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

Note

The “EUAA Quarterly Overview of Asylum Case Law” is based on a selection of cases from the EUAA Case Law Database, which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU) 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 | Bundesamt für Migration und Flüchtlinge (Germany)
BFA	Federal Office for Immigration and Asylum | Bundesamt für Fremdenwesen und Asyl (Austria)
CIAR	The Interministerial Committee on Asylum and Refuge | Comisión Interministerial de Asilo y Refugio (Spain)
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)
CPR	Pre-Removal Centre | Centro di Permanenza per il Rimpatrio (Italy)
Dublin III Regulation	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EASO	European Asylum Support Office (now the EUAA)
EUAA	European Union Agency for Asylum
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union
EU+ countries	Member States of the European Union and associate countries
Fedasil	Federal Agency for the Reception of Asylum Seekers (Fedasil) | Agence fédérale pour l'accueil des demandeurs d'asile | Federaal agentschap voor de opvang van asielzoekers (Belgium)
FIFO	'first in, first out' (Netherlands)

GDPR	General Data Protection Regulation. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
IPAC	International Protection Administrative Court | Διοικητικό Δικαστήριο Διεθνούς Προστασίας (Cyprus)
JCS	Schiphol Judicial Complex | Justitieel Complex Schiphol (Netherlands)
LGBTIQ	lesbian, gay, bisexual, transgender, intersex and queer
OCMA	Office of Citizenship and Migration Affairs | Pilsonības un migrācijas lietu pārvalde (Latvia)
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
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

Main highlights

The decisions and judgments presented in this edition of the "EUAA Quarterly Overview of Asylum Case Law, Issue No 2/2025" were pronounced from March to May 2025.

Court of Justice of the European Union (CJEU)

The CJEU pronounced five important judgments on: i) the time limit to examine an application for international protection beyond the 6-month time limit provided by the recast Asylum Procedures Directive (APD); ii) the exclusion clause under Article 12(2)(b) of the recast Qualification Directive (QD); iii) membership of a particular social group related to blood feuds; iv) effective remedy for victims of torture; and v) the right to rectify gender identity data for asylum applicants.

The CJEU ruled in *State Secretary for Justice and Security* v *X [Zimir]* (8 May 2025) that under Article 31(3)(b) of the recast APD the 6-month time limit for the examination of applications for international protection may be extended by 9 months by the determining authority due to a significant increase in the number of applications within a short period and not when there is a gradual increase in applications over an extended period. Other circumstances, such as a significant backlog of applications or insufficient personnel at the determining authority, cannot justify such an extension.

In *K. L.* v *Migration Department at the Ministry of the Interior of the Republic of Lithuania [Galte]* (30 April 2025), the CJEU clarified that the fact that an applicant served a sentence for committing a crime does in itself prevent the application of the exclusion clause provided under Article 12(2)(b) of the recast QD. However, it is one of the several aspects that Member States must take into account among others to be considered when deciding on exclusion for commission of a serious non-political crime. The court added that in order to assess the seriousness of the offence, the competent authority must examine in particular the type of act, the sentence incurred and imposed, the period which has elapsed and the conduct of the person since the criminal act, and the remorse expressed by the person. The court also noted that the exclusion of a person from refugee status under Article 12(2) of the recast QD is separate from the decision whether that person may be returned to the country of origin.

Deciding on whether involvement in blood feuds may lead to international protection due to membership of a particular social group, the CJEU clarified in *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)* v *AN [Laghman]* (27 March 2025) that the criterion is related to how the society as a whole or in large part recognises a group as distinct when considering prevailing social, moral and legal norms. It also held that membership of a particular social group must be established independently of the risk of persecution and reiterated its findings in the judgment *WS* v *State Agency for Refugees under the Council of Ministers (SAR)*, (C-621/21, 16 January 2024). In contrast, Advocate General de la Tour referred to EUAA's *Country Guidance: Afghanistan* (May 2024) to explain blood feuds for the Pashtunwali in Afghanistan, distinguishing between blood feud and simple land dispute, and concluded in his opinion that "depending on the circumstances in the country of origin, a member of a family involved in a blood feud in that country may be considered to

belong to a 'particular social group' as a reason for persecution that may lead to the recognition of refugee status".

Of relevance for the provision of an effective remedy to victims of torture, especially in national systems in which courts do not have the power to order a medical examination, the CJEU ruled in *B.F. v Kypriaki Dimokratia [Barouk]* (3 April 2025) that a national court of first instance which hears an appeal against a negative asylum decision must have the power to order a medical examination of the asylum applicant when the court considers that the use of the examination is necessary or relevant for the purposes of assessing the application for international protection. If this would not be the case, then the remedy provided would not be an effective one, covering *ex nunc* aspects of law and fact. The court observed that it is not necessary for the court itself to approach a qualified health professional, and it may also order the determining authority to arrange the medical examination and to send the results to the court within a short period of time.

Noteworthy for the rights of transgender people under EU law, and specifically for asylum applicants granted refugee status due to persecution based on transgender identity, the CJEU ruled in *VP v National Directorate-General for Aliens Policing* (13 March 2025) that individuals may be required to provide reasonable evidence to exercise their right to rectify personal data relating to gender identity, pursuant to Article 16 of the General Data Protection Regulation (GDPR), but Member States cannot impose an administrative requirement to prove gender reassignment surgery to exercise this right. The court also underlined that, based on the principle of accuracy of personal data, the authorities should have registered the correct gender identity of the applicant at the time of registration of the asylum application, and not the gender identity assigned at birth. Consequently, national law cannot oppose to the right to have data rectified.

European Court of Human Rights (ECtHR)

At the Council of Europe, the European Court of Human Rights (ECtHR) dealt with requests for interim measures concerning returns from Poland to Belarus, state obligations during coast guard operations, obligations when examining cases of applicants at risk of suicide and when carrying out age assessments.

The ECtHR granted a request for an interim measure (Rule 39) in *ATT* v *Poland* on 9 April 2025. The interim measure was adopted in the context of Poland suspending the possibility of submitting an application for international protection at the border with Belarus. The court indicated to the Polish authorities not to return the applicant to Belarus until 28 April 2025 because of a real risk of violating his right to life and the prohibition of torture, inhuman or degrading treatment. A similar interim measure was adopted by the court on 15 April 2025, preventing the return of a woman from Democratic Republic of Congo and a woman from Somalia to Belarus.

Following up on its previous case law concerning the obligations of state authorities during coast guard operations where force is used against migrant boats (see *Safi and Others v Greece*, 7 July 2022; *Alkhatib and others v Greece*, 16 January 2024), in a recent judgment, *Almukhlas and Al-Maliki v Greece* (25 March 2025), the ECtHR found a violation of

Article 2 under its procedural and substantial limbs due to shortcomings in the investigation of the death of the applicant's minor son, which took place after a shot was fired by a Greek coastguard during an operation to intercept a boat which was illegally transporting people to Greece on 29 August 2015. The court also held that the interception operation was not carried out in a way that would minimise the use of lethal force and the possible risks to life.

In a judgment which raises awareness about asylum applicants at risk of suicide, and specifically about state obligations towards unaccompanied minors at risk of suicide, the ECtHR clarified in *Hasani* v *Sweden* (6 March 2025) that an assessment of an applicant with a mental health condition concerns real and imminent risks, and the burden on the authorities must not be impossible or a disproportionate burden. It added that the court's assessment is centred on what the authorities knew or ought to have known at the relevant time, namely in the days preceding A.H.'s suicide, and caution must be exerted when revisiting events with the wisdom of hindsight. However, in a dissenting opinion, a minority of three judges considered that national authorities could have adopted reasonable measures to prevent the risk of suicide by providing specific support, for example psychological or psychiatric support, assessment of the mental state before announcing the decision, legal support and assistance when the decision was announced. The dissenting judges stated that such measure could have had a real prospect of altering the outcome or mitigating the harm.

On procedural safeguards on age assessments, the ECtHR found a violation of Article 8 of the Convention in the case *F.B.* v *Belgium* (6 March 2025) when the applicant complained of rights as an unaccompanied minor being terminated. The court underlined that a medical examination must be a last resort measure to assess the age of a foreigner, and less intrusive methods should have been explored in the first place, for example by conducting a preliminary interview to ascertain whether the doubts about her age could be dispelled. Also, an interview would have allowed the applicant to receive the necessary information to defend her rights effectively.

National courts

Dublin procedure

The thematic report *Analysis of Jurisprudence on the Implementation of the Dublin Procedure*, covering jurisprudence from European and national courts between January 2024–May 2025, was published by the EUAA on 3 June 2025. In addition to the jurisprudence presented therein, for the relevant period for this quarterly, the main highlights concern access to the asylum procedure in Hungary and Poland and access to adequate reception conditions following a Dublin transfer.

Regarding access to the asylum procedure, the District Administrative Court in Latvia found systemic deficiencies in the asylum system in Hungary due to its specific embassy procedure which prevents access for asylum seekers. In addition, the District Court of the Hague seated in Haarlem found deficiencies in the asylum procedure in Poland for a Tajik applicant whose removal was attempted by the Polish authorities despite an interim measure from the ECtHR and a court ruling in Poland preventing a deportation.

On reception conditions following a Dublin transfer, the District Court of the Hague seated in Groningen annulled a decision on a Dublin transfer to Belgium because of the risk for the

applicant, a non-vulnerable, single man, of not finding long-term accommodation and not securing basic needs in Belgium.

Secondary movements of beneficiaries of international protection

German courts confirmed inadmissibility decisions for applicants who were already granted protection in Greece. The Federal Constitutional Court ruled that the applicant could secure accommodation in a temporary shelter and that undeclared work may be regarded as a reasonable and acceptable means of securing basic needs as long as the person is not exposed to a serious risk of criminal prosecution. The Federal Administrative Court reached a similar conclusion by finding that asylum applications submitted by single, employable and non-vulnerable beneficiaries of international protection in Greece can be rejected as inadmissible in Germany, as their living conditions upon a transfer back to Greece would not amount to inhuman or degrading treatment as provided in Article 4 of the EU Charter.

Exclusion of Afghan nationals

The Supreme Administrative Court in Finland confirmed the application of exclusion clauses for Afghan applicants as it found that: i) a long period of working for the Afghan National Security Agency and involvement in many operations resulted in contributing to the torture of detainees, constituting a serious non-political crime; and ii) a former Taliban member committed war crimes for which he was criminally responsible despite the fact that he was a 15-year-old minor at the time of the events.

Detention

In the Netherlands, the District Court of the Hague seated in Amsterdam submitted several questions to the CJEU for a preliminary ruling on the meaning, standards and conditions of specialised detention facilities as set out in the recast RCD. The court sought clarification specifically on the Schiphol Judicial Complex (JCS) which is used for the detention of applicants for asylum and for criminal detention at the same time.

In a case concerning the detention of an Algerian applicant in view of his removal, the District Court of the Hague seated in Roermond referred two questions before the CJEU on the scope of judicial review and whether the judge can verify *ex officio* compliance with the principle of *non-refoulement* and respect of interests provided for under Article 5 of the Return Directive and the EU Charter.

Regarding the Italy-Albania Protocol[1], the Court of Appeal of Rome found unlawful the detention measure adopted against a Moroccan national who, while detained at the pre-removal centre (CPR) in Gjader, Albania, initially for the implementation of an expulsion order, applied for international protection while in detention in Albania. The application for international protection led to a change in the legal basis for detention and rendered the provisions of the Italy-Albania Protocol inapplicable.

[1] See the Law No 14 of 21 February 2024.

Referrals to the CJEU for a preliminary ruling

National courts also referred questions to the CJEU for a preliminary ruling on matters related to: i) the power of the first instance appeal court to rule on the substance of the asylum grounds when it considers to have sufficient, publicly-available country of origin information to decide on eligibility for international protection; ii) the suspension of time limits to decide on an asylum application submitted by a beneficiary of temporary protection, iii) the interplay between temporary protection status and the possibility to be granted subsidiary protection and iv) interpretation of the Return Directive and the need to issue a return decision when it cannot be implemented due to the *non-refoulement* principle. These are highlighted in more detail below.

Second instance procedures

The District Court of the Hague seated in Zwolle referred several questions to the CJEU for a preliminary ruling on the power of a first instance appeal court to conduct its own credibility assessment on the grounds for international protection and to take a decision based on publicly-available country of origin information.

Temporary protection

On the interplay between temporary protection and the international protection procedure, the Dutch Council of State referred two questions to the CJEU for an interpretation of Article 17(2) of the Temporary Protection Directive (TPD) on the possibility to suspend the processing of asylum applications during the validity of the temporary protection status and on whether the time limits for examining asylum applications as set under Article 31 of the recast APD must be observed. Similarly, the Swedish Migration Court in Gothenburg submitted four questions to the CJEU for a preliminary ruling on the possibility of applying for and being granted subsidiary protection during the validity of temporary protection status.

Return

The District Court of the Hague seated in Roermond referred a question to the CJEU for a preliminary ruling on whether the Minister must issue a return order with written confirmation of the postponement of its implementation when subsidiary protection status is revoked on the basis of an exclusion ground and a return is not possible due to the *non-refoulement* principle.

Access to the territory and to the asylum procedure

ECtHR judgment on procedural obligations and substantive limb of Article 2 of the ECHR

ECtHR, *Almukhlas and Al-Maliki v Greece*, No 22776/18, 25 March 2025.

The ECtHR ruled that Greece violated Article 2 of the European Convention as it did not provide an effective investigation into the death of an applicant's minor son, caused by a shot fired by a Greek coastguard during an operation to intercept a boat which was illegally transporting people to Greece. The court held that the operation was not carried out in a way that would minimise the use of lethal force and the possible risks to life.

The applicants' minor son, Ameer Mokhlas, an Iraqi national, died on 29 August 2015 near the island of Symi, following a shot fired by a Greek coastguard during an operation to intercept a boat which was illegally transporting people to Greece. The facts of the case were disputed between the parties, but they essentially concerned the interception as part of a joint operation aimed at managing the influx of migrants in the Mediterranean.

The applicants complained that the domestic authorities failed to properly plan and conduct the operation with the primary aim of protecting the people on board. They alleged that the reckless use of weapons caused the death of their son and that the investigations were inadequate in establishing the responsibility of the perpetrators.

The court found a violation of Article 2 of the ECHR in its procedural aspect due to the ineffectiveness of the investigation. It noted that, since the people responsible for the criminal investigation were the coastguard colleagues involved in the incident in question, the authorities failed to conduct an independent investigation to determine the circumstances surrounding the death of the applicants' son. The court found that the investigation contained numerous shortcomings, including the loss of evidence, which undermined its effectiveness, and led to a failure in establishing the circumstances under which the death occurred and to identify and, if appropriate, punish those responsible.

Furthermore, the court found a violation of Article 2 of the ECHR in its substantive aspect as the interception operation was not carried out in a way to minimise the use of lethal force or the possible risk to life. The court noted that before carrying out the immobilising shots and arresting the skippers, the coastguard did not consider the possible presence of other passengers on board and did not exercise the vigilance required to ensure that any risk to life would be reduced to a minimum.

Regarding the use of lethal force, due to insufficient evidence to establish certain facts beyond reasonable doubt, the court concluded that the use of force did not go beyond what was 'absolutely necessary' and it was not established that unnecessarily excessive force was used. Therefore, no violation of Article 2 of the ECHR under its substantive limb was found in this respect.

Dublin procedure

Dublin transfers to Cyprus

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *The Minister for Asylum and Migration (de Minister van Asiel en Migratie) v Applicant*, No 202403478/1/V3, 26 March 2025.

The Council of State ruled that the Netherlands may continue to transfer asylum applicants to Cyprus, as although Cyprus exceeds the maximum period for deciding on an asylum application, there are no structural shortcomings in reception facilities that would amount to ill treatment and no evidence that asylum applicants transferred under the Dublin procedure are systematically placed in detention and would not have access to an effective remedy against a negative asylum decision.

A Somali national contested a decision on a Dublin transfer to Cyprus by alleging that there were systemic deficiencies in the asylum and reception systems. The first instance court allowed the appeal and annulled the contested decision. The Minister for Asylum appealed before the Council of State, arguing that the situation in Cyprus could not prevent the transfer and referenced information collected by the EUAA and answers provided by the Cypriot authorities. The Council of State upheld the appeal and found that the principle of mutual trust can be relied upon because, despite certain worrying aspects related to the situation in reception centres, namely in Pournara, it could not be concluded that the applicant would be subjected to inhuman or degrading treatment upon transfer. The council noted that the Cypriot authorities were carrying out works to increase reception capacity.

On long processing times for asylum applications, the council considered that this did not lead to an inapplicability of the principle of mutual trust and the applicant can use effective remedies to contest the length of proceedings. On access to legal aid in Cyprus, the council clarified that a means and merits test are in line with the requirements of the recast APD.

Dublin transfers to France

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)*, 202403570/1/V2, 11 April 2025.

The Council of State ruled that the Minister for Asylum and Migration is not required to address every individual circumstance in the intention phase of the Dublin procedure, as long as all essential considerations are included, and individual circumstances are sufficiently dealt with in the final decision. The council did not find systemic deficiencies in the reception system in France and considered that the pregnancy of one of the applicants did not preclude the Dublin transfer, as France has adequate procedures and safeguards in place for vulnerable individuals, including access to maternity care.

A family (parents and their minor child) applied for asylum in the Netherlands and their applications were rejected as France was deemed responsible under the Dublin III Regulation. The family had previously faced poor conditions in France,

including homelessness and a lack of medical support, which they raised during their registration interview. The Minister for Asylum and Migration only addressed these individual circumstances in the final decision, not in the earlier intention notice.

The District Court of the Hague seated in Amsterdam allowed the appeal of the family, stating that the minister acted negligently by not addressing personal circumstances in the intention phase, which hindered a fair exchange of views. The court argued that even in Dublin cases, the intention procedure[2] must be tailored to the individual.

Upon an onward appeal by the minister, the Council of State noted that not all individual circumstances must be addressed in the intention phase of a Dublin case, if essential considerations are included. The council held that the minister sufficiently justified France's responsibility and properly assessed the applicants' objections and vulnerabilities in the final decision.

The council also ruled that the applicants had not shown a real risk of inhuman or degrading treatment in France. The council found that the minister had reasonably relied on reports and safeguards regarding adequate reception and medical care in France, including for pregnant applicants. While the applicants' situation was acknowledged, it did not reach the level of requiring 'special protection' within the meaning of the ECtHR judgment in *Tarakhel v Switzerland* (No 29217/12, 4 November 2014).

The council annulled the district court's ruling and upheld the minister's decision.

Because the time limit for a transfer under the Dublin III Regulation had expired, the Netherlands became responsible for processing the family's asylum application, rendering the minister's appeal inadmissible.

Dublin transfers to Poland

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL25.3915, 15 May 2025.

The District Court of the Hague seated in Haarlem ruled that the Netherlands is responsible for processing the asylum application submitted by a Tajik national, finding systemic deficiencies in the asylum procedure in Poland after the Polish authorities attempted to deport the applicant despite court rulings against a deportation.

A Tajik applicant contested a decision on a Dublin transfer to Poland on grounds of deficiencies in the asylum procedure and a risk of *refoulement* to Tajikistan. The applicant applied before the ECtHR for an interim measure which was granted with a view of not being transferred to Poland. The Polish authorities submitted guarantees that the applicant would not be expelled during the processing of his asylum application in Poland. In 2023, a Polish Court of Appeal ruled against the return of the applicant to Tajikistan.

The Polish authorities attempted on two occasions to deport the applicant, including a day after he was transferred under the Dublin procedure. Thus, the Dutch court considered that the principle of mutual trust could not be relied upon in

[2] The Netherlands introduced the intention phase of the Dublin procedure to allow the applicant a fair opportunity to respond to the establishment of responsibility prior to the final decision being issued.

the case of the applicant since, despite an interim measure from the ECtHR and a national ruling in Poland, the Polish authorities could not be prevented from trying to deport the applicant. The court reiterated that Article 3 of the ECHR and Article 4 of the EU Charter have an absolute character and ruled that the Netherlands is the Member State responsible for processing the asylum application under Article 3(2) of the Dublin III Regulation.

First instance procedures

CJEU interpretation of Article 31(3)(b) of the recast APD on possibilities to extend the 6-month time limit

CJEU, *State Secretary for Justice and Security v X [Zimir]*, C-662/23, 8 May 2025.

The CJEU ruled that under Article 31(3)(b) of the recast APD, the 6-month time limit for the examination of applications for international protection may be extended by 9 months by the determining authority due to a significant increase in the number of applications within a short period, but not when there is a gradual increase in applications over an extended period. Other circumstances, such as a significant backlog of applications or insufficient personnel at the determining authority, cannot justify such an extension.

A Turkish national applied for international protection in the Netherlands on 10 April 2022, and the State Secretary extended the time limit to examine the application by 9 months. The applicant served a notice of default on the State Secretary for failing to take a decision within the 6-month time limit, and in the absence of a reply, the applicant brought an action before the District Court of the Hague. The latter allowed the appeal and ordered the State Secretary to conduct the interview within 8 weeks and to decide within 8 weeks from the interview, or face penalties. Upon an appeal by the State Secretary, the Council

of State stayed the proceedings and referred questions to the CJEU for a preliminary ruling.

The CJEU clarified that an extension of the 6-month time limit for processing an asylum application is allowed if three cumulative conditions are fulfilled: i) the applications for international protection must be lodged 'simultaneously'; ii) the applications must be lodged by a large number of third-country nationals or stateless persons; and iii) it must then be very difficult in practice to conclude the procedure within the 6-month time limit.

For the first condition the CJEU noted that it excludes situations when the increase in applications is gradual. The second condition implies that current and historical statistical trends are used to determine whether there is a high number of applicants. For the third condition, the existence of practical difficulties is assessed against the Member State obligations under Article 4(1) of the recast APD.

ECtHR on state obligations towards applicants with mental health problems

ECtHR, *Hasani* v *Sweden*, No 35950/20, 6 March 2025.

The ECtHR found no violation of Sweden's positive obligations under Article 2 of the ECHR toward an Afghani asylum seeker with a worsening visual impairment and mental health problems who committed suicide 2 days after he received his negative asylum decision, due to a lack of signs of mental distress or suicidal tendencies in the month preceding it and no immediate signs to render the attempt likely in the days prior.

A.H., the brother of the applicant in the proceedings before the ECtHR, had a visual impairment since birth, which was later diagnosed as a degenerative retinal disease, Retinitis Pigmentosa, and had mental health problems.

The brothers arrived in Sweden in 2016 as unaccompanied children and were placed together in a family home where the family home parent was an experienced assistant nurse specialised in psychiatry. They applied for asylum and their request was rejected by the Asylum Agency in August 2017, following which A.H. mentioned during the personal interview that he harmed himself and would commit suicide irrespective of the outcome of the asylum procedure. The applicant committed suicide 2 days after the notification of the negative asylum decision.

A.H.'s brother complained before the ECtHR that the Swedish authorities failed to fulfil their obligation to protect his brother's life, as required by Article 2 of the ECHR, by not taking measures to prevent the suicide.

The court concluded that there were no signs of mental distress or suicidal tendencies in the month preceding A.H.'s suicide and, in particular, during the meeting with the Migration Agency and the days thereafter. Although the Migration Agency knew that the negative decision on his asylum application would be distressing for A.H., there were no signs to alert the authorities, in the days prior to A.H.'s suicide, that he was in a disturbed state of mind, rendering a suicide attempt likely, even though he had previously voiced such thoughts.

The court reiterated that it approaches the question of risk with a view to assessing whether it was both real and immediate.

Regarding the state's positive obligations, the court clarified that they must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Additionally, it noted that the court's assessment is centred on what the authorities knew or ought to have known at the relevant time, namely in the days preceding the suicide.

In a dissenting opinion, a minority of three judges considered that national authorities could have adopted reasonable measures to prevent the risk of suicide by providing for example psychological or psychiatric support, assessing the mental state before announcing the decision, providing legal support and assistance when the decision was announced.

ECtHR on safeguards in age assessment procedure

ECtHR, *F.B.* v *Belgium*, No 47836/21, 6 March 2025.

The ECtHR unanimously found a violation by Belgium of Article 8 (right to respect for private life) due to insufficient safeguards surrounding the age assessment of a Guinean national claiming to be a minor, who had not been informed of the need for her consent and the medical examinations were not performed as a last resort. The court noted that a preliminary interview could have been used to ascertain whether the doubts about her age could be dispelled by less intrusive means and would have allowed her to receive the necessary information to defend her rights effectively.

A Guinean national who claimed to be a minor applied for international protection in Belgium. Due to doubts about her age, the applicant underwent a bone test, which found that she was 21.7 years old. Consequently, the guardianship office terminated the applicant's entitlement to support and transferred her to a centre for adults. The applicant was later granted refugee status.

The applicant complained before the ECtHR that the decision to terminate her entitlement to support as an unaccompanied foreign minor interfered with her right to respect for her private life under Article 8 of the Convention.

The court noted that the decision to terminate her entitlement to support as an unaccompanied minor was provided by law and pursued a legitimate aim, namely the protection of public order and safety, and of the rights and freedoms of others.

On the necessity of the interference, the parties agreed that the medical test could not be performed without the explicit consent of the applicant. However, while the applicant claimed that she had not been informed about the tests or the possibility of refusing them, the government argued that she had been given a written form about it.

The court did not consider it necessary to rule on the question whether the applicant had actually received the information since, even if the document had in fact been delivered to her, it made no mention of the need for her consent, which could amount to an interference with her physical integrity in a manner capable of engaging the rights under Article 8.

The court emphasised that, given their invasive nature, such medical examinations should only be performed as a last resort when alternative means do not yield conclusive results. For example, a preliminary interview with an employee of the guardianship office could have made it possible to ascertain whether the doubt as

to her minor status could be dispelled by less intrusive means. The court concluded that the decision-making process to terminate her entitlement to support as an unaccompanied foreign minor had not been accompanied by sufficient safeguards and hence violated Article 8 of the Convention.

Germany, Federal Constitutional Court [Bundesverfassungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 2 BvR 1425/24, 1 April 2025.

When assessing reception conditions in a Member State where the applicant was previously granted international protection, the Federal Constitutional Court held that engagement in undeclared work may be regarded as a reasonable and acceptable means of securing a livelihood, provided that it does not expose the individual to a serious risk of criminal prosecution.

BAMF rejected an application for international protection lodged by an Afghan national who had previously been granted protection in Greece. The Administrative Court upheld this decision, and the applicant appealed before the Federal Constitutional Court.

The Federal Constitutional Court referenced the ECtHR judgments in *M.S.S. v. Belgium and Greece* (30696/09, 21 January 2011) and *Tarakhel v Switzerland* (29217/12, 4 November 2014). It considered that the Administrative Court properly examined whether the applicant would face living conditions in violation of Article 3 of the ECHR upon transfer to Greece.

Moreover, based on the Federal Administrative Court decision in *Applicants v Federal Office for Migration and Refugees* (1 C 23.23 and 1 C 24.23, 21 November 2024), the court ruled that activities in the 'shadow or niche economy' may reasonably be expected of beneficiaries of international protection to secure their livelihood, provided they do not expose themselves to a serious risk of criminal prosecution. Therefore, it dismissed the applicant's claim that this matter was unclear or unlawfully decided. Based on the same decision, the court reiterated that accommodation in temporary shelters constitutes a reasonable alternative for beneficiaries of international protection. Therefore, it dismissed the applicant's claim of a violation of Article 3 of the ECHR and Article 4 of the EU Charter and declared the appeal inadmissible.

Germany, Federal Administrative Court [Bundesverwaltungsgericht], *Applicants v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 1 C 18.24 and 1 C 19.24, 16 April 2025.

The Federal Administrative Court ruled that asylum applications lodged by single, employable and non-vulnerable beneficiaries of international protection in Greece can be rejected as inadmissible in Germany, as their living conditions upon a transfer back to Greece would not amount to inhuman or degrading treatment as provided in Article 4 of the EU Charter.

A 34-year-old man born in northern Gaza and a 32-year-old Somali national had been granted refugee status in Greece before applying for asylum in Germany. BAMF rejected their applications, citing the possibility of their transfer to Greece. The Higher Administrative Court upheld this decision, concluding that the applicants

would not face a significant risk of inhuman or degrading treatment if transferred.

The Federal Administrative Court confirmed the lower court's ruling, finding that able-bodied, healthy and single male beneficiaries of protection in Greece are unlikely to experience extreme material hardship which prevent them from meeting basic needs such as accommodation, food and hygiene. The court acknowledged bureaucratic delays that may affect immediate access to state support in Greece but noted that beneficiaries of international protection can still find shelter, meet basic needs through informal work, receive aid from organisations and access emergency medical care.

The court concluded that asylum applications from single, employable and non-vulnerable beneficiaries of international protection in Greece can be deemed inadmissible in Germany under Section 29(1), No 2 of the Asylum Act.

Secondary movements of applicants with a medical condition

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)*, 202407853/1/V2, 17 March 2025.

The Council of State ruled that a decision to transfer an applicant to Italy could lead to a situation of extreme material deprivation due to the applicant's medical problems.

The Minister of Asylum and Migration declared the asylum application inadmissible on grounds that the applicant was already granted protection in Italy. Upon appeal, the District Court of the Hague seated in Arnhem upheld the contested decision.

In an onward appeal before the Council of State, the applicant argued that, due to the severity of his mental health condition, he would face extreme material deprivation in Italy and his return would result in a violation of Article 3 of the ECHR. At the minister's request, the Medical Advice Bureau confirmed the serious mental health condition, warning that, without treatment, his situation could rapidly deteriorate and become life-threatening.

The Council of State found that the lower court had overlooked the medical evidence on the applicant's mental health conditions and his particular vulnerability. It noted that, in Italy, beneficiaries of international protection face significant challenges, including the loss of access to reception and other basic needs after 6 months, and there is limited availability of social housing, income support and medical care, which could potentially hinder the applicant's access to necessary treatment in the short term.

The council based its assessment on the CJEU judgment in *Bashar Ibrahim (C-297/17), Mahmud Ibrahim, Fadwa Ibrahim, Bushra Ibrahim, Mohammad Ibrahim, Ahmad Ibrahim (C-318/17), Nisreen Sharqawi, Yazan Fattayrji, Hosam Fattayrji v Bundesrepublik Deutschland, and Bundesrepublik Deutschland v Taus Magamadov* (Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, 19 March 2019). It concluded that, given the applicant's medical needs and the risks involved, the minister had not sufficiently justified how the applicant would avoid extreme material deprivation if transferred to Italy. The council upheld the appeal and instructed the minister to reexamine the case, also in view of medical evidence

showing that the applicant had attempted suicide again in January 2025.

Procedural safeguards for unaccompanied minors

Cyprus, International Protection Administrative Court [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *F.R. and The Commissioner for Children's Rights v Republic of Cyprus*, No 6847/22, 14 April 2025.

The International Protection Administrative Court (IPAC) annulled a negative asylum decision for an unaccompanied minor from Pakistan, noting that the interview did not meet the minimum requirements, and the guardian did not fulfil his legal duty which resulted in the child's deprivation of fundamental procedural guarantees and a violation of his right to be heard.

An unaccompanied minor applicant from Pakistan was rejected international protection. The child appealed the decision, arguing that his guardian had not helped him understand the procedure or the interview, the principles governing the examination of applications submitted by children were not applied, the examination was superficial, and the decision was biased.

The court found that the interview did not meet, even minimally, the conditions to ensure that the applicant was duly given the "opportunity to present all the reasons for his application" set out by Articles 10, 13A and 18 of the Refugee Law. The court noted that the fact that the applicant was asked only one question about the reasons for his departure from Pakistan characterised the carelessness and frivolity with which the interview was conducted. The court also held that the guardian, who had not intervened at all during the interview, did not fulfil the obligation of informing the applicant and aiding him during the interview, as provided under Article 10(1C) of the Refugee Law.

The court concluded that the cumulative impact of all these individual defects led to a deprivation of the child's fundamental procedural guarantees and his right to be heard. Consequently, the court annulled the negative asylum decision.

Duty to notify UNHCR

Spain, Supreme Court [Tribunal Supremo], *Applicants v Ministry of the Interior (Ministerio del Interior)*, STS 1573/2025, 2 April 2025.

The Supreme Court ruled that ideally an administrative file should include formal proof that the application for international protection was communicated to and received by UNHCR, allowing the latter to carry out its responsibilities at the meeting of the Interministerial Committee on Asylum and Refuge (CIAR).

The applicants lodged a cassation appeal before the Supreme Court requesting to overturn a negative decision on their application because the obligation to notify UNHCR had not been properly fulfilled. They argued that there was no written evidence in the administrative file showing that UNHCR received information on the application and UNHCR's participation in the meeting of CIAR did not replace the required formal notification.

The court held that ideally the administrative file should include formal proof that the application for international protection was communicated to UNHCR and was actually received. This would make it easier to verify the administration's compliance with Article 34 of the Asylum Law. However, the court clarified that the

key requirement was that it could be proven - by any legally acceptable means - that the administration informed UNHCR in time, allowing it to carry out its legally assigned responsibilities in this area.

Moreover, the court found that the involvement of UNHCR in the CIAR meeting directly impacted the assessment of whether the duty to inform was fulfilled. The court noted that the UNHCR representative had timely access to the application, was aware of the agenda of the CIAR meeting and did not contest the negative decision on the application.

As a result, the court held that the obligations set out in Articles 34 and 35 of the Asylum Act on the involvement of UNHCR were fulfilled.

Interplay between asylum and other residence permits

Norway, Court of Appeal [Lagmannsrettane], *Applicant v Immigration Appeals Board (Utlendingsnemnda, UNE)*, LB-2024-120668, 11 April 2025.

The Borgarting Court of Appeal ruled that the applicants' possession of temporary residence permits based on family reunification should not be considered when assessing their eligibility for asylum, nor should it constitute a legitimate ground for denying refugee status.

A., an Eritrean national, and her 4-year-old son B. requested international protection in Norway sometime after obtaining temporary residence permits on grounds of family reunification. The Norwegian Directorate of Immigration (UDI) rejected their applications, stating that individuals who already hold valid residence permits are not eligible for refugee status. Following the rejection of their claims by the Immigration Appeals Board (UNE) as well, the applicants appealed before the Borgarting Court of Appeal.

As the applicants' residence permits did not grant them rights equivalent to those of Norwegian nationals, the court noted that the interpretation of Section 28 must align with international obligations under Article 1A of the Geneva Refugee Convention, rather than the exclusion clause under Article 1E.

Therefore, the court allowed the applicants' appeal and ruled that their applications must be examined as asylum requests pursuant to Article 1A of the Geneva Convention regardless of holding residence permits for family reunification.

Assessment of applications

CJEU interpretation of Article 12(2)(b) of the recast QD on exclusion for serious non-political crimes

CJEU, *K. L. v Migration Department at the Ministry of the Interior of the Republic of Lithuania [Galte]*, C-63/24, 30 April 2025.

When deciding on exclusion from international protection under Article 12(2)(b) of the recast QD, the CJEU ruled that Member States must take into account if the applicant already served the sentence. Nonetheless, this is an aspect among others that must be considered and it does not, in itself, prevent the applicant from being excluded from refugee status.

The applicant requested international protection in Lithuania, alleging political persecution in his home country but he was excluded due to committing a serious non-political crime. The Regional Administrative Court of Vilnius dismissed his appeal, and he subsequently appealed to the Supreme Administrative Court, which referred questions to the CJEU on whether the application of the exclusion clause under Article 12(2)(b) of the recast QD, read in conjunction with Article 18 of the EU Charter, requires consideration of whether the applicant has already served the sentence for the crime.

The CJEU held that, since the recast QD does not define 'serious crime', the term must be interpreted according to its ordinary meaning, considering the context and objectives of the recast QD. It emphasised that Article 12(2)(b) concerns acts committed in the past and acknowledged that the assessment of an offence's seriousness may vary between the time it was committed and the time the application for international protection is examined.

The CJEU emphasised that the purpose of Article 12(2)(b) of the recast QD is to exclude individuals who are deemed unworthy of refugee protection, particularly to prevent them escaping criminal liability. It held that national authorities and courts must take into account whether the applicant has served the relevant criminal sentence but clarified that this alone does not automatically preclude the application of the exclusion clause.

The CJEU highlighted that exclusion from refugee status must not be automatic and requires competent authorities to conduct an individual assessment of the specific facts and circumstances of each case, considering factors such as the type and gravity of the offence, the sentence imposed and served, the time elapsed since the criminal conduct, the applicant's conduct during that period and any expressed remorse.

CJEU judgment on membership of a particular social group: Applicants targeted by blood feuds

CJEU, *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA) v AN [Laghman]*, C-217/23, 27 March 2025.

The CJEU ruled that Article 10(1)(d) of the recast QD must be interpreted as meaning that an asylum applicant targeted by a blood feud in the country of origin for being a member of a family involved in a property dispute may not, for that sole reason, be regarded as belonging to a particular social group. However, national authorities must determine whether the applicant qualifies for subsidiary protection, as serious harm covers a real threat to the applicant of being killed or subjected to acts of violence inflicted by a member of his/her family or community.

An Afghan national requested international protection in Austria, claiming persecution due to a blood feud related to a family property dispute. The BFA rejected the application, finding it was solely based on economic motives and the alleged risk of persecution was unfounded. Upon an appeal, the Federal Administrative Court overturned the decision and granted the applicant refugee status. The BFA appealed to the Supreme Administrative Court, which referred questions to the CJEU on Article 10(1)(d) of the recast QD.

The CJEU held that a proven risk of physical violence, including homicide, such as that faced by the applicant in his country of origin, is not alone sufficient to qualify for refugee status. The CJEU held that membership of a particular social group must be established independently of the risk of persecution and the group must be perceived as distinct by a substantial part of the surrounding society.

Regarding blood feuds, the CJEU emphasised that the victim's perception is not decisive; what matters is whether the surrounding society as a whole recognises the group as distinct, considering prevailing social, moral and legal norms. In the case, the CJEU held that, subject to verification by the referring court, while the applicant's family met the requirement of an innate characteristic or immutable background due to the blood feud, it was not apparent that there was sufficient evidence that the group made up of the members of a particular family targeted by a blood feud caused by a property dispute was perceived by society at large in the country of origin as a distinct social group.

Finally, the CJEU affirmed that, for the purpose of assessing eligibility for subsidiary protection, serious harm includes a real threat of violence or death by non-state actors, including the applicant's family or community, regardless of the reasons behind such acts.

Membership of a particular social group: Homosexual persons in Guatemala

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.C. v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 23061341 C+, 17 March 2025.

The CNDA granted refugee protection to a Guatemalan national, victim of attacks and threats in his country because of his homosexuality and recognised the existence of a particular social group of homosexual people suffering

discrimination, serious violence and ill treatment in Guatemala.

M.C., a Guatemalan national, applied for asylum in France, fearing persecution due to his sexual orientation. He claimed that as a homosexual man he faced threats from individuals and society in Guatemala, without effective protection from the authorities. His application was rejected by OFPRA on 23 October 2023, and he appealed to the CNDA.

The CNDA reaffirmed that refugee protection does not depend on whether an individual publicly expresses their sexual orientation, nor can they be expected to conceal it to avoid persecution. The court emphasised that a particular social group is defined by societal perception, and persecution may exist even in the absence of laws explicitly criminalising homosexuality.

Citing reports from ILGA, Human Rights Watch and Amnesty International, the CNDA noted widespread violence, killings and discrimination against LGBTIQ individuals in Guatemala, along with a lack of effective legal protection and impunity for perpetrators, which deterred victims from filing complaints. It found that M.C.'s credible account, detailing trauma, violence and the murder of his partner due to sexual orientation, substantiated his claim of a well-founded fear of persecution.

The CNDA concluded that homosexuals in Guatemala constituted a particular social group at risk of persecution and granted M.C. refugee status.

Cessation of UNRWA assistance

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)*, 202307092/1/V2, 7 May 2025.

The Council of State ruled that the Minister for Asylum and Migration cannot restrict the assessment of an asylum application by a stateless Palestinian who voluntarily left the UNRWA area of operation solely to the time of their departure and must consider the conditions in the relevant area at the time of the decision on the asylum application, taking into account the personal circumstances of the applicant.

The subsequent application of a stateless Palestinian woman from the West Bank was rejected on grounds that she had voluntarily left the UNRWA area of operation and protection or assistance from the agency had not ceased at the time of her departure, pursuant to Article 1(D) of the Refugee Convention. The District Court of the Hague seated in 's-Hertogenbosch overturned this decision, and the Minister for Asylum and Migration appealed to the Council of State.

Citing the CJEU judgment in *LN, SN v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* (C-563/22, 13 June 2024), the Council of State clarified that a voluntary departure from the UNRWA area of operation does not, in itself, exclude the applicant from qualifying for refugee status. However, if the applicant was compelled to leave due to circumstances beyond their control—such as UNRWA's inability to provide adequate protection—they fall within the ground for inclusion of Article 1(D) of the Refugee

Convention (second sentence of Article 12(1)(a) of the recast QD).

The court clarified that decision-making authorities and reviewing courts must assess whether UNRWA protection or assistance ceased not only at the moment of the applicant's departure but also at the time of the administrative decision and the judicial review. The council referred to the CJEU judgment in *Nigyar Raul Kaza Ahmedbekova and Raul Emin Ogla Ahmedbekov* v *Deputy Chair of the State Agency for Refugees (Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*) (C-652/16, 4 October 2018), emphasising that first instance appeal procedures must allow for a reassessment based on the most current information.

The council concluded that even in cases of a voluntary departure an applicant may still qualify under the inclusion ground of Article 1(D) of the Refugee Convention where subsequent developments render UNRWA's protection or assistance effectively unavailable due to factors outside the applicant's control. Thus, the council upheld the lower court's decision and ordered a reassessment of the application considering current conditions and the applicant's vulnerabilities.

Exclusion of Afghan nationals due to serious non-political crimes and war crimes

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant* v *Finnish Immigration Service (Maahanmuuttovirasto, FIS)*, KHO:2025:27, 6 April 2025.

The Supreme Administrative Court upheld the exclusion of an Afghan national from international protection, finding that his long period of working for the Afghan National Security Agency and involvement in many operations resulted in contributing to the torture of detainees and thus to the commission of a serious non-political crime.

The Finnish Immigration Service excluded an Afghan national from international protection on the grounds that, as a soldier in the Afghan National Security Agency, he apprehended individuals and transferred them to an Investigation Unit known to use torture. The Administrative Court upheld this decision, and the applicant subsequently appealed to the Supreme Administrative Court.

The Supreme Administrative Court referred to the EASO Practical Guide: Exclusion (January 2017) and the CJEU judgment in *Germany* v *B and D* (C-57/09 and C-101/09, 9 November 2010), which established that the exclusion clause is not discretionary and must be interpreted strictly. The court held that, while personal liability is required for exclusion, the direct commission of the act is not required. Exclusion may apply where the individual substantially contributed to the crime, provided there are reasonable grounds to suspect such involvement. The court added that the assessment of liability must be objective and account for any mitigating factors but cannot rely solely on the applicant's subjective perception of the reasons for their actions.

The court confirmed that the torture of detainees by the Investigation Unit constituted an aggravated non-political crime under the exclusion clause. Given the applicant's prolonged service in the Afghan National Security Agency, his participation in numerous detention operations and his awareness of the systematic use of torture, the court held

that he had substantially contributed to the torture. It further concluded that his personal liability was not mitigated by the fact that he acted on the orders of superiors, and he was not under duress, since he was aware that the use of torture as an interrogation method was unlawful.

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *Applicant v Finnish Immigration Service (Maahanmuuttovirasto, FIS)*, KHO:2025:28, 6 April 2025.

The Supreme Administrative Court confirmed the exclusion from refugee status of a former Taliban member due to the commission of war crimes as it found him criminally responsible for the acts despite the fact that he was a 15-year-old minor at the time of the events.

The Finnish Immigration Service excluded an Afghan applicant from international protection due to his involvement in war crimes. The Administrative Court confirmed this decision, and the applicant further appealed to the Supreme Administrative Court, invoking duress as a ground for exemption from criminal responsibility and citing his minor age at the time of the acts.

The Supreme Administrative Court referenced relevant jurisprudence from the International Criminal Court, *AB v The Secretary of State for the Home Department* (22 July 2016), and the CJEU judgment in *Germany v B and D*, (C-57/09 and C-101/09, 9 November 2010), as well as UNHCR's guidelines on the application of exclusion clauses. The court affirmed that the assessment of circumstances eliminating personal liability must be objective and cannot rely solely on the individual's subjective perception of their reasons for acting.

The court noted that the applicant, as a member of the Taliban, participated as a perpetrator in the internal armed conflict, including involvement in three executions of prisoners and the killing of a total of seven individuals, acts that constitute war crimes. Taking into account his mental maturity and health, the court held the applicant committed war crimes. While acknowledging that the conditions he faced were harsh and potentially life-threatening, the court emphasised that he remained with the group for about a year, was aware that the executions were unlawful, did not attempt to flee and did not refuse subsequent orders.

Consequently, the court upheld his exclusion from refugee protection.

Subsidiary protection: Ukrainian nationals

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *Applicant v French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, No 25004921, 26 May 2025.

The National Court of Asylum granted subsidiary protection to a Ukrainian national from Sumy, finding that the area was characterised by a situation of indiscriminate violence due to frequent attacks, but emphasised that being a Ukrainian national did not suffice to be granted international protection.

In an appeal against a negative decision concerning a Ukrainian applicant, the CNDA considered that the situation in the region of origin of the applicant, specifically in Sumy, was characterised by increased violence due to frequent attacks since the summer of 2024. The court qualified the violence as of exceptional

intensity, resulting in a real risk of serious harm for civilians. The court referenced the CJEU judgment in *CF and DN v Bundesrepublik Deutschland* (C-901/19, 10 June 2021), in which the CJEU clarified that, when assessing the criteria for Article 15(c) of the recast QD, all circumstances must be considered, such as the intensity of the armed confrontations, the level of organisation of the armed forces involved, the duration of the conflict, the geographical extent of the situation of violence, or any intentional aggression against civilians.

Based on country of origin reports, the court ruled that the applicant as a civilian would be exposed to a real risk of suffering a serious and individual threat to his life or person in the event of his return to Sumy, solely because of his presence on that territory by reason of violence which may extend to persons irrespective of their personal situation, without being able to rely on the effective protection of the authorities. However, the court stated that being a Ukrainian national does not suffice to be granted international protection.

Denmark, Refugee Appeals Board [Flygtningenævnet], 2 April 2025.

- ***Applicant v Danish Immigration Service (Udlændingestyrelsen, DIS)***.
- ***Applicant v Danish Immigration Service (Udlændingestyrelsen, DIS)***.
- ***Applicant v Danish Immigration Service (Udlændingestyrelsen, DIS).***

The Refugee Appeals Board upheld negative decisions for three Ukrainian applicants, finding that their fear of compulsory military service and punishment for desertion did not constitute grounds for international protection.

- ***Applicant v Danish Immigration Service (Udlændingestyrelsen, DIS).)***

The Refugee Appeals Board upheld negative decisions for three Ukrainian applicants, finding that their fear of compulsory military service and punishment for desertion did not constitute grounds for international protection. It ruled that, while the security situation in Kyiv and Zakarpattia Oblasts did not justify subsidiary protection, such protection would be warranted in Kharkiv Oblast, but a safe internal protection alternative existed in the western and central regions of Ukraine.

The Refugee Appeals Board ruled that the applicants' asylum claims, based solely on the obligation to perform military service in Ukraine during the ongoing armed conflict, did not constitute grounds for international protection.

The board acknowledged that the applicants, upon a return to Ukraine, risked punishment if they refused to perform military service and might also be penalized for evading the service. However, it affirmed that the penalties that could be imposed were not of such severity or nature as to constitute a real risk of treatment contrary to Article 3 of the ECHR or fall within the grounds for persecution outlined in the Refugee Convention. While recognising that detention conditions in Ukrainian prisons were harsh and of a lower standard than those in Danish prisons, it concluded that they did not amount to a violation of Article 3 of the ECHR in the applicants' cases.

Finally, the board found that the security situation in central and western Ukraine, including the home areas of the first two applicants—Kyiv and Zakarpattia Oblasts—was characterised by a low or very low level of indiscriminate violence, thus providing no grounds for subsidiary protection and no real risk of ill treatment contrary to Article 3 of the ECHR. The board further held that the security situation in the third applicant's home area, Kharkiv Oblast, met the threshold for subsidiary protection; however, a safe internal protection alternative was available to him in the western and central regions of Ukraine.

Reception

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

Belgium, Labour Court [Cour du travail/Arbeidshof], *Applicant v Federal Agency for the Reception of Asylum Seekers (Agence fédérale pour l'accueil des demandeurs d'asile, Fedasil)*, 2025/CB/2, 13 March 2025.

The Labour Court of Brussels ruled that Fedasil and the Belgian State unlawfully limited an applicant's reception conditions because he had previously been granted refugee status in Greece, without considering his extreme material deprivation, his heightened vulnerability as a Palestinian national and whether he could maintain a dignified standard of living.

A Palestinian applicant who had been granted refugee status in Greece requested international protection in Belgium. Fedasil limited reception conditions to medical aid, invoking the principle of mutual trust. The Brussels Labour Tribunal rejected the applicant's request for interim relief against Fedasil and the Belgian State, and he appealed to the Brussels Labour Court.

The Brussels Labour Court found that the applicant was in an urgent and precarious situation, homeless and without financial resources to meet his basic needs, contrary to human dignity. It emphasised that mutual trust between Member States

could not justify denying basic reception conditions under such circumstances.

The court held that Fedasil's decision lacked individual reasoning and failed to consider the applicant's specific vulnerabilities, including his Palestinian nationality and whether, despite limiting or withdrawing material reception conditions, the applicant could still enjoy a dignified standard of living. It also ruled that Belgian authorities could not invoke force majeure due to the reception crisis, as this crisis was ongoing, foreseeable and not properly managed despite legal obligations. In this regard, the court referred to the CJEU judgment in *Fedasil* v *S. Saciri and Others* (C-79/13, 27 February 2014), which ruled that the saturation of reception systems cannot justify any derogation from the minimum standards for the reception of applicants for international protection.

Based on this, the court ordered Fedasil and the Belgian State to provide the applicant with accommodation and material assistance, stating that his right to reception remained valid regardless of his previous refugee status in another Member State, given his individual situation of deprivation and his membership in a particularly vulnerable group.

Reception of unaccompanied minors in Canary Islands, Spain

Spain, Supreme Court [Tribunal Supremo], *Applicant* v *Ministry of the Interior* (Ministerio del Interior), ATS 3180/2025, 25 March 2025.

Although there was a concurrence of competences of both national and regional administrations, the Supreme Court held that the state was required to guarantee, within 10 days, access to the national system of reception to unaccompanied minors who were under child protection services in the Canary Islands and who had applied for international protection or expressed their willingness to request it.

According to UNHCR data, between January 2023 and November 2024, 546 unaccompanied migrant children requested international protection on the Canary Islands. The appeal concerned a dispute between the state and the autonomous community about responsibility for the reception and care of the unaccompanied minor applicants.

The court found that neither of the two positions was sufficiently solid to exclude the opposite, confirming a concurrence of competence of both the national and regional administrations. The court emphasised that the minors were both children who should receive the protection provided to all minors by each autonomous community, and asylum applicants, who should be included in the national reception system provided by the state.

However, the court found that although the minors were entitled to the state reception system, it had not been made available to them. Instead, they were solely cared for by the child protection system of the Canary Islands, without access to the resources and support of the national reception system. This led to overcrowding and conditions contrary to the best interests of the children.

Consequently, the court ruled that the state administration was required to guarantee, within the non-extendable period of 10 days, access and permanence to the national reception system to the minors who were in the charge of child protection services on the Canary Islands

and who had applied for international protection or expressed their willingness to request it, with the necessary collaboration and cooperation of the requesting autonomous community. The court underlined that these actions must be carried out under the principle of the best interests of the child.

Detention

Referrals to the CJEU on detention of asylum applicants in the same facility with criminal detainees

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL25.6640, 20 March 2025.

The District Court of the Hague seated in Amsterdam submitted several questions to the CJEU for a preliminary ruling on the meaning, standards and conditions of specialised detention facilities as set out in the recast RCD, with reference to the Schiphol Judicial Complex (JCS) which is used for the detention of applicants for asylum and for criminal detention at the same time.

In an appeal submitted by an applicant against the extension of his detention at the JCS, the applicant complained that the JCS was not a specialised facility as provided under Article 10(1) of the recast RCD and that his detention lasted beyond “the shortest possible period” mentioned in Article 9 of the recast RCD.

The District Court of the Hague seated in Amsterdam stayed the proceedings and referred three questions to the CJEU for an urgent preliminary ruling. The first question concerned the definition of the term ‘specialised facility’ under the recast RCD and the Return Directive, and the second and third questions sought clarifications on whether a multifunctional building

complies with the requirement of a specialised detention facility.

The fourth question concerned the possibility of imposing additional restrictions on asylum applicants, besides the obligation to remain in the detention facility. The fifth question was about additional restrictions in case the answer would be affirmative to the fourth question, and the conditions to be satisfied by those additional restrictions as well as the test on the lawfulness of restrictions.

Further questions concerned the conditions of detention, namely the requirements for having access to an outdoor space and the permission for the Member States to restrict such access.

Questions 9 and 10 concerned the test to determine whether a detention facility meets the criteria for being qualified as a specialised facility. Lastly, Question 11 sought clarification on the conditions for separate accommodation for males and females, and Question 12 concerned the meaning of the concept of "only for as short a period as possible" as referred to in Article 9(1) of the recast RCD at the phase of judicial proceedings.

Netherlands, Court of The Hague [Rechtbank Den Haag], *The Minister for Asylum and Migration (de Minister van Asiel en Migratie) v Applicant*, NL25.8606, 20 March 2025.

The District Court of the Hague seated in Amsterdam referred questions to the CJEU for an interpretation of the Return Directive on criteria to determine whether a detention facility can be classified as 'specialised', the limitations that can be imposed to a detainee and the scope of a judicial review against a detention measure and detention conditions.

The District Court of the Hague, seated in Amsterdam, referred the following questions to the CJEU for a preliminary ruling:

1. Is a Member State acting in accordance with Article 16 of the Return Directive by routinely using a detention facility where both foreign nationals as referred to in the Return Directive and criminal detainees are held - separately from each other - in different units, and the units are identical in terms of construction and decor and, where necessary, are also interchangeable in practice?

2. Would the answer to the previous question be different if shared facilities were used for both criminal and immigration detention and contact between immigration detainees and criminal detainees could therefore take place? What should be understood by 'held separately from each other' in this context? Does that mean that no form of contact is allowed? If not, which forms of contact are allowed?

3. What should be understood by 'limiting to what is strictly necessary' for the purpose, as the CJEU determined in the Landkreis judgment? Does that mean that if there is no direct relationship between the limitation and the purpose of the detention - an effective preparation for the removal - the limitation is by definition not allowed?

4. If a Member State were allowed to impose additional limitations not directly related to the purpose of the detention, to what should these limitations then adhere, in view of the fact that full respect for the fundamental rights of the foreign national must be guaranteed, in particular the right to human dignity, freedom, private and family life and

information as described in Articles 1, 6, 7 and 11 of the EU Charter?

5. If a Member State were allowed to impose additional limitations not directly related to the purpose of the detention, how should the court review the legality of those? Is that a comprehensive or a cautious review?

6. What circumstances should the court consider when assessing whether the conditions of detention at the facility are such that they avoid, as much as possible, the detention resembling detention in a prison environment, suitable for detention for punitive purposes?

7. When determining whether a detention facility is specialised, can the court simply compare the way in which immigration detention and criminal detention are organised?

Referral to the CJEU on the scope of judicial review of detention for the purpose of a removal

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL25.17803, 6 May 2025.

The District Court of the Hague seated in Roermond referred two questions to the CJEU on the scope of a judicial review against a detention measure and the possibility for the judge to verify ex officio compliance with the principle of non-refoulement and respect of interests provided for under Article 5 of the Return Directive and the EU Charter.

An Algerian national appealed against a detention measure in April 2025 which was adopted for the purpose of implementing a return decision issued on 7 October 2024 when the first asylum application of the applicant was rejected. That return decision was issued jointly with the rejection of asylum because the applicant did not appear for the personal interview. Upon a Dublin transfer from France on 26 March 2025, the applicant submitted a subsequent application and was detained on asylum grounds on the same day.

The applicant withdrew his subsequent application, thus the detention grounds changed from asylum-related to implementation of the initial return decision since his stay became illegal. In the appeal on the detention measure, the District Court of the Hague seated in Roermond stayed the proceedings and referred two questions to the CJEU on whether the court, when reviewing the detention measure, can take into account, by its own motion, statements pertaining to the application of the *non-refoulement* principle and the interests provided under Article 5 of the Return Directive, as follows:

1. Are Articles 5, 13(1) and (2), and 15 of Directive 2008/115, read in conjunction with Articles 6, 19 (2) and 47 of the EU Charter, to be interpreted as meaning that a judicial authority, when reviewing compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law, is required to satisfy itself, if necessary of its own motion, that the principle of non-refoulement does not preclude the enforcement of the return decision previously adopted and for the purposes of its enforcement the third country national was detained?

2. Are Articles 5, 13(1) and (2), and 15 of Directive 2008/115, read in conjunction with Articles 6, 7, 24(2) and 47 of the EU Charter, to be interpreted as meaning that a judicial authority, when reviewing compliance with the conditions governing the lawfulness of the detention of a third country national which derive from EU law, is required to satisfy itself, if necessary of its own motion, that the interests referred to in Article 5 of the Return Directive do not preclude the enforcement of the return decision previously adopted and for the purposes of its enforcement the third country national was detained?

Detention under the Italy-Albania Protocol[3]

Italy, Court of Appeal [Corte di Appello], *Questura di Roma*, RG 2025 2208, 19 April 2025.

The Court of Appeal of Rome did not validate the detention measure for a Moroccan national as it found that the applicant, while detained at the CPR in Gjader (Albania), initially due to pending expulsion proceedings, applied for international protection after the transfer to Albania, resulting in a change of the legal basis for detention and rendering the provisions of the Italy-Albania Protocol inapplicable.

Pending expulsion proceedings, a national of Morocco was transferred to Albania and placed in the CPR in Gjader. He subsequently requested international protection. The Quaestor of Rome then submitted a request to the Court of Appeal of Rome to validate the applicant's detention in the CPR in Gjader, arguing that the timing and circumstances of the asylum application indicated it was made to delay or obstruct the execution of the expulsion order.

The Court of Appeal of Rome ruled that the valid submission of the request for international protection changed the legal basis for the detention of the applicant, shifting its purpose from enforcing a return order to facilitating the examination of the asylum application. The court affirmed that, upon acquiring the status of asylum seeker, the applicant cannot be transferred to the areas specified in Article 1(1)(c) of the Italy-Albania Protocol.

The court clarified that border procedures were not applicable in the case, as the applicant had already entered the Italian territory irregularly and was subject to both an expulsion and a detention order. As such, the conditions for applying the accelerated border procedure were not met. The court emphasised that return procedures, including expulsion, did not apply, as the applicant's submission of the asylum request altered the legal basis for detention and prevented the immediate enforcement of a deportation order.

The court stated that under Article 9 of the recast APD, an applicant for international protection has the right to remain in the Member State until a decision is made, including during any appeal process, unless specific exceptions apply.

[3] On 20 May 2025, the Italian Chamber of Deputies approved, with amendments, the bill converting Decree-Law No 37 of 28 March 2025 into law. Among other provisions, the Law No 75 of 23 May 2025 notably expanded the categories of individuals eligible for transfer to detention facilities in Albania to include, not only applicants for international protection originating from safe countries, but also irregular migrants subject to expulsion orders. Moreover, the law permits individuals to remain in detention facilities in Albania after requesting international protection, where the request is deemed to be made for the purpose of frustrating or delaying removal.

Therefore, the court ruled that the Italy-Albania Protocol and its implementing law were inapplicable in the case, as neither explicitly authorises the detention of an asylum seeker in the CPR of Gjader. The court thus concluded that the detention of the applicant was unlawful.

Italy, Court of Appeal [Corte di Appello], *Questura di Bari*, R.G. 795/2025, 9 May 2025.

The Court of Appeal of Bari did not validate the detention measure ordered by the Quaestor of Bari and ruled that the application for international protection, submitted by the applicant while detained at the CPR of Gjader, was not made to delay or obstruct removal, as he had resided in Italy for almost 30 years and had two young children.

The applicant was issued an expulsion order and detained at the CPR of Gorizia-Gradisca d'Isonzo. He was later transferred to the CPR of Gjader (Albania), where he requested international protection. As the Court of Appeal of Rome did not validate the subsequent detention ordered by the Quaestor of Rome, he was returned to Italy. A new detention order was then issued by the Quaestor of Bari and submitted to the Court of Appeal of Bari for validation.

The Court of Appeal of Bari clarified that, contrary to the Police Headquarters' position, the Court of Appeal of Rome explicitly ruled that the application was not made for the purpose of delaying or obstructing the removal. The Court of Appeal of Bari noted that this element, under Article 6(3) of Legislative Decree No 142/2015, is an essential condition for the validation of detention. It refrained from reassessing the matter, as the Court of Appeal of Rome had already adjudicated on it and reiterated that re-examination would have contravened the *ne bis in idem* principle. Consequently, the court found that the legal conditions for validating the detention ordered by the Quaestor of Bari were not met and did not validate the measure.

Second instance procedures

CJEU judgment on the power of the court to order a medical examination

CJEU, *B.F. v Kypriaki Dimokratia [Barouk]*, C-283/24, 3 April 2025.

The CJEU ruled that, in order to satisfy the requirement of a full and ex nunc examination on appeal, a national court of first instance must have the power to order a medical examination of the asylum applicant if it considers the examination to be necessary or relevant for the purposes of assessing the application for asylum.

The International Protection Administrative Court (IPAC) requested a preliminary ruling after noting that the asylum authority failed to carry out a medical or psychological examination of a Lebanese applicant who claimed that he had been a victim of torture by the Lebanese intelligence agencies and military services. IPAC considered that it was impossible to assess the applicant's credibility in the absence of a medical examination. At the national level, the Supreme Court of Cyprus confirmed that, under national law, IPAC does not have the power to order such a medical examination and could only ask the asylum authority why such an examination had not taken place and could annul the contested decision.

The CJEU noted that national legislation that does not allow a court of first instance to order a medical examination, subject to the applicant's consent, when the court considers that the examination is necessary or relevant in order to assess the merits of the application, does not satisfy the requirement of a full and ex *nunc* examination under Article 46(3) of the recast APD.

Furthermore, the CJEU noted that a law that limits the court's power to the option to annul the negative asylum decision when the authority should have referred the applicant for a medical examination does not satisfy the requirement of a full and *ex nunc* examination, even though it would allow for a fresh examination of the application by the asylum authority. The CJEU highlighted that it is the court itself which must ensure a complete examination, without a need to return the file to the determining authority, as this would also provide an expeditious processing of applications.

The CJEU also added that it is sufficient if the court orders the asylum authority to arrange the medical examination and to send the results to the court within a short period of time, besides the option that the court itself would order the examination.

Finally, the CJEU also highlighted that it is for the referring court to interpret national legislation in a manner consistent with the requirement of a full and *ex nunc* examination and, if this would be impossible, to set aside national legislation and apply EU law, specifically Article 46(3) of the recast APD which has a direct effect.

Referral to the CJEU on the power of the court to make a substantive ruling

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL24.1518, 11 March 2025.

The District Court of the Hague seated in Zwolle submitted several questions to the CJEU for a preliminary ruling on whether a court ruling in a first appeal has the power to assess the credibility of the grounds for international protection based on the files available and make a substantive and final ruling on the application, especially when it has publicly-available country of origin information which it considers sufficient in the case.

In an appeal against a negative decision concerning a Pakistani national, the District Court of the Hague seated in Zwolle submitted several questions before the CJEU for a preliminary ruling on whether a court deciding on the first appeal has the power to take a substantive decision and grant international protection, based on its own assessment of credibility and publicly-available country of origin information, which are considered sufficient by that court.

The following questions were submitted to the CJEU for a preliminary ruling:

1. Can a court derive from Article 46(3) of Directive 2013/32/EU, whether or not read in conjunction with Article 47 of the EU Charter, or from any other provision or principle of EU law, the power to make its own ruling on the credibility of an asylum account, superseding the ruling made by the minister?

2. Can the court derive from any of the abovementioned provisions the power to make a substantive and final ruling on the application for international protection on the basis of those parts of the asylum account which the minister deems credible and, if the answer to question 1 is in the affirmative, those parts of the asylum account which the court also deems credible? In that regard, may the court substitute its own ruling on the plausibility of the fear of persecution or the real risk of serious harm for that of the minister, especially if, against the background of publicly accessible country information, the court considers itself sufficiently informed to make such a ruling?

3. Can national case-law constrain the powers referred to in questions 1 and 2, for example on the ground of procedural autonomy, to the effect that those powers are still vested exclusively in the minister?

4. May the court take into account information, which was put forward on appeal, but which was not yet available at the administrative stage, in the ruling on the question whether it has enough information to make a substantive ruling? Is it relevant in that regard whether the parties have been able to express their views fully on the facts in writing or at the hearing?

Content of protection

Family reunification with other relatives

Finland, Supreme Administrative Court [Korkein hallinto-oikeus], *A,B,C v Finnish Immigration Service (Maahanmuuttovirasto, FIS),* KHO:2025:35, 24 April 2025.

The Supreme Administrative Court ruled that an Afghan applicant, grandchildren of the sponsor and their mother may be considered other relatives for family reunification and the rejection of their request was unreasonable in view of their stable family life in Afghanistan, which they intended to continue in Finland.

The Finnish Immigration Service rejected the requests for residence permits of an Afghan mother and her two children which were based on family reunification with the children's grandfather (sponsor), who was a refugee in Finland. The Finnish Immigration Service did not consider the mother as a legal relative under Section 115 of the Aliens Act and rejected the application for residence permits of the children as they intended to reunite with the sponsor together with their mother. The Administrative Court confirmed this decision, and the applicants appealed to the Supreme Administrative Court.

The Supreme Administrative Court ruled that the bond between the mother and the family sponsor should not have been assessed separately from the children, given that the children are other relatives of the family sponsor. Considering the applicants' explanation of their stable family life with the sponsor in Afghanistan, the disappearance of the children's father and the best interests of the children, the court ruled that the mother must also be regarded as another relative of the family sponsor pursuant to Section 115 of the Aliens Act.

The court also noted that the sponsor was the children's only close male relative, and they were unable to lead an independent life in their country of residence. It therefore ruled that the refusal of the residence permit was unlawful, it annulled the contested decision and instructed the Finnish Immigration Service to reassess the case.

Switzerland, Federal Court [Bundesgericht - Tribunal fédéral], *A. v State Secretariat for Migration (Staatssekretariat für Migration, SEM)*, 2C_323/2024, 14 April 2025.

The Federal Supreme Court rejected an appeal for family reunification between the applicant and her niece and nephew due to the children's advanced age and established life in Ethiopia. It also held that public interest in controlling immigration outweighed the private interest in family reunification.

An Eritrean national with refugee status in Switzerland requested family reunification with her niece and nephew, who are two of four children of her late sister who died in 2019. The other two children were recognised as refugees after entering Switzerland as unaccompanied minors and they were adopted by the applicant and her spouse. The applicant sought reunification with the two children in

Ethiopia after their grandmother passed away in 2023. The State Secretariat for Migration rejected the application. Upon an unsuccessful appeal before the Court of Zurich, the applicant complained before the Federal Supreme Court, arguing a violation of Article 8 of the ECHR.

Despite the existence of a family relationship between the applicant and the children, the court found that their advanced age (15 and 17 years), as well as their well-established life in Ethiopia (school attendance and familiarity with the country), significantly reduced dependency on the applicant. The court ruled that the reunification was not justified because public interest in controlling immigration outweighed their private interest. The court acknowledged that the applicant provided financial and emotional support to the children, but it took into account the lack of ties to Switzerland, potential challenges for integration and the fact that the applicant never lived with the children.

Family reunification: Timely processing of applications

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *The Minister for Asylum and Migration (de Minister van Asiel en Migratie) v Applicant*, 202405046/1/V1, 21 May 2025.

The Council of State ruled that the application of the 'first in, first out' (FIFO) principle in processing family reunification applications neither justifies extending the legally-established deadlines for a decision nor warrants a reduction in the penalties imposed for non-compliance with the deadlines.

A Turkish refugee applied for family reunification for his spouse and three minor children. After a decision was not made within the legal timeframe, his spouse filed an appeal and requested interim relief. The District Court of the Hague seated in Arnhem recognised the urgent need for expeditious processing due to ongoing criminal proceedings against the applicant in Türkiye. It ordered the Minister of Asylum and Migration to decide within specified timeframes and imposed a penalty of EUR 250 per day for the delay, capped at EUR 37,500. The minister subsequently appealed to the Council of State.

The Council of State addressed the minister's adoption of the FIFO principle, which prioritises applications in chronological order. It held that, while FIFO may improve administrative efficiency, it does not justify deviating from the legally prescribed deadline for a decision or reducing penalties for a delay. The council emphasised that the minister remains legally obliged to comply with court-imposed deadlines and cannot rely on the FIFO principle to postpone individual decisions. Furthermore, the council highlighted the importance of timely family reunification, noting that undue delays undermine the objectives of the Family Reunification Directive and infringe fundamental rights protected under Articles 7 and 24 of the EU Charter.

Although the council acknowledged an increased backlog in family reunification applications, it found that this did not render the established decision periods unreasonable. The council reaffirmed that the legally-prescribed deadlines had long been clear and appropriate. While recognising the minister's efforts to process applications fairly and efficiently under the FIFO principle, the council stressed that adherence to court-imposed

decision periods remains mandatory. Finally, the council upheld the penalty amounts imposed by the district court, finding them justified in the circumstances of the case.

Withdrawal of refugee status on grounds of conviction for a particularly serious crime

Sweden, Migration Court of Appeal [Migrationsöverdomstolen], *AA v Swedish Migration Agency (Migrationsverket, SMA)*, UM 4827-24, ME 2025:3, 6 March 2025.

The Migration Court of Appeal ruled that it was proportionate to revoke refugee status for a third-country national who was convicted for aggravated weapons offenses, which was considered to be a particularly serious crime, thus considering the applicant to be a genuine, present and sufficiently serious threat to fundamental public interest.

AA, a national of Iraq, was granted refugee status in Sweden. He was later sentenced to 2 years and 6 months in prison for assault, aggravated unlawful threats, petty drug offenses and serious weapons offenses. After the sentence remained final, the Swedish Migration Agency decided to revoke AA's refugee status because the serious weapons offense he was convicted of constituted a particularly serious crime. AA appealed the decision to the Migration Court in Gothenburg and, upon its rejection, to the Migration Court of Appeal.

The Migration Court of Appeal dismissed the appeal, concluding that the revocation of AA's refugee status was proportionate. In its overall assessment, it followed the considerations of the CJEU judgment in *Staatssecretaris van Justitie en Veiligheid v M.A.* (C-402/22, 6 July 2023). The court considered that the aggravated weapons offense committed by the applicant constituted a particularly serious crime. Furthermore, the court noted that a serious weapon offense is a crime posing a threat to a fundamental public interest, as it constitutes a prerequisite for a wide range of other violent crimes. On this basis alone, the court found that AA constituted a genuine, present and sufficiently serious threat to fundamental public interest.

Lastly, regarding the proportionality of the revocation of refugee status, the court considered that when a foreigner is deemed to have committed a particularly serious crime and is further considered to constitute a threat to fundamental public interest, there must be special and qualifying circumstances for a revocation not to be considered proportionate.

Temporary protection

Referrals to the CJEU for a preliminary ruling on the interplay with the asylum procedure

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)*, 202402732/1/V2, 2 April 2025.

The Council of State referred two questions to the CJEU for an interpretation of Article 17(2) of the TPD on the possibility to suspend the processing of asylum applications during the validity of the temporary protection status and in situations when the time limits for examining asylum applications as set under Article 31 of the recast APD must be observed.

A Chinese applicant who resided in Ukraine before 24 February 2022 travelled to the Netherlands and applied for asylum on 13 April 2022. During his personal interview on the same day, he was informed that the asylum application would not be processed as he was eligible for temporary protection, which was granted to him.

The applicant appealed to the first instance court challenging the failure to assess his asylum claim. The court considered that as per Article 31(5) of the recast APD, the examination procedure must be completed no later than 21 months after an asylum application was submitted. The minister submitted an onward appeal before the Council of State, arguing that under Article 17(2) of the Temporary Protection Directive (TPD), the processing of an asylum application can be completed after the temporary protection status has ended, in line with the objective of the TPD.

By referring to paragraphs 127 and 128 of the CJEU judgment *P (C-244/24, Kaduna), AI, ZY, BG (C-290/24, Abkez)* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (C-244/24 and C-290/24, 19 December 2024), the council affirmed that they provide the starting point to read Article 17(2) as meaning that the time limit for deciding on an asylum application may be suspended in the event that the application was lodged before or during the period of temporary protection. The council decided to stay the proceedings and submit two questions to the CJEU for a preliminary ruling:

1. 'Should the second paragraph of Article 17 of the TPD be interpreted as meaning that it gives Member States the power to suspend the examination of an application for international protection from a person enjoying temporary protection during the period of temporary protection?

2. Should the decision-making periods in Article 31 of the recast APD be interpreted as meaning that, in the event that an application for international protection is lodged before or during the period of temporary protection by a beneficiary of temporary protection under the TPD, those periods only begin or continue to run after the end of the period of temporary protection?'

Sweden, Administrative Courts [Förvaltningsdomstolar], *AA, BA, CA, DA, EA, FA v Migrationsverket*, 11 March 2025.

The Migration Court in Gothenburg submitted questions before the CJEU for a preliminary ruling on the interplay between temporary protection status and the possibility of applying for and being granted subsidiary protection while the temporary protection status is still valid.

The applicants, BA, a Ukrainian national, and AA, a Nigerian national, with permanent residence permits in Ukraine, together with their four children, applied for international protection in Sweden. Their applications were rejected because of their status as beneficiaries of temporary protection. The Migration Court in Gothenburg submitted a referral for a preliminary ruling to the CJEU, seeking guidance on the following questions:

1. Are the recast QD and the recast APD applicable to applications for a grant of protection status following the granting of temporary protection under the TPD?

2. (a) Must Articles 17(1) and 19(2) of the TPD be interpreted as meaning that the possibility of making an application for asylum refers to the possibility of making an application for refugee status and making an application for subsidiary protection status, and having such an application examined in the light of the recast QD and the recast APD? (b) Is Article 3(1) of the TPD to be interpreted as meaning that temporary protection under that directive precludes the recognition of subsidiary protection status under the recast QD for persons eligible for or receiving temporary protection under the first directive?

3. If Articles 17(1) and 19(2) of the TPD also cover the right to apply for subsidiary protection status under the recast QD, are those articles, in conjunction with Article 10(2) of the recast APD, sufficiently clear and precise to have a direct effect?

4. Is national legislation compatible with EU law when, for example, the Swedish rules in Paragraph 5 of Chapter 21 of the Law on Foreign Nationals (2005:716) restrict the right to apply for refugee status or alternative protection status?

Inadmissibility decisions on temporary protection and access to an effective remedy

Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], 3 April 2025:

- ***Applicant v Ministry of the Interior (Ministerstvo vnitra České republiky)*, Azs 174/2024.**
- ***Applicant v Ministry of the Interior (Ministerstvo vnitra České republiky)*, Azs 336/2024.**

The Supreme Administrative Court ruled that the Ministry of the Interior could not reject as inadmissible a request for temporary protection submitted by a Ukrainian national on the sole ground that he was a beneficiary of temporary protection in another Member State, and that the relevant Czech legislation on the prohibition of an appeal against an inadmissible decision on temporary protection was incompatible with EU law.

Ukrainian nationals who were granted temporary protection in Belgium and Poland, respectively, requested temporary

protection in Czechia, and the Ministry of the Interior rejected their requests as inadmissible, based on national legislation according to which a beneficiary of temporary protection in another Member State cannot apply again in Czechia. The national provision also prohibits a judicial review against the inadmissibility decision.

The Municipal Court in Prague allowed the appeal of the applicants and overturned the contested decision. Upon an onward appeal submitted by the Ministry of the Interior, the Supreme Administrative Court ruled that the national provisions were incompatible with EU law and referenced the CJEU judgment in *A.N. v Ministerstvo vnitra* (C-753/23, 27 February 2025) to state that the prohibition of an appeal against an inadmissibility decision for a request for temporary protection was contrary to EU law, as it unlawfully denied the right to an effective remedy.

On the reasons for the inadmissibility decision, the court noted that Article 11 of the TPD is not applicable to Ukrainian nationals, as agreed by Member States in the Council Implementing Decision, which states that a Member State should take back a beneficiary of temporary protection if the beneficiary stays on or attempts to enter the territory of another Member State without authorisation. The court noted though that, according to the European Commission guidelines on the application of temporary protection, beneficiaries of such protection are free to move to another Member State and receive another residence permit under temporary protection, provided that "the first issued residence permit and the rights arising from it must be terminated".

Thus, the Supreme Administrative Court clarified that, upon receiving a request for temporary protection by a beneficiary of such status in another Member State, the competent authority must assess whether the first residence permit expired under the national legislation of that Member State, if analogous to the Czech provisions. If that Member State does not have similar provisions, then it will be for the applicant to demonstrate that their status ended in the other country, failure of which the application can be rejected.

The court rejected the appeal of the Ministry of the Interior and instructed the latter to reassess the cases in view of the above observations.

Return

Referral to the CJEU for a preliminary ruling on the interpretation of the Return Directive

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, NL24.24991, 12 March 2025.

The District Court of the Hague seated in Roermond referred one question to the CJEU for a preliminary ruling on whether the Minister must issue a return order with written confirmation of the postponement of its implementation when protection status is revoked based on an exclusion ground and a return is not possible due to the non-refoulement principle.

In an appeal against the revocation of subsidiary protection granted to a Syrian national on grounds that he constituted a threat to public policy, the District Court of the Hague seated in Roermond referred a question to the CJEU on the interpretation of the Return Directive and the recast QD:

- Is Article 6 of Directive 2008/115, in conjunction with Articles 3, 5, 8 and 9(1a) of Directive 2008/115, and in conjunction with Articles 17 and 19(2) and (3a) of Directive 2011/95, to be interpreted as meaning that, subject to the exceptions set out in Article 6(2) to (5) of Directive 2008/115, the Member State is obliged to issue a return decision in respect of a third-country national staying illegally on its territory who is excluded from subsidiary protection, and that if removal to the country of destination is contrary to the principle of *non-refoulement,* the Member State is obliged, at the same time as issuing a return decision, to confirm in writing that the removal of that third-country national has been postponed?

Other relevant aspects

CJEU judgment on the rectification of gender identity data for asylum applicants

CJEU, *VP v National Directorate-General for Aliens Policing (Országos Idegenrendészeti Főigazgatóság, NDGAP)*, C-247/23, 13 March 2025.

The CJEU ruled in a case concerning a refugee in Hungary, that under Article 16 of the GDPR, national authorities must rectify inaccurate gender identity data. It also found that, while a transgender applicant may be required to provide reasonable evidence, Member States cannot impose an administrative requirement to prove gender reassignment surgery to exercise this right.

VP, a national of Iran, was granted refugee status in Hungary due to persecution based on transgender identity. Although identifying as male, VP was registered as female in the Hungarian asylum register. The asylum authority rejected VP's request to amend the gender marker and forename in the register due to a lack of proof of gender reassignment surgery. VP appealed to the Budapest High Court, which referred questions to the CJEU on the interpretation of Article 16 of the GDPR.

The CJEU first clarified that under Article 16 of the GDPR a person has the right to have inaccurate personal data, including gender, rectified by the data controller (in this case, the asylum authority) without undue delay. It ruled that the data controller must consider the applicant's gender identity at the time of registration, not the one assigned at birth.

The CJEU ruled that Member States must not restrict the right to rectification beyond the conditions set out in Article 23 of the GDPR. It held that Hungary's administrative practice requiring transgender individuals to provide proof of gender reassignment surgery to rectify their gender identity data did not comply with the conditions set out in the article. Furthermore, the CJEU found that this requirement was neither necessary nor proportionate to ensure the reliability and consistency of the asylum register, as relevant and sufficient evidence may include a medical certificate, such as a psychiatric diagnosis.

The CJEU concluded that under Article 16 of the GDPR, while individuals may be required to provide reasonable evidence to exercise their right to rectification of personal data relating to gender identity, Member States cannot impose an administrative requirement to prove gender reassignment surgery to exercise this right.


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