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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) and the European Court of Human Rights (ECtHR). 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 page.

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List of abbreviations

APD	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)
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
COA	Central Agency for the Reception of Asylum Seekers
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
EASO	European Asylum Support Office (now the EUAA)
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 associate countries
FGM/C	female genital mutilation/cutting
FAC	Federal Administrative Court (Switzerland)
HREC	Irish Human Rights and Equality Commission
IPAC	International Protection Administrative Court (Cyprus)

LGBTIQ	lesbian, gay, bisexual, transgender, intersex, or queer
NGO	non-governmental organisation
OFPRA	Office for the Protection of Refugees and Stateless Persons | Office Français de Protection des Réfugiés et Apatrides (France)
OMCA	Office of Citizenship and Migration Affairs (Latvia)
ONA	National Reception Office (Luxemburg)
QD	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	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
RIC	Reception and Identification Centre (Greece)
THB	trafficking in human beings
TPD	Temporary Protection Directive. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
UAM	unaccompanied minor
UN	United Nations
UNRWA	United Nations Relief and Works Agency for Registered Palestine Refugees

Main highlights

The decisions and judgments presented in this edition of the "EUAA Quarterly Overview of Asylum Case Law, Issue No 3/2024" were pronounced from June to August 2024.

Court of Justice of the European Union (CJEU)

In June 2024, the CJEU issued no less than five judgments interpreting provisions of the Common European Asylum System (CEAS) in cases concerning: Hungary's non-compliance with a previous CJEU judgment on asylum, gender-based asylum claims with reference to westernised women, Palestinian applicants for international protection for whom UNRWA's protection ceased, and lastly, the effects of a decision granting refugee protection in another EU Member State for a beneficiary of international protection and the binding effect of refugee status in an extradition procedure in another Member State.

In *European Commission* v *Hungary* (C-123/22), the CJEU imposed a lump sum fine of EUR 200 million and a daily penalty of EUR 1 million for Hungary's non-compliance with its December 2020 judgment (C-808/18). The earlier ruling found Hungary in breach of EU law on international protection procedures and the return of illegally staying third-country nationals. Since Hungary had not addressed these issues, the CJEU determined that its failure to comply disrupted the EU's common policy and principles of solidarity.

The CJEU ruled in *K and L* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (C-646/21) that "women, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a particular social group, constituting a reason for persecution capable of leading to the recognition of refugee status". The court also ruled that: i) national authorities must conduct an individual assessment which considers the best interests of a minor applicant; and ii) when assessing an application for international protection based on persecution due to membership of a particular social group, a long stay in the Member State may be taken into consideration, especially when it coincides with a period when the minor was forming his/her identity.

In *LN, SN* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* (C-563/22), the CJEU ruled that UNRWA's protection or assistance may be considered to have ceased when the agency finds itself unable to ensure dignified living conditions or minimum security conditions to any stateless person of Palestinian origin who registered with UNRWA's area of operations. The court noted that both the living conditions in the Gaza Strip and UNRWA's capacity to fulfil its mission have experienced an unprecedented deterioration due to the consequences of the events of 7 October 2023. The judgment provides additional guidelines for the recognition of international protection for persons from the Gaza Strip.

The CJEU ruled in *QY* v *Bundesrepublik Deutschland* (C-753/22) that when an application is submitted by a beneficiary of international protection in another Member State, the Member State assessing the application on merits is not required to automatically recognise the status adopted in another Member State but has the discretion to do so. In addition, when an

inadmissible decision is not possible, a new individual assessment must be carried out by fully examining the elements of case, up to date information and the previous decision through an exchange of information with the other Member State.

In *A. v Generalstaatsanwaltschaft Hamm* (C-352/22), the CJEU clarified the binding effect of refugee status in another Member State in an extradition procedure to the country of origin from which the person fled. The court held that since extradition would effectively end refugee protection, it must be refused if the refugee status has not been revoked or withdrawn by the other Member State where refugee status was recognised. In addition, if following contact with the competent authorities of the other Member State results in the revocation or withdrawal of refugee status, the Member State from which extradition is being requested must conclude that the person is no longer a refugee and there would be no serious risk, in the event of extradition, of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

European Court of Human Rights (ECtHR)

As in previous months, similar asylum-related topics were dealt with by the ECtHR in the current period covered by the Quarterly Overview. The ECtHR ruled on cases related to the detention of asylum seekers and family reunification. The judgments, however, concern situations which happened in 2018–2019 and 2021.

With regard to detention, the ECtHR found a violation of Articles 3 and 5 of the ECHR by Hungary in the case S.H. An Iranian woman was detained in the Tompa transit zone between January 2018–March 2019 in isolation and without providing adequate mental health care. In two cases against Cyprus, K.A. and B.A., the court found violations of Article 5 for the length of the judicial review and issues related to the grounds of detention based on national security without nexus with the asylum procedure.

In *Okubamichael Debru v Sweden*, the ECtHR found no violation of Article 8 of the ECHR, ruling that refusing family reunification for the applicant's wife and children, based on the unmet ‘maintenance requirement’, did not breach his right to family life or constitute discrimination. The court determined that this decision struck a fair balance between the applicant's private interests and the country’s immigration control interests.

National courts

Judicial reviews of decisions on Dublin transfers concerned most prominently the risk of indirect *refoulement*. National courts also sought interpretations of EU asylum law by referring questions to the CJEU for a preliminary ruling on extending successively the length of the asylum procedure beyond the 6 months and on the use of detention. Other landmark cases concerned LGBTIQ applicants, gender-based persecution and the level of indiscriminate violence in Syria and South Kordofan in Sudan.

Dublin procedure

The Dublin procedure is a recurrent topic brought to national courts with regard to procedural aspects and conditions for implementing a transfer.

As noted in the Asylum Report 2023, the Danish policy on applicants from Syria has been disputed in appeals concerning secondary movements of these beneficiaries of international protection from Denmark.[1] In the context of appeals against Dublin transfers to Denmark, more recently courts in the Netherlands and Norway assessed the impact of policy changes and the risk of indirect *refoulement*.

The Dutch Council of State ruled that an assessment of the risk of indirect *refoulement* resulting from a difference in protection policies between Member States falls outside the scope of a judicial review of a decision on a Dublin transfer. The judgment constitutes a change in the court's approach to the assessment of the risk of indirect *refoulement* in an appeal concerning a decision on a Dublin transfer.

In contrast, the Oslo District Court considered that a Syrian applicant cannot be transferred to Denmark under the Dublin procedure due to a risk of indirect *refoulement* because of the Danish policy to return Syrian applicants and the fact that Danish authorities already issued a deportation decision against the applicant.

The Slovenian Supreme Court ruled in two cases on onward appeals against decisions on Dublin transfer to Croatia.

First instance procedures

In view of a high influx of asylum applicants in 2023 (see Asylum Report 2024) and backlogs in the processing of applications, the Dutch Council of State submitted additional questions to the CJEU for a preliminary ruling on the right of the Member State to extend the length of the asylum procedure beyond 6 months in situations of an increased number of asylum applications and backlogs, pursuant to the recast Asylum Procedures Directive (APD), Article 31(3), point b) of the third subparagraph. The questions were in addition to a referral submitted in November 2023, in case C-662/2023, and sought clarification on whether the determining authority can apply this provision in a repeated and consecutive manner and under which conditions.

A new trend was noted related to safeguards for applicants with special needs. For example, national courts from the Netherlands and Cyprus ruled that a failure to identify and address vulnerabilities in the assessment and to provide adequate safeguards are grounds for a re-examination of the asylum application.

Regarding the possibility to reject a request for asylum due to the absence of the applicant from the personal interview, the Dutch Council of State ruled that legislative changes are necessary to completely implement Article 28(1) of the recast APD, which concerns the procedure in the event of an implicit withdrawal or abandonment of the application. These changes are needed if the State Secretary for Justice and Security is to implement a new working method which was initiated in October 2022 at the Budel asylum-seekers' centre,

[1] See also EUAA Quarterly Overview of Asylum Case Law Issue 4/2023.

whereby absence from the personal interview without a valid reason result in the application being rejected as unfounded or manifestly unfounded.

Russian applicants

As noted in the Asylum Report 2024, Russian nationals submitted applications for international protection in some EU+ countries on grounds of political opinion and a risk of being drafted into military.

The District Administrative Court in Latvia found in two cases that applications submitted by Russian applicants lacked evidence on: i) political activities that would lead to a risk of persecution; and ii) a risk of mobilisation for the war in Ukraine. Specifically, one case concerned an applicant who had no political activities, whereas the second had social media posts while in Latvia. [2]

Membership of a particular social group

As seen in previous editions of the Quarterly Overview and the Asylum Report 2024, courts continued to assess applications from specific profiles, in particular membership in a particular social group for LBGTIQ applicants and Afghan women. Building on the recent case from the CJEU, the trend continued to grant refugee status to Afghan women who oppose the Taliban regime.

The National Court of Asylum (CNDA) in France recognised the existence of a social group of homosexual persons in Burkina Faso and in Togo, entitling them to refugee status in accordance with the 1951 Refugee Convention. The CNDA noted the stigmatisation, discrimination, social violence, mistreatment and humiliation of this group by security forces, police and society. While homosexuality is not currently criminalised in Burkina Faso, a bill aiming to prohibit and criminalise it was adopted by the Council of Ministers on 10 July 2024. In contrast, in Togo, there are already criminal provisions in force, prohibiting sexual relations between persons of the same sex, which puts applicants at risk of criminal prosecutions and arbitrary arrests by police, violence and discrimination by society.

In addition, the CNDA ruled in a Grand Chamber formation that all Afghan women who refuse to be subjected to the measures taken against them by the Taliban are likely to be recognised as refugees because of their membership in the social group of Afghan women and girls. The court applied the CJEU judgment of *WS v SAR*, which stated that women as a whole may be regarded as belonging to a social group under the recast Qualification Directive (QD) if they are exposed, because of their gender, to physical or mental violence, including sexual violence and domestic violence, in their country of origin.

Gender-based persecution

In the Netherlands, the Council of State ruled on applications by trans women from Colombia and confirmed that they are not systematically persecuted in their country of origin and that an individual assessment is necessary in conjunction with an examination of available country

[2] See also EUAA Quarterly Overview Asylum Case Law Issue 2/2024.

information. The council acknowledged that, although access to justice and protection is not consistent and high levels of impunity persist, prosecutions and convictions do occur.

Similarly, the Tribunal of Rome found that a woman from Tunisia, who had experienced severe violence and abuse, was eligible for refugee status since there were systemic deficiencies in the state protective mechanisms.

Reopening cases at the national level following a CJEU judgment

Following judgments pronounced by the CJEU on referrals for preliminary rulings on the interpretation of CEAS, the duty was on national courts to reopen procedures and reassess the cases based on the CJEU interpretation.

As such, the Council of State in France ruled following the CJEU judgment of 5 October 2023 in *French Office for the Protection of Refugees and Stateless Persons (OFPRA) v SW* that UNRWA assistance had ceased for the applicant since it could not provide sufficient access in Lebanon to medical treatment and the medicine on which her life was dependent.

Following the CJEU judgment of 9 November 2023 in *X, Y and their six children v Staatssecretaris van Justitie en Veiligheid*, the Dutch Council of State ruled that to assess an application under Article 15c of the recast Qualification Directive the determining authority must always examine individual circumstances of the applicant.

Subsidiary protection for Syrian applicants

National courts in Austria and Germany took different approaches when assessing the level of violence in Syria in a region controlled by the Kurdish forces. For example, the Higher Administrative Court of North Rhine-Westphalia ruled on 16 July 2024 that the situation in Syria no longer reached such a level of violence that there would be a serious, general danger to civilians. The German court departed from EUAA Country Guidance: Syria published in April 2024 and the Country of Origin Information Report Syria - Security Situation from October 2023.

In contrast, the Austrian Federal Administrative Court, after referring to several EUAA COI and Country Guidance Reports on Syria, concluded on 10 June 2024 that a Syrian national was rightly granted subsidiary protection due to the high level of indiscriminate violence in a region controlled by Kurdish forces. Similarly, the Supreme Administrative Court in Austria annulled a refusal to grant subsidiary protection to a Syrian from Damascus, considering that the lower court failed to take into consideration the 2024 EUAA Country Guidance: Syria.

Subsidiary protection for applicants from South Kordofan in Sudan

The CNDA in France ruled that a return to South Kordofan in Sudan exposes a person to a real risk of suffering a serious threat to life or person, simply by mere presence as a civilian, without being able to obtain effective protection from the authorities.

Reception conditions

The Higher Administrative Court of Baden-Württemberg ruled on the direct application of the recast Reception Conditions Directive (RCD) on the appointment of a legal representative for an unaccompanied minor, especially for the age assessment procedure.

The Irish High Court held that the Irish state violated the human rights of unaccommodated international protection applicants by infringing on their right to human dignity under Article 1 of the EU Charter of Fundamental Rights (EU Charter) due to its failure to provide adequate accommodation and related services between December 2023 and May 2024. It is the first case where the Irish Human Rights and Equality Commission, the National Human Rights Institution[3] and the National Equality Body exercised their authority under Section 41 of the Irish Human Rights and Equality Act to initiate proceedings about the rights of third parties, namely applicants without accommodation who entered Ireland after December 2023.

Detention

The Dutch Court of the Hague seated in Roermond referred a question to the CJEU on the scope of the judicial review of consecutive detention measures when the court finds that the first detention period had been or had become unlawful at any time during the continuous periods of detention.

Content of protection

In Finland, the Supreme Administrative Court ruled by a majority opinion that the date from which a beneficiary of international protection is eligible for a permanent residence permit is the date of entry into the country, even when the status itself was acquired following the lodging of a subsequent application. Two judges dissented, arguing that the national provision does not support this interpretation.

The Hellenic Council of State held that the refusal to issue a travel document to a recognised refugee can only occur after an individualised assessment by the Asylum Service based on public order and security reasons, in line with the recast QD and CJEU jurisprudence.

The Norwegian courts addressed the issue of revoking residence permits due to false information in two cases. The Borgarting Court of Appeal upheld the revocation of an Uzbek national's permit for providing false information during his asylum application. Meanwhile, the Oslo District Court annulled the revocation of an Ethiopian national's permit, finding that the authorities failed to account for her forced marriage as a minor and the duress under which she provided false information.

Temporary protection

The EUAA will publish a thematic report on “Jurisprudence on the Application of the Temporary Protection Directive” in September 2024. It will be available here. The report analyses judgments and decisions related to different aspects of the implementation of the Temporary Protection Directive, as pronounced by national courts and the CJEU between March 2022–September 2024.

[3] For an overview of National Human Rights Institutions and Ombudspersons across EU+ countries, please refer to Who is Who in International Protection in the EU+: The Role of National Human Rights Institutions, Ombudsperson Institutions and Ombudspersons for Children

Access to the asylum procedure

Non-compliance with previous CJEU ruling

CJEU, *European Commission v Hungary*, C-123/22, 13 June 2024.

The CJEU ordered Hungary to pay a lump sum of EUR 200 million and a penalty payment of EUR 1 million per day of delay for failure to comply with the CJEU judgment in European Commission v Hungary (C-808/18) pronounced on 17 December 2020.

In December 2020, the CJEU held that Hungary failed to comply with EU law on procedures for granting international protection and returning illegally-staying third-country nationals. As Hungary did not comply with the 2020 judgment, the European Commission brought a new action for failure to comply with obligations, seeking the imposition of financial sanctions.

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

The court determined that Hungary's failure to meet its obligations effectively shifted its responsibilities, including financial ones, onto other Member States, thereby undermining the principles of solidarity and fair sharing of responsibilities within the EU. Consequently, the court imposed a fine and daily penalties until Hungary fully complies.

Dublin procedure

Scope of a judicial review

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant*, 202304791/1/V2, 12 June 2024.

The Council of State ruled that an assessment of the risk of indirect refoulement resulting from a difference in protection policies between Member States falls outside the scope of a judicial review of a decision on a Dublin transfer.

The Dutch the State Secretary for Justice and Security did not examine the merits of a request for asylum lodged by a Pakistani applicant belonging to the Ahmadis, as it considered that Austria was the Member State responsible under the Dublin III Regulation. In an appeal, the applicant argued that a transfer to Austria could lead to indirect *refoulement*.

Based on the CJEU judgment of 30 November 2023 in Ministero dell'Interno and Others (joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21), the Council of State changed its previous case law and held that a difference in protection policies between Member States does not constitute a fundamental systemic flaw leading to a risk of *refoulement* if an applicant is transferred to another Member State under the Dublin III Regulation. It noted the CJEU's observation that, in line with the principle of mutual trust, the court must presume that the risk of *refoulement* is properly assessed and that an applicant has access to effective legal remedies to challenge a decision of the Member State. The Council concluded that, where no systemic flaws have been identified, an assessment of a risk of indirect *refoulement* falls outside of the scope of a judicial review of a Dublin transfer.

Norway, District Court [Noreg Domstolar], *Applicant v Directorate of Immigration (Utlendingsdirektoratet, UDI)*, TOSL-2024-41013, 5 July 2024.

The Oslo District Court ruled that the Norwegian authorities had a duty to consider a Syrian national's application in its merit, as there was clear evidence that the applicant would be returned to Syria and a real doubt that the applicant will be protected from being returned if transferred to Denmark under the Dublin III Regulation.

In a case concerning a Dublin transfer of a Syrian applicant from Norway to Denmark, the Oslo District Court assessed whether the applicant would be protected against *refoulement* if transferred to Denmark. In view of the Danish policy to return Syrian nationals, except for a temporary suspension, and taking into account the deportation decision against the applicant by the Danish authorities, the Oslo District Court considered that Norway can give greater protection to the applicant and that, since a return to Syria would result in a violation of Article 3 of the ECHR and Article 4 of the EU Charter, a transfer to Denmark was prohibited.

The court concluded that the Norwegian authorities have the duty to assess the application on merits because there was a real doubt that the applicant will be protected from indirect *refoulement* if transferred to Denmark under the Dublin III Regulation.

Dublin transfers to Cyprus

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL24.14231, 4 July 2024.

The Court of the Hague seated in Arnhem ruled that the principle of mutual trust can be relied upon in Dublin transfers to Cyprus.

The Court of The Hague seated in Arnhem reviewed a Dublin transfer decision to Cyprus for a Syrian national. The court assessed whether the applicant would face inhuman or degrading treatment in Cyprus and whether the State Secretary correctly applied the principles outlined in the CJEU judgment in *X v State Secretary for Justice and Security* (Case C-392/22).

The court upheld the State Secretary's decision, affirming that the principle of mutual trust between EU Member States applies unless compelling evidence shows systemic flaws in the receiving state's asylum procedures or reception conditions. The court noted that, according

to the CJEU judgment, Member States had a duty to consider relevant information on potential risks, even when not raised by the asylum applicant. The court concluded that the State Secretary had adequately considered both the applicant's submitted documents and additional relevant information, including recent reports on Cyprus.

While acknowledging deficiencies in the Cypriot reception system, the court found that they did not meet the threshold to rebut mutual trust. The court also dismissed allegations related to pushbacks, legal aid and violence against migrants, concluding that the applicant did not prove a real risk of harm or inadequate protection by the Cypriot authorities. Therefore, the court upheld the State Secretary's decision to transfer the applicant to Cyprus.

Dublin transfers to Croatia

Slovenia, Supreme Court [Vrhovno sodišče], *Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia) v Applicant*, VS00076907, 28 June 2024.

The Supreme Court referred a case back for re-examination holding that the court of first instance used too high criteria for assessing the conditions for the reception of asylum applicants in Croatia in view of the principle of mutual trust, and that the mere fact that one of the plaintiffs was a baby did not in itself mean that the transfer to the Republic of Croatia would be contrary to Article 4 of the EU Charter, nor did it negate the principle of mutual trust.

A family with a 6-month-old child contested a decision on a Dublin transfer to Croatia on grounds of inadequate reception conditions and an alleged violation of the principle of best interests of the child. The Administrative Court allowed the appeal and stated that the Ministry of the Interior incorrectly assessed the best interests of the child and individual guarantees were needed.

In an onward appeal submitted by the Ministry of the Interior, the Supreme Court annulled the lower court decision and reiterated the scope of the principle of mutual trust between Member States. It stated that a breach of the recast RCD is not sufficient to rebut such a presumption. On the best interests of the child, it found it to be unproven that the child faced any exceptional situation, preventing the transfer and stated that the mere fact that one applicant is a baby does not imply that the Dublin transfer would be contrary to Article 4 of the EU Charter or contrary to the principle of mutual trust. The court underlined that the lower court requested too high standards when conditioning the transfer to an equivalent accommodation in Slovenia.

The Supreme Court referred the case back for a re-examination and reiterated the importance of taking into account all subjective and objective elements of each case.

Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00077669, 10 July 2024.

The Supreme Court confirmed the Administrative Court's decision that there is a distinction between the police treatment of those who illegally cross the border and the treatment of those transferred to Croatia under the Dublin III Regulation, concluding that there were no

systemic deficiencies in Croatia preventing the Dublin transfer.

In an onward appeal against a Dublin transfer decision to Croatia, the Supreme Court confirmed the lower court's decision which validated the transfer. The court clarified that the alleged mistreatment by the police cannot be claimed as there is a difference between foreigners who illegally enter and may face mistreatment, and those who are transferred under the Dublin III Regulation and have the status of applicants for international protection.

The court reiterated the findings in the cases of *MSS v Belgium and Greece* from the ECtHR and *X v State Secretary for Justice and Security* from the CJEU to state that Member States have a duty, on their own initiative, to consider any information on possible systemic deficiencies which they are aware of or should be that can lead to a treatment contrary to Article 4 of the EU Charter. However, the court ruled that this obligation is not *ex officio* and without any procedural obligation for the applicant to adduce evidence, based on publicly available information, to shift the burden of proof to the Ministry of the Interior.

Medical conditions

Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00076903, 17 June 2024.

The Supreme Court confirmed a Dublin transfer decision to Spain for a Russian as it found that her alleged medical condition did not prevent the transfer.

A Russian applicant appealed against a decision on a Dublin transfer to Spain and invoked a medical condition in the appeal which allegedly would prevent the transfer. The Supreme Court rejected the appeal as it found that the applicant did not prove her allegations.

Her medical report was 6 years old. Although she argued that she was unable to be in hot climates, she had travelled to Spain where she stayed longer than 2 months. Because of the absence of a current medical report and the fact that she was not under treatment or follow up by a cardiologist, the court considered the claims unfounded.

First instance procedures

Possibility to extend the length of the asylum procedure

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant*, 202400194/1/V1, 10 July 2024.

The Council of State submitted additional questions before the CJEU on the interpretation of the recast APD, Article 31(3), point b) of the third subparagraph on extending the length of the asylum procedure beyond 6 months.

The Council of State submitted additional questions to the CJEU to the previously submitted question on 8 November 2023 in case C-662/2023 to seek clarification on the recast APD, Article 31(3), point b) of the third subparagraph on extending the length of the asylum procedure beyond 6 months. The State Secretary extended the processing time to 9 months by WBV 2022/22 and WBV 2023/3, justified by an increased number of asylum applications and backlogs in the processing.

The following questions were sent for a preliminary ruling, registered under C-489/24:

1. May the determining authority apply point b) of the third subparagraph of Article 31(3) of the recast APD repeatedly and consecutively?

2. If Question 1 is answered in the affirmative:

a. Under what conditions may the determining authority apply point b) of the third subparagraph of Article 31(3) of the recast APD repeatedly and consecutively, and is the total duration of the period over which the determining authority may apply that provision repeatedly and consecutively subject to any restrictions?

b. In answering the question whether the determining authority was permitted to extend the time limit for making its decision following, and consecutive to, a previous decree extending that time limit, to what extent can or must the court take account of the increase in the number of asylum applications, including relative to the period preceding the previous decree extending the time limit, and the determining authority's efforts (if any) to improve the shortfall in its decision-making capacity in order to ensure – against the backdrop of Article 4(1) of the recast APD – an adequate and complete examination of asylum applications?

Lack of investigation of special procedural guarantees

Netherlands, Court of The Hague [Rechbank Den Haag], *Applicant v the Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL24.22954, NL24.22955, 5 July 2024.

The Court of the Hague ruled that the Minister of Asylum and Migration failed to assess the need for special procedural safeguards in a case concerning a female applicant from Togo who had psychological issues.

A Togolese national applied for asylum, claiming a fear of persecution due to her lesbian orientation. She reported experiencing sexual abuse by her uncle, threats from her stepbrother and ostracism by her community. Her asylum application was rejected as manifestly unfounded and she was issued a return decision to Togo along with a 2-year entry ban.

The court noted that the medical report issued for the applicant recommended that she should only be asked simple questions due to her limited training, fluctuating and shortened concentration, and delayed understanding, and the case officer insufficiently considered it.

Furthermore, the court highlighted that the determining authority was obliged to investigate even in a border procedure whether special procedural guarantees were necessary, such as additional medical advice, or to apply the general asylum procedure and to allow the interview to take place over several days.

The court concluded that the failure to implement these safeguards resulted in an unfair and inadequately reasoned decision, justifying its annulment. The court ordered the determining authority to re-examine the applicant's asylum application by taking full account of her psychological condition and the need for special procedural safeguards.

Cyprus, International Protection Administrative Court [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *Applicant v Republic of Cyprus through the Asylum Service (Κυπριακή Δημοκρατία και/ή μέσω Υπηρεσίας Ασύλου)*, No 6696/2021, 10 June 2024.

The International Protection Administrative Court (IPAC) annulled the Asylum Service's decision to reject international protection to a Cameroonian woman as it found substantial procedural shortcomings with the investigation of the possibility that the applicant was a victim of human trafficking.

Following rejection of her asylum application, a Cameroonian applicant applied complained that the negative decision was based on several procedural shortcomings and adopted in the absence of a vulnerability assessment and an investigation of allegations of being a victim of trafficking in human beings.

IPAC underlined the obligation deriving from Article 24 of the recast APD and Article 10A of the Refugee Law to examine the need for procedural safeguards, and if the applicant is found in need, to provide adequate reception and procedural support as well as adequate monitoring of the person's situation. In view of indicators resulting from the records of the interview, the court made a thorough analysis of each statement by the applicant against the key elements of trafficking pursuant to the special national law on prevention and combatting human trafficking.

IPAC found that the applicant disclosed a situation of coercion, exploitation and physical abuse or attempted physical abuse by her trafficker, indicators which the Asylum Service had failed to examine and consequently it failed to take the appropriate measures to protect the applicant, including to refer the matter for further investigation by the competent authorities.

IPAC annulled the contested decision and gave instructions on the action to be taken by the determining authority to remedy the shortcomings.

Policy on failure to attend the personal interview

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202303430/1/V2, 26 June 2024.

The Council of State declared unlawful a new working method by the State Secretary for Justice and Security to reject an asylum application as unfounded or manifestly unfounded when the applicant does not attend the personal interview without providing prior notice.

The Dutch State Secretary for Justice and Security initiated a trial for a new working method in October 2022 at the Budel asylum-seekers' centre, informing asylum seekers that failure to attend interviews without a valid reason would result in their application being rejected as unfounded or manifestly unfounded. According to the State Secretary, the invitation was translated into the languages most used in asylum procedures (English, French, Spanish, Turkish, Tigrinya, Farsi, Russian and Arabic). This method aimed to address the frequent non-appearance of asylum applicants, which caused delays and inefficiencies. Based on this new method, the State Secretary rejected the applicant's asylum request as manifestly unfounded under Articles 31(1) and 30b(1) of the Aliens Act 2000.

In the onward appeal, the Council of State ruled that there was no legal basis for this rejection and that the provisions of the Aliens Act were not adequate as they do not fully implement Article 28 of the recast APD. It held that Articles 14 (personal interview), 31 (examination procedure) and 32 (unfounded applications) of the recast APD require a personal interview to deem an application unfounded and, according to Article 28(1), the failure to appear at a further interview may be regarded as an implicit withdrawal, allowing the termination of the examination of the application or a rejection as unfounded if there is a sufficient examination of the application under Article 4 of the recast QD.

The Council concluded that legislative changes are needed to fully implement Article 28 of the recast APD and support the State Secretary's new working method.

Policy and burden of proof regarding Syrian applicants

Netherlands, Court of The Hague [Rechtbank Den Haag], 14 August 2024.

- ***Applicant* v *The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202305713/1/V2.**
- ***The Minister for Asylum and Migration (de Minister van Asiel en Migratie)* v *Applicant*, 202300173/1/V2.**

The Council of State ruled that the Dutch policy towards Syrians who returned to the country is in line with the usual assessment and burden of proof, but the Minister must adequately motivate whether an applicant has a real risk of serious harm after a thorough investigation of all elements and the updated situation in Syria.

The Council of State ruled in two cases concerning Syrian applicants who had returned to Syria after seeking asylum. First, the council clarified that the policy on Syrian nationals who have travelled to and from that country after an earlier departure

is correct because it makes no distinction between this category and other Syrian applicants and because the burden of proof applied in the assessment is the same for other asylum applicants. Namely, the current policy on Syrians is that the Minister no longer assumes that returning to Syria leads to serious harm for Syrians and this leads to a shift in the burden of proof from the authority to the applicant.

Second, the council highlighted that the Minister has the duty to then assess, based on the individual circumstances of the applicant, all facts and elements of the case against updated country of origin information on the general security situation in Syria and the attitude of the Syrian authorities to determine and reason whether that person runs a real risk of serious harm upon return.

The first case concerned a woman who returned several times to Syria without facing any difficulties, and the Council of State confirmed the negative decision since the applicant did not adduce any evidence on a real risk of serious harm.

The second case concerned a Syrian woman who returned for a longer period to Syria after having obtained a travel permit in the Netherlands. The council referred the case back for re-examination of all facts and elements, including the stay in Syria after previously having left the country, along with updated country of origin information to determine whether the applicant would face a real risk of serious harm upon return.

Presumption of a safe country of origin

Italy, Civil Court [Tribunali], *Applicant v Ministry of the Interior (Territorial Commission of Caserta)*, R.G. 15869, 19 July 2024.

The Tribunal of Naples granted a suspensive effect on enforcing a negative decision for an Egyptian national and ruled that Egypt could not be deemed a safe country for the applicant due to lack of investigation into the risks associated with evading military conscription.

An Egyptian national requested a suspensive effect on enforcing a negative decision on asylum because his country of origin was designated as a safe country. He argued that the Territorial Commission failed to consider a document proving a custodial sentence for evading military service, which challenged the presumption of safety in Egypt.

The Tribunal of Naples found substantial and well-founded reasons to suspend the enforcement of the negative decision. It concluded that the applicant's refusal to participate in military service and the fear of penalties upon a return were sufficient to challenge the presumption of safety in Egypt. The tribunal referenced the EASO COI Query: Information on Military Service in Egypt (22 June 2018), which indicates that conscientious objection and the punishment of deserters are significant issues warranting further investigation, including the evaluation of the document submitted by the applicant.

Reimbursement of procedural costs

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers, COA) v Applicant*, 202204022/1/V1, 12 June 2024.

The Council of State ruled that the Central Agency for the Reception of Asylum Seekers (COA) was correct in its rejection of an application for reimbursement of extraordinary expenses incurred by an applicant for the services of a lawyer from his home country in relation to the assessment of the authenticity of a voting card submitted as evidence in the asylum procedure, on the ground that the services offered could not be considered as counter-expertise.

An applicant from Congo requested to be reimbursed for the costs of a lawyer to authenticate a document (voting card) which was provided during the asylum procedure. Upon appeal against the refusal, the Court of the Hague considered that COA did not analyse whether the investigation of the lawyer contributed to the processing of the asylum procedure.

In the onward appeal submitted by COA, the Council of State agreed that, although the lawyer is an expert in legal matters, he is not an expert in assessing the authenticity of documents and stated that COA has discretion in assessing whether such expertise falls under the counter-expertise provided by Article 17 of the Regulation on Provisions for Asylum Seekers and other Categories of Foreign Nationals 2005 (Rva 2005).

Subsequent applications

Lithuania, Supreme Administrative Court of Lithuania [Lietuvos vyriausiasis administracinis teismas], *Migration Department of the Ministry of the Interior of the Republic of Lithuania v A.J.S*, eA-1910-624/2024, 3 July 2024.

The Supreme Administrative Court confirmed the lower court's decision that the subsequent application must be reassessed in view of new elements, namely conversion to Christianity and baptism.

The Vilnius Regional Administrative Court (VAAT) ordered the Migration Department to re-examine the applicant's subsequent application for international protection, citing Article 40(1) of the recast APD, as the applicant indicated new essential circumstances that he was baptised since coming to Lithuania.

The VAAT determined the Migration Department should have conducted a thorough investigation into the applicant's conversion, the seriousness of his faith, how he expressed his Christian faith in Lithuania and how he intended to practise it in his home country, and the potential reaction in his home country upon return.

The Migration Department filed an appeal with the Supreme Administrative Court of Lithuania (LVAT), which rejected the appeal and ruled that the new circumstances were not properly examined and the Migration Department had an obligation to adopt a new administrative decision in the presence of new and potentially important circumstances.

Length of the asylum procedure

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, A 7 K 2324/24, 10 July 2024.

The Administrative Court of Stuttgart ruled that the 21-month processing period constitutes an absolute procedural deadline for rendering decisions on asylum applications under the Asylum Procedure Act (AsylG).

A stateless Palestinian from Gaza was granted international protection in Greece, then he entered Germany and requested protection again. BAMF decided not to issue an inadmissibility decision due to a potential violation of Article 3 of the ECHR if returned to Greece. The applicant subsequently challenged BAMF's failure to decide on his application within the 21-month deadline prescribed by Section 24(7) of AsylG.

The Administrative Court of Stuttgart ruled that the 21-month period constitutes a strict procedural deadline for deciding on asylum applications, in line with the recast APD. The court found that BAMF had exceeded this period, since at the time of the judgment it had not yet issued a decision. Therefore, it ordered BAMF to decide on the asylum application within 3 months. The court also clarified that it would not rule on the merits of the asylum claim, as its role was to ensure BAMF's compliance with procedural deadlines.

Assessment of applications

Persecution based on religious beliefs: Chinese and Iraqi applicants

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, W233 2285422-1/7E, 4 June 2024.

The Federal Administrative Court granted refugee status to a Chinese applicant, member of a Christian minority, due to a well-founded fear of persecution by state authorities on grounds of religious beliefs.

The Federal Office for Immigration and Asylum rejected an asylum application from a Chinese national fearing persecution due to her membership in the Church of the Almighty God. On appeal, the Federal Administrative Court noted severe restrictions on religious freedoms in China and targeted persecution of unregistered religious groups, including the Church of the Almighty God, which is labelled an 'evil cult' by the government. The court noted that this group faces repression, persecution and torture, destruction of places of worship, and strict surveillance, as part of the government's broader campaign against unregistered and minority religious groups.

The court confirmed the applicant's credible membership in the church, supported by her detailed statements and

external evidence. It found that, if returned to China, she would face serious persecution, including torture, by state institutions, and that no internal protection alternative was available. Citing the CJEU judgment in *Bundesrepublik Deutschland v Y and Z* (C-71/11 and C-99/11, 5 September 2012), the court determined that the applicant could not publicly practice her religion in China without a significant risk of persecution. It concluded that she qualified as a refugee due to her well-founded fear of persecution and the lack of an internal flight alternative in China.

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.24787, 9 July 2024.

The District Court of the Hague seated in Zwolle ruled that the State Secretary for Justice and Security based its decision on incorrect grounds when rejecting an asylum application of an Iraqi national who claimed to have converted from Islam to Christianity.

The State Secretary for Justice and Security rejected an Iraqi national's subsequent asylum application based on his conversion from Islam to Christianity. On appeal, the Court of The Hague found that the State Secretary wrongly concentrated on the sincerity of the applicant's conversion, under Dutch Work Instruction 2022/3. Instead, the focus should have been whether the applicant faced a well-founded fear of persecution due to his perceived or actual religious beliefs in Iraq. The court found this approach breached Article 3:46 of the General Administrative Law Act, which mandates decisions to be based on sound reasoning.

The court annulled the decision but did not find a well-founded fear of persecution or evidence that the applicant would be seen as an apostate or face torture upon a return. It noted that recognised religious groups, including Christians, are not widely persecuted in Iraq. Additionally, concerns about the applicant's Christian wife and child were also deemed insufficient, as mixed-faith marriages are permitted there.

Persecution of Iranian applicants due to political activity

Norway, District Court [Noreg Domstolar], *Applicant v Directorate of Immigration (Utlendingsdirektoratet, UDI)*, TOSL-2023-194404, 17 June 2024.

The Oslo District Court determined that an Iranian woman did not face persecution upon returning to her country of origin as a result of her political activity in Norway against the Iranian regime and did not qualify for refugee status or protection against a return.

An Iranian woman claimed she was at risk of persecution because of her political activism against the Iranian authorities in Norway, which had intensified following the death of Mahsa Amini in September 2022 and she was a visible leader of the demonstrations. The applicant stated that if returned to Iran, she would continue to engage in protests and refuse to wear the hijab.

The Oslo District Court determined that the applicant did not demonstrate that the Iranian authorities had been monitoring her activities and there was no evidence to suggest that her conduct in Norway would result in persecution in Iran. The court further found that the applicant was unlikely to continue her political activity if she was returned to Iran and refused to

wear the hijab, and therefore did not delve into further depth or analysis of the potential consequences.

Norway, District Court [Noreg Domstolar], *Applicant v Directorate of Immigration (Utlendingsdirektoratet, UDI)*, TOSL-2024-34954, 12 July 2024.

The Oslo District Court determined that, if returned to Iran, the applicant was at real risk of persecution in view of his political activities, his brother's asylum claim and an uncertain reaction from the authorities towards the applicant during the procedure for a laissez-passer.

An Iranian national was refused international protection in Norway in 2010 and his requests for re-examination were rejected in 2013 and 2022 as unfounded with regard to a risk of persecution based on his political activities as an active member of the Hekmatist Party since moving to Norway. In 2023, his lawyer presented a letter from UNHCR stating that his brother's claim for asylum in Türkiye was found credible and was based on persecution suffered in Iran, including arrest, torture and accusations of espionage.

In January 2024, the Immigration Appeals Board (UNE) reconfirmed its negative decision and the applicant appealed before the Oslo District Court. The court annulled the negative decision on grounds of the brother's successful asylum claim and country-of-origin information, as there were uncertainties on the possible reactions and risks from the Iranian authorities should the applicant be returned. The political activities of the applicant, although deemed to be relatively minimal in recent year, were assessed as being digitally monitored overseas. As such, if the applicant was to be returned, he would need to be issued a laissez-passer by the Iranian Embassy in Norway and the authorities would become aware of his political activities in the host country.

By referring to the ECtHR case *S.F. and others v Sweden* (15 May 2012), the court assumed that returned Iranians are screened upon a return. The court ruled that the applicant was eligible for protection due to a real risk of persecution.

Persecution based on political activities and military conscription: Russian applicants

Latvia, District Administrative Court [Administratīvā rajona tiesa], *A. v Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)*, No A42-01432-24, 22 July 2024.

The District Administrative Court dismissed a Russian applicant's request for international protection, concluding that his minimal political activity did not substantiate a well-founded fear of persecution.

A Russian applicant appealed against the negative decision on his application for international protection and argued that he was at a risk of persecution because of his anti-government activities and at risk of mobilisation for military service.

The District Administrative Court considered that the applicant had a low political profile because his activities were mainly social media posts while in Latvia and there was no evidence of being in the negative attention of the Russian authorities.

On the risk of military conscription, the court found that the applicant's soldier certificate had a mention of limited fitness and exemption from conscription, thus in the absence of other evidence, the risk was assessed as inexistent.

Latvia, District Administrative Court [Administratīvā rajona tiesa], *A. v Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)*, No A42-01578-24/18, 4 July 2024.

The District Administrative Court upheld the negative decision on a Russian applicant's asylum application, finding insufficient evidence of alleged political persecution, military conscription fears and unjust criminal charges.

A Russian applicant appealed a negative decision on his asylum application. The District Administrative Court found that the applicant had a criminal file in Russia for failing to pay wages when he was the director of a company and clarified that a criminal charge can constitute persecution if it involves disproportionate or discriminatory penalties. In the absence of such evidence, the applicant's claim was rejected on this aspect.

On political activities, the court referenced the EUAA Country of Origin Information Report: The Russian Federation – Political Opposition (December 2022) and assessed the facts as not substantiating any political activities, since the applicant was not following the news, was not making any public statements and did not use social media.

Regarding a risk of military conscription in view of the war in Ukraine, the court acknowledged a potential risk but found that there was no evidence that Russian citizens in the military reserve had been forcibly mobilised, and the applicant did not receive any summon in this regard. The court concluded that the fear of persecution due to opposition to the conflict was only hypothetical.

Military conscription: Syria

Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA) v Applicant*, 2 LB 40/24, 3 June 2024.

The Higher Administrative Court of Lower Saxony allowed the appeal submitted by the Federal Office for Migration and Refugees (BAMF) and found that the applicant was not eligible for refugee status on grounds of military conscription or religious affiliation.

A Syrian national of Kurdish ethnicity and Yazidis religious affiliation, who had been granted subsidiary protection, appealed the decision to request refugee protection. The lower administrative court considered that, since the applicant is a reservist and subject to military service, his departure and stay abroad can be considered evasion from conscription in Syria. BAMF appealed this judgment.

The Higher Administrative Court clarified that the assumption of an imminent threat of prosecution or punishment for refusing military service within the meaning of the AsylG, para 3a(2)(5) and Article 4(4) of the recast QD, upon departure can only be considered if, from the point of view of the Syrian state, a man of military-service age clearly withdrew from military service before the moment of his departure and he was, precisely for that reason, subject to the remarkably probable risk of suffering persecution measures. In the absence of

such conditions in the case of the applicant, he was not eligible for refugee protection.

The Higher Administrative Court stated that case law from the majority of Higher Administrative Courts in Germany is that military service evaders in Syria are not threatened with political persecution. The court also stated that Yazidis in Syria are not regularly threatened with religious persecution by the Syrian authorities

Membership of a particular social group: LGBTIQ applicants from Burkina Faso and in Togo

The CNDA recognised the existence of a social group of homosexual persons in Burkina Faso and in Togo, entitling them to refugee status in accordance with the 1951 Refugee Convention.

France, CNDA, *M.G. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 24009761 C, 17 July 2024.

The court highlighted the stigmatisation, discrimination, social violence, mistreatment and humiliation that LGBTIQ people suffer in Burkina Faso, from members of the security forces, police and society. It relied on public sources (a report by the US Department of State, a note by the Canadian Ministry of Immigration, an article by Prison Insider, a report by an American NGO FHI360, the database of ILGA and media sources) and also noted that, while homosexuality is not currently criminalised in Burkina Faso, a bill aimed to prohibit and criminalise it was adopted by the Council of Ministers on 10 July 2024.

Thus, the court ruled that homosexual people who are subjected to a climate of strong hostility towards them in Burkina Faso and without assistance from national authorities are at risk of persecution.

France, CNDA, *M.N. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 24008057 C, 17 July 2024.

The court highlighted criminal law which prohibits sexual relations between persons of the same sex that could be used against members of the LGBTIQ community in Togo and arbitrary arrests, violence and harassment that they are subjected to by the police and discrimination from the society. It relied on public sources (a 2023 report by the US Department of State, a report by Freedom House entitled Freedom in the Word 2024, UN reports, and a 2023 report by the Belgian Commissioner General for Refugees and Stateless Persons).

Thus, the court ruled that, in the absence of assistance from national authorities, homosexual people who are subjected to violence, discrimination and harassment and at risk of criminal prosecution in Togo are at risk of persecution.

Membership of a particular social group: Westernised women and minors

CJEU, *K and L v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, C-646/21, 11 June 2024.

The CJEU ruled on the assessment of the ground of persecution based on membership of a particular social group in a case concerning minor girls from Iraq who claimed to have been westernised

considering their long residence in the Netherlands.

Two Iraqi teenagers who have been residing in the Netherlands since 2015 claimed that they have adopted western norms and would be unable to conform to the norms of society in Iraq, which does not afford equality between women and men. They claimed a risk of persecution based on the identity which they have formed in the Netherlands.

The CJEU ruled that "women, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State may, depending on the circumstances in the country of origin, be regarded as belonging to a 'particular social group', constituting a 'reason for persecution' capable of leading to the recognition of refugee status".

The court also determined that "Article 24(2) of the EU Charter must be interpreted as precluding the competent national authority from deciding upon an application for international protection submitted by a minor without having concretely determined the best interests of that minor in the context of an individual assessment".

Also, for the purpose of assessing an application for international protection, a long stay in a Member State, especially when it coincides with a period during which an applicant who is a minor has formed his/her identity, may be taken into account under Article 4(3) of the recast QD, read in light of Article 24(2) of the Charter.

Membership of a particular social group: Afghan women and girls

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *O., O. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 24014128 R, 11 July 2024.

The CNDA ruled in a Grand Chamber formation that all Afghan women who refuse to be subjected to the measures taken against them by the Taliban are likely to be recognised as refugees because of their membership in the social group of Afghan women and girls.

OFPRA rejected an Afghan woman and her three children's asylum application. On appeal, the CNDA found that, based on a set of decrees, declarations, instructions and social norms, Afghan women and girls are treated differently by Afghan society and must be recognised as members of a particular social group eligible for refugee protection. The CNDA determined that the Taliban's significant discriminatory tactics constitute acts of persecution under Article 1A of the Refugee Convention and Afghan women and girls who refuse to be subjected to discriminatory measures that violate their fundamental rights and freedoms simply because they are female are likely to be eligible for refugee status.

In its decision, the CNDA cited the CJEU's decision in *WS v SAR*, which stated that women as a whole may be regarded as belonging to a social group under the recast QD and may qualify for refugee status if they are exposed, because of their gender, to physical or mental violence, including sexual violence and domestic violence, in their country of origin. In

addition, the CNDA used EUAA COI reports on Targeting Individuals (August 2022), Afghanistan Country Focus (December 2023) and Country Guidance Afghanistan (May 2024) to conclude that, since the Taliban took power, they have undermined the fundamental rights and freedoms of Afghan woman and girls.

Membership of a particular social group: HIV-positive individuals in Nigeria

Italy, Civil Court [Tribunali], *Applicant v Ministry of the Interior (Territorial Commission of Monza)*, R.G.29929/2023, 3 July 2024.

The Tribunal of Milan granted refugee status to a Nigerian woman based on her well-founded fear of persecution by non-state actors due to her membership in the particular social group of HIV-positive individuals in Nigeria.

An HIV-positive Nigerian woman whose application for international protection was initially rejected appealed upward to the Court of Cassation which remanded the case to the Tribunal of Milan for a re-examination.

The tribunal, based on relevant country of origin information, observed that in Nigeria, HIV is often viewed as a consequence of immoral behaviour, particularly linked to homosexuality. It also found that in Nigeria HIV is heavily stigmatised, leading to widespread discrimination, including workplace bias, job loss and a denial of medical treatment. Since there is no explicit legal prohibition against such discrimination and existing sanctions are ineffective, the tribunal held that this systemic mistreatment constitutes severe persecution, establishing a well-founded fear of harm for HIV-positive individuals if returned to Nigeria.

The tribunal deemed that persecution was perpetrated by non-state actors, such as the applicant's family or community, and that state protection was ineffective. Given the applicant's vulnerability and medical condition, it determined that there was a reasonable likelihood she would face discrimination and marginalisation upon a return due to her membership of a particular social group. Consequently, the tribunal recognised her as a refugee.

Gender-based persecution: Protection in the country of origin

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicants v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.35597 and 23.35599, 11 June 2024.

The District Court of the Hague seated in Zwolle granted international protection to two Turkish nationals, holding that temporary protection measures provided by the country of origin were not effective against persecution based on gender identity and sexual orientation.

Two Turkish applicants contested the rejection of their asylum applications submitted on grounds of gender-based violence by their family due to sexual orientation and gender identity. After facing multiple episodes of violence, abuse and threats, they left Istanbul. The State Secretary rejected the application on accounts of temporary protection measures which were provided by the Turkish authorities in 2020 and some support from several organisations.

The Court of the Hague seated in Zwolle upheld the appeal and considered that the State Secretary wrongly relied on previous

temporary and limited protective measures as it underlined that there should be strong reasons to demonstrate that acts of persecution or serious harm will not happen again or at all. On the contrary, the court considered that since the statements were found credible, the risk of persecution from non-state actors, especially in view of credible previous acts of persecution, should be presumed to persist upon a return unless proven otherwise. The court ruled that the two applicants would run a real risk of serious harm if returned to Türkiye and ordered the State Secretary to grant temporary asylum residence.

Italy, Civil Court [Tribunali], *Applicant* v *Ministry of the Interior (Territorial Commission of Rome)*, R.G. No 54397/2023, 9 July 2024.

The Tribunal of Rome granted refugee status to a woman from Tunisia who was subjected to domestic violence, citing the ineffective implementation of protective laws on gender-based violence and inadequate state protection.

The Territorial Commission of Rome rejected a Tunisian woman's application for international protection as manifestly unfounded. In appeal, she argued that Tunisia was unsafe for her due to her experiences of domestic violence by her stepfather and inadequate protection despite her attempts to seek help from the authorities.

The court reviewed relevant COI, which highlighted systemic issues in Tunisia for women's protection. Despite existing legal provisions, the court observed significant gaps in implementation, including inadequate police response, lack of trained personnel, insufficient funding and societal stigma. Thus, the court considered that this indicated that Tunisia's protective laws were undermined by systemic failures.

While considering the applicant's claims and the broader context in Tunisia, the court found that her experiences of severe abuse were credible and reflected systemic failures in protective mechanisms. Ultimately, the court found the applicant's fear of returning to Tunisia to be well-founded, meeting the criteria for membership in a particular social group and granted her refugee status.

Gender-based persecution: Trans women in Colombia

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202106747/1/V2, 5 June 2024.

The Council of State ruled that, although they face difficulties, trans women in Colombia are not systematically persecuted and an individual assessment of each case is necessary in conjunction with an examination of country information.

The Council of State reviewed the situation of trans people in Colombia, acknowledging both progressive legal protection and significant violence against the LGBTIQ community, particularly by the police. However, the council found that the number of violent incidents relative to the size of the trans community does not indicate systematic persecution.

The Council argued that the incidents, while serious, vary in severity and do not always meet the threshold for persecution or serious harm. The judgment also addressed discrimination faced by trans women in Colombia, who, according to

country of origin information, struggle to access public services, formal employment, healthcare and education. Despite these challenges, the council argued that the discrimination does not alone qualify trans women for international protection.

Although it acknowledged that access to justice and protection is not consistent and high levels of impunity persist, the council noted that trans individuals can access national protection mechanisms which are available to all Colombians and report crimes, and that prosecutions and convictions do occur.

The council concluded that the general security situation for trans woman in Colombia was not such that being an openly trans woman automatically leads to persecution or serious harm, and therefore, a thorough individual assessment is necessary in combination with the country of origin information.

Threshold to assess cessation of UNRWA assistance or protection

CJEU, *LN, SN* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, C-563/22, 13 June 2024.

The CJEU clarified that stateless persons of Palestinian origin who are registered with UNRWA should be granted refugee status if UNRWA's protection or assistance has ceased, meaning when UNRWA is unable, for whatever reason, to ensure dignified living conditions or minimum-security conditions.

The CJEU was requested by the Administrative Court of Sofia City to interpret the recast QD in the case of a mother and her minor daughter, both stateless persons of Palestinian origin, who left the city of Gaza and requested international protection in Bulgaria. After their first application was rejected, they lodged a subsequent application asserting their registration with UNRWA and the *de facto* cessation of their protection by UNRWA.

The CJEU held that UNRWA's protection or assistance must be considered to have ceased when the organisation isunable, for whatever reason, to ensure dignified living conditions or minimum-security conditions to stateless persons of Palestinian origin who are registered with UNRWA and have a habitual residence in its area of operations. The court noted that both the living conditions in the Gaza Strip and UNRWA's capacity to fulfil its mission have experienced an unprecedented deterioration due to the consequences of the events of 7 October 2023. The court further elaborated that the condition relating to the personal state of serious insecurity implies that that applicant must be personally confronted with serious insecurity in UNRWA's area of operations. However, it is not required that that state of serious personal insecurity presents particular characteristics specific to that applicant or is caused due to the particular situation of the latter. The reasoning was in line with its previous case law in *Bundesrepublik Deutschland* v *XT* (C-507/19, 13 January 2021). The court also highlighted that the assessment of these conditions must take into account the applicant's specific situation and degree of vulnerability.

Cessation of UNRWA assistance

France, Council of State [Conseil d'État], *French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA) v Applicant*, 449551, 11 July 2024.

The Council of State confirmed the CNDA assessment that UNRWA assistance or protection has ceased, in a judgment following up on the CJEU ruling of 5 October 2023.

The case concerned the reopening at the national level of the case which triggered the submission of questions before the CJEU by the Council of State in a judgment of 22 March 2022, *Office for the Protection of Refugees and Stateless Persons (OFPRA) v AB*. The CJEU answered the question in the ruling of 5 October 2023, *French Office for the Protection of Refugees and Stateless Persons v SW*, and the Council of State reiterated the findings.

The Council of State concluded that UNRWA could not provide sufficient access to medical treatment for the applicant and the medicine on which her life was dependent on and UNRWA could not ensure living conditions in line with its mandate of assistance, placing the applicant in a personal state of serious insecurity which could force her to leave Lebanon.

The CNDA had thus correctly assessed that UNRWA's protection or assistance in the sense of the recast QD, Article 12(1a), second sentence must be regarded as having ceased. The circumstance that the departure of the applicant from the UNRWA area of operation was not motivated by threats on her security and the required medical treatment which exceeds the general medical treatment provided have no impact in the overall assessment of the case.

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *BF v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, L512 2276189-1, 2 August 2024.

The Federal Administrative Court granted refugee protection to a Palestinian stateless person from Syria on the basis of the Refugee Convention, Article 1D, second sentence after finding that UNRWA cannot provide assistance or protection in areas of operations in Syria.

A stateless Palestinian from Syria was rejected asylum but granted subsidiary protection by the BFA. In appeal, the court found that the applicant failed to substantiate his claim of individual fear of persecution since he provided contradictory statements. However, the court noted that the applicant was registered as a refugee with UNRWA in Syria, thus he falls under Article 1D of the Refugee Convention which provides for exclusion from asylum unless UNRWA is unable to provide assistance or protection according to its mandate, resulting into *ipso facto* refugee status.

The court stated that, although the applicant has received UNRWA assistance in the past, currently UNRWA protection was unavailable for "reasons beyond his control and independent of his will" and ruled that since he cannot receive assistance in other areas of operation, he is entitled to refugee protection *ispo facto*.

Individual threat to life or physical integrity in Afghanistan

Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, E 746/2024-16, 13 June 2024.

The Constitutional Court confirmed based on an individual assessment and COI that there was no risk of individual threat for a rejected asylum applicant to return to Afghanistan. It assessed that the applicant would be able to rely on a wide family network in Afghanistan and on the good economic situation of his family.

The applicant challenged the refusal of his request for asylum and complained before the Constitutional Court that, contrary to the findings of the Federal Constitutional Court, Afghanistan's security and supply situation remained poor and had only slightly improved since the Taliban took power. The Constitutional Court dismissed the complaint, noting that the Federal Administrative Court made no errors in its proceedings and performed a reasonable case-by-case examination.

Based on COI, the court determined that there was no substantial individual threat to the applicant's life or physical integrity, under the ECHR, Article 2. Moreover, according to the EUAA COI Report Afghanistan-Country Focus (December 2023) and Country Guidance: Afghanistan (January 2023), the applicant would be in a good economic situation, as he was of working age, had spent most of his life in Afghanistan, had attended school for 12 years, had professional experience in building materials and typing, and his family owned a house, a farm and several cultivated properties.

However, the court also ruled that, upon implementation of the return measure, competent authorities are obliged to assess the risk of inhuman or degrading treatment under Article 3 of the ECHR, particularly regarding the current security and supply situation.

Subsidiary protection: Assessment of individual circumstances in the context of indiscriminate violence

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicants v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202400387/1/V2, 17 July 2024.

The Council of State ruled that the Minister for Asylum and Migration must always take into consideration the individual circumstances of an applicant when assessing the risk of indiscriminate violence.

The Minister for Asylum and Migration rejected the asylum applications of a Libyan family, deeming their claims of threats and injury to be implausible. The case was referred to the CJEU which delivered a preliminary ruling on 9 November 2023 in *X, Y and their six children v Staatssecretaris van Justitie en Veiligheid* (Case C- 125/22) and clarified that both general and individual circumstances must be considered when assessing claims under Article 15(c) of the recast QD.

Following the CJEU's ruling, the Court of the Hague ordered the Minister to reassess the case, but the Minister appealed, arguing that the level of indiscriminate violence in Tripoli was not

severe enough to justify consideration of the family's personal circumstances.

The Council of State upheld the Minister's decision, concluding that the family had not demonstrated a real risk of serious harm in Libya. However, referring directly to the CJEU's ruling, the court concluded that, even if the degree of indiscriminate violence in Tripoli was not extreme, the specific individual circumstances of the family must still be considered under Article 15(c). The court highlighted that the CJEU's ruling in case C-542/22 clarified that when there is some level of indiscriminate violence in an armed conflict, the risks faced by individuals, due to their unique personal circumstances, must be assessed.

Subsidiary protection: South Sudan

France, National Court of Asylum [Cour Nationale du Droit d'Asile], *M.J. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, 24009379 C+, 17 July 2024.

The National Court of Asylum (CNDA) ruled that South Kordofan in Sudan is experiencing a situation of indiscriminate violence of exceptional intensity.

A national of Sudan of Nuba ethnicity from Abu Kershola in South Kordofan, whose request for asylum was rejected by OFPRA, appealed against the negative decision.

The CNDA concluded that while the applicant did not meet the conditions for refugee status, he should be granted subsidiary protection. It noted that if the applicant was to return to South Kordofan, Sudan, he would run a real risk of suffering a serious threat to his life or person, simply by mere presence there as a civilian, without being able to obtain effective protection from the authorities of his country. The court noted that this threat was the consequence of a situation of violence of exceptional intensity, resulting from an internal armed conflict, which could extend indiscriminately to civilians. The court relied on a vast range of publicly available sources, in particular the EUAA Country of Origin Information Report Sudan - Country Focus: Security situation in selected areas and selected profiles affected by the conflict.

Subsidiary protection: Syria

Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) v Applicant*, 14 A 2847/19.A, 16 July 2024.

The Higher Administrative Court of North Rhine-Westphalia ruled that there is no serious general danger to life and limb of the civilian population in Syria due to the civil war. The judgment may be appealed with the Federal Administrative Court.

A Syrian national's request for refugee or subsidiary protection was rejected as manifestly unfounded by BAMF and the Higher Administrative Court of North Rhine-Westphalia. The court ruled that the applicant did not meet the requirements for being granted refugee status, as he was not threatened with political persecution in Syria, and he was excluded from protection due to the criminal offences he committed before entering Germany.

With regard to subsidiary protection, the court departed from the EUAA's Country of

Origin Information Report Syria-Security situation (October 2023) and Country Guidance: Syria (April 2024). The court held that the requirements to grant subsidiary protection, namely the serious, individual threat to the life or physical integrity of civilians because of arbitrary violence in the context of an internal conflict, in the province of Hasaka and in Syria, were no longer met. It noted that in the province of Hasaka there were still armed conflicts between Türkiye and allied militias against the Kurdish People's Protection Units (YPG). It added that the Islamic State also occasionally carries out attacks on Kurdish self-government facilities there.

However, the court concluded that the armed conflicts and attacks no longer reach such a level that there would be a serious general danger to life and limb of civilians, so they would not be generally at risk of being killed or injured in these conflicts and attacks in Syria. The court further added that the applicant was also excluded from subsidiary protection due to the crimes he committed before entering Germany.

The judgment is not final, as an appeal can be lodged with the Federal Administrative Court.

Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, Ra 2024/18/0151-13, 25 June 2024.

The Supreme Administrative Court annulled the refusal to grant subsidiary protection to a Syrian applicant due to deficiencies in the lower court's reasoning, including failure to consider relevant EUAA Country Guidance.

A Syrian national challenged the rejection of his asylum application first before the Federal Administrative Court and then the Supreme Administrative Court.

The Supreme Administrative Court cited the CJEU judgment in *PG v Bevándorlási és Menekültügyi Hivatal* (C-406/18, 19 March 2020), emphasising the importance of conducting an individual assessment, including considering relevant sources such as the EUAA Country Guidance and UNHCR guidelines. The court determined that the lower court failed to address personal security concerns when assessing the applicant's eligibility for subsidiary protection. It emphasised the widespread human rights violations in Syria and the lack of reliable protection for returnees, particularly in regime-controlled areas like Damascus. It also noted that most EU Member States and UNHCR consider Syria unsafe for a return.

The court found that the lower court did not adequately incorporate the EUAA Country Guidance - Syria (April 2024) but merely quoted some excerpts of the EUAA Country of Origin Information – Country Focus Syria (October 2023). Additionally, it noted that the lower court judgment overlooked individual risk factors, such as the applicant's participation in demonstrations and having relatives who were granted asylum in Austria. Consequently, the decision to deny subsidiary protection was annulled for procedural errors.

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA),* I411 2283115-1, 10 June 2024.

The Federal Administrative Court found that a Syrian applicant from the Al Hasaka region controlled by Kurdish forces was not likely to be subjected to persecution based on alleged military desertion but ruled that subsidiary protection must be granted.

The court found that the applicant, a Kurdish Muslim from the Al Hasaka Governorate (controlled by Kurdish forces), would not likely face persecution from the Syrian regime in his home region for deserting the military, as the regime has limited access to areas controlled by Kurdish forces. It also determined that, even if he had deserted the Syrian military, this alone does not qualify for refugee status unless connected to a convention ground. The court noted that he could safely return to his region through routes not controlled by the Syrian government and found no evidence of potential persecution by Kurdish forces.

However, the court stated that the information on the security situation in the applicant's home province showed that the level of indiscriminate violence in the Al Hasaka Governorate was so high that there are serious reasons to believe that a civilian returning there would face a real risk of being subjected to a serious threat merely by his/her presence. The court therefore granted subsidiary protection to the applicant.

Subsidiary protection: Ukraine

Cyprus, International Protection Administrative Court [Διοκητικο Δικαστηριο Διεθνους Προστασιας], *D.K. v Republic of Cyprus through the Asylum Service (Κυπριακή Δημοκρατία και/ή μέσω Υπηρεσίας Ασύλου),* 6697/2021, 7 June 2024.

The International Protection Administrative Court (IPAC) granted subsidiary protection to a Ukrainian citizen who was habitually residing in Mariupol, Donetsk.

IPAC concluded that the situation in the entire territory of Ukraine, and especially in the region where the applicant came from, is a situation of generalised violence, characterised by continuous, generally and prolonged levels of indiscriminate violence due to armed conflict of such a high degree that it would constitute a threat to the life of a citizen by mere presence in the respective area, within the meaning of the recast QD, Article 15(c). To motivate the decision and to elaborate on the concepts of armed conflict and indiscriminate violence, IPAC referred to extensive national jurisprudence from the Supreme Court of Cyprus, the CJEU, and the EASO Judicial Analysis on Article 15(c) of the Qualification Directive 2011/95/EU.

Exclusion from international protection

Belgium, Council of State [Raad van State - Conseil d'État], *Applicant v Commissioner General for Refugees and Stateless Persons (le Commissaire Général aux Réfugiés et aux Apatrides; de Commissaris-generaal voor de vluchtelingen en de staatlozen; CGRS; CGRA; CGVS)*, No 260.165, 18 June 2024.

The Council of State upheld the CALL decision to exclude an applicant by ruling that the key question was the legal qualification of the crimes under the Rome Statute and that ruling on exclusion does not affect the presumption of innocence of the applicant.

An applicant from the Democratic Republic of the Congo appealed against his exclusion from international protection and argued that CALL wrongly confirmed the CGRS decision, in violation of the EU Charter, the ECHR, the recast APD and the Refugee Convention because: i) the acts committed took place more than 20 years ago and the procedure leading to exclusion lasted 16 years; and ii) the principle of presumption of innocence was not respected.

The Council of State stated that the legal qualification of the acts under the Rome Statue had key importance in assessing exclusion and that it was demonstrated that the constitutive elements of the crimes, namely war crimes and armed conflict, were present, irrespective of whether the applicant was aware then or now of the legal qualification of the acts committed.

The Council of State clarified that exclusion from international protection does not affect the principle of presumption of innocence because the procedure is different from a criminal case and CALL only decided on whether there were serious reasons to believe that the applicant was guilty of war crimes, but it did not rule on criminal liability or charge.

Belgium, Council of State [Raad van State - Conseil d'État], *Belgian State represented by the State Secretary for Asylum and Migration (de Belgische staat, vertegenwoordigd door de Staatssecretaris voor Asiel en Migratie) v Lawyer of the applicant*, No 260.059, 7 July 2024.

The Council of State annulled a CALL decision on exclusion and clarified the national provision on exclusion criteria from subsidiary protection.

The Council of State clarified the criteria to exclude an asylum applicant from subsidiary protection as being differently provided under national law. By interpreting Article 9ter or Article 55/4 of the Aliens Act, the council stated that the requirement for exclusion is the existence of serious reasons to consider that a person committed the acts, and Article 55/4 concerns only the acts that could lead to exclusion without any of the provisions adding a condition on an actual danger to the host country when assessing exclusion from subsidiary protection.

Norway, Court of Appeal [Lagmannsrettane], *Directorate of Immigration (Utlendingsdirektoratet, UDI) v Applicant*, LB-2024-5105, 6 June 2024.

The Borgarting Court of Appeal ruled that a Syrian applicant's participation in an armed rebel force against the Assad regime did not amount to serious non-political crimes and that the requirements

for exclusion from refugee status had not been met.

The UDI and UNE determined that a Syrian applicant, who was a member of a rebel group in Syria and had engaged in fighting and fired weapons, had committed a serious non-political crime and was therefore not eligible for international protection.

The applicant filed an appeal before the Court of Appeal, and the majority of the panel concluded that the applicant's participation in armed rebel forces with the aim of overthrowing the Assad regime in Syria did not amount to a serious non-political crime, even if it was assumed that attempted murder and complicity to murder had occurred during the fighting.

The court ruled by a majority opinion that it would not be against the principles guiding the rules on exclusion from asylum to grant asylum to combatants from non-international armed conflicts who are at the time of decision reasonably afraid of facing serious persecution in their home country. The majority opinion extensively relied on the reasoning in UNHCR's Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees.

They also pointed out that the application of humanitarian law is a critical factor in determining proportionality, and the asylum seeker should be granted international amnesty for the offences he committed. The court concluded, in the majority opinion, that there were no reasons to consider that the applicant committed serious non-political crimes.

Norway, District Court [Noreg Domstolar], *Applicant v Directorate of Immigration (Utlendingsdirektoratet, UDI)*, TOSL-2023-189595, 12 June 2024.

The Oslo District Court determined that the decision to exclude the applicant from being granted refugee status was lawful since he committed serious non-political crimes in his home country.

An ethnic Kurd from Türkiye joined the PKK youth organisation in 2014 and took part in 18-19 acts for them. Based on the use of false identity documents, he was granted international protection in Norway in June 2015. The authorities revoked the residence permit after a police inquiry revealed his true identity. The decision noted that, although he qualified for refugee protection, he was excluded due to having committed serious non-political crimes in his home country.

The Oslo District Court rejected his appeal and noted, based on his statements, that he had explained that he hated the Turkish authorities and wanted to avenge discrimination and violence in the military. However, the court considered that several acts against civilians were qualified as serious non-political crimes, for example the episode where a teacher was shot in the foot. Also, the court found that the applicant's attack on drug dealers and the acts against the police were deemed non-political crimes.

The applicant's exclusion was not considered disproportionate because he was protected from a return under Section 74 of the Immigration Act, and he was granted a limited residence permit. The court further confirmed the UNE's decision not to grant a residence permit on humanitarian grounds.

Sweden, Migration Court of Appeal [Migrationsöverdomstolen], *Applicant v Swedish Migration Agency (Migrationsverket, SMA)*, UM 10975-23, 14 June 2024.

The Migration Court of Appeal held that an Eritrean applicant must be excluded from international protection due to his involvement in acts contrary to the purposes and principles of the UN, as he illegally contributed to the collection of a diaspora tax while he worked at an Eritrean embassy abroad, as confirmed by a UN Security Council Resolution in force from 5 December 2011 to 14 November 2018.

An Eritrean national who had worked for an Eritrean embassy abroad and who was involved in the application of a diaspora tax by the state, was denied asylum in Sweden in June 2023, as it was considered that these acts were contrary to the purposes and principles of the UN.

On appeal, the court held that by reserving the right to consular services with the payment of a diaspora tax and the submission of a letter of repentance, the applicant had actively contributed to collecting the tax from Eritreans living abroad on behalf of the Eritrean state. It also added that his activities were related to international cooperation, so they had an international dimension as requested in order to apply this exclusion ground. The court also considered that the eventual annulment of the UN resolution did not lead to a different assessment, especially considering that the resolution was not cancelled because the information on unlawful recovery was incorrect or because the violations at Eritrean missions ceased.

The court further added that there was no evidence that Mr A tried to limit the damage or ensure that illegal methods were not used in the collection of the diaspora tax, or that he tried to change his duties or leave his post, but it was only when he was called home to Eritrea that he chose to leave his employment.

On the applicant's argument that he risked the death penalty if he refused orders or had not carried out his duties, the court held that there was no evidence that there would have been an imminent threat to his life or danger of serious bodily harm for this reason.

Applications by beneficiaries of international protection in another Member State

CJEU, *QY v Bundesrepublik Deutschland*, C-753/22, 18 June 2024.

The CJEU ruled that Member States are not required to automatically recognise refugee status granted in another Member State.

A Syrian national who was a beneficiary of refugee status in Greece requested asylum in Germany. It was determined that she could not be returned to Greece due to the poor living condition of refugees there and was granted subsidiary protection by the Germany determining authorities. The applicant appealed this decision, and the German Federal Administrative Court requested a preliminary ruling from the CJEU.

The CJEU ruled that Member States are not required to recognise automatically decisions granting refugee status adopted by another Member State, however it is at their discretion to do so. The court noted that when the competent authority cannot reject as inadmissible the asylum request of an applicant to whom another Member State granted protection, it must carry out

a new individual, full and up-to-date examination of the case, taking into account the elements of the previous decision and participating in an exchange of information with the other Member State.

Netherlands, Court of The Hague [Rechtbank Den Haag], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant*, NL23.5666, 3 June 2024.

The District Court of the Hague seated in Arnhem ruled that the State Secretary was incorrect to consider Denmark a third country when declaring inadmissible an application of a Syrian applicant who is a beneficiary of international protection in Denmark and ruled that the principle of mutual trust can be relied upon.

A Syrian national applied for asylum in the Netherlands, and her application was deemed inadmissible as she was a beneficiary of international protection in Denmark.

In the appeal, the court cited the CJEU judgment in *SI, TL, ND, VH, YT, HN v Bundesrepublik Deutchland* (C-497/21) and found that Denmark should be considered the responsible Member State to assess the application's admissibility, even though it is not bound by the recast APD. Moreover, the court noted that the concept of international protection under the Aliens Act 2000, Article 30a(1a) includes any protection status granted by a Member State, not just those assessed under the recast APD or recast QD. It found that the applicant's status in Denmark qualified as international protection under Article 30a(1a). The court concluded that the State Secretary should have based the grounds of inadmissibility on Article 30a(1a) rather than Article 30a(1b) of the Aliens Act 2000.

Regarding mutual trust and indirect *refoulement*, the court referred to the CJEU judgment in Ministero dell'Interno and Others (Cases C-228/21, C-254/21, C-297/21, C-315/21, and C-328/21). It ruled that it was unnecessary to assess these risks further and that the principle of mutual trust applied, as the applicant did not provide concrete evidence against Denmark's protection standards.

The court concluded that, while the State Secretary correctly declared the application inadmissible, it was based on incorrect grounds. Hence it upheld the decision's legal effects and instructed the applicant to return to Denmark.

Humanitarian protection: Vulnerable persons

Spain, Supreme Court, *Applicant v Ministry of the Interior (Ministerio del Interior)*, 3385/2024, 17 June 2024.

The Supreme Court annulled the decision of Audiencia Nacional rejecting humanitarian protection to the applicants and fixed the interpretational doctrine of Articles 37 and 46 of the Spanish Asylum Law.

A Colombian single mother and her three children received rejections to their applications for international protection from first and second instance courts. In the rejected decisions there was no reference to the fact that the applicants are legally defined as vulnerable, nor to the possibility of the applicants to reside in Spain for humanitarian reasons.

On appeal, the Supreme Court noted that there was 'cassational interest' to determine the nature and effects of the differential treatment that must be given to international protection applicants who are in a situation of vulnerability, and the

significance of such treatment as to the possibility of granting them an authorisation to reside based on humanitarian reasons.

The court highlighted that the Spanish Asylum Law envisages two regimes to grant humanitarian protection, a general one and a more specific one. It noted that the Audiencia Nacional had erred in considering that the applicants had failed in not providing specific reasons to justify their stay based on humanitarian reasons, for the specific regime of Article 46(1) and (2) of the Asylum Law applies to them. In that respect, the applicants are by law already defined as vulnerable persons. Thus, there is not an additional requirement to claim different reasons from those raised in the initial claim for international protection.

The Supreme Court clarified that to assess the granting of humanitarian protection, it is not necessary to assert the individual persecution of the applicant. It is rather the social conflict and how the social conflict in the country of origin affects the specific person, which can be corroborated by country of origin information or any other submitted evidence. In addition, the court highlighted that protection based on humanitarian reasons does not relate to any type of general humanitarian reasons. Instead, the claimed humanitarian reasons must be related to a real, tangible risk of a lack of protection due to conflict or serious political, ethnic or religious clashes.

To this end, it is crucial to evaluate whether there are reasons or circumstances that would affect the fundamental rights of the applicant upon a return to the country of origin. The alleged humanitarian reasons must be sufficiently specific with respect to the personal situation of the applicant and the conditions in the country of origin.

The Supreme Court considered that the reiterated extortion experienced by the applicant in Colombia was sufficiently meaningful to entail a real risk to herself and her children.

Reception

Appointment of a legal representative for unaccompanied minors

Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Jugendamt v Applicant*, 12S 1700/23, 11 July 2024.

The Higher Administrative Court of Baden-Württemberg found a procedural error in not appointing a legal representative in the age determination procedure for an unaccompanied minor. It stated that the recast RCD must be applied directly and reiterated the requirements for representation.

In a case where an unaccompanied minor was not appointed a legal guardian or legal representative for the age assessment procedure, the Higher Administrative Court reaffirmed its previous case law[4] that failure to appoint a representative pursuant to the recast RCD, Article 24(1)(1) resulted in a significant procedural error which was neither remedied pursuant to Section 41 SGB X nor irrelevant pursuant to Section 42(1)(1), sentence 1 of the Social Welfare Law VIII (SGB). The court highlighted that Social Welfare has a legal obligation derived from the recast RCD to appoint a legal representative for the age determination procedure, due to direct application of this requirement from the recast RCD since it has not been implemented into national law.

The court explained that the legal representative, within the meaning of the recast RCD, is a person who ensures that an unaccompanied minor benefit of the measures enshrined in the recast RCD. Thus, the legal representative should have sound knowledge of the procedural law but also of protection needs, such the overall development of a minor.

The court referred to the EASO/IARMJ-Europe, Judicial Analysis, Need for Protection in the Context of Applications for International Protection, 2021 and the ECtHR judgment in *Darboe and Camara v Italy* (Case 5797/17, 21 July 2022).

Sanctions for breaking reception centre rules

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, W117 2278420-3, 17 June 2024.

The Federal Administrative Court upheld the suspension of material reception conditions in cash as a sanction against a Syrian minor applicant for serious and repeated breaches of house rules, considering that the measure was proportionate and aligned with the best interests of the child.

A Syrian minor applicant for international protection was accommodated in a care facility for unaccompanied minor asylum seekers. Due to serious and repetitive beaches of the house rules and following discussions between the applicant and the Federal Office for Immigration and

[4] A similar judgment was issued in April 2024, see Quarterly Overview of Asylum Case Law, Issue No 2/2024.

Asylum (BFA), the office suspended his pocket money for the remaining time in the centre.

In appeal, the Federal Administrative Court confirmed the decision based on the fact that the applicant's misconduct was repetitive and consisted of severe violations of the house rules during a short period of time. The court underlined the need to ensure respect for the best interests of the child and of the proportionality principle, referring to the CJEU judgment, *Zubair Haqbin v Belgium* (C-233/18, 12 November 2019). However, it rejected the appeal as it found the measure legally correct and proportionate. It ruled that the suspension of pocket money did not affect the applicant's ability to meet his essential needs or impact his overall development or standard of living.

Human rights concerns over lack of access to reception

Ireland, High Court, *Irish Human Rights and Equality Commission v Minister for Children, Equality, Disability, Integration and Youth & Ors*, [2024] IEHC 493, 1 August 2024.

The High Court ruled that the state breached the right to human dignity of unaccommodated international protection applicants, in violation of their rights guaranteed by Article 1 of the EU Charter.

The case concerned the Irish state's inability to provide accommodation and related services to international protection applicants between December 2023 and May 2024.

The Irish Human Rights and Equality Commission (HREC), the National Human Rights Institution and the National Equality Body, for the first time exercised their power under Section 41 of the Irish Human Rights and Equality Act to initiate proceedings before the High Court concerning the human rights of a class of persons, namely international protection applicants who arrived in Ireland after December 2023 and were left unaccommodated. The state questioned whether the HREC could exercise this power under Section 41, but the High Court confirmed its competence to file judicial action over the rights of third parties.

Moreover, the High Court ruled that the Irish state's approach breached the human rights of unaccommodated international protection applicants, in particular, the right to human dignity enshrined in Article 1 of the EU Charter, and referred to the relevant CJEU ruling in *Federaal agentschap voor de opvang van asielzoekers (Belgium, Fedasil) v S. Saciri and Others*, where the court drew a direct connection between the recast RCD and the requirements of Article 1 of the Charter.

The High Court granted the HREC declaratory relief but denied the mandatory orders sought, as it determined that there were sufficient grounds to conclude that the state would not ignore its obligations, given the latter had made significant efforts to improve the situation for unaccommodated international protection applicants in response to the High Court's rulings in 2023.

Detention

ECtHR judgments on detention

ECtHR, *S.H. v Hungary*, 47321/19, 20 June 2024.

The ECtHR ruled that Hungary violated Articles 3 and 5 of the ECHR for the detention of an Iranian woman in the Tompa transit zone from 18 January 2018 to 4 March 2019, which included a period of isolation due to her risk of committing suicide, without providing adequate mental health care.

An Iranian applicant entered the Tompa transit zone at the Serbian-Hungarian and requested asylum in Hungary. Her application was rejected and she appealed the decision. The administrative and labour court suspended the examination of her appeal and submitted a preliminary reference to the CJEU.

Under Article 3 of the ECHR, the applicant claimed that the conditions in which she was held in the transit zone were inhuman and degrading and that there was a lack of an effective remedy. The court noted that she was placed in an isolation sector due to a risk of suicide, but there was no psychiatric evaluation, or medical records provided. It referred to its previous judgment in *R.R. and Others*, where it found that conditions in the isolation sector were more restrictive than in other sectors. Although isolation reduced harassment risks, it deteriorated her mental health due to inadequate medical care. The court concluded that the authorities violated Article 3 by failing to provide appropriate mental health care.

The applicant also complained under Article 5(1) and (4) of the ECHR about her 13-month confinement in the transit zone. The court found that this situation was similar to the case examined in *R.R. and Others*, where a stay of nearly 4 months was deemed a *de facto* deprivation of liberty. The same conclusion was reached in this case, leading to a finding of a violation of Article 5(1) and (4).

ECtHR, *K.A. v Cyprus*, No 63076/19, 2 July 2024.

The ECtHR found a violation of Article 5(4) of the ECHR due to the length of the appeal procedure against the lawfulness of the detention measure applied for an asylum applicant from Morocco after arrival in Cyprus.

The court ruled on the legality of the detention of a Moroccan national upon his arrival in Cyprus based on national security concerns and the lengthy nature of the domestic legal proceedings. The applicant argued that his detention from 10 January 2019 to 24 February 2020, and again from 3 April 2020 to June 2020, was unlawful. The court concluded that there was a violation of Article 5(4) of the ECHR which pertains to the right to a speedy judicial procedure to assess the lawfulness of detention.

ECtHR, *B.A. v Cyprus*, No 24607/20, 2 July 2024.

The ECtHR found violations of Article 5(1) and (4) of the ECHR concerning the detention of a Syrian asylum seeker on grounds of national security.

A Syrian national entered Cyprus in January 2019 and sought asylum. After being flagged as a potential national security threat, he was detained from February 2019 until November 2021. The applicant challenged his detention before the Cypriot courts, but his appeals were rejected.

Before the ECtHR, he claimed that his detention violated Article 5(1) of the ECHR, and the court found that, while the applicant's detention may have been lawful under domestic law, it was not sufficiently linked to preventing unauthorised entry into the country, as required under Article 5(1). The court noted that his detention was based solely on national security grounds, without a clear connection to the examination of his asylum claim. Additionally, the prolonged detention of over 2 years and 9 months was deemed arbitrary, especially in the absence of a time limit under the Refugee Law.

The court also found a violation of Article 5(4) of the ECHR due to the lengthy appeal proceedings, which lasted over2 years and were not conducted promptly, even considering the difficulties posed by the COVID-19 pandemic. Therefore, the court concluded that the applicant's detention was both arbitrary and unlawfully prolonged, constituting violations of Article 5(1) and (4) of the ECHR.

Scope of a judicial review

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL24.20258m NL24.21272 and NL24.21362, 4 June 2024.

The Court of the Hague seated in Roermond referred a question to the CJEU on the scope of the judicial review of consecutive detention measures.

The Court of the Hague seated in Roermond submitted a question to the CJEU for a preliminary ruling on the impact of a judicial review of consecutive detention measures when the judicial body finds that one period of detention has been or has become unlawful. In fact, an applicant was detained continuously based on two detention measures, and the court found that the first one, regarding the implementation of a Dublin transfer to Spain, was unlawful. He was kept in custody and a second measure was imposed, aiming at ensuring the removal to the country of origin.

The question addressed in the case C-387/24 is:

> *Should Article 15(2), introductory phrase and (b) of Directive 2008/115, Article 9(3) of Directive 2013/33 and Article 28(4) of Regulation No 604/2013 3 , read in conjunction with Articles 6 and 47 of the EU Charter, be interpreted as meaning that the judicial authority is always obliged to release the person detained immediately if the detention has been or has become unlawful at any time during the uninterrupted execution of a series of successive detention measures?*

Detention pending an appeal

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202307746/1/V3, 28 June 2024.

The Council of State ruled that a measure of deprivation of liberty which was prolonged for 5 weeks until the scheduled hearing of an appeal against an asylum decision was lawful in light of the recast RCD, Article 9(1).

The State Secretary for Justice and Security detained an Indian national at Schiphol International Airport. The application for international protection was denied, and the Court of the Hague ruled that the restriction of liberty must be lifted as the appeal hearing was scheduled in 5 weeks, which exceeded the 4-week time limit to rule on an appeal, thus the detention measure was no longer justifiable.

The State Secretary appealed before the Council of State, which referred to the CJEU judgement in *C, B and X v State Secretary for Justice and Security*, to rule that detention is only permissible in compliance with the rules laid down in the recast RCD, Article 9(1).

The council ruled that there was no delay in the administrative procedure relevant to the grounds for deprivation of liberty mentioned in the recast RCD, Articles 8(3) and 9(1) and the District Court determined that the delay was caused by legal rather than administrative actions. The council stated that the State Secretary had made a timely judgement on the asylum application and the appeal was to be heard in the near future. The council noted that the applicant had been in border custody for 6.5 weeks at the time of the scheduled hearing, and the court determined that the deprivation of liberty had not been extended unnecessarily, contrary to Article 9(1).

Legal assistance to challenge detention

Cyprus, International Protection Administrative Court [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *Applicant v Lawyer of the Republic*, No 103/2024, 7 July 2024.

An asylum applicant detained on grounds of national security or public order was granted legal aid to challenge his detention as the conditions provided by the Legal Aid law were met.

An applicant from the Democratic Republic of the Congo who was detained on grounds of national security or public order requested legal aid to lodge an appeal against the decision ordering his detention.

The judge determined that Article 6B(7a) of the Legal Aid Law of 2002 was satisfied, as the legal aid concerned proceedings at first instance and not before the Supreme Court. According to Article 7 of the same law, the applicant was eligible for legal aid due to his lack of economic resources and the seriousness of the case. In the absence of a Social Welfare Services report, the judge evaluated the applicant's socio-economic status based on his application form and statements made during the hearing. The applicant was found to be unemployed, unmarried, childless and without significant assets.

Given these circumstances and the serious nature of the case, the judge concluded

that legal aid was crucial to ensure justice. Consequently, the judge ordered the registry office to appoint a lawyer to represent the applicant.

Procedural deadlines for detention pending a return

Italy, Supreme Court of Cassation - Civil section [Corte Supreme di Cassazione], *Applicant v Ministry of the Interior (Ministero dell'Interno)*, No 16707/2024, 17 June 2024.

The Court of Cassation annulled the extension of the detention of a foreigner pending a return, deeming it invalid due to a violation of procedural deadlines.

Following the applicant's detention at a pre-repatriation centre for an initial 30 days, the Justice of Peace extended it for another 30 days. In an onward appeal, the Court of Cassation annulled the extension due to a breach of procedural deadlines. Under Article 14(5) of Legislative Decree No 286/1998, detention can be extended by 30 days, with a further 30 days for nationals from countries with return agreements.

In this case, the extension hearing occurred after the permissible deadline expired. The court emphasised that any deprivation of liberty must strictly follow legal deadlines and procedures and a failure to adhere to these timelines invalidates the detention order.

No prospects of a return

Greece, Administrative Court [Διοικητικό Πρωτοδικείο], *Applicant v Greek State (represented by Minister for Citizen Protection),* No Π2087/2024, 21 June 2024.

The First Instance Administrative Court of Corinth ordered the release from detention of an Afghan asylum applicant ruling that there was no real prospect of returning him to Türkiye and Afghanistan. However, it imposed the duty to report once a week to the police pending the outcome of his asylum application.

An Afghan national was arrested on 2 March 2024 in Patras for irregular entry and stay in Greece and provisionally detained because he was suspected of absconding. Additionally, a return decision to his country of origin was adopted and his detention extended for a period that could not exceed 6 months.

While in detention, the applicant lodged his application for international protection on 10 June 2024. Subsequently, the director of the Corinth Police Directorate decided to detain the applicant for a period of 50 days from 10 June since the elements of his asylum applications were to be determined.

In an appeal against the last detention order, the court noted, based on documents submitted by the Director and the Deputy Director of the Migration Management Directorate of the Hellenic Police Headquarters, that procedures for returns to Afghanistan has been suspended since 8 July 2021, and readmission of third-country nationals to Türkiye have been suspended since March 2020. The court ruled that there was no evidence to suggest that this suspension

will be lifted immediately or at a time which would not exceed the time limits contained in Article 30(5) and (6) of Law No 3907/2011 (transposing Article 15(4) of the Return Directive).

Since the police had not taken any action leading to the readmission of the applicant to Türkiye or the return to his country of origin, the court considered that the detention lacked a legal basis because there was no reasonable prospect of removal. The court cited the CJEU judgment *Kadzoev* (C-357/09, 30 November 2009) in its reasoning.

The court ordered the release of the applicant but imposed an obligation of the applicant to appear once a week before the police authority of his place of residence, on a day and time to be determined by the police authority.

Content of protection

Extradition of a refugee status holder from another Member State

CJEU, *A. v Generalstaatsanwaltschaft Hamm*, C-352/22, 18 June 2024.

The CJEU held that a third-country national cannot be extradited to the country of origin if that person is recognised as refugee in another Member State. The competent authority must contact the authority that granted protection and cannot extradite the person as long as protection has not been revoked or withdrawn.

A Turkish national of Kurdish origin who was recognised as a refugee in Italy in 2010 on the ground that he was at risk of political persecution by the Turkish authorities because of his support for the Kurdistan Workers' Party (PKK) was suspected of murder. For this reason, Türkiye requested Germany, his country of residency, to extradite him. The German court hearing the case requested a preliminary ruling from the CJEU.

The CJEU replied that refugee status granted in Italy precludes the extradition of the person to the country of origin which he fled, and if refugee status has not been revoked or withdrawn by the Italian authorities, extradition must be refused, as extradition would end that status.

The CJEU also added that the competent German authority must contact the Italian authority that granted refugee status, and if the Italian authority revokes or withdraws refugee status, the German authority must conclude that the person is no longer a refugee and there is no serious risk that, in the event of that person's extradition, he would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment in Türkiye.

Extradition pending the outcome of an application for international protection

Greece, Hellenic Council of State, *Applicant v Hellenic Ministry of Justice, 1129/2024*, 15 July 2024.

The Council of State ruled that the Ministry of Justice is not precluded to issue an extradition decision until a final decision on the request for international protection is adopted and that the execution of the extradition is automatically suspended pending the outcome on international protection.

A citizen of Türkiye sought the annulment of the decision of the Deputy Minister of Justice to extradite him to his country of origin.

The Council of State concluded that the relevant national laws do not preclude the Minister of Justice from issuing an extradition decision before the decision on the request for international protection becomes final. It noted that the fact that the extradition decision precedes the final decision on the request for international protection does not demonstrate an abuse of power. The Council of State highlighted that an extradition decision may be issued, but its execution is automatically suspended until the decision on his request for international protection becomes final.

It was noted that the formulation of finality of the decision on an application for international protection as envisaged in national law is in accordance with the CEAS, Article 47 of the EU Charter and the Greek Constitution.

Eligibility for permanent residence status when protection was acquired after lodging a subsequent application

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant v Finnish Immigration Service (Maahanmuuttovirasto, FIS)*, KHO:2024:87, 11 June 2024.

The Supreme Administrative Court ruled that the date from which a beneficiary of international protection is eligible for a permanent residence permit is the date of entry, even when the status was acquired following the lodging of a subsequent application.

A beneficiary of asylum was granted protection after lodging a third subsequent application for international protection and requested permanent residence permit in Finland. The Supreme Administrative Court ruled that according to the Aliens Act, Section 56(4) if a residence permit has been obtained based on refugee status or subsidiary protection, the 4-year period is calculated from the date of entry. The court held that this provision places beneficiaries of international protection in a different position from other foreigners for the conditions to be fulfilled for acquiring a permanent residence permit.

In a dissenting opinion, two judges held that the preparatory work for the Aliens Act did not consider explicitly a situation where a person applied for international protection for the second time after receiving a negative decision.

Refusal to grant a travel document to a refugee status holder

Greece, Hellenic Council of State, *Applicant v Greek Asylum Service (Υπηρεσία Ασύλου)*, 1107/2024, 18 July 2024.

The Council of State ruled that refusing to grant a travel document to a recognised refugee is possible only after an individualised assessment is performed by the Asylum Service on reasons of public order and security.

The Council of State clarified the wording of Article 1(2) of KYA 10302/29.5.2020. It ruled that the article, which does not leave room for an individualised assessment by the administrative authority establishing an automatic rejection of the issuance of a travel document to a recognised refugee if convicted for certain offences, is in breach of its enabling provision Article 25 (2) of Law 4636/2019. It highlighted that the reading of the provision demands that the authority issues an individualised decision on the request for a travel document after assessing the personal circumstances of the refugee, the specific facts of the case, the seriousness of the offense committed, the criminal conviction, the time elapsed since the conviction and any other relevant element.

The Council of State ruled that the choice of the legislature to assign to an administrative body, the Asylum Service, the competence to decide which specific facts constitute an imperative reason of national security or public order that prevents the granting of the requested travel document is in accordance with the provisions of the recast QD and with the relevant jurisprudence of the CJEU.

Right to private life

Switzerland, Federal Court [Bundesgericht - Tribunal fédéral], *Applicant v Service de la population et des migrants du canton de Fribourg*, 2C_157/2023, 23 July 2024.

The Federal Tribunal clarified the right to a residence permit for a young Syrian applicant who was placed on a disadvantageous situation due to her status under provisional admission.

The Federal Tribunal allowed an onward appeal submitted by a young Syrian girl, aged 15, against the refusal to be granted the right to a residence permit. The applicant had a residence status under provisional admission, after rejection of her asylum application. The tribunal considered that the applicant was placed in a disadvantageous situation due to her residence status and ruled that the refusal to grant a residence permit constituted an interference with the applicant's right to private life, as protected under Article 8 of the ECHR. The tribunal found that approaching the age of majority implies a higher need to travel abroad for scholastic exchanges and the applicant showed that she integrated very well and had excellent results in school and in the French language. Also, the tribunal mentioned that there were no prospects of a return to Syria in the foreseeable future.

Revocation of a residence permit due to false information

Norway, Court of Appeal [Lagmannsrettane], *Applicant v Directorate of Immigration (Utlendingsdirektoratet, UDI)*, LB-2023-190064, 17 June 2024.

The Borgarting Court of Appeal ruled that the decision to revoke an Uzbek national's residence permit and not renew his residence permit for refugee status was valid as he had provided false information during his asylum application.

The applicant stated that he had not been in Uzbekistan following the rejection of his first application for international protection. However, his passport showed that the applicant had been in Uzbekistan, which resulted in his residence permit being revoked because he had provided false information.

The Court of Appeal affirmed the decision to revoke the applicant's residence permit, ruling that the information was important to the asylum determination and that the applicant's claim that he did not disclose the correct information because he did not trust the Norwegian authorities was not credible. The court further ruled that the applicant had no well-founded fear of persecution upon a return or because of his claimed conversion to Islam, and that neither the general security situation nor the applicant's individual circumstances justified protection.

Norway, District Court [Noreg Domstolar], *Applicant v Directorate of Immigration (Utlendingsdirektoratet*, UDI), TOSL-2024-58046, 12 July 2024.

The Oslo District Court ruled that the revocation of a residence permit given to an Ethiopian national was unlawful since the UNE failed to properly assess key elements, specifically that the applicant was a minor subject to a forced marriage at the time.

The UNE validated in the appeal the revocation of the residence permit of A, an Ethiopian national who was granted family reunification with B, her husband, a recognised refugee. In fact, when A applied for humanitarian residence on her own behalf after separating from B, the UDI learnt that she provided false information on her identity and revealed that she was forced to marry B and given a new identity after marriage. Consequently, the request for humanitarian residence was rejected and her residence permit revoked.

In an onward appeal, the Oslo District Court stated that the UNE failed to properly assess that she was forced to marry as a minor and provided with false identity documents, as well as the fact that her initial erroneous information was provided under duress. Since the error affected both decisions on revocation and humanitarian residence, the court annulled them and ordered a suspensive effect on the implementation of a return.

Family reunification

ECtHR, *Okubamichael Debru v Sweden*, 49755/18, 25 July 2024.

The ECtHR found no violation of Article 8 concerning an application for family reunification submitted by an applicant from Ethiopia in Sweden.

An Ethiopian applicant argued that the refusal of family reunification in Sweden was contrary to Article 8 of the ECHR. The court noted that the refusal was justified because the maintenance requirement was not fulfilled and the applicant applied outside the three months exemption period, thus the national authorities duly assessed the circumstances of the case. The applicant was able to keep contact with family members who were residing in Uganda as asylum seekers and there were no exceptional reasons to be exempted from the financial requirement.

Thus, the court found that national authorities struck a fair balance between the private interest of the applicant and the state interest to control immigration and found no breach of Article 8 of the ECHR.

Ireland, Court of Appeal , *Sibanda v The Minister for Justice and Equality & Ors*, [2024] IECA 206, 30 July 2024.

The Court of Appeal determined that adult children are not eligible family members for family reunification, unless there is more than an emotional dependency between the applicant and an adult child.

An applicant from Zimbabwe applied for family reunification with her three children after having been granted asylum. The request was rejected for her eldest daughter who was an adult at the time of the submission of the application.

In the appeal, the applicant argued that there was an infringement of the right to equality, because the processing of her own asylum application was delayed, time lapsed and her daughter reached the age of majority when the application for family reunification was submitted.

While acknowledging the human dimension, the court reiterated that family reunification with an adult child is possible in cases where the dependency between the parent and the adult child surpasses the normal emotional bond. The court also mentioned that the age of the children at the time of the parent's asylum application or prior to the application for family reunification is not assessed.

Norway, District Court [Noreg Domstolar], *Applicants v Directorate of Immigration (Utlendingsdirektoratet, UDI)*, TOSL-2023-173165, 8 July 2024.

The Oslo District Court ruled that the family members of a recognised refugee did not meet the requirement to produce documents for family reunification and the negative decision did not violate Article 8 of the ECHR.

An Eritrean family was rejected family reunification due to a lack of passports. In an onward appeal, the District Court of Oslo confirmed the negative decision and stated that the UDI correctly assessed that the applicants did not meet the passport requirements as provided by national legislation. It stated that there were no reasons to allow an exemption from this requirement since Eritrea has a functional administration and documents could be also acquired from embassies in Sudan or Ethiopia, and the applicants did not prove any impediments or that the Eritrean authorities would react adversely to such

request. The court also found that there was not violation of Article 8 of the ECHR.

Revocation of subsidiary protection

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, A 12 K 2656/23, 3 June 2024.

The Administrative Court of Karlsruhe upheld BAMF's decision to revoke subsidiary protection for a Syrian applicant, ruling that the conduct of the applicant and the gravity of the rape constitute a serious crime and grounds for exclusion.

After having been granted subsidiary protection, a Syrian national committed multiple offenses in Germany, culminating in a rape conviction. Subsequently, BAMF revoked his protection status, and the applicant appealed before the Administrative Court of Karlsruhe.

The court upheld BAMF's decision, finding that the conviction for rape met the criteria for a serious crime warranting revocation of subsidiary protection. It emphasised the severe nature of the crime, noting that the brutality and coercive elements of the rape highlighted its gravity. The court also took into account the applicant's prior history of violent offenses and the continuous suffering of the victim.

Temporary protection

Eligibility for protection

Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 11 S1425/23, 18 June 2024.

The Higher Administrative Court of Baden-Württemberg confirmed that a Russian national was not eligible for temporary protection as she could safely return to her country of origin and her Ukrainian partner was still residing in Ukraine.

A Russian national was rejected temporary protection in Germany on grounds that she was able to return safely to her country after the war in Ukraine started. The Higher Administrative Court of Baden-Württemberg confirmed that the applicant did not belong to any of the eligible categories for temporary protection. Based on country-of-origin information and her individual situation, the court found that she could undertake a safe and durable return to her country, where she can secure her livelihood and medical treatment. Also, the applicant was not eligible as a family member of a Ukrainian national because her partner remained in Ukraine and was not displaced.

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A v State Secretariat for Migration (Staatssekretariat für Migration, SEM)*, E-3859/2024, 28 June 2024.

The Federal Administrative Court referred a case back for a re-assessment of the eligibility of a Ukrainian national for temporary protection.

A Ukrainian national was rejected temporary protection in Switzerland on grounds of holding a tourist visa for the USA and a refugee visa for Canada, converted into a tourist visa which was valid until 31 March 2024. FAC considered that SEM had insufficiently investigated whether the USA or Canada would be valid alternatives to protection that can be given by Switzerland, based on the principle of subsidiarity of protection.

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL23.9121, 4 July 2024.

The Court of the Hague seated in Arnhem confirmed that a Ukrainian national who was not residing in Ukraine after 27 November 2021 was not eligible for temporary protection despite a short visit to Ukraine after the war broke.

A Ukrainian national contested the negative decision on his request for temporary protection. The Court of the Hague seated in Arnhem noted that the applicant left Ukraine on 21 November 2021 to join his Belarussian daughter and wife in Belarus and came back to Ukraine in March 2022 for a one-day visit to collect documents. As such, the court agreed with the State Secretary that the applicant did not have residence in Ukraine when the war broke out, thus he was not eligible for temporary protection.

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v Ministry of Immigration and Asylum*, No 49121, 8 July 2024.

The Administrative Tribunal rejected the appeal against an application for temporary protection from an applicant from Eritrea because he did not demonstrate to be a resident in Ukraine on 24 February 2022

An Eritrean applicant contested the refusal to be granted temporary protection. The Administrative Tribunal confirmed that the person was not eligible because the cumulative requirements for third-country nationals were not met.

The applicant was found to have been a temporary resident in Ukraine for studies, but the last exit stamp was dated September 2022. As such, the applicant was not a resident in Ukraine when the war broke out and thus was ineligible.

The court decided it was not necessary to assess whether the applicant can return under safe and durable conditions to the country of origin.

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A v State Secretariat for Migration (Staatssekretariat für Migration, SEM)*, D-2175/2024, 9 July 2024.

FAC confirmed a negative decision on temporary protection and stated that the applicant was excluded because he was not present nor resident in Ukraine on 24 February 2022.

FAC rejected the appeal of a Ukrainian national with a valid Polish residence permit against the negative decision on temporary protection. FAC recalled that

the applicant had already been living and working in Poland for 2 years on 24 February 2022, thus it can be assumed that his main place of residence was in Poland on the day the war broke out in Ukraine.

The court considered it irrelevant whether he intended to stay in Poland long term or even for life and explained that, since the Federal Council specified a cut-off date in the decision of 11 March 2022, the Federal Council expressed that Ukrainian nationals who were not living in Ukraine on 24 February 2022 are to be excluded from the scope of temporary protection.

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A v State Secretariat for Migration (Staatssekretariat für Migration, SEM)*, E-3535/2024, 17 June 2024.

FAC rejected the appeal against a SEM decision not to allow a re-examination of a third request for temporary protection since the applicant did not adduce elements to change the assessment.

FAC noted that the facts which were newly cited to justify a request for reconsideration were not legally relevant, since they were not suitable to establish a claim for temporary protection.

The court highlighted that the procedure for granting temporary protection is not intended to circumvent the asylum procedure and that allegations of persecution which relate to the situation in the country of origin must be made in the context of an asylum application. The court also stated that the fear of being drafted into the Azerbaijani military, linked to the escalation of the conflict, does not in itself constitute a threat because such a draft is in any case only hypothetical, if not improbable, particularly since the applicant is older than the age for military conscription since only men between the ages of 18 and 35 are subject to compulsory military service in Azerbaijan.

The court concluded that the new facts alleged by the applicant were not relevant to grant temporary protection and upheld the former rejecting decisions.

Secondary movements of temporary protection beneficiaries

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A v State Secretariat for Migration (Staatssekretariat für Migration, SEM)*, E-3788/2024, 27 June 2024.

FAC rejected the appeal against a negative decision on temporary protection because the applicant had alternative protection in Romania.

A Ukrainian national requested temporary protection in Switzerland. SEM rejected the request as it considered the applicant was not eligible because he had a valid residence permit in Romania.

FAC rejected the appeal of the applicant and stated that, based on the subsidiarity principle, since temporary protection was valid in Romania, the granting of it in Switzerland was not necessary. The court stated that the applicant failed to provide any convincing argument to the contrary, since he merely stated his unwillingness to obtain protection in Romania without providing any evidence that his protection status in Romania had been revoked or had expired.

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal

administratif fédéral - FAC], *A v State Secretariat for Migration (Staatssekretariat für Migration, SEM),* E-3310/2024, 7 June 2024.

FAC confirmed a negative decision on temporary protection which was submitted by a Ukrainian national who had been previously granted protection in Poland.

A Ukrainian national who had received temporary protection in Poland travelled to Switzerland and requested the same type of protection, as her husband and her cousin were in Switzerland too. SEM rejected the request and ordered the removal of the applicant.

In the appeal, FAC reiterated the subsidiarity principle and ruled that a Ukrainian citizen is not dependent on the protection of Switzerland when he has valid alternative protection outside Ukraine, namely temporary protection in Poland. The applicant held a Polish PESEL, which is a document specifically issued to Ukrainian nationals who entered Poland through the Ukrainian border after 24 February 2022.

Although the applicant alleged that leaving Poland and staying outside Poland equates with an end of her status, FAC considered that Ukrainian citizens can re-obtain a PESEL number if they re-apply by following the same procedure as the first time. A renewal of the PESEL number allows a stay in Poland for 18 months. The applicant did not demonstrate to have re-applied for the PESEL number and to have been rejected. Furthermore, the applicant did not provide a credible explanation of the reasons for which the Polish authorities would reject his application for a new PESEL and considered that the applicant can freely return to Poland and reapply for temporary protection.

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A,B,C v State Secretariat for Migration (Staatssekretariat für Migration, SEM),* E-3824/2024, 3 July 2024.

FAC ruled that Ukrainian nationals who were previously granted protection in another EU country are excluded from S protection status in Switzerland.

A Ukrainian national, along with his wife and son, applied for temporary protection in Switzerland after previously living in Belgium with a temporary protection status for 1 year. SEM requested Belgium to readmit the family. Belgium approved the request and noted that, while their residence permits had been cancelled upon departure, they would be eligible for re-registration under Belgium's temporary protection scheme if they returned. SEM rejected the request for temporary protection as requested by the Ukrainian family and ordered their expulsion.

FAC upheld SEM's decision, stating that the applicants had voluntarily left Belgium despite having protection there and were therefore not eligible for protection in Switzerland. The court confirmed that Belgium could still grant them temporary protection, as it had explicitly agreed to readmit and accept them as a family.

The court emphasised that under the Temporary Protection Directive, Switzerland is not required to provide protection to individuals who already have such status in another EU country, in accordance with the principle of subsidiarity. The court noted that the expiration of their Belgian residence permits did not change this principle, especially since Belgium had agreed to continue their protection. The court also

found that the applicant's pregnancy did not prevent their return and acknowledged Belgium's well-functioning health system.

Suspension of return decisions

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL24.20123, 30 July 2024.

The Court of the Hague seated in s-Hertogenbosch allowed an interim request against a return decision for a third-country national, beneficiary of temporary protection, under the optional provision, pending the outcome before the CJEU.

An applicant from Bangladesh with a temporary residence in Ukraine was granted temporary protection under Article 2(3) of the Implementing Decision 2022/382. He contested the return decision issued by the State Secretary on the basis of the end of protection as of 4 March 2024.

The Court of the Hague seated in Hertogenbosch allowed an interim relief against the return decision, pending the outcome on merits of the appeal and the ruling of the CJEU on the referrals submitted by the Council of State on 25 April 2024 and by the Court of the Hague seated in Amsterdam on 29 March 2024.

The court also found that the State Secretary adopted a Freezing Decision to specify the conditions to receive temporary protection pending the outcome of the preliminary rulings before the CJEU. The court noted that the applicant could not re-register due to the Freezing Decision and stated that he was unjustifiably excluded from benefit due to a groundless distinction in this group of third-country nationals. The court noticed that the policy towards this category has been ambiguous, unclear and involved many changes of legal aspects, thus the applicant could be excluded since he left the reception shelter based on correct information, which the State Secretary subsequently changed.

Family unity

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A, B v State Secretariat for Migration (Staatssekretariat für Migration, SEM)*, F-55/2024, 19 July 2024.

FAC allowed a request to change cantons for a beneficiary of temporary protection and recognised that the applicant and her partner, who were in a relationship for 6 months, justified the right to family unity.

A Ukrainian national, A, and her son, beneficiaries of temporary protection in Switzerland, requested to move from canton C to canton D to live with A's partner, E. SEM and cantonal authorities denied the request, citing that A's relationship with E did not meet the requirement of a 1-year duration for changing cantons.

FAC reviewed the case, noting that while A and E had only been together for 6 months, their relationship was serious, involving shared childcare, a commitment to marriage and future plans. The court ruled that despite the short duration, the relationship qualified as a premarital family relationship protected under the ECHR, Article 8(1), which includes the right to family unity. FAC concluded that SEM's refusal was incorrect, and A's request to change cantons was justified.

Return

Suspension of return decision due to procedural errors

Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 4 L 1954/24.GI. A, 27 June 2024.

The Administrative Court of Giessen ordered the suspension of the deportation of a Turkish applicant due to BAMF's procedural errors in rejecting the asylum claim as manifestly unfounded on grounds of alleged deliberate destruction of documents.

A national of Türkiye was rejected international protection by BAMF as manifestly unfounded on the basis of allegedly deliberately destroying identity documents. The applicant challenged the negative decision, the deportation order and requested the suspension of the implementation of the return through an urgent procedure.

The Administrative Court of Giessen granted the applicant's request for a suspensive effect, citing significant doubts about the lawfulness of BAMF's rejection of the asylum application. The court found that the applicant's claim of losing documents when entrusted to a lorry driver did not meet the threshold for intentional destruction under AsylG, para 30(1). Additionally, it noted that the applicant's political persecution claims were not adequately addressed and BAMF had to thoroughly reassess the case.


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