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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
COI	country of origin information
CNDA	National Court of Asylum | Cour Nationale du Droit d'Asile (France)
DAANES	Democratic Autonomous Administration of Northern and Eastern Syria
Dublin III Regulation	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EUAA	European Union Agency for Asylum
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union and associate countries
IAB	Immigration Appeals Board (Malta)
IPAT	International Protection Appeals Tribunal (Ireland)
IPO	International Protection Office (Ireland)
JCS	Schiphol Judicial Complex
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)
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
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
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Main highlights

The decisions and judgments presented in this edition of the "EUAA Quarterly Overview of Asylum Case Law, Issue No 1/2025" were pronounced from December 2024 to February 2025.

Court of Justice of the European Union (CJEU)

Six important judgments were pronounced by the CJEU on the topics of Dublin transfers, subsequent applications, refusal or revocation of refugee status and mandatory civic integration examinations. The court also delivered its first two judgments interpreting the Temporary Protection Directive.

In a judgment which has implications for appeals against decisions on Dublin transfers to Italy, as the Italian authorities continue to unilaterally suspend most incoming transfers, the CJEU, in *RL, QS [Tudmur] v Bundesrepublik Deutschland* (C-185/24 and C-189/24, 19 December 2024), nuanced the concept of systemic flaws within the Dublin procedure. The CJEU held that the fact that a Member State unilaterally suspended most incoming transfers due to inadequate reception capacity, as Italy had done in this case, does not signify, in itself, the existence of systemic flaws in the asylum procedure and reception conditions for applicants for international protection. The existence of such flaws and a risk contrary to Article 4 of the EU Charter may be established only following an analysis based on objective, reliable, specific and updated information.

While recalling that its interpretation of the concept of a subsequent application takes into consideration the goal of limiting secondary movements, the CJEU ruled in *N.A.K. and Others v Bundesrepublik Deutschland* (Joined Cases C-123/23 and C-202/23, 19 December 2024) on the topic of mutual recognition of decisions on asylum applications. The CJEU clarified the conditions under which an application made in one Member State can be rejected as inadmissible when the applicant already requested international protection in another Member State and that previous application was discontinued, although not by a final decision, on account of an implicit withdrawal of that application.

The concept of danger to the security of the state providing protection was examined in *K.A.M. v Cyprus* (C-454/23, 27 February 2025), specifically whether acts or conduct prior to entering the host state could be the basis to refuse or to revoke refugee status. The CJEU held that under Article 14(4)(a) and (5) of the recast QD, Member States may revoke refugee status or decide not to grant it where there are reasonable grounds for regarding the refugee as a danger to the security of that Member State based on acts or conduct prior to entering the territory of that Member State. Importantly, the court stated that it is irrelevant whether such acts or conduct constitute grounds for exclusion and clarified that, since revocation or refusal does not imply the adoption of a position on deportation, it is not necessary to refer to the conditions applicable to the concept of 'danger to the security of the country' of Article 33(2) of the Refugee Convention. The CJEU held that Article 14(4) and (5) of the recast QD cannot be interpreted as adding new grounds for exclusion, and such a conclusion does not affect their validity in light of Article 78(1) of the Treaty on the Functioning of the European Union (TFEU) and Article 18 of the EU Charter.

In a Grand Chamber formation, the CJEU ruled for the first time on the compatibility of the Common European Asylum System (CEAS) with mandatory civic integration examinations in *T.G.* (C-158/23, 4 February 2025). The CJEU ruled that Member States may oblige beneficiaries of international protection to take civic integration examinations. However, the court nuanced that systematically imposing a fine for having failed such an examination is not in accordance with EU law. While highlighting the importance of acquiring the language to facilitate integration into the society and work force, the court noted that imposing a fine is possible only in exceptional cases, such as for proven and persistent lack of willingness to integrate.

Furthermore, the CJEU delivered its first two judgments interpreting the Temporary Protection Directive 2001/55/EC (TPD). As some EU+ countries adjust[1] their policies and provisions on optional temporary protection previously provided to categories of people not included in EU law provisions, in *P, AI, ZY, BG [Kaduna] v State Secretary for Justice and Security* (Joined Cases C-244/24 and C-290/24, 19 December 2024) the CJEU was asked whether the TPD requires Member States not to terminate temporary protection which they granted to additional categories of displaced persons at their discretion before the maximum duration set at the EU level is reached. The judgment clarified at what point a Member State may do so, and at what point a return decision may be issued with respect to persons no longer enjoying such protection. The CJEU held that Member States have the power to end protection at any point for the optional category within the duration of temporary protection as granted by EU institutions, but national authorities cannot issue a return decision before protection actually ends (i.e. while the person resides lawfully based on the protection). While the proceedings referred to third-country nationals who had temporary residence permits in Ukraine, the judgment has implications for all other categories which are not designated by the Council Decision, who fled for the same reasons and from the same region or country.

The obligation of Member States to issue a residence permit based on temporary protection when a person has applied for temporary protection in several Member States and has not yet received it was clarified by the CJEU in *A.N. [Krasiliva] v Ministerstvo vnitra* (C-753/23, 27 February 2025). The court held that Member States cannot consider the application inadmissible solely due to multiple applications and the request must be assessed on its merits. The CJEU noted in paragraph 30 that it is open to the authorities of a Member State to verify whether the person had already obtained a residence permit in another Member State. In addition, the court clarified that the applicant has the right to an effective remedy against an inadmissibility decision in such cases.

European Court of Human Rights (ECtHR)

At the Council of Europe, the European Court of Human Rights (ECtHR) found for the first time that Greece carried out systematic pushbacks from the Evros region and Greek islands to Türkiye in 2019 and 2020, in violation of Article 3 of the European Convention.

In the first case, *A.R.E v Greece* (7 January 2025), the court highlighted that although the Greek government firmly denied any pushbacks, there was a high volume of diverse,

[1] See for example Bulgaria, Finland (here and here) and Germany.

consistent and relevant sources (e.g. the Greek Ombudsperson, the National Commission for Human Rights, the Council of Europe and the United Nations) that highlighted a systematic practice of *refoulement* from the Evros region to prevent third country nationals from accessing asylum procedures. The applicant's account, which she carefully documented with extensive audiovisual material and an official court decision from Türkiye in which it was mentioned that she had fled to Greece, could not be rebutted by the Greek government. Notably, the applicant also alleged a violation of Articles 2 and 3 of the Convention, which the court dismissed, as the infringements could not be established beyond reasonable doubt due to the lack of precise and consistent evidence that her life had been endangered by the manner in which the pushback had taken place. Even if the distress she experienced during *refoulement* was established, it did not meet the severity required for the treatment to amount to inhuman or degrading treatment.

The second case highlighted even more prominently that there are evidentiary requirements to which an applicant must comply, even when there are strong indications of a systematic practice of pushbacks. In *G.R.J. v Greece* (3 December 2024), which concerned an unaccompanied minor, the court dismissed the case as inadmissible, holding that he was not exempt from providing *prima facie* evidence to substantiate his claims. Unlike the previous judgment, the applicant had not proven his presence in Greece and his pushback to Türkiye from the island of Samos.

The ECtHR added to its previous case law concerning effective remedies in Malta, more recently in the context of a remedy against a removal when a considerable time has passed after the assessment of the asylum request. In *A.B. and Y.W. v Malta* (25 February 2025), which concerned the return of two Uighur Muslims to China, the ECtHR highlighted that the contracting states have a rigorous procedural obligation under Article 3 of the ECHR to assess *ex nunc* the risk before removing a rejected asylum applicant. In this case, the Immigration Appeals Board (IAB) could not merely stamp or reproduce the negative asylum decision taken almost 6 years prior to the removal order. The court held that there would be a violation of Article 3 if the applicants were to be removed to China without an *ex nunc* rigorous assessment of the risk they would face on their return to XUAR as Uighur Muslims. Meanwhile, at the EU level, the European Commission presented on 11 March 2025 a proposal to establish a Common European System for Returns, which highlights that returns must be carried out in full respect of fundamental and international human rights standards, including the principle of *non-refoulement* and the right to an effective remedy.

National courts

Secondary movements: Admissibility of applications made by beneficiaries of international protection in another Member State

Germany's highest court in matters of asylum, the Federal Administrative Court, decided on 19 December 2024 that single parents, beneficiaries of international protection in Italy, who have a primary school-aged child and a child under the age of 3 were not at risk of degrading or inhumane living conditions if transferred to Italy, and such applications lodged in Germany can be rejected as inadmissible. On this topic, the CJEU previously held in *QY v Bundesrepublik Deutschland* (C-753/22, 18 June 2024) that Member States are not required to automatically recognise refugee status granted in another Member State, although

Member States are free to do so. If the competent authority cannot reject as inadmissible the asylum request of an applicant to whom another Member State granted protection, due to a serious risk of being subjected to inhuman or degrading treatment in that Member State, then the competent authority must carry out a new individual, full and up-to-date examination of the applicant's qualification for refugee status.

In a leading judgment on transfer cases to Greece,[2] the Irish High Court concluded in *A.A.H. and M.H.A.* that the International Protection Office (IPO) and the International Protection Appeals Tribunal (IPAT) had adequately applied the relevant test to assess the risk of being subjected to treatment contrary to Article 4 of the EU Charter upon a transfer to Greece for two Somali nationals who had been granted international protection there. Considering the CJEU judgment in *Ibrahim* (Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, 19 March 2019) and recalling the principle of mutual trust, the High Court held that the applicants did not establish personal exposure to a real or serious risk of inhuman or degrading treatment. A high degree of insecurity or a significant degradation of the living conditions was held to be insufficient to establish the relevant risk, unless they entail extreme material poverty. On account of the country of origin information, the applicants' personal circumstances and in the absence of any vulnerabilities, the court held that they had a reasonable possibility to avoid severe or extreme material deprivation if returned to Greece.

The concept of safe countries of origin

The compatibility of Italian law with EU law on the designation of safe countries of origin is a topic the CJEU will examine in 2025, as several referrals for a preliminary ruling were made by the Tribunal of Rome and the Tribunal of Bologna, currently pending under C-758/24 [Alace] and C-759/24 [Canpelli].[3] In this context, the Italian Supreme Court of Cassation applied in December 2024 the CJEU judgment in *CV* (C-406/22, 4 October 2024) while ruling on the court's duty to investigate the safety of countries designated as safe and to disapply the designation if it conflicts with EU or national law, considering the applicant's circumstances. The Supreme Court of Cassation noted that when a constitutional right, such as the right to asylum, is at stake, the court retains the authority to reconsider the inclusion of a country on the list of safe countries if the designation deviates from the established criteria, especially if it risks compromising the inviolable rights essential to human dignity in the applicant's country of origin.

Gender-based violence against women

While referring to the CJEU judgment in *WS*, which held that, depending on the conditions prevailing in the country of origin, both women from that country as a whole and smaller groups of women sharing an additional common characteristic, may be considered as belonging to a particular social group and be granted refugee protection, the French National Court of Asylum (CNDA) held that Sahrawi women residing in Tindouf camps in Western Sahara, victims of domestic violence and intra-tribal violence, do not constitute a particular social group within the meaning of the Refugee Convention. The CNDA reasoned that the discrimination and violence suffered by women living in Tindouf camps do not reflect the

[2] See EMN Ireland here.
[3] See also the EUAA Quarterly Overview of Asylum Case Law, Issue No 4/2024.

social, moral or legal norms specific to this society but, on the contrary, constitute condemned practices, including by Western Sahara which has established standards to promote gender equality.

On this topic, the EUAA published a report in February 2025 on *Jurisprudence related to Gender-Based Violence against Women* analysing relevant jurisprudence from 2020-2024.

Membership of a particular social group: Homosexual persons in Lebanon and Sri Lanka

The situation of LGBTIQ individuals in Lebanon and Sri Lanka was examined in recent judgments by Austrian and French courts. In Austria, the Federal Administrative Court cited the CJEU judgment in *X, Y, and Z* (Joint Cases C-199/12, C-200/12, C-201/12, 7 November 2013) to grant refugee protection to a national of Lebanon on grounds of a well-founded fear of persecution due to his sexual orientation, confirmed by his previous conviction for same-sex acts in his country of origin and based on the lack of adequate state protection for LGBTIQ individuals.

In France, the CNDA held that homosexual persons constitute a particular social group in Sri Lanka, considering the legal provisions which criminalise same-sex sexual relations, arbitrary arrests, detentions, attacks and hate crimes to which they are subjected.

Military conscription

Refusal of military conscription was analysed by courts as a reason for persecution in the aftermath of the fall of Assad's regime in Syria and as a perceived political opinion by the Belarusian authorities. In light of the regime change in Syria, the Federal Administrative Court of Austria analysed the situation of a Syrian national who claimed a risk of being subjected to military conscription if returned there. The court dismissed his appeal, finding no significant risk of persecution from the Kurdish forces in the Democratic Autonomous Administration of Northern and Eastern Syria (DAANES) for men born before 1998 and concluding that, with the fall of Assad's regime, the risk of conscription and punishment for avoiding military service were no longer present, as the new regime announced the abolition of compulsory military service in Syria.

In Estonia, the Supreme Court ruled that the lower court failed to adequately assess whether a national of Belarus met the criteria for asylum based on draft evasion and political opposition. The court did not properly assess whether the applicant's actions in Estonia could be deemed genuine political opposition or the potential abuse of the international protection procedure. The court cited the EUAA's Practical Guide on Political Opinion (December 2022) and CJEU judgment in *EZ v Federal Republic of Germany* (C-238/19, 19 November 2020) in which the CJEU held that in cases of refusal to participate in a civil war, it should be presumed that the ruling regime would attribute a political motive to the refusal.

Subsidiary protection for Sudanese and South Sudanese applicants

While the first Sudanese and South Sudanese refugees arrived in Italy through complementary pathways,[4] national courts of EU+ countries continued to stress the importance of thoroughly evaluating the international protection needs of these groups of people. Courts in France and the Netherlands ruled on the evaluation made by the respective national determining authority of the need for subsidiary protection for Sudanese and South Sudanese applicants, annulling in both cases the decisions rejecting protection. In France, the CNDA referred to EUAA's Sudan - Country Focus, Security situation in selected areas and selected profiles affected by the conflict (April 2024) which indicated that the regions of Khartoum, Darfur and Kordofan are among those with the highest numbers of security incidents from 15 April 2023 to 31 January 2024. It concluded that the situation prevailing in West Kordofan, Sudan, can be described as of exceptional intensity. The Council of State in the Netherlands, after a detailed evaluation of the situation in South Sudan, ordered the case to be reassessed.

Reception conditions

In Belgium, the State Secretary for Asylum and Migration intended to implement in advance certain parts of the EU Pact on Migration and Asylum and decided to limit material assistance, including by refusing reception, for applicants who have already been recognised as refugees in another Member State. The Council of State suspended the enforcement of this decision, ruling that the measure may lead to a risk of homelessness and destitution for that category of applicants.

Detention

Border detention in the Netherlands was the subject of several important decisions concerning the use of the Schiphol Judicial Complex (JCS), which also holds criminal detainees, and the examination of mobile phones while the person is in border detention. The Council of State ruled that although asylum applicants in the Schiphol Judicial Complex (JCS) were more restricted in their freedom in November and December 2024, due to a large influx of persons and limited staff capacity, this did not render their border detention unlawful. The JCS still qualified as a specialised detention facility within the meaning of Article 10(1) of the recast Reception Conditions Directive (RCD). The ruling highlighted that asylum applicants are separated from criminal detainees and provided with access to facilities to process their asylum application.

In another ruling, the Council of State advised the legislator to clarify the legal basis for phone searches of asylum applicants under Article 55(2) of the Aliens Act, while finding that the examination of three Iranian applicants' mobile phones, without their consent, while they were in border detention, did not render their detention unlawful. The court noted that the mobile phones were examined to find documents that were necessary for the assessment of their asylum applications and not to place or keep them in border detention. The legality of the

[4] See Italy, Ministry of Labor and Social Affairs (17 January 2025). *Corridoi lavorativi per rifugiati, primi arrivi a Trieste [Work corridors for refugees, first arrivals in Trieste]*.

examination of their mobile phones and the possible use of the information obtained may however be challenged in an appeal against the asylum decision.

Second instance determination

Two relevant judgments from Belgium examined aspects related to appeals in asylum procedures, specifically the impartiality of judges and the effects of an absence of the asylum applicant from the host country.

The Council of State upheld the request of an asylum applicant to disqualify a judge in an appeals case being examined before the Council for Aliens Law Litigation (CALL), ruling that the judge's recent employment with the determining authority created a legitimate doubt about her objective impartiality. The council rejected the argument that lifetime judicial appointment should automatically prevent disqualification and noted that the judge's intention to refrain from cases she had previously handled was deemed irrelevant, as the concern was not her personal bias but the general impression of impartiality.

CALL ruled on the consequences of child abduction when a minor applicant has an appeal against a negative asylum decision pending. CALL held that such an involuntary return and absence from the host Member State does not amount to explicit or implicit withdrawal and therefore the appeal must be examined. The council provided refugee protection, citing the CJEU judgment of *K and L* v *State Secretary for Justice and Security* (C-646/21) and the EUAA's Practical Guide on the Application of Cessation Clauses (December 2021).

Access to the asylum procedure

ECtHR on pushbacks from Greece to Türkiye

ECtHR, *A.R.E.* v *Greece*, No 15783/21, 7 January 2025.

The ECtHR found that Greece had systematically carried out pushbacks of asylum seekers in 2019 from the Evros region to Türkiye, in violation of Articles 3 and 13 of the Convention. In the case of the applicant, she was denied access to the asylum procedure and subjected to unlawful detention prior to the pushback to Türkiye.

A national of Türkiye fled her country while appeal proceedings were pending against her sentence to imprisonment for membership in the Fetullahist Terror Organisation / Parallel State Structure ("FETÖ/PDY"). She entered Greece by crossing the Evros River, and she documented her whereabouts with her mobile phone. She was arrested and taken to Neo Cheimonio border post, where she requested asylum. She was then transferred to a police station where her belongings were confiscated and she was forced into a small inflatable boat to Türkiye, along with others. Once she reached the shore she was arrested by the authorities.

The ECtHR found violations of: Articles 3 and 13 of the Convention, due to *refoulement* to Türkiye; Article 5 for her deprivation of liberty for the purpose of *refoulement*; Article 13 in conjunction with Articles 2 and 3 due to the lack of access to an effective remedy.

The ECtHR distinguished this case from other recent cases on *refoulement* under Article 3 of the Convention and those on collective expulsion of aliens under Article 4 of Protocol No 4, as in this case the government firmly denied any involvement of its agents in the events, contesting the applicant's presence in Greece and her return to Türkiye, and disputing any systematic practice of *refoulement*.

The court acknowledged the volume, diversity and consistency of the relevant sources (e.g. the Greek Ombudsperson, the National Commission for Human Rights, the Council of Europe and the United Nations) that highlighted a systematic practice of *refoulement* from the Evros region and the Greek islands to prevent third-country nationals from accessing the asylum procedure.

The ECtHR concluded that there was solid evidence suggesting the systematic practice of pushbacks from the Evros region to Türkiye and determined that the applicant's account, which appeared to be detailed, specific and consistent, largely corresponded to the *modus operandi* described in official reports.

The court highlighted that the applicant provided *prima facie* evidence that confirmed her version of events, namely a decision of the Izmir Criminal Court in which the prosecutor had requested her detention due to her fleeing abroad to Greece. She had also provided extensive audiovisual material, which could separately be considered *prima facie* evidence, which the government was unable to rebut.

The court rejected the applicant's claim that her return to Türkiye posed a risk to her life and that her *refoulement* amounted to inhuman and degrading treatment in violation of Articles 2 and 3 of the ECHR. It noted that while her allegations appeared *prima facie* plausible, the infringements could not be established beyond reasonable doubt due to the lack of precise and consistent evidence that her life had been endangered when she was returned to Türkiye via the Evros River. Even if the distress she experienced during the *refoulement* was established, it did not meet the seriousness required for the treatment to amount to inhuman or degrading treatment.

ECtHR, *G.R.J.* v *Greece*, No 15067/21, 3 December 2024.

Due to a lack of prima facie evidence, the ECtHR dismissed the claims of an unaccompanied minor from Afghanistan as inadmissible when he alleged that he had been subjected to a collective expulsion from Samos to Türkiye.

An unaccompanied minor from Afghanistan claimed that he was subjected to a collective expulsion from the Greek island of Samos to Türkiye. He alleged that he arrived in Samos on 8 September 2020 on a boat with other migrants, and the following day, he was forced by the coastguard onto a raft and left adrift in the Aegean Sea, where the Turkish coastguard recovered them.

The ECtHR first noted many reports which detailed a uniform modus operandi by Greek authorities in Evros and Greek islands towards those entering unlawfully to send them back to Türkiye. The court noted reports by the Greek Ombudsman, the National Commission for Human Rights and international organisations such as the Council of Europe and the United Nations Special Rapporteur on the Human Rights of Migrants. The latter had assessed that pushbacks at land and sea borders were essentially standard practice.

The court highlighted that a systematic practice of pushbacks did not exempt an applicant from the duty to provide *prima facie* evidence to substantiate their claims. Although the applicant's account largely corresponded to the modus operandi that emerged from these reports, this did not prove the link between the applicant's entering Greece and being subsequently found in Türkiye on the dates alleged. Thus, he could not claim victim status for the purposes of Article 34 of the Convention.

Obligation to provide information following disembarkation at sea

Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], *A.* v *Ministry of the Interior (Ministero dell'Interno)*, RG 5566/2025, 30 January 2025.

In reviewing an expulsion order, the Court of Cassation held that the judge of the peace (giudice di pace) must assess whether the national administration fulfilled its duty to provide adequate information to the individual within the time limits set by law.

A national of Bangladesh was rescued at sea and later was issued an expulsion order. The order was confirmed by the judge of the peace of Salerno and was subsequently appealed to the Court of Cassation.

The court held that the obligation to provide information on international protection procedures to third-country nationals who enter the national territory following a disembarkation at sea and are taken to the hotspot must be complete and effective. It clarified that this obligation is independent of the prior expression of the intention to request international protection and renders irrelevant any declaration made before being adequately informed of the possibilities provided by law.

For the obligation to provide information to be considered fulfilled, the court emphasised that it is not sufficient for the expulsion order to generically state that the person has been fully informed if no evidence of this emerges during an appeal. It added that, to allow a check on the comprehensibility of the information provided, it is important to consider the timing and methods used to provide the information, with specific regard to the language used and the presence of an interpreter or cultural mediator.

Hence, the court ruled that the judge of the peace should have ascertained whether there was sufficient evidence that the applicant had received adequate information within the terms provided in Article 10-ter of Legislative Decree No 286 of 1998, and in the absence of such evidence, should not have validated the expulsion order.

Dublin procedure

CJEU interpretation of systemic flaws

CJEU, *RL, QS [Tudmur] v Bundesrepublik Deutschland*, C-185/24 and C-189/24, 19 December 2024.

The CJEU ruled that the unilateral suspension of measures for the transfer of asylum applicants by the Member State responsible does not justify the finding of systemic flaws and such a flaw may be established only after an analysis of objective, reliable, specific and updated information.

Two Syrian nationals applied for asylum in Germany, but Italy was identified as the responsible state. When Italy did not respond to Germany's take back request, German authorities dismissed their applications and ordered their removal to Italy.

During the appeal process, Italy issued circulars suspending transfers due to a lack of reception facilities. The German court sought clarification from the CJEU on whether such circumstances indicated systemic flaws in Italy's asylum system.

The CJEU ruled that a unilateral suspension of transfers by a Member State does not, by itself, constitute systemic flaws. It observed that under the Dublin III Regulation, the treatment of applicants for international protection in all Member States is presumed to comply with human rights standards. The court noted that a transfer can only be blocked if systemic

flaws lead to a risk of inhuman or degrading treatment under Article 4 of the EU Charter. It highlighted that courts assessing such claims must consider all relevant evidence, including reports from NGOs and UNHCR.

Application of the discretionary clause

Italy, Supreme Court of Cassation - Civil Section [Corte Suprema di Cassazione], *Ministry of the Interior (Ministero dell'Interno) v H. A.*, RG 935/2025, 10 December 2024.

In the context of a decision on a Dublin transfer, the Court of Cassation ruled that the adjudicating court cannot examine whether there is a risk of violating the non-refoulement principle in the requested Member State based on differing views on the interpretation of the substantive requirements for international protection, unless there are systemic deficiencies in the asylum procedure or reception conditions in that Member State.

H.A., a national of Pakistan, challenged the decision on his Dublin transfer to Austria. The Tribunal of Firenze upheld the appeal, and the Dublin Unit subsequently appealed before the Court of Cassation alleging infringement of Articles 3(2) and 17 of the Dublin III Regulation.

The court affirmed that the plea in law was well-founded, particularly in light of the principles established in the CJEU judgment *DG (C-254/21), XXX.XX (C-297/21), PP (C-315/21), GE (C-328/21) v CZA (C-228/21), Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino* (30 November 2023). The court ruled that the Tribunal of Firenze, without identifying any systemic deficiencies in Austria's asylum and reception systems, incorrectly used the discretionary clause to decide on the risk of indirect *refoulement* in the country of origin, based on a different evaluation of the level of protection the applicant may receive there, thus disregarding the rule of mutual trust and the obligation of all Member States to adhere to the principle of *non-refoulement*. Consequently, the court annulled the contested measure and referred the case back to the Tribunal of Firenze.

First instance procedures

CJEU interpretation of Article 33(2d) of the recast APD on subsequent applications

CJEU, *N.A.K. and Others v Bundesrepublik Deutschland*, Joined Cases C-123/23 and C-202/23, 19 December 2024.

The CJEU ruled that Article 33(2d) of the recast APD precludes a Member State from rejecting a further application as inadmissible after the applicant requested international protection in another Member State that decided to discontinue the examination of that previous application on account of its implicit withdrawal but the decision to discontinue was not yet final.

The applicants requested international protection in Germany after having requested it in other EU Member States (Spain, Belgium and Poland). BAMF rejected their applications as inadmissible, and on appeal, the Administrative Court of Minden referred the matter to the CJEU for a preliminary ruling.

The CJEU clarified that, according to Article 40(7) of the recast APD, read in conjunction with Article 17(1) of the Dublin III Regulation, a subsequent application refers to a new application made in the Member State requesting the transfer after a decision had been taken by the Member State to which the person was to be transferred due to a previous application. The CJEU also stated that, in line with the goal of limiting secondary movements of applicants between Member States, Article 33(2d) of the recast APD should be interpreted as allowing a Member State to classify a further application as subsequent and reject it as inadmissible if the previous application had been rejected by a final decision from another Member State and the new application lacked new elements or findings.

The CJEU affirmed that Article 33(2d) of the recast APD, read in conjunction with Article 2(q), does not preclude national legislation that allows to reject an application as inadmissible when made by a third-country national or stateless person whose previous application had been rejected by a final decision from another Member State. The CJEU also concluded that the same article precludes the rejection of an application as inadmissible when made by a third-country national or stateless person who has already submitted an application to another Member State, if the subsequent application is made before the competent authority has decided to discontinue the examination of the previous application due to its implicit withdrawal.

CJEU interpretation of Article 14(4) and (5) of the recast QD on refusing to grant or revoking refugee status

CJEU, *K.A.M. v Republic of Cyprus*, C-454/23, 27 February 2025.

The CJEU interpreted Article 14(4) and (5) of the recast QD and held that acts or the conduct of an applicant prior to entering the country of refuge may be the basis to refuse or revoke refugee status,

irrespective of whether such acts constitute grounds for exclusion. To decide on the revocation or refusal, there is no need to refer to the conditions applicable to the concept of 'danger to the security of the country' of Article 33(2) of the Refugee Convention or to the resulting serious consequences for that refugee.

A Moroccan national applied for international protection in Cyprus. The authorities issued a decision stating that, while there were substantial reasons to believe that he would be persecuted upon a return to Morocco on account of his opinions, he posed a danger to the community and the security of Cyprus and thus refugee status should be refused. The decision took into consideration a letter from the Cyprus Counter-Terrorism Office. The applicant appealed the decision to the Refugee Reviewing Authority and, upon rejection, to the International Protection Administrative Court (IPAC), which submitted a reference for a preliminary ruling to the CJEU.

IPAC requested guidance on the interpretation of Article 14(4) and (5) and whether it could be interpreted to mean that refugee status could be refused or revoked due to acts or conduct prior to entering the host Member State and that are not included in the list of grounds for exclusion. Furthermore, IPAC requested the CJEU to clarify whether a positive answer would be compatible with Article 78(1) of the TFEU and Article 18 of the EU Charter.

The CJEU held that the applicant's acts or conduct prior to his entry into the territory of the Member State can be considered when deciding whether to grant or revoke refugee status. It highlighted that it is irrelevant whether those acts and conduct constitute grounds for exclusion from being a refugee expressly provided in Article 1(F) of the Refugee Convention and Article 12 of the recast QD.

On the assessment of the seriousness of the danger, the court clarified that it is not necessary to refer to the conditions applicable to the concept of 'danger to the security of the country' to which Article 33(2) of the Refugee Convention refers or to the resulting serious consequences for that refugee.

Highlighting that revoking refugee status does not result in the applicant no longer being a refugee, the CJEU held that Article 14(4) and (5) of the recast QD cannot be interpreted as adding new grounds for exclusion from being a refugee to those set out in Article 12(2) of that directive and Article 1(F) of that convention. The court noted that such a conclusion did not disclose new factors to affect the validity of the provision in light of Article 78(1) of the TFEU and Article 18 of the EU Charter.

Presumption of a safe country of origin

Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], *Applicant v Ministry of the Interior (Ministero dell'Interno)*, RG 14533/2024, 4 December 2024.

The Court of Cassation ruled on the adjudicating authority's duty to investigate the safety of countries designated as safe and disapply the designation if it conflicts with EU or national law, considering the applicant's specific circumstances.

The application for international protection of a national of Tunisia was rejected as manifestly unfounded on grounds that he was from a country deemed safe. The

applicant appealed to the Tribunal of Rome, which referred questions to the Court of Cassation.

The Court of Cassation referenced the CJEU judgment in *CV* (C-406/22, 4 October 2024). It clarified that, while the designation of safe countries of origin involves both political and legal assessments, a judicial review remains applicable to verify whether the legal criteria for classifying a country as safe are met. The court affirmed that the ordinary court has the power and duty to review the legality of the ministerial decree which establishes the list of safe countries, particularly if it clearly contradicts EU and national legislation, and up-to-date information on the country of origin was to be considered, in line with the principle of investigative cooperation.

The court noted that, when a constitutional right as the right to asylum is at stake, the ordinary court retains the authority to reconsider the inclusion of a country in the list of safe countries if the designation deviates from the established criteria, especially if it risks compromising the inviolable rights essential to human dignity in the applicant's country of origin. It stated that the ordinary court has the power to disapply an administrative act, such as the designation of a country as safe, if it is found to be unlawful.

The court ruled that when the applicant challenges the safety of their country of origin based on general conditions affecting entire groups of nationals, rather than individual circumstances, the ordinary court must assess the decree's compatibility with EU and national laws and disapply it if found incompatible. It also affirmed that when the applicant presents serious reasons to believe that their country of origin is not safe due to their specific circumstances, the ordinary court must conduct a concrete assessment of the applicant's individual security situation and may suspend the contested measure, granting protection based on the applicant's personal circumstances.

Secondary movements: Admissibility of applications when protection was already received in Greece

Ireland, High Court, *A.A.H., M.H.A. v International Protection Appeals Tribunal, The Attorney General, The Minister for Justice and Equality,* [2024] IEHC 699, 6 December 2024.

The High Court, based on the test in the CJEU judgment of Ibrahim and recalling the principle of mutual trust, ruled in a leading case that the applicants, beneficiaries of international protection in Greece, could be transferred there, considering their personal circumstances, lack of vulnerabilities and the fact that they did not prove a serious risk of extreme material deprivation in case of return to Greece.

Two Somali nationals requested international protection in Ireland, which were considered inadmissible by IPAT because they had each been granted protection in Greece. The two applicants appealed the decision, claiming that they lived in the Moria camp and expressed fears of extreme poverty and safety concerns if returned to Greece.

While the proceedings were the subject of separate and distinct legal challenges, the High Court ruled on both cases, stating that there were evident common features to the two cases and similarities between the two tribunal decisions, while also noting that the cases are part of a wider

group of cases concerning transfers to Greece of applicants who had been granted international protection there.

The High Court considered the principles set out by the CJEU in *Ibrahim* (Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, 19 March 2019), other relevant CJEU case law and the principle of mutual trust to highlight that the applicants must demonstrate that there is a real risk of suffering treatment in breach of Article 4 of the EU Charter having regard to the individual circumstances and vulnerabilities of the applicant. To this end, a high degree of insecurity or a significant degradation of living conditions would be insufficient to prove such a risk. The court considered that the applicants did not prove that they personally faced a real or serious risk of extreme material deprivation if transferred to Greece. Therefore, the court upheld the tribunal's decisions.

Secondary movements: Admissibility of applications when protection was already received in Italy

Germany, Federal Administrative Court [Bundesverwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (BAMF)*, BVerwG 1 C 3.24, 19 December 2024.

The Federal Administrative Court held that single parents who are beneficiaries of international protection in Italy and who have a primary school-aged child and a child under the age of 3 were not at risk of degrading or inhumane living conditions if they are transferred back to Italy, and such asylum applications lodged in Germany can be rejected as inadmissible.

A pregnant single mother and her 7-year-old daughter, who were recognised in Italy as beneficiaries of international protection, requested asylum in Germany. Their applications were rejected as inadmissible by BAMF, and they were to be transferred to Italy.

The Federal Administrative Court found that it is not expected with any considerable probability that beneficiaries of protection in this group if returned to Italy would find themselves in extreme material hardship, which would not allow them to satisfy their specific, most basic needs in terms of accommodation, food and hygiene over a foreseeable period of time. The court noted that if the returning beneficiaries of international protection can receive assistance in the other Member State, which excludes an inhuman or degrading situation within a foreseeable period of time, an asylum application can only be admissible if it can already be assumed at the relevant time of assessment that the returnees are highly likely to face destitution within a short period of time after the end of the assistance.

The court observed that returning beneficiaries of protection from this group could probably initially be accommodated for 1 year in a facility of the SAI secondary reception system in a family- and child-friendly manner, where their basic needs are met and basic medical care is guaranteed. In view of the support services offered in this facility, including in the search for accommodation, a job and childcare, it cannot be assumed that they are at high risk of destitution in the near future, even after this accommodation ends.

Secondary movements: Obligation to exchange information with the Member State which already granted protection

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL24.3902, 22 January 2025.

The District Court of the Hague seated in Groningen ruled that the Minister for Asylum and Migration failed in its duty to cooperate when it rejected the application of a Somali national who was granted protection in Greece, without requesting information from the Greek authorities.

A Somali national, who was granted international protection in Greece, submitted an asylum application in the Netherlands, which the Minister for Asylum and Migration rejected. The court found that the minister had failed to properly consider the significance of the applicant's refugee status in Greece, in light of the CJEU judgment in *QY* (C-753/22, 18 June 2024). The CJEU had ruled that while Member States were not required to recognise refugee status granted by another Member State automatically, they must take full account of the decision and supporting evidence. The court found that the minister had not adequately fulfilled this obligation, particularly by failing to exchange information with the Greek authorities. It declared that this failure resulted in a lack of proper reasoning in the contested decision and failure on the minister's part to fulfil the duty to cooperate.

Assessment of applications

Referral to the CJEU on credibility assessment

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie),* NL24.28889, 7 January 2025.

The District Court of the Hague seated in Roermond submitted two questions to the CJEU for a preliminary ruling on the compatibility of the Dutch credibility assessment method with the recast QD, recast APD and the EU Charter.

An Iraqi woman requested asylum because she refused a marriage proposal for her daughter by an armed group member, leading to attacks on her and her late husband. She also sought protection from the risks associated with being a single woman returning to Iraq. Her application was rejected under the new credibility assessment framework (effective as of 1 July 2024) as it did not meet the requirements of Article 4(5c) and (d) of the recast QD.

The new method for the credibility assessment mandates that the minister must first determine the reasons for asylum, then assess whether these reasons are fully substantiated by authentic or objectively verifiable documents or with country of origin information, followed by an assessment of whether the applicant meets all the

requirements set out in Article 4(5) of the recast QD.

The District Court of The Hague referred two questions to the CJEU for a preliminary ruling on the compatibility of this new method with EU law. The key issues raised were:

i) Whether the national credibility assessment method is compatible with Article 4 of the recast QD, Article 10(3b) of the recast APD and Articles 4 and 18 of the EU Charter.

ii) Whether courts of first instance reviewing asylum rejections must conduct a full and independent examination of facts and legal points, including reassessing international protection needs of their own motion.

Gender-based persecution: Sahrawi women

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *L. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 24019923 C+, 13 December 2024.

The CNDA held that Sahrawi women residing in Tindouf camps, victims of domestic violence and intra-tribal violence do not constitute a particular social group within the meaning of the Refugee Convention.

A stateless woman of Sahrawi origin who had lived in the Boujdour camp in Tindouf requested international protection in France, fearing persecution upon a return due to her membership to the social group of women exposed to physical or mental violence, including sexual and domestic violence, because of their gender. She also expressed fear of being subjected to serious harm from her family upon a return and the lack of effective protection from the authorities. Her application was rejected, and she appealed to the CNDA.

The CNDA rejected the appeal and confirmed the refusal of protection. It dismissed the existence of a particular social group of Sahrawi women from Tindouf on the grounds that Western Sahara had established standards aimed at promoting gender equality, and the Sahrawi authorities sought to promote women's rights. Following previous national relevant case law, the court stated that the discrimination and violence suffered by women living in the Tindouf camps remained occasional, and did not reflect the social, moral or legal norms specific to this society but, on the contrary, constitute condemned practices.

Membership of a particular social group: Homosexual persons in Lebanon

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *X v Federal Office for Immigration and Asylum (BFA)*, L507 2209587-1, 30 January 2025.

The Federal Administrative Court granted refugee status to a national of Lebanon on grounds of a well-founded fear of persecution due to his sexual orientation, confirmed by his previous conviction for same-sex acts in his country of origin and the lack of adequate state protection for LGBTIQ individuals.

A national of Lebanon claiming to be homosexual requested protection by arguing that he had been sentenced to prison a year earlier in Lebanon for engaging in sexual acts with a man. The BFA rejected the application as not

credible, and this decision was appealed before the Federal Administrative Court.

In its legal analysis, the court referenced the CJEU judgment in *Minister voor Immigratie en Asiel* v *X, Y* and *Z* v *Minister voor Immigratie en Asiel* (Joined Cases C-199/12, C-200/12, C-201/12, 7 November 2013) and affirmed that Article 10(1d) of the recast QD must be interpreted to mean that the existence of criminal provisions specifically targeting homosexuals allows for the conclusion that these individuals should be regarded as a particular social group.

The court considered the evidence submitted by the applicant, including the judgments relating to his criminal conviction for acts "against the laws of nature or causing public annoyance" and offenses related to sexual intercourse, and deemed them reliable. It also analysed the treatment of LGBTIQ individuals in Lebanon, finding there are laws criminalising consensual same-sex sexual acts between adults that are applied. The court noted that, although there was no widespread police or judicial prosecution of individuals suspected of homosexuality, occasional harassment, including violent attacks, is reported against LGBTIQ persons by security forces and religious groups. Furthermore, there was no government effort to address potential discrimination. Conclusively, it held that the applicant would be significantly likely to face a nationwide threat from state actors upon a return.

Membership of a particular social group: Homosexual persons in Sri Lanka

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.K.* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 24027654 C, 13 December 2024.

The CNDA held that homosexual persons constitute a particular social group in Sri Lanka since the legislation criminalises same-sex sexual relations and there are arbitrary arrests and detentions, as well as attacks and hate crimes reported against LGBTIQ.

After an appeal lodged by an applicant claiming a risk of persecution due to his sexual orientation if returned to Sri Lanka, the CNDA analysed the situation of the LGBTIQ community in the country of origin based on various sources, including reports from Human Rights Watch, the UK Home Office, Freedom House, an article by the France Press Agency and observations made by the UN Human Rights Committee. These sources reported on the legal provisions which criminalise same-sex sexual relations in Sri Lanka, the arbitrary arrests and detentions suffered by members of the LGBTIQ community, and the attacks and hate crimes to which they are subjected within Sri Lankan society, which is particularly hostile to homosexuality.

The CNDA highlighted the impunity of perpetrators of homophobic acts, which was also due to LGBTQI persons not being able to report them to the police without fear of being discriminated against, marginalised, charged for criminal offenses or suffering other forms of abuse by the police. The court concluded that homosexual persons in Sri Lanka constitute a particular social group within the meaning of the Refugee Convention.

The CNDA provided refugee protection, as it noted the credibility of the alleged sexual

orientation and the difficulty the applicant had in living within a conservative family and a society that rejected him. The court also found that the domestic violence, combined with periods of confinement to which the applicant was exposed, as well as the sexual abuse and ill treatment he suffered at the hands of an uncle and a politician, had been established without it being possible for him to obtain protection against these acts.

Disclosure of sexual orientation in a subsequent application

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *X v Federal Office for Immigration and Asylum (BFA)*, L530 2199527-5/21E, 30 January 2025.

The Federal Administrative Court annulled a negative decision for a national of Iraq who disclosed his sexual orientation in his second subsequent application, finding that the BFA failed to comprehensively assess the credibility and evidence related to this new element.

An Iraqi national filed both an initial and a subsequent application for international protection, citing threats due to the war and his family's political ties to Saddam Hussein, which led to restrictions on his ability to work, attend school and move freely. In his second subsequent application, he disclosed that he was homosexual and feared persecution based on his sexual orientation.

The Federal Administrative Court found that the BFA had not adequately examined the evidence submitted by the applicant. The court also found that the BFA should have heard the applicant's partner and, if necessary, other individuals who had expressed their views in writing on the sexual orientation of the applicant, without the need for a formal request for evidence. It affirmed that, in line with CJEU case law, the mere fact that a person did not immediately disclose their sexual orientation does not, given the sensitive nature of the issue, undermine the credibility of such a claim. According to the court, the applicant had presented compelling reasons for not disclosing his sexual orientation.

The court further noted that the application was based on events that had occurred after the last decision on the merits. It deemed that the applicant's sexual orientation was a new element that could undoubtedly contribute significantly to the likelihood of being granted international protection. The court clarified that the applicant's failure to present his alleged sexual orientation in previous asylum procedures could not be held against him. It held it was at least possible that, if returned to his region of origin, the applicant could face persecution due to his sexual orientation. The court added that considering the situation in Iraq, it was not inappropriate to expect that the case's outcome could change following further examination.

Membership of a particular social group: Biharis in Bangladesh

Italy, Civil Court [Tribunale], *X v Ministry of the Interior (Territorial Commission of Trieste/Udine)*, R.G. 5089/2019, 6 December 2024.

The Tribunal of Trieste granted refugee status to a stateless individual on grounds of a well-founded fear of persecution due to his membership in the Bihari minority group, which faces systemic discrimination and marginalisation in Bangladesh.

A stateless individual born and raised in the "Geneva camp" located in Mohammadpur, Dhaka, Bangladesh requested international protection, claiming that he faced harsh living conditions in the camp, discrimination in accessing healthcare and education, and difficulties in receiving a nationality document because he was Bihari. The Territorial Commission of Trieste/Udine rejected the application.

Upon appeal, the Tribunal of Trieste acknowledged the applicant's low level of education and noted that this should have been taken into account when conducting the credibility assessment. In relation to this, it found that the applicant was able to provide a satisfactory and sufficiently personalised account.

The tribunal found that the applicant's statements were externally consistent with COI, which confirmed that Biharis in Bangladesh had been *de facto* rendered stateless, with significant implications for every aspect of life, including access to essential services like education. It noted that, despite the formal recognition of their right to vote and to citizenship in 2008, in practice, they faced difficulties in exercising these rights, namely due to the inability to provide proof of a permanent address. Moreover, the tribunal noted that economic and social discrimination persisted, along with a lack of state initiatives to promote the genuine integration of the Bihari community, forcing many of them to continue living in slums.

In light of the personal stigmatisation the applicant had already suffered as a member of the Bihari minority group, the legal and socio-cultural context he would return to, and the lack of specific laws protecting against discrimination of minority groups in Bangladesh, combined with the state's factual inability to provide protection to such groups, the tribunal concluded that the applicant would face a real risk of persecution upon a return. Consequently, it ruled that the applicant met the conditions for refugee status.

Persecution of applicants with HIV in Uzbekistan

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202406731/1/V2, 3 February 2025.

The Council of State annulled the negative decision of the District Court of the Hague seated in Arnhem in a case concerning a female applicant from Uzbekistan who feared discrimination and prosecution because she was infected with HIV.

An Uzbek national applied for asylum on the grounds that she faced discrimination in her home country because she had HIV and was at risk of persecution because, under Article 113 of the Uzbek Criminal Code, exposing others to HIV infection is criminalised.

The Council of State found that the Minister for Asylum and Migration incorrectly assessed the applicant's risk of persecution. It ruled that Article 113 applies to all HIV-positive individuals who expose others to the virus, regardless of gender, sexuality or whether transmission occurred. The council determined that the minister's claim was unsubstantiated – that persecution was limited to HIV-positive LGBTIQ individuals, and the applicant was heterosexual. However, evidence showed that convictions also occurred in heterosexual marriages. Consequently, it found that the minister failed to adequately

justify its rejection of the applicant's fear of criminal prosecution. The council upheld the appeal and ordered the minister to issue a new decision.

Persecution based on political opinion in Burundi due to submitting an application for international protection

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *X v Commissioner General for Refugees and Stateless Persons (CGRS)*, No 321 368, 10 February 2025.

The Council for Alien Law Litigation granted refugee protection to a young Tutsi man from Burundi on the ground of perceived political opinion due to his stay in Belgium and the fact that he submitted an application for international protection, which would mean that upon a forced return to Burundi he would be suspected of having ties with the opposition.

A Tutsi applicant from Bujumbura (Burundi) had his request for international protection rejected by the CGRS. CALL ruled that Burundi faced severe political repression, human rights abuses and a shrinking civic space. It highlighted the dominance of the CNDD-FDD party, increasing violence by the Imbonerakure and the arbitrary arrests, detention and unfair trials of individuals on suspicion of ties with the opposition, human rights defenders, journalists and political opponents.

CALL reaffirmed its previous ruling that simply seeking asylum in Belgium could lead to a person being suspected of opposition sympathies by Burundian authorities, noting that this risk was aggravated for Tutsi applicants. CALL noted that the Burundian diaspora in Belgium faced heightened surveillance. It concluded that the applicant would likely face persecution upon a return and the council granted him refugee status based on political opinion attributed to him by the Burundian authorities.

Persecution based on political activities and military conscription of a national of Belarus

Estonia, Supreme Court [Riigikohtusse Poordujale], *Police and Border Guard Board (Politsei- ja Piirivalveamet, PBGB) v Applicant*, 3-23-935, 13 December 2024.

The Supreme Court ruled that the Tallinn Circuit Court failed to adequately assess whether a national of Belarus met the criteria for international protection based on his draft evasion and political opposition to the regime. The court also did not properly assess the potential abuse of the international protection procedure.

The Police and Border Guard Board (PBGB) rejected the application for protection of a national of Belarus. Upon appeal, the Tallinn Administrative Court ordered a re-examination of the case. The PBGB challenged the decision to the Tallinn Circuit Court, which ruled that the applicant should be granted international protection. The PBGB then appealed to the Supreme Court.

The Supreme Court noted that the circuit court did not adequately evaluate whether the refusal to serve could be perceived as politically motivated by Belarusian authorities and whether it could lead to persecution, as required by the EUAA's Practical Guide on Political Opinion (December 2022). It emphasised that according to the CJEU judgment in *EZ* v

Bundesrepublik Deutschland (Federal Republic of Germany) (C-238/19, 19 November 2020), in case of a refusal to participate in a civil war, it should be presumed that the ruling regime would attribute a political motive to the refusal. Moreover, the Supreme Court noted that the circuit court had found that the Belarusian military is not directly involved in combat operations against Ukraine. As a result, it concluded that there was no specific military conflict in which participation could be assumed solely based on military service, following the CJEU judgment in *Andre Lawrence Shepherd v Bundesrepublik Deutschland* (C-472/13, 26 February 2015). It also specified that the applicant did not demonstrate that his potential participation in Belarus's military could lead to the commission of crimes or war crimes.

The Supreme Court highlighted that the circuit court had not fully considered the possibility of abuse of the international protection system by the applicant. While acknowledging the applicant's political activities in Estonia, the Supreme Court pointed out that the circuit court did not fully investigate whether the applicant's actions in Estonia could be deemed genuine political opposition. The court emphasised the importance of assessing the applicant's political activities compared to his actions before arriving in Estonia. Thus, the Supreme Court annulled the decision of the Tallinn Circuit Court and referred the case for re-examination.

Military conscription: Syrian applicants

Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *X v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, L516 2276399-1, 22 January 2025.

The Federal Administrative Court dismissed a Syrian applicant's appeal against a negative decision for refugee status, finding no significant risk of persecution from the Kurdish forces in the Democratic Autonomous Administration of Northern and Eastern Syria (DAANES) for men born before 1998. With the fall of Assad's regime, it concluded that the risk of conscription and punishment for avoiding military service were no longer present.

A Syrian national from Ar-Raqqa who was granted subsidiary protection appealed the decision before the Federal Administrative Court, claiming that he would face detention upon a return for conscientious objection by both the Syrian regime and Kurdish armed forces and be persecuted for leaving Syria and seeking international protection.

The Federal Administrative Court found that the applicant failed to demonstrate a risk of persecution by the Kurdish forces or other actors upon a return. It noted, based on recent COI, that since Decree No 3 of 4 September 2021 in the Kurdish-controlled territory of DAANES, the obligation for self-defence was restricted to men born in 1998 or later who have reached the age of 18, while those born between 1990 and 1997 were exempt. The court concluded that this exemption demonstrated that the applicant was not at risk of recruitment by Kurdish forces.

Following the situation in Syria after 8 December 2024 and the fall of the Assad regime, the court confirmed that the applicant was no longer at risk of persecution by the regime, conscription into the Syrian army or punishment for evading military service or seeking asylum abroad. The court observed that hundreds of soldiers had been dismissed and, on 15 December 2024, Hay'at Tahrir al-Shams (HTS) leader Ahmed al-Sharaa (also known as Abu Mohammad al-Jolani) announced the abolition of compulsory military service in Syria.

As a result, the court concluded that the applicant was not threatened with conscription into the military of the current regime. Consequently, the court determined that the conditions to grant refugee status were not met and dismissed the appeal as unfounded.

Subsidiary protection: South Sudan

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant* v *The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL24.6277, 3 February 2025.

The District Court of the Hague seated in Groningen ruled that the Minister for Asylum and Migration failed to adequately justify its position that the situation in South Sudan did not reach the threshold of indiscriminate violence as per Article 15(c) of the recast QD.

A South Sudanese national from the Shilluk tribe sought asylum in the Netherlands, and his application was rejected by the Minister for Asylum and Migration. The District Court of The Hague seated in Groningen found that the minister failed to justify the position that South Sudan did not meet the threshold of "most exceptional situation" under Article 15(c) of the recast QD.

The court cited the CJEU judgment in *X, Y, their six minor children* v *Staatssecretaris van Justitie en Veiligheid* (C-125/22) and the ECtHR judgment in *N.A.* v *United Kingdom* (25904/07). The court assessed the general security situation in South Sudan, noting the extreme fragility, lack of security structures, ongoing tribal conflicts and severe displacement crisis. The court referred to reports which indicated continued violence in the Upper Nile State, where the applicant was from, including attacks on civilians and kidnappings.

The court also found the minister had failed to sufficiently explain why a reduced number of civilian fatalities since the 2013-2018 civil war outweighed other relevant circumstances or that humanitarian aid was not being deliberately obstructed as a weapon of war. The court further found that the minister failed to convincingly argue that long-term displacement diminished the current security concerns.

As a result, the primary ground of appeal was upheld, the court annulled the decision and ordered a reassessment of both the general security situation in South Sudan and the applicant's individual risk.

Subsidiary protection: Sudan

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.O.O.* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 24004064 C+, 19 December 2024.

The CNDA granted subsidiary protection to a national of Sudan, from West Kordofan, due to the current armed

conflict, holding that West Kordofan was in a situation of indiscriminate violence of exceptional intensity.

The CNDA granted subsidiary protection to a Sudanese applicant of Berti ethnicity on the sole basis of his origin from West Kordofan. The court noted that it does not appear from available public sources that the Berti are systematically persecuted by the Sudanese authorities or paramilitary militias solely because of their ethnicity.

The CNDA further noted that it is up to the asylum judge, hearing an application for subsidiary protection, to determine *ex officio* whether there exists, in the region from which the person concerned comes, a situation of armed conflict characterized by widespread violence likely to pose a serious, direct, and individual threat to their life or person if they return to their country of origin.

Thus, the CNDA analysed the situation in the country of origin based on various sources, including the EUAA's Political developments and security situation in Sudan between 1 September 2020 – 31 August 2021, which reported numerous intercommunal conflicts (over land ownership and control of local gold mines), armed robberies, and serious gaps and challenges in the protection of civilians. The court also referenced EUAA's Sudan - Country Focus, Security situation in selected areas and selected profiles affected by the conflict (April 2024) which indicated that the regions of Khartoum, Darfur and Kordofan are among those with the highest numbers of security incidents from 15 April 2023 to 31 January 2024, with civilians being the primary or sole target in 1,129 cases (24%) in indiscriminate attacks, as well as war crimes and crimes against humanity.

The court concluded that the situation of indiscriminate violence prevailing in West Kordofan, as of the date of decision, can be described as being of exceptional intensity resulting from an internal armed conflict.

Exclusion of a Russian national due to serious non-political crimes

Latvia, District Administrative Court [Administratīvā rajona tiesa], *Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)*, A42-02175-24, 19 December 2024.

The District Administrative Court upheld the negative decision on a Russian national's asylum application due to exclusion for having committed a serious non-political crime.

A Russian national appealed against a negative asylum decision, claiming that he would face severe persecution in Russia and serious harm in case he would be imprisoned upon return.

The District Administrative Court referenced the EUAA's COI Report The Russian Federation - Political opposition (December 2022). It concluded that the applicant did not fall into any of the social groups persecuted for political reasons.

The court noted that the applicant, a Russian citizen of ethnic Russian background, had not previously claimed Ukrainian ethnicity as a basis for persecution. The court dismissed the applicant's claim that he may be forced to fight in Ukraine as speculative, based on his age and lack of military service.

Moreover, the court confirmed that the applicant committed the crimes of illegal detention and extortion in Russia, which were considered serious crimes in Latvia. It noted that the applicant left Russia a day before his conviction, using false documents.

The court upheld the decision of the determining authority, excluding the applicant from subsidiary protection status and concluding that he had committed serious crimes and there were strong indications he had left his country solely to avoid punishment for such crimes.

Reception

Refusal of reception for applicants who were recognised as refugees in another Member State

Belgium, Council of State [Raad van State | Conseil d'État], *Coordination and Initiatives for Refugees and Foreigners (CIRÉ) and others v Belgian State represented by the State Secretary for Asylum and Migration*, No 261.887, 27 December 2024.

The Council of State ordered the urgent suspension of the enforcement of a decision of the State Secretary for Asylum and Migration which aimed to limit material assistance for applicants for international protection who had already been granted refugee status in another Member State.

The Council of State examined a request by a group of NGOs to suspend, under the extremely urgent procedure, the execution of a decision made by the Secretary of State for Asylum and Migration to limit material assistance for applicants for international protection who had already been granted refugee status in another Member State.

The council assessed whether the conditions for such a suspension were met under Article 17(1)(2) of the laws on the Council of State, which requires both urgency and the existence of at least one serious argument justifying an annulment.

The council rejected the Secretary of State's claim that the urgency was caused by the applicants themselves for leaving a Member State where they already received refugee status. It ruled that the contested act directly created an urgent situation by depriving the applicants of material support, making them vulnerable to destitution. Additionally, the council observed that there was no evidence to confirm that these individuals could be accommodated outside the Fedasil network by a partner organisation. As a result, the council asserted that the enforcement of the contested act directly created the risk cited and justified the urgency of the matter. Thus, it concluded that the conditions for an emergency suspension were met.

Detention

Detention following search and rescue operations

Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], *M.G.K. v Presidency of the Council of Ministers and Ministry of the Interior*, RG 5992/2025, 18 February 2025.

The Court of Cassation ruled on the Diciotti case, determining that the 177 migrants rescued at sea were entitled to non-material damages for the unlawful deprivation of their personal liberty for 10 days aboard the Italian Coast Guard vessel, during which they were not disembarked, even after the vessel docked in the port of Catania, thereby violating their fundamental right to personal liberty.

A group of migrants, including M.G.K., were detained aboard an Italian Coast Guard vessel for 10 days. They sought compensation for non-material damages from the Tribunal of Rome, which ruled it lacked jurisdiction. The Court of Appeal of Rome later dismissed the claim. M.G.K. challenged the decision to the Court of Cassation, and the appeal was upheld.

The court ruled that, despite concerns about the competent state under the search and rescue (SAR) zone breakdown, the rescue operations were carried out by an Italian SAR authority, which was required by international regulations to arrange disembarkation "as soon as reasonably possible". The court found that the failure to identify a place of safety in a

timely manner, combined with the decision to delay disembarkation for 5 days while the ship was moored in the port of Catania, violated international laws.

Moreover, the court referenced the ECtHR judgment in *Khlaifia and Others v Italy* (16483/12, 15 December 2016), which clarified that Article 5(1)(f) of the ECHR requires any deprivation of liberty to have a legal basis in national law and the conditions limiting personal freedom must be clearly defined. The court found that the absence of a judicial measure or subsequent validation of governmental decisions was sufficient to establish the arbitrary detention of the migrants under Article 5 of the ECHR. Additionally, the lack of a notified and reasoned detention measure prevented the migrants from challenging the lawfulness of the detention in court or seeking its immediate termination if found unlawful.

The court ruled that the alleged regulatory uncertainty regarding the identification of the competent state or the flexibility in disembarkation decisions could not justify the conduct. It stated that such flexibility must in any case adhere to reasonable time limits, as failure to do so would amount to the restriction of personal freedom. The court also noted that the lower court failed to evaluate whether the forced detention on the vessel was reasonable, considering factors such as the ship's conditions, the number of occupants, their health, past trauma, and weather. Additionally, the court highlighted that the lower court did not assess whether the administration's actions met the standards of prudence and diligence, given the rights at stake and the question of whether the prolonged detention of migrants could be deemed acceptable.

Thus, the court upheld the appeal, overturned the judgment, and remitted the case to the Court of Appeal of Rome, in a different composition.

Specialised detention facilities used in border detention

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202407479/1/Q3, 29 January 2025.

The Council of State ruled that the Schiphol Judicial Complex still constituted a specialised detention facility within the meaning of Article 10(1) of the recast RCD, despite increased restrictions in detention due to a large influx of asylum applicants in border detention in November and December 2024.

With reference to the guidelines set out in CJEU case C-519/20, the Council of State ruled that the Schiphol Judicial Complex qualified as a specialised detention facility under Article 10(1) of the recast RCD, as asylum applicants were separated from criminal detainees, received different treatment and had access to facilities for their application to be processed. Despite stricter conditions due to overcrowding, the council found that they did not exceed necessary limits or amount to criminal detention. It also held that the District Court of The Hague lacked jurisdiction to assess compliance with the Border Accommodation Regime Regulation.

The Council of State confirmed this position in a ruling pronounced on 26 February 2025 (202500661/1/V3), in which it noted that, although the organisation of the Schiphol Judicial Complex departments for border detention

does not differ from those for criminal detention, asylum seekers and criminal detainees are separated from each other. The fact that both asylum seekers and criminal detainees are restricted in their freedom does not mean, according to the Council of State, that there are no differences, as asylum seekers are detained for a shorter period and can make more use of the exercise yard than criminal detainees.

Examination of a mobile phone while being placed in border detention

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)*, BRS.24.000162, 22 January 2025.

The Council of State ruled that, although the Royal Netherlands Marechaussee examined the mobile phones of three Iranian applicants without their consent, this did not render their border detention unlawful. It also advised the legislator to elaborate Article 55(2) of the Aliens Act if it wants to allow the possibility for the examination of mobile phones without the consent of applicants.

Three Iranian asylum applicants arrived at Schiphol Airport on 4 April 2024. They were placed in border detention and their phones were searched by the Royal Netherlands Marechaussee without their consent.

The District Court of the Hague ruled this to be unlawful, finding no sufficient legal basis and concluding that the border detention was unlawful from the start. The minister appealed, arguing that the search was for the purposes of the asylum procedure, not detention, and cited Article 55(2) of the Aliens Act 2000 as justification.

The Council of State found this article insufficient for phone searches but ruled that the search did not affect the lawfulness of detention. The court noted that the mobile phones were examined to find documents that were necessary for the assessment of their asylum applications and not to place or keep them in border detention. The legality of the examination of their mobile phones and the possible use of the information obtained may however be challenged in an appeal against the asylum decision. The minister's appeal was upheld, and the court advised the legislator to clarify the legal basis for searching the phones of asylum applicants.

Detention on grounds of national security

Norway, Court of Appeal [Lagmannsrettane], *Applicant v The National Police Immigration Service*, LB-2024-189205, 6 December 2024.

The Borgarting Court of Appeal upheld the decision to detain an Iraqi national due to the risk of absconding assessed on the basis of classified information according to which he may pose a threat to national security.

The Borgarting Court of Appeal ruled on the detention of an Iraqi national on grounds of a risk of absconding. The court considered the pending asylum application and the possible expulsion based on assessments by the Norwegian Police Security Service (PST), which linked the applicant to activities that threaten national security due to alleged involvement in terrorism for ISIS.

The court determined that there were concrete and objective indications of a risk of absconding, particularly considering the applicant's alleged ties to ISIS and involvement in the 2014 Camp Speicher massacre in Iraq. The Borgarting Court of Appeal ultimately found that the applicant's inconsistent identity claims and past behaviour supported the risk of absconding, justifying the detention as a proportionate measure.

Duration of detention and limits of a judicial review

Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], *Applicant v Ministry of the Interior (Ministerstvo vnitra České republiky),* 10 Azs 244/2024 - 37, 20 February 2025.

The Supreme Administrative Court clarified that the Ministry of the Interior must set up the duration of asylum detention by taking into account the scope of detention and the risk of arbitrariness, and that the judicial review is ex officio and cannot reduce the length of detention as only the Ministry of the Interior is competent by law to establish its duration.

A Turkish applicant contested the lawfulness of the asylum detention measure taken by the Ministry of the Interior, pending the proceedings for his subsequent application. The initial duration was set up for 140 days by taking into account possible procedural steps for first and second instance determination in the asylum procedure. In the first appeal, the regional court assessed the duration as too long and shortened it to 110 days.

In the cassation appeal, the Supreme Administrative Court referred extensively to EU law, specifically the Returns Directive and the recast RCD, along with the CJEU Grand Chamber judgment in *C, B and X v State Secretary for Justice and Security* (Joined Cases C-704/20 and C-39/21, 8 November 2022) and national legislation. It clarified that when determining the duration of detention the Ministry of the Interior must consider the scope of the asylum detention, namely to ensure that the third-country national is available to enforce a return decision in the case of a negative decision, and to prevent arbitrariness. As such, the detention duration should be long enough to avoid repeated extensions, but short enough to prevent arbitrariness.

As for a judicial review, the Supreme Administrative Court clarified that neither EU law nor national legislation allow courts to shorten the duration of asylum detention since only the Ministry of the Interior is competent by law to set it up. However, courts have a duty to examine *ex nunc* and *ex officio* the lawfulness of detention. Conclusively, the court ruled that the lower court could not shorten the duration of detention and annulled both contested decisions.

Second instance procedures

Impartiality of judges who previously worked with the determining authority

Belgium, Council of State [Raad van State | Conseil d'État], *A.K. v Commissioner General for Refugees and Stateless Persons (CGRS)*, No 261 928, 9 January 2025.

The Council of State upheld the request for the disqualification of a judge in an appeals case examined before CALL, ruling that the judge's prior employment with the determining authority created a legitimate doubt about her objective impartiality.

The Council of State ruled on a request to disqualify a judge from a case being examined before CALL and determined that the request was well-founded on the basis of a legitimate suspicion about the judge's impartiality, as she had previously worked as an attaché and advisor for the CGRS until 3 months before her appointment as a judge in immigration matters. During her employment with the determining authority, she handled cases of Afghan asylum applicants and represented the CGRS at hearings.

Given that she would be judging a case involving her former employer within 3 months of leaving her position, the council found that this could reasonably create doubts about her objective impartiality.

The council rejected the argument that her lifetime judicial appointment should automatically prevent disqualification. It also dismissed the claim that no concrete evidence of subjective bias had been presented, emphasising that the issue at hand was the objective appearance of partiality. The fact that the judge intended to refrain from cases she had previously handled was deemed irrelevant, as the concern was not her personal bias but the general impression of impartiality. Consequently, the council upheld the request for disqualification.

Consequences on a pending appeal when a minor applicant is forcibly taken outside the territory of the Member State

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *X v Commissioner General for Refugees and Stateless Persons (CGRS)*, No 318 812, 18 December 2024.

CALL ruled that the applicant's involuntary return to Iraq due to being kidnapped by her father during the appeal procedure did not lead to the rejection of her application. The council granted her refugee status, recognising the risk of persecution she faced as a minor girl who was unfamiliar with Iraqi norms.

CALL examined an appeal against an inadmissibility decision in the case of a minor Iraqi applicant. During the hearing, her mother revealed that the child had just been abducted by her father and taken to Iraq. The CGRS argued on this basis for the closure of her case.

CALL clarified that in order to apply for international protection an individual must be outside their country of origin. Since the applicant had been outside Iraq when she

submitted her application, the council considered that it had no legal basis not to examine the appeal, as the applicant had not waived her request, either explicitly or implicitly. The council referred to the Law of 15 December 1980, which does not allow for the closure of a case if the return to the country of origin was involuntary. It also referenced the EUAA's Practical Guide on the Application of Cessation Clauses (December 2021), emphasising that an involuntary return would not lead to cessation.

Thus, CALL held that it could continue examining the appeal, as the applicant's return to Iraq was not voluntary and did not prevent the continuation of the proceedings. Furthermore, the council found that, as a minor girl born out of wedlock, unfamiliar with Iraqi norms and raised in Belgium, she faced a serious risk of discrimination and violence if returned. Citing the CJEU judgment *K and L v State Secretary for Justice and Security* (C-646/21), it determined that she belonged to a particular social group and granted her refugee protection.

Appeals against age registration

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202305421/1/V2, 18 December 2024.

The Council of State concluded that the notification of an age registration is a preliminary decision leading up to a final asylum decision and cannot be appealed separately.

After repeated changes to the date of birth of the applicant, his date was set to that of an adult but he was not notified about it. The applicant was granted international protection and the decision noted that an objection against the changed date of birth will be examined separately. The State Secretary for Justice and Security then declared the objection inadmissible, stating that a notification cannot be regarded as a decision within the meaning of the General Administrative Law.

Although the notification of an age registration is a decision, the Council of State found that it cannot be appealed separately within the meaning of the General Administrative Law. The identity and the age of the applicant is part of the process to prepare for the asylum decision and the notification of the age registration pending the asylum decision is not a final decision in itself. The applicant may, upon a decision granting international protection, appeal the decision only related to the part on age assessment.

In an *obiter dictum*, the court noted that the minister had acknowledged that it had given the impression to the applicant that the objection to the determination of the age would be substantively examined, which was not done, as it was dismissed as inadmissible. With the appeal deadline against the asylum decision having passed, the minister proposed to give the third-country national the opportunity to exceptionally challenge the determination of his age in court after a supplementary decision on the asylum application would be issued addressing the objections raised by the applicant against the determination of his age.

Humanitarian protection

Humanitarian protection in Spain

Spain, Supreme Court [Tribunal Supremo], *Applicants v Administracion del Estado (representada por la Abogacia del Estado)*, No 361/2025, 28 January 2025.

The Supreme Court reaffirmed its interpretational doctrine considering that a temporary authorisation to reside based on humanitarian grounds is a third level of protection within the international protection framework governed by Spanish Asylum Law and highlighted that a situation of vulnerability demands the ex officio consideration of such protection.

A Colombian family, whose request for asylum in Spain was rejected, appealed the decision and requested protection based on humanitarian grounds due to their vulnerable situation, namely having two children and not being able to exercise their liberty and economic, social, and cultural rights, given their political persecution.

The Supreme Court observed that Spanish legislation on asylum has included within its framework an authorization to reside on humanitarian grounds not necessarily linked with asylum grounds or conflict situations, instability, or risk in the country of origin, that can cover other circumstances such as social and personal reasons of the applicant. Such exceptional circumstances must be expressed and substantiated by the applicant, and they can be linked to the personal situation of the applicant and the deterioration that returning to their country of origin would entail.

The court noted that vulnerability or a situation of vulnerability does not introduce differences to the type of humanitarian grounds that could be appreciated, it rather demands a proactive attitude from the administration which demands even to consider *ex officio* the possible presence of such humanitarian circumstances.

In the present case, the court granted humanitarian protection, noted that the contested decision had accepted that the father of the family had been persistently subject to threats and extortion. From the information contained in the file, the Supreme Court concluded that given the seriousness and repetition of these acts, they had sufficient grounds to constitute a real risk for the security of the family, including for the younger children, an aspect which was not duly considered in the rejecting decision. The court noted that whilst it had been argued that the family could relocate to another region of Colombia, that disregarded the vulnerability of the family and the difficulty of overcoming extortion.

Humanitarian protection in Italy

Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], *Applicant v Ministry of the Interior (Ministero dell'Interno)*, 25 January 2024.

The Court of Cassation upheld the appeal of a national of Ghana, ruling that the Tribunal of Venezia had wrongly considered her past conviction as an absolute obstacle to granting a residence

permit on humanitarian grounds and emphasising the need for a thorough assessment of her social and occupational integration, as well as the potential impact on her fundamental rights upon repatriation.

The request for international protection of a national of Ghana was rejected on the grounds that she had been convicted of aiding and abetting drug trafficking. The Tribunal of Venezia dismissed her appeal and stated she could not be granted additional protection.

The Court of Cassation ruled that the tribunal had incorrectly held that the offence committed was, in itself, an obstacle to issuing a residence permit on humanitarian grounds, making an abstract assessment. It clarified that the potential social danger posed by the applicant, in the event of an obstacle to the issuance of such a residence permit, must be assessed concretely and in the present context. The court further clarified that the tribunal hearing the merits of the case must assess whether, despite the offence committed and taking into account its temporal context and the fact that the sentence had been served, there are fundamental rights that would be compromised by the refusal of the residence permit on humanitarian grounds. Specifically, the Court of Cassation noted that the tribunal must determine whether social and occupational integration would be irreversibly compromised by repatriation, considering the conditions in the country of origin and the applicant's length of stay in Italy.

In conclusion, the court upheld the appeal and referred the case back to the Tribunal of Venezia for a new examination by a different composition.

Content of protection

CJEU ruling on the compatibility of civic integration examinations with the recast QD

CJEU, *T.G. v Minister van Sociale Zaken en Werkgelegenheid*, C-158/23, 4 February 2025.

The CJEU ruled that EU law does not preclude imposing on beneficiaries of international protection, under certain conditions, the obligation to pass a civic integration examination. Imposing a fine is possible only in exceptional cases, such as for proven and persistent lack of willingness to integrate, but Member States cannot systematically penalise beneficiaries for failing the examination.

The Dutch Council of State submitted a request for a preliminary ruling on the compatibility of the Dutch system with the recast QD, in a case concerning an Eritrean beneficiary of international protection who did not attend several mandatory civic integration training sessions and failed several times. The authorities imposed a fine of EUR 500 and decided that he had to repay the loan of EUR 10,000 that he had been granted to cover the costs of the civic integration programme.

The CJEU emphasised the importance of acquiring language and societal knowledge for the integration of beneficiaries of international protection into the host Member State, particularly for access to the labour market and vocational

training. The knowledge required for integration exams should remain at an elementary level, and those effectively integrated should be exempt, taking into account individual circumstances.

The CJEU noted that failing such an examination should not automatically result in a fine, which should only be imposed for persistent unwillingness to integrate and should not impose an unreasonable financial burden on the beneficiary. The CJEU found that the Dutch legislation, which systematically fined beneficiaries of international protection up to EUR 1,250 and required them to cover all integration costs, was disproportionate and undermined effective integration.

The CJEU held that Article 34 of the recast QD prohibited an unreasonable financial burden to the beneficiaries of international protection for failing civic integration examinations. Additionally, it precluded legislation requiring beneficiaries to fully bear the costs of integration courses and examinations.

Family reunification for beneficiaries of subsidiary protection

Belgium, Court of Appeal [Hof van Beroep - Cour d'Appel], *Applicant* v *Belgian State*, 2024/KR/60, 11 February 2025.

The Court of Appeal held that the Belgian State unlawfully rejected the inclusion of a woman from Gaza on the evacuation list, prohibiting her from exercising her right to family reunification with her husband who was a beneficiary of subsidiary protection in Belgium. The court held that the distinction by the state in including refugees but not beneficiaries of subsidiary protection on the list was discriminatory.

A woman from Gaza sought family reunification with her husband who had subsidiary protection in Belgium. Although granted a visa, her request for evacuation assistance was denied, as Belgium only aids its nationals, recognised refugees and their nuclear families. The Brussels Court of First Instance ordered the state to place her on the evacuation list within 72 hours, imposing a EUR 1,000 daily penalty for delays. The Belgium State appealed, arguing a lack of jurisdiction by the lower court and no obligation to provide consular assistance.

The court ruled that the right to family reunification in Belgium does not distinguish between refugee status and subsidiary protection status, and the decision to not include the applicant on the evacuation list, which was a necessary prerequisite for her to exercise her right to family reunification, constituted unequal treatment. The court found that the distinction by the state lacked pertinent motives, rendering it unlawful and discriminatory. It upheld the lower court's ruling and maintained the penalty payment.

Withdrawal of refugee status on grounds of national security

Lithuania, Vilnius Regional Administrative Court [Vilniaus apygardos administracinis teismas], *P.B.* v *Migration Department of the Ministry of the Interior of the Republic of Lithuania*, eI2-4429-780/2025, 21 January 2025.

The Vilnius Regional Administrative Court upheld the decision to revoke the refugee status of a Belarusian national, as Lithuania's security service (VSD) classified

him as loyal to the Belarusian regime and a security threat, while the court considered that there was a lack of credibility concerning his claims that he never collaborated with the KGB but instead sought to mislead them.

The Migration Department of the Ministry of the Interior revoked the refugee status of a Belarusian national after determining that the applicant had cooperated with Belarusian law enforcement. The applicant appealed the decision before the Vilnius Regional Administrative Court, stating that withdrawing his refugee status would expose him to severe risks.

The court had to assess whether the revocation was lawful and justified. The court found the applicant's explanations to be unconvincing, citing contradictions in his statements and a lack of credibility. Additionally, the court noted that the applicant concealed past cooperation with Belarusian authorities when applying for asylum and only admitted it after being confronted with evidence. His membership in Belarusian opposition organisations in Lithuania was suspended after the allegations surfaced, further casting doubt on his credibility.

The Vilnius Regional Administrative Court upheld the decision to revoke his refugee status, concluding that his explanations were unreliable and that he was a threat to national security.

Temporary protection

CJEU interpretation of Articles 4 and 7 of the Temporary Protection Directive

CJEU, *P, AI, ZY, BG [Kaduna] v State Secretary for Justice and Security*, Joined Cases C-244/24 and C-290/24, 19 December 2024.

The CJEU ruled that a Member State which had extended temporary protection to certain categories of people beyond what is required by EU law may withdraw that protection without waiting for the temporary protection granted under EU law to end.

In the Netherlands, the authorities initially granted temporary protection to all holders of a Ukrainian resident permit, including temporary ones. The same authorities subsequently decided to limit temporary protection to a more restricted category of people, namely holders of a permanent Ukrainian residence permit.[5]

The CJEU held that a Member State which had granted optional temporary protection to a category of people may, in principle, withdraw the protection from these people. In this respect, Member States may decide on the duration of the optional temporary protection which they grant, if it does not begin before and does not end after the temporary protection granted by EU

[5] An overview of the divergent case law on this matter is available in EUAA's report on Jurisprudence on the Application of the Temporary Protection Directive. Analysis of case law from 2022-2024 (October 2024).

institutions. In addition, the Member State is required to grant a residence permit to beneficiaries of optional temporary protection which enables them to reside on its territory as long as that protection is not withdrawn from them.

The CJEU clarified that, when people continue to benefit from optional temporary protection, they are lawfully resident in the territory of the Member State. Therefore, they cannot be the subject of a return decision until the Member State has put an end to the optional protection.

It recalled that the immediate and temporary protection scheme, which is a manifestation of the principle of solidarity and fair sharing of responsibility between Member States in the implementation of asylum policy, is exceptional in nature and must be reserved for cases of a mass influx of displaced persons.

CJEU interpretation of Article 8(1) of the Temporary Protection Directive

CJEU, *A.N. [Krasiliva] v Ministerstvo vnitra*, C-753/23, 27 February 2025.

The CJEU held that Article 8 of the TPD precludes national legislation which envisages the refusal of an application for a residence permit based on temporary protection when a person has applied for, but not received yet, such a permit in another Member State. A person under temporary protection has a right to an effective remedy before a tribunal against a decision to reject as inadmissible an application for a residence permit, within the meaning of Article 8 of the TPD.

The Czech Supreme Administrative Court asked the CJEU whether Article 8 of the TPD precludes national legislation which foresees the inadmissibility of an application for a residence permit based on temporary protection if the foreign national has applied or been granted a residence permit in another Member State. The court also requested the CJEU to clarify whether such an applicant has the right to an effective remedy before a tribunal under Article 47 of the EU Charter against the failure of a Member State to grant a residence permit within the meaning of Article 8(1) of the TPD.

The CJEU clarified that Article 8(1) of the TPD must be interpreted as precluding national legislation which considers inadmissible the application for a residence permit based on temporary protection solely because the applicant has already applied in another Member State. The CJEU stated that the second Member State must examine the merits of the application. In doing so, the court noted, the authorities of the Member State may verify whether the person falls within the categories referred to in Article 2 of Implementing Decision 2022/382 and if he/she has already obtained a residence permit in another Member State.

On the second question, the court noted that under Article 8(1) of the TPD, Member States are required to adopt the necessary measures to provide persons described in the TPD a residence permit for the entire duration of the protection and, for that purpose, to issue documents or other equivalent evidence. Accordingly, the right to a residence permit and evidence of it is guaranteed by the legal order of the EU, and thus be invoked under Article 47 of the EU Charter.

Return

ECtHR judgment on return of Uighurs to China

ECtHR, *A.B. and Y.W. v Malta*, No 2559/23, 25 February 2025.

The ECtHR held that there would be a violation of Article 3 if the applicants were to be removed to China without an ex nunc rigorous assessment of the risk they would face on their return to the Xinjiang Uyghur Autonomous Region (XUAR) as Uighur Muslims who had been rejected asylum. The court indicated interim measures to the Maltese government.

A married couple of Uighur ethnicity and Muslim faith from Xinjiang province applied for international protection in Malta. The Office of the Refugee Commissioner in Malta rejected their request for protection. Five years later, in 2022, they applied for a residence permit that was rejected, and a return decision and removal order were issued. The applicants challenged the removal order before the Immigration Appeals Board (IAB), arguing that their removal from Malta would constitute a violation of the principle of *non-refoulement*. The IAB concluded that the applicants would not be at risk.

Shortly after, the applicants requested interim measures to the ECtHR under Rule 39, and relying on Articles 2, 3 and 13 of the ECHR, the applicants lodged a complaint stating that they would be at risk of ill treatment if they were returned to China and that they had no effective remedy in Malta to assess that risk.

The ECtHR concluded that the conduct of the Maltese authorities in the applicants' case had been in breach of their procedural obligations under Article 3 of the ECHR. It held that the IAB's function in 2022 was to rigorously assess the risk of treatment contrary to Article 3 that the applicants would face if returned to China, before confirming the return decision and removal order. The court noted that the IAB should not merely rubber stamp prior asylum decisions, in order for it to be an effective remedy. The court highlighted that this is even more the case when there has been a substantial lapse of time between the rejection of the asylum application and the date of the removal order and its subsequent challenge. The court noted that it was evident from the IAB's brief decision that it merely relied on an assessment that was taken 6 years earlier.

The court further held that there would be a violation of Article 3 if the applicants were to be removed to China without an *ex nunc* rigorous assessment of the risk they would face on their return to XUAR as Uighur Muslims who were rejected asylum seekers. Interim measures were indicated to the Maltese government.


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