. On appeal,

the Refugee Board noted that the applicant had no network in Greece, whereas he had several family members in Denmark. Additionally, the Board paid attention to the vulnerability of the applicant as an unaccompanied minor. It also assessed whether the applicant would have access to housing, medical care, education and other services in Greece and found that the applicant would not be provided with adequate housing conditions for his particular situation.

Removal from the accommodation centre

France, Council of State [Conseil d'État], *Minister of the Interior* v *Order of the Prefect of Seine-Maritime*, No 450047, 22 March 2022.

The Council of State ruled that the continued accommodation of an asylum applicant for whom the benefit of material reception conditions has been withdrawn (including during a Dublin procedure or while awaiting a transfer) constitutes a serious breach of the rules of the place of accommodation for which removal can be ordered.

The French Office for Immigration and Integration (OFII) suspended material reception conditions for an applicant because of his lack of collaboration for a Dublin transfer. The Administrative Court ruled that the prefect could not request an interim order for the removal of the applicant from the accommodation centre. The Council of State held that the court made an error of law and that the Ministry of the Interior was entitled to challenge the refusal of the interim order for the removal of the person from the accommodation centre.

Detention

The CJEU ruled on the detention of third-country nationals pending a return

European Union, Court of Justice of the European Union [CJEU], *K* v *Landkreis Gifhorn*, C-519/20, 10 March 2022.

The CJEU ruled on the detention of third-country nationals pending a return.

A Pakistani national residing irregularly in Germany was placed in detention prior to a deportation. The applicant appealed against a decision to extend the detention on grounds of the conditions in the detention centre. The District Court of Hanover decided to refer questions for a preliminary ruling to the CJEU on the conditions that a detention establishment must satisfy to be considered as a specialised detention centre suitable for the detention of third country nationals awaiting deportation.

The court observed that the conditions of detention in such a centre must avoid being akin to confinement in a prison environment, as it is only intended to ensure the effectiveness of the return procedure. The court specified the conditions under which it a third-country national can be detained in a prison rather than a specialised centre: this is only possible when there are an exceptionally high number of people in the specialised detention centres, if there are no vulnerabilities, and the measure must be distinguished from the detention applicable to persons convicted of criminal offences.

Violation of the ECHR, Article 5(1) for detention pending an expulsion

Council of Europe, European Court of Human Rights [ECtHR], *Ali Reza v Bulgaria*, 35422/16, 17 May 2022.

The ECtHR found a violation of the ECHR, Article 5(1) for the detention of a former beneficiary of subsidiary protection pending an expulsion to Iraq.

The court found a violation of the ECHR, Article 5(1) when the applicant was detained for 7-month in Bulgaria pending an expulsion due to a threat to national security. The authorities did not take proactive measures to speed the issuance of the necessary documents to process the expulsion but kept the applicant in detention while the initial reasons that justified the measure no longer subsisted throughout the procedure.

Council of Europe, European Court of Human Rights [ECtHR], *Nikoghosyan and Others v Poland*, 14743/17, 3 March 2022.

The ECtHR found a violation of the ECHR, Article 5(1f) due to the automatic placement in detention of a family with children seeking asylum at the Polish border.

An Armenian family with three children was placed in detention for 6 months after trying to cross the Polish border illegally. Although they did not contest the fact that the material conditions of reception had been adequate, the court noted that their confinement in the Biała Podlaska guarded centre violated the ECHR, Article 5(1f). The court held that the detention of the adults and children was not a measure of last resort for which no alternative was available. Since minors were concerned, it also noted that the situation called for greater speed and diligence on the part of the authorities.

Detention after an irregular entry to the territory of a Member State

Poland, Voivodeship Administrative Court [Wojewodzki Sąd Administracyjny], *Applicant v Border Guard*, No VII Kp 203/21, 28 March 2022.

The District Court ruled that the detention of three Afghan nationals was unlawful and unnecessary.

Three Afghan nationals who entered Poland irregularly and expressed their wish to apply for international protection were detained by the Border Guard for a few hours and returned across the border. Upon complaint against their detention and collective expulsion, the District Court stated that the deprivation of liberty of the applicants, despite lasting for less than 48 hours, was unlawful detention and not a temporary restriction of the freedom of movement. The Border Guard did not record any documentation of the event and did not provide the applicants with information about their rights or reason for detention.

Detention pending a transfer to another Member State

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Security and Justice (Staatssecretaris Van Veiligheid en Justitie)*, 202106798/1/V3, 1 March 2022.

The Council of States clarified the duty of the State Secretary to reason decisions to extend the detention of third-country nationals.

The applicant was placed in detention pending his transfer to Italy, where he had received protection. On appeal, the Court of the Hague considered that the State Secretary did not expressly include in its assessment the foreign national's point of view when weighing up the interests at stake. The Council of State held that if facts and circumstances were clearly made known but they were ignored, the third-country national's interests were harmed. It also held that a decision to extend detention must be issued in writing and must state the factual and legal grounds to allow the applicant to pursue legal remedies. The decision was annulled, and the applicant was granted compensation for the unlawful detention.

Content of protection

Family reunification

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant v Finnish Immigration Service (FIS)*, KHO:2022:45, 7 April 2022.

The Supreme Administrative Court confirmed a negative decision on family reunification due to a failure to provide a valid travel document.

An Ethiopian whose spouse had a permanent residence permit and whose child was granted refugee status in Finland submitted a request for family reunification. The FIS' negative decision was validated by the Supreme Administrative Court as the applicant lacked a valid travel document, thus not meeting the relevant legal requirements. The court noted that no special circumstances had been put forward about the situation of the family which would require the second guardian of the children to be granted a residence permit despite the absence of a travel document and special circumstances.

Statelessness

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *T v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20011942, 4 March 2022.

The CNDA held that the stateless partner of an Ethiopian refugee benefits from the principle of family unity since Ethiopia is her country of habitual residence and she cannot avail herself of the protection of any other state.

A stateless person born in Eritrea and whose habitual residence was in Ethiopia requested refugee protection claiming persecution in Eritrea due to her religious beliefs, refusal to perform military service, as well as her Eritrean origin and persecution by her father-in-law. The CNDA ruled that the circumstances alleged by the applicant which justified her departure from Ethiopia did not relate to any of the grounds in the Geneva Convention.

However, the court noted that a stateless person who resided in the same country as her partner can claim refugee protection as a family member of the beneficiary of protection. On this basis, the stateless person was provided refugee protection, considering that she cannot avail herself of protection from any other state.

Return

The CJEU interpreted the Return Directive

European Union, Court of Justice of the European Union [CJEU], *UN v Subdelegación del Gobierno en Pontevedra*, C-409/20, 3 March 2022.

The CJEU interpreted the Return Directive, ruling on the possibility for an illegally-staying third-country national to regularise his stay.

In the case of a Colombian national who entered Spain illegally and exceeded the 90-day legal stay, the court ruled that the Return Directive must be interpreted as not precluding legislation which criminalises the illegal stay of a third-country national in the territory of that Member State, in the absence of aggravating circumstances, initially by a fine and the obligation to leave the territory of the Member State within a prescribed period, unless during that period the person's stay is regularised.

Potential violation of the ECHR, Article 3 in the event of a return to Tajikistan

Council of Europe, European Court of Human Rights [ECtHR], *T.K. and others v Lithuania*, No 55978/20, 22 March 2022.

The ECtHR held that there would be a violation of the ECHR, Article 3 if the applicants were returned to Tajikistan without a new assessment of the existence of a practice of ill treatment in that country of origin.

Two applicants and their four children, Tajik nationals living in Vilnius, were denied asylum in Lithuania and their return

to Tajikistan was ordered. The court ruled that there would be a violation of the ECHR, Article 3 if the applicants were returned to Tajikistan without a new assessment of the existence of a practice of ill treatment in that country of origin, as claimed by the applicants. The court continued to apply an interim measure indicating to the government not to expel the applicants until the current judgment became final or until further notice.

Extradition of ethnic Uzbeks to Kyrgyzstan would not constitute a violation of the ECHR

Council of Europe, European Court of Human Rights [ECtHR], *Khasanov and Rakhmanov v Russia*, Nos 28492/15 and 49975/15, 29 April 2022.

The ECtHR held that there was no real individual risk of ill treatment from an extradition of ethnic Uzbeks to Kyrgyzstan.

Two nationals of Kyrgyzstan requested refugee protection in Russia, claiming that they would be subjected to ill treatment if returned to Kyrgyzstan after their requests were rejected because they belonged to the Uzbek ethnic minority. The court noted that between 2012 and 2016 it had found in several cases that ethnic Uzbeks extradited from Russia to Kyrgyzstan continued to run a real risk of targeted and systematic ill treatment against this group. However, in this case, the court re-assessed current reports on the situation in Kyrgyzstan and concluded that there was not enough evidence that ethnic Uzbeks still constituted a group which was systematically exposed to ill treatment. In addition, the applicants did not prove any individual circumstances from which it could be concluded that they would be exposed to a real risk of ill treatment. The court concluded that their extradition would not constitute a violation of the ECHR.

Locus standi of the spouse to appeal an expulsion order

Finland, Turku Regional Administrative Court [fi. hallinto-oikeus], *Applicant v Finnish Immigration Service*, H551 / 2022, 31 March 2022.

The Turku Administrative Court stated that a spouse did not have the right to appeal against the rejection of a subsequent application and the expulsion order of the applicant.

The case concerned the right of a spouse to appeal when the applicant's subsequent application was rejected as inadmissible and an expulsion order and entry ban were ordered. Although the expulsion and entry ban may impact the private and family life of the spouse, the Turku Administrative Court found that the decision did not have a direct effect on the spouse's rights, thus the spouse has no right to appeal. The court also noted that there are other special procedures related to family ties.

Return to Russia after the withdrawal of international protection

France, Council of State [Conseil d'État], *B.M. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 450618, 28 March 2022.

The Council of State ruled on the return to Russia of a person whose refugee protection was withdrawn.

The applicant was granted refugee protection in 2003, which was withdrawn in 2018 by decree ordering him to leave the French territory. The Council of State noted that the person whose refugee protection has been withdrawn, but who has retained refugee status, can only be expelled if the administration concludes that there is no risk for the person to be subjected to ill treatment in the country of

origin. In this case, the Council noted that the court of appeal failed to provide an individual assessment of the risk of being subjected to ill treatment in Russia.

Relocation and resettlement

Germany, Federal Administrative Court [Bundesverwaltungsgericht], *Land of Berlin v The Federal Ministry of the Interior and Homeland (BMI)*, 1 A 1.21, 15 March 2022.

The Federal Administrative Court ruled that the Federal Ministry of the Interior and Homeland lawfully refused the agreement to admit refugees from the Moria camp.

In June 2020, the Land of Berlin issued an admission order for 300 particularly-vulnerable persons from the (former) Moria refugee camp on the Greek island of Lesbos aimed at alleviating the humanitarian emergency situation for those seeking protection in the overcrowded reception centre. The BMI rejected the granting of the agreement in July 2020 because the conditions for a Land admission order were not fulfilled and federal uniformity was not maintained.

The Federal Administrative Court ruled that the refusal was lawful as it was not consistent with the measures taken by the Confederation, and it would have led to a different legal status for groups coming from the same refugee camp in Greece.


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