EASO
Case Law Newsletter

Issue No 1/2020

September-November 2020

EASO Case Law Newsletter

September - November 2020

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.*

Access to procedure

Italy, IT: Court of Appeal [Corte di Appello], *Ministry of the Interior* v *Applicant*, 29/10/2020

IT: The Court of Appeal of Rome held that obstructions by administrative authorities and police preventing an applicant from lodging subsequent asylum applications and to access reception constitute violations of fundamental rights and dignity.

Following a negative decision on his first application for international protection, the applicant unsuccessfully attempted to renew his application based on new elements, being obstructed by the Questura in Rome. A deportation order was issued in 2018 and his last application was rejected as inadmissible on grounds of allegedly delaying the removal. By interim order of 2019, the court of first instance instructed the Questura in Rome to receive the application and to allow his presence on the territory including access to reception until his application is examined by the determining authority. The Court of Appeal upheld this decision, concluding that law provisions do not allow an automatic rejection of a subsequent application and that the police and the prefecture infringed the applicant's right to dignity by preventing his access to procedure and by depriving him of access to the reception system and an adequate standard of life.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1348

Dublin procedure

COVID-19 situation in responsible Member State

Luxembourg, LU: Administrative Tribunal [Tribunal administratif], *Applicant* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, 22/09/2020

LU: The Administrative Tribunal ruled on a Dublin transfer to Italy and found no violation of the ECHR, Article 3 or EU Charter, Article 4 given the improved situation in Italy.

The case reviewed if a Dublin transfer to Italy during the COVID-19 pandemic would entail a violation of the ECHR, Article 3 and the EU Charter, Article 4. The Administrative Tribunal stated that the applicant did not adduce evidence to support his allegation that the health situation in Italy prevents a Dublin transfer. On the contrary, it was held, based on international sources, that the health situation in Italy had significantly improved since March 2020, and the number of COVID-19 infections considerably dropped when compared to the situation in Luxembourg at the time. The Administrative Court further found that the applicant did not prove a serious health condition and an alleged lack of adequate medical treatment in Italy.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1207

Interruption of 6-month time limit for a Dublin transfer

Germany, DE: Federal Administrative Court [Bundesverwaltungsgericht], *Applicants (Iraq)* v *Federal Office for Migration and Refugees*, 18/09/2020

DE: The Federal Administrative Court ruled that the implementation of Dublin transfers cannot be administratively suspended over the time limits provided by the Dublin III Regulation due to the COVID-19 outbreak.

Following the acceptance of a take back-request by Sweden pursuant to the Dublin III Regulation on 27 September 2018, the application for international protection of plaintiffs, Iraqi nationals, was rejected. A request for an interim measure was dismissed on 29 November 2018. After unsuccessful attempts to transfer the applicants in 2019, the time limit for conducting the transfer was extended by 18 months because the plaintiffs absconded. In April 2020, the Federal Office for Migration and Refugees (BAMF) suspended the transfer due to the COVID-19 pandemic, but on 22 June 2020 the suspension was revoked because transfers to Sweden were resumed. The applicants applied for interim measures and BAMF opposed the request. On 31 July 2020, the Administrative Court annulled the transfer decision and concluded that the initial 6-month period for the transfer was reopened for the last time by the decision of 29 November 2018 on interim measures, whereas the 18 months had expired at the time of the judicial decision. The BAMF suspension decision in relation to the COVID-19 was found contrary to EU law. It was underlined that the Dublin III Regulation provides for clear time limits, not allowing Member States to extend or interrupt the transfer period for COVID-19-related reasons.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1252

See also Germany, Applicant (Nigeria) v Federal Office for Migration and Refugees (BAMF), 10/06/2020; Germany, Applicant (Afghanistan) v Federal Office for Migration and Refugees, 28/08/2020, Netherlands, Applicant (Sudan) v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), 21/04/2020.

Medical condition not precluding Dublin transfer

Switzerland,CH: Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *X. (Guinea)* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, 16/11/2020

CH: The Federal Administrative Court ruled that a medical condition that requires soft medication and regular check-ups does not prevent a Dublin transfer to Spain.

The applicant, a Guinean national, applied for asylum in Switzerland on 10 August 2020, but based Eurodac information, a take back was requested and accepted by Spain on 25 August 2020. In the following period, the applicant received medical and psychiatric treatment. On 28 October 2020, the transfer order was issued by a lower court, leaving the asylum application unsolved. The applicant's appeal against the transfer order was rejected by the Federal Administrative Court based on the fact that Spain complies with all international requirements in terms of international protection and human rights protection. Moreover, the applicant's health condition was assessed as not preventing the transfer since he received soft medication for diagnosed lumbar pain, anxiety and sleep disorders due to post-traumatic stress disorder. It was held that the Swiss authorities duly took into consideration his individual circumstances for the transfer arrangements and informed the Spanish authorities of his health issues.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1377

First instance procedures

Consideration of all relevant evidence

Germany, DE: Federal Constitutional Court [Bundesverfassungsgericht], *N. (Mauritania)* v *Administrative Court (VG) of Greifswald*, 25/09/2020

DE: The Constitutional Court found a violation of the right to legal protection for a Mauritanian asylum applicant who feared persecution as a former slave.

A Mauritanian national applied for asylum invoking that she belonged to a slave tribe, had no schooling, was raped by her father and after his death became a member of the anti-slavery group IRA in Mauritania. The Federal Office rejected her application and further assessed that the humanitarian situation in Mauritania does not amount to a potential violation of the ECHR, Article 3 in order to prevent a return. The applicant's appeals were rejected, but she reached the Constitutional Court which concluded that the Administrative Court and the Higher Administrative Court violated her right to be heard and to an effective legal protection. The Constitutional Court considered that Mauritania was still confronted with extreme poverty and exclusion from society for former female slaves and that the evidence adduced by the applicant was not duly assessed; the case was referred for a new decision.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1247

Provision of an adequate reasoning

Italy, IT: Supreme Court - Civil section [Corte di Cassazione], *Applicant* v *Ministry of Interior (Ministero dell'interno)*, 25/09/2020

IT: The Court of Cassation referred a case back for lack of reasoning on the merits for an application for humanitarian protection.

Following a negative decision based on an unproven fear of persecution, the applicant appealed before the Court of Cassation which also rejected it as inadmissible due to the general arguments which were invoked. The applicant's allegations of irregularities in the procedure for failure to translate the notification of the administrative decision into a language known/understood was rejected. The court held that, according to national law, an applicant must indicate which non-translated act directly infringed the right to a fair hearing and to specify the actual version to be offered and the significance it has in the language of the country of origin. However, on the humanitarian protection claim, the Court of Cassation found that the lower courts did not properly assess the applicant's medical situation and his vulnerable situation arising from the objective situation in his country of origin. The case was referred for a new examination in a different formation, because all the applicant's arguments were not analysed and the decision lacked proper reasoning on the merits.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1288

Member of a particular social group

Individuals suffering from epilepsy in Guinea

Italy, IT: Civil Court [Tribunali], *Applicant (Guinea)* v *Ministry of the Interior (Ministero dell'interno)*, 19/09/2020

IT: The Civil Court of Milan granted refugee protection to a Guinean national suffering from epilepsy, based on the ground of membership of a particular social group because of his disease and risks of persecution in his country of origin.

The applicant, a Guinean national, was provided refugee status by the Court of Milan

in a decision where it was assessed that stigma and social persecution of people with epilepsy are characteristics for belonging to a particular social group. The Court of Milan based its reasoning on multiple country of origin reports to conclude that the Guinean health system is deficient, people with epilepsy are discriminated against due to cultural beliefs and state authorities cannot protect the applicant. The court stated that acts and behaviours of the community towards such persons can give rise to serious human rights violations and social stigma: risks of being subjected to treatment that could strongly affect living conditions, access to healthcare and work, and they could not enjoy a dignified life with full exercise of civil and political rights.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1351

Somali children and adolescents not subjected to FGM constitute a particular social group

France, FR: National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *Applicant (Somalia)* v *OFPRA (Office Français de Protection des Réfugiés et Apatrides)*, 01/09/2020

FR: The CNDA ruled that Somali children and adolescents not subjected to FGM constitute a particular social group.

A 2-year-old Somali girl, represented by her parents, was rejected international protection by the French Office for the Protection of Refugees and Statelessness Persons (OFPRA). The decision was appealed against, invoking that OPFRA only briefly heard the father, not the mother, and did not properly assess the risk of FGM. The French National Asylum Court (CNDA) allowed the appeal and stated that OFPRA failed to offer an essential guarantee to the girl, such as to be heard through her legal representative. The CNDA took into consideration that the mother had undergone FGM (medically certified) which objectively represents the social norm in Somalia, and children and adolescents not subjected to FGM therefore constitute a particular social group. The CNDA concluded that the parents would not be able to oppose the FGM of their daughter.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1370

LGBTQ+

Council of Europe, CoE: European Court of Human Rights [ECHR], *B (Gambia) and C (Switzerland)* v *Switzerland*, 17/11/2020

The ECtHR found that there would be a violation of the ECHR, Article 3 for an expulsion order to Gambia of a homosexual applicant in the absence of a new assessment of risks.

Following a negative decision and a refusal to register a same-sex partnership with the second applicant C., B., a Gambian applicant, was also refused a residence permit and was ordered to leave Switzerland. B complained under Article 3 of the ECHR about a real risk of ill treatment upon his return to Gambia. The court found a violation of the ECHR, Article 3 and held that sexual identity is part of the identity of a person and no person should be requested to conceal it in order to avoid persecution. Regarding ill treatment by state actors, the court concluded that, although homosexual acts are criminal offences in the law, no report indicated an individual application of the law, potentially due to a fear of state discrimination or under-reporting. For the alleged ill treatment by non-state actors, the court found reports of widespread homophobia and discrimination against LGBTI persons and concluded that Swiss authorities failed to duly analyse the available state authorities' protection or unwillingness of the latter to offer it. A deportation in the absence of a new assessment of risks would constitute a violation of the ECHR, Article 3.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1346

Vulnerable applicants

Romania, RO: County Court [Tribunal], *A.E.H. (Iraq)* v *General Inspectorate for Immigration - Radauti Regional Centre for accommodation and procedures for asylum applicants (Centrul Regional de Cazare si Proceduri pentru Solicitantii de Azil din Radauti)*, 16/09/2020

RO: The County Court confirmed refugee status for vulnerable single woman from Iraq.

The applicant, a single woman from Iraq, was rejected asylum in Romania and she contested the decision before the court of first instance. She argued that she would face a high risk of being subject to abducting, rape or killing due to her status as a single woman in her country of origin, amid the conflict and security situation. A sister, a nephew and her mother are in Romania and other relatives in Germany, with no family members in Iraq. The court of first instance allowed her appeal and granted refugees status on grounds of the vulnerable situation as a single woman in Iraq. The General Inspectorate for Immigration's appeal was rejected by the County Court, and the decision of the court of first instance was upheld. The Country Court reasoned its decision by reference to reports from UNHCR and EASO on the situation in Iraq, analysed jointly with her individual circumstances.

The court cited "EASO Country Guidance: Iraq; Guidance note and common analysis, 2019".

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1296

Finland, FI: Supreme Administrative Court [Korkein hallinto-oikeus], *A. (Somalia)* v *Finnish Immigration Service*, 07/09/2020

FI: The Supreme Administrative Court ruled on special procedural guarantees for vulnerable applicant who allegedly suffered sexual violence.

A Somali woman applied for international protection in Finland by invoking repeated sexual abuses by Al-Shabaab. The interview was conducted by a male officer and a male interpreter, and her application was rejected on credibility grounds. Her appeal against the negative decision was dismissed without an oral hearing by the administrative court, and she further went to the Supreme Administrative Court, arguing that she could not comprehensibly present all grounds in the asylum procedure because both the interpreter and the interviewers were male. The Supreme Administrative Court ruled that according to the Aliens Act there is an obligation by the officer to identify applicants in vulnerable situations and to ensure that special procedural safeguards are provided. The determining authority should have offered the opportunity to have a same-sex interviewer and interpreter, and for these reasons, the asylum procedure was not conducted properly and the case was referred to the determining authority for a new asylum interview.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1178

Religious persecution

Finland, FI: Supreme Administrative Court [Korkein hallinto-oikeus], *A, B and C (Russia)* v *Finnish Immigration Service*, 10/09/2020

FI: The Supreme Administrative Court ruled on persecution based on religious grounds for Jehovah's witnesses.

Russian nationals who are Jehovah's witnesses applied for international protection based on a risk of persecution for religious beliefs and activities. They were actively involved in Russia at Jehovah's witnesses' religious gatherings and activities and reported several occasions of being harassed by private persons or state authorities for their preaching activities. Jehovah's witnesses were banned as an extreme organisation and the applicants conducted their activities in secret before

leaving the country in 2017. Their applications were rejected, and an appeal reached the Supreme Administrative Court that made a thorough analysis of country of origin information, EU law and CJEU case law, as well as case law from the ECtHR on Article 9. The Supreme Administrative Court stated that a ban on participation in religious activities may amount to persecution if infringements of the prohibition may result in being subject of justice offences. Based on the individual circumstances of the applicants, the Supreme Administrative Court concluded that the applicants had a well-founded fear of being persecuted in their home country due to their religion and would not have the protection of state authorities.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1183

Military conscription

European Union, EU: Court of Justice of the European Union [CJEU], *EZ* v *Bundesrepublik Deutschland (Federal Republic of Germany)*, 19/11/2020

The CJEU interpreted Article 9 of the Qualification Directive and ruled that there is a strong presumption that, in the context of the Syrian civil war, a refusal to perform military service is connected to a reason which may give rise to refugee protection.

EZ, a Syrian national, was refused refugee status but granted subsidiary protection by the Federal Office for Migration and Refugees. In his application, he claimed to face persecution in Syria because he fled conscription out of fear of being involved in the civil war. He appealed the decision, and the Administrative Court of Hanover addressed a preliminary question to the CJEU on the interpretation of the recast Qualification Directive, Article 9(2)(e) and (3).

The CJEU held that the recast Qualification Directive, Article 9(2)(e) must be interpreted as not precluding the finding of a refusal to perform military service in the absence of a formalised refusal in countries where the possibility to refuse military service is not provided. It must be interpreted that, in the context of civil war, a refusal to perform military service is linked to an assumption that the military service will involve the commission of crimes, irrespective of the field of operation. Refusal of military conscription in such circumstances can be considered the expression of political or religious beliefs and can be linked to the grounds of persecution. The court concluded that, although there is a strong presumption of the existence of a connection between the reasons mentioned in Article 2(d) and Article 10 of the directive and the prosecution and punishment for refusal to perform the military service referred to in Article 9(2)(e), national courts have to ascertain the plausibility based on individual circumstances.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1360

Subsidiary protection

France, FR: National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.M. (Afghanistan)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 19/11/2020

FR: The CNDA ruled on the process for assessing the level of violence generated by armed conflict for the purposes of granting subsidiary protection.

M.M., an Afghan national, applied for international protection in France on grounds of a security situation that would expose him to a serious risk of harm by the Taliban and members of the Islamic State while transiting to his region. The French Office for the Protection of Refugees and Stateless Persons (OFPRA) rejected his application and the CNDA upheld the negative decision. CNDA analysed the qualitative and qualitative criteria used for assessing country of origin information in order to determine if the indiscriminate violence in an armed conflict context would pose an individual threat against an applicant's life and the level of such violence. The need for

such an assessment was considered to derive from the CJEU case law in Elgafaji (C-465/07) with the purpose of assessing grounds for subsidiary protection. With regards to the case, CNDA found that Panjsher, the province of origin of the applicant, was not in a situation of indiscriminate violence and there were no indications of exposure to a real risk of suffering harm while transiting to other provinces.

The CNDA made reference to the EASO report "Key socio-economic indicators. Focus on Kabul City, Mazar-e Sharif and Herat City" of August 2020; the EASO Judicial Practical Guide on Country of Origin Information, 2018; the EASO report "Afghanistan: Individuals targeted by armed actors in the conflict", December 2017; and the EASO COI report "Afghanistan Anti-Government Elements (AEGs)", 2020.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1353

Romania, RO: County Court [Tribunal], *Applicants (Iraq)* v *Rădăuți Regional Centre for accommodation and procedures for asylum applicants (Centrul Regional de Cazare și Proceduri pentru Solicitanții de Azil din Rădăuți)*, 14/10/2020

RO: The County Court granted subsidiary protection to family from Iraq given the available country of origin information and COVID-19 restrictions.

The applicants, an Iraqi family with minor children, were rejected international protection for reasons of unproven fear of persecution, and they appealed the decision. The Suceava County Court upheld that the applicants did not demonstrate that their fear of returning to the country of origin was linked to persecution motives. However, the County Court considered that the applicants should be granted subsidiary protection due to the political and human rights situation in Iraq, some of the applicants being minors, and the difficulties of travel due to COVID-19 restrictions in certain areas of Iraq, including in the area from where the applicants originated.

The judgment cited EASO "Country of Origin Information Report – Iraq. Targeting of Individuals", March 2019.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1297

Implicit withdrawal of an application

Slovenia, SI: Supreme Court [Vrhovno sodišče], *Applicant* v *Administrative Court of Slovenia*, 30/09/2020

SI: The Supreme Administrative Court held that arbitrarily leaving the reception centre shows a lack of legal interest in pursuing the administrative procedure related to the application for international protection.

The case concerned an applicant who received a negative decision, and pending the outcome of his appeal proceedings, he left the reception centre arbitrarily and did not return within 3 days as provided by law. His appeal was rejected by the court of first instance on grounds of a lack of interest to conduct the administrative dispute. The Supreme Administrative Court upheld the lower court decision by ruling that, despite not explicitly mentioned in the legislation, the arbitrary leaving of the reception centre in the period after the issuance of the decision has consequences on the administrative dispute because an asylum applicant has obligations, such as being available to the competent authority, responding to its invitations and complying with its measures.

Permanent link to the case law:

https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1373

Reception

Provision of food

France, FR: Administrative Court - First Instance [Tribunal administratif - première instance], *Association Secours Catholique et autres*, 22/09/2020

FR: The Administrative Tribunal of Lille rejected a request for interim measures to continue food and beverage distribution in the centre of Calais.

On 8 September 2020, the prefect of Pas-de-Calais asked the Mayor of Calais to stop the distribution of food and beverages by several associations in the city centre, in order to prevent health risks and public disorder. The latter refused and the prefect issued a decree on 10 September 2020 prohibiting distribution from 11-30 September 2020. The associations asked the interim relief judge to suspend the decree for alleged violation of fundamental freedoms of migrants and the associations. The Administrative Tribunal of Lille observed that Calais hosts between 1,000 and 1,200 migrants and in August 2020 the number of those living in precarious conditions had doubled in the city centre and the immediate region, which led the associations to organise the distribution of food and beverages in the city centre. The judge decided not to suspend the execution of the decree as the migrants had access to food and water distributed in other parts of the city and the associations could continue their distribution activities outside of the area mentioned in the decree.

Permanent link to the case law: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1179

Reception conditions in a temporary camp

Council of Europe, CoE: European Court of Human Rights [ECHR], *B.G. and Others* v *France*, 10/09/2020

The ECtHR ruled on living conditions in a temporary camp for asylum applicants in Metz, France.

The case concerned 17 applicants, asylum seekers, members of four Albanian, Bosnian and Kosovar families, including minor children. They complained about the living conditions in a temporary camp for asylum applicants in Metz, as they had been accommodated for several months in a tent camp set up in a carpark on the concrete ground and had not been provided with material and financial support. The ECtHR held unanimously that there had been no violation of the ECHR, Article 3. The court ruled on the substance of the claim only for the applicants who had maintained an interest in their application. The court noted that the camp had indeed been overcrowded and did not offer satisfactory sanitary conditions, but it could not conclude that the applicants had themselves been in a situation of material deprivation that would reach the threshold of severity under Article 3. The court also noted that the authorities had provided for basic needs, such as housing, food and washing; the children had medical supervision; and accommodation in a permanent structure was offered 3 months and 11 days after their arrival in the camp.

Permanent link to the case law:https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1170

Social benefits and return orders

European Union, EU: Court of Justice of the European Union [CJEU], *B.* v *Centre public d'action sociale de Liège*, 30/09/2020

The CJEU ruled on the consequences of the automatic suspensive effect of a return decision on social assistance benefits.

The applicant was rejected both international protection and the right to remain based on medical grounds in 2015. A return decision was ordered and her social assistance was withdrawn. The applicant appealed against the decision of the *Centre public d'action sociale de Liege* (CPAS). The Higher Labour Court referred the case to the CJEU to inquire if a dispute on social assistance could entail an automatic suspension of the return decision when the suspension does not result from the application of national legislation. The CJEU held that according to the Return Directive, Article 13 a third country national must have an effective remedy against a return decision and such remedy must comply with the non-refoulement principle. An appeal must have an automatic suspensive effect when the enforcement of a return decision would entail a risk of refoulement (*Gnandi* judgment). National courts must analyse the non-refoulement claim of the applicant in order to assess if the enforcement of the return decision would expose the third country national who is suffering from a serious illness to a serious risk of grave and irreversible deterioration of the health situation. The national court must suspend the return decision from the appeal lodged when such claim would appear not to be manifestly ill-founded.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1181

European Union, EU: Court of Justice of the European Union [CJEU], *LM* v *Centre public d'action sociale de Seraing*, 30/09/2020

The CJEU ruled on the interpretation of the Return Directive, Articles 5 (non-refoulement, best interests of the child, family life and state of health), 13 (remedies) and 14 (safeguards).

The applicants, LM and his minor daughter R., were allowed to remain in Belgium in 2013 on medical grounds related to several serious illnesses of R. In 2016, their applications for leave to remain were rejected, a return decision was ordered, and social assistance was withdrawn when R. became an adult in 2017. Upon an appeal lodged by L.M. against the return decision (which has no automatic suspensive effect in Belgian law), the appellate court assessed that due to the deterioration of R.'s health situation, a return of the applicants to their country of origin would expose R. to inhuman and degrading treatment and referred the case to the CJEU on Articles 5, 13 and 14 of the Return Directive. First, the CJUE held, based on the EU Charter, Article 47 that an appeal against a return decision must have an automatic suspensive effect when there is a real risk of irreversible deterioration in the state of health. The CJEU further ruled that the Return Directive read in conjunction with the EU Charter must be interpreted as not precluding national legislation to provide basic needs to a third country national when: the adult child of the third country national is suffering from a serious illness and the presence of the third country national is essential to the adult child, the return decision was appealed by the third country national for him and on behalf of the adult child, its enforcement would expose the adult child to irreversible deterioration in his/her state of health, and the third country national does not have the means to provide for himself or herself.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1182

Detention

Illegal detention of asylum applicants in Malta

Malta, MT: First Hall Civil Court, *Frank Kouadioane (Ivory Coast)* v *Detention Services*, 29/10/2020

MT: The Court of Magistrates ordered the immediate release of the illegally-detained applicant noting the significant number of illegally-detained asylum applicants in Malta.

The Court of Magistrates in Malta decided that the applicant's detention for medical reasons was unlawful and ordered his immediate release. The Court of Magistrates noted that the applicant is a national from Côte d'Ivoire and a place had been made available for his accommodation in the Hal Far open reception centre. The Court of Magistrates noted that it was extremely worrying that, although there is a significant number of illegally-detained asylum applicants in Malta, only seven similar requests for release have been lodged before the court over the last year, and that in a democratic society based on the rule of law, persons such as the present applicant remain illegally detained without a legal basis.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1341

Malta, MT: First Hall Civil Court, *Applicants* v *Advocate General, Police Commissioner*, 26/11/2020

MT: The Court of Magistrates ordered the immediate release of detained asylum applicants due to arbitrariness and a lack of legal basis.

Following a challenge of their detention, the Court of Magistrates found that four asylum applicants were held at a detention centre, not by order of the Police Commissioner, but due to a policy of a department of Ministry of the Interior to place asylum seekers in a detention centre when there were no available places to accommodate them in reception centres or open centres. The Court of Magistrates ordered the immediate release of the applicants and found their detention arbitrary and without legal basis.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1404

Detention of families with minor children pending removal from Belgium

Belgium, BE: Council of State [Raad van State - Conseil d'État], *Défense des enfants-International-Belgique-Branche francophone et al.* v *Belgian state*, 01/10/2020

BE: The Council of State assessed the amendments to the royal decree regulating foreigners' administrative detention and the detention of families with minors pending removal.

The Council of State examined the legality of the amendments to the royal decree regulating foreigners' administrative detention. The amendments concerned the detention of families with minor children pending their removal. The court considered that it was against the law for detention staff to have unconditional access to the families' accommodation between 6.00 and 22.00 and that children's access to outdoor areas was limited to 2 hours per day. However, it rejected other complaints, including complaints regarding the royal decree not expressly providing that families should be protected from air and noise pollution. The contested decree clarifies that family locations need to be set up with specific regard to family needs and that the best interests of the child should be of primary consideration. Therefore, the decree itself is not in violation of the ECHR, Articles 3 and 8, and it is not for the Council of State in the framework of these proceedings to

evaluate the existing family locations against the criteria of the ECHR.

Permanent link to the case law: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1238

Second instance procedures

Time limits for appeals in subsequent applications

European Union, EU: Court of Justice of the European Union [CJEU], *JP* v *Commissaire général aux réfugiés et aux apatrides*, 09/09/2020

The CJEU ruled on short time limits for appeal procedures in subsequent applications and on the notice of decisions.

The CJEU interpreted the Asylum Procedure Directive (APD), Article 46 in a case in which the asylum decision was notified to the applicant by registered post sent to the to the head office of the Belgian Commissioner-General for Refugees and Stateless Persons (CGRS). In addition, the 10-day time limit to challenge the decision was calculated as of the third working day after the letter was delivered to the postal services.

On the question of whether the APD, Article 46 precludes national legislation that prescribes that the notice of a decision for applicants who have not specified an address for the service of decisions in the Member State is to be served at the head office of the national authority responsible for the examination of the applications, the CJEU considered that Belgian law, in principle, conforms to EU law, provided that: i) applicants are informed that, where they have not specified an address for service for the purposes of notification of the decision concerning their application, they will be deemed to have specified an address for service for those purposes at the head office of that national authority; ii) the conditions for the applicants' access to the head office is not rendered excessively difficult; iii) genuine access to the procedural safeguards granted to applicants for international protection by EU law is ensured within such a period; and iv) the principle of equivalence is respected.

The CJEU then addressed the question of whether the APD, Article 46 precludes national legislation that prescribes a limitation period of 10 days to challenge such decisions. Invoking the principle of procedural autonomy, the CJEU noted that, in the absence of EU procedural rules, it is up to the Member States to establish procedural rules for actions intended to safeguard the rights of individuals and is itself limited by the principle of equivalence and the principle of effectiveness.

The CJEU held that the APD, Article 46, read in light of the EU Charter, Article 47, does not in principle preclude a 10-day time limit for the introduction of an appeal against a decision declaring a subsequent application for international protection by a third country national to be inadmissible.

Permanent link to the case law: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1175

Legal aid in appeal procedures

Cyprus, CY: Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], *F.A. (Somalia)* v *Administrative Court for International Protection*, 16/10/2020

CY: The Administrative Court for International Protection rejected a legal aid request considering that the appeal had no chances of success.

A Somali national applied for international protection based on alleged persecution by Al Shabaab, and his application was rejected by the Asylum Service. He applied before the Administrative Court of International Protection in order to be granted legal aid and

requested the appointment of a lawyer to help him file an appeal against the negative decision. The Administrative Court held that legal aid cannot be granted for remedies that have no chance and based its reasoning on case law of the Supreme Court. In the present case, the Administrative Court concluded that the applicant did not provide coherent, consistent and persuasive statements on the facts, thus irreparably affecting the credibility of his allegations and the substance of his application. The application for legal aid did not contain any information to contradict what had been already assessed by the determining authority. The Administrative Court rejected his request for legal aid without examining his financial resources and holding that an appeal lodged by the applicant would have no chances of success.

The court referenced the EASO Judicial Analysis on Evidence and credibility assessment in the context of the Common European Asylum System, (2018).

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1325

For a similar case, see also Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], E.M.A.S. (Egypt) v Refugee Review Authority, 16/10/2020.

Content of protection

Netherlands, NL: Court of The Hague [Rechtbank Den Haag], *Applicants (Syria)* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 19/10/2020

NL: The Court of The Hague ruled that Bulgaria does not offer proper integration facilities to beneficiaries of international protection.

The applicants, a woman with four (now) adult children from Syria, were granted refugee status in Bulgaria on 11 August 2017. In June 2020, they entered the Netherlands and submitted applications for temporary asylum residence permits. The State Secretary declared that their applications were inadmissible as they had been granted international protection in Bulgaria. The applicants challenged the decision arguing that they cannot obtain an identity document in Bulgaria because they have no accommodation and cannot get accommodation because they cannot obtain an ID. They also added that Bulgaria has no integration facilities for permit holders. The court concluded that it was real and foreseeable that the applicants would not be able to obtain proof of identity in Bulgaria. Thus, access to housing and other rights would be legally and factually impossible. It noted that for seven years the Bulgarian authorities had made no effort to provide integration facilities, and although Bulgarian authorities intended to support the applicants at the time of granting international protection, from the information submitted about the legal and factual position of beneficiaries in Bulgaria, a different picture appears about how permit holders are treated by Bulgarian authorities. In addition, the court held that permit holders in Bulgaria do not have access to social housing (only Bulgarian nationals have such access) and the legal impossibility of obtaining an identity document makes it impossible to access private housing.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1246

National forms of protection

Revocation of provisional admission

Switzerland, CH: Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A. (Eritrea)* v *State Secretariat for Migration*, 28/10/2020

CH: The FAC held that the principle of proportionality must be duly applied in assessing the revocation of provisional admission and the private interest of the applicant may outweigh the public interest of removal.

The applicant was refused international protection but was granted provisional admission due to the situation in Eritrea and his personal situation. Later on, the SEM informed the applicant that he no longer met the requirements for provisional admission as the situation in Eritrea made it possible to implement the return. The applicant appealed, and the Federal Administrative Court concluded that the provisional admission of the applicant should be maintained. The court considered the personal circumstances of the applicant (age, length of stay in Switzerland, degree of integration and lack of criminal conviction or prosecution) and held that the private interest of the applicant in staying in Switzerland outweighed the public interest in his removal. The court held that the SEM must apply the principle of proportionality when deciding to lift provisional admission, as it does for the revocation of residence permits. It noted that considering the large number of substantive rights granted under provisional admission, the examination conducted to lift such a status is not the same as the examination carried out for granting provisional admission and the loss of provisional admission can have significant consequences on the life plans of persons legally present in Switzerland.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1331

Humanitarian protection

Italy, IT: Civil Court [Tribunali], *Applicant (Bangladesh)* v *Territorial Commission for the recognition of international protection Bologna*, 26/10/2020

IT: Humanitarian protection was granted to a Bangladeshi national after a comparative assessment of life in Italy and access to work and healthcare in the country of origin with due consideration of the applicant's ethnicity.

The Court of Bologna ruled that, for a Bangladeshi national of Bede ethnicity, his health condition, the drama of the migration path and the discrimination against his ethnic group were not sufficient elements to be granted refugee status or subsidiary protection, despite the credible and verifiable information provided. He was granted humanitarian protection after a comparative assessment of private life in Italy and life back in Bangladesh, where the vulnerability of the applicant combined with the situation in his country of origin for his ethnic group, would not allow him to fully exercise and enjoy his fundamental rights, such as the right to work and health protection. The applicant had a concrete and effective path of work and integration into the society in Italy, and his health issues were being looked after by local services. The Court of Bologna concluded that the applicant's fundamental rights to work and access healthcare could not adequately be guaranteed in his country of origin due to his ethnicity, thus meeting the requirements of serious humanitarian grounds for granting residence permits for 'special cases' in accordance with Legislative Decree No 286/2008.

The Court of Bologna referenced country of origin information from the EASO report, *Bangladesh — Country Overview* (December 2017).

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1342

Return

Expulsion based on national security reasons (ECtHR judgments)

Council of Europe, CoE: European Court of Human Rights [ECHR, GC], *Muhammad and Muhammad* v *Romania*, 15/10/2020

The ECtHR ruled on procedural safeguards relating to the expulsion of aliens based on national security reasons.

The applicants, Pakistani nationals living in Romania on student visas, were deported on national security grounds, without being provided information on the specific facts and grounds that led to the decision, nor having access to classified documents. The ECtHR detailed the analysis that must be carried out by national authorities and the procedural safeguards that must be provided to applicants. The court also noted two general principles: first, that the safeguard provided is more important when the information provided to the person is limited; and second, that where there are particularly significant repercussions for the person's situation, the counterbalancing safeguards must be strengthened accordingly. In this case the ECtHR found a violation of Protocol No 7, Article 1 due to the significant limitation of the right to be informed about the factual basis of the expulsion, the actual national security reasons, the content of the documents, the key stages of the proceedings or how to access classified documents. The mere presence of the lawyers before the domestic court, without authorisation to access classified documents or any other possibility to ascertain the accusations, does not ensure effective defence. In addition, domestic courts must use the power vested in them to access classified information and verify the credibility and veracity of the underlying facts.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1253

Council of Europe, CoE: European Court of Human Rights [ECHR], *Bou Hassoun (Syria)* v *Bulgaria*, 06/10/2020

The ECtHR ruled that Bulgaria violated the right to family life and did not provide an effective remedy when it issued an expulsion order based on national security.

Mr. Bou Hassoun, a Syrian national, arrived in Bulgaria in 2009, obtained asylum in 2013 and started a relationship with a Bulgarian national, with whom he had a son. In 2015, an expulsion order was issued against him on national security grounds. The applicant challenged the expulsion order, claiming that no factual circumstances and no reasons were provided for the expulsion, that a return would violate his right to family life and that a return would expose him to a risk of harm due to the Syrian conflict. The Supreme Administrative Court rejected the appeal holding that there was data indicating the applicant's involvement in the illegal transportation of foreign nationals. It did not answer the claims on the interference with family life and the possibility for the applicant's lawyer to consult the materials in the case, including the classified documents.

The ECtHR found that the applicant was not afforded a minimum degree of protection against arbitrariness. The expulsion order was based solely on the assessment of the National Security Services and the judicial review did not provide any meaningful evaluation of the expulsion measure. The court concluded that there was a violation of the ECHR, Article 8 as the interference with the applicant's right to family and private life was not "in accordance with the law". A violation of the ECHR, Article 13 was also found due to deficiencies in the judicial review of the expulsion order.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1229

Return despite court decision cancelling a deportation (ECtHR judgment)

Council of Europe, CoE: European Court of Human Rights [ECHR], *M.A. (Sudan)* v *Belgium*, 27/10/2020

The ECtHR ruled on a deportation to Sudan taking place despite a court decision cancelling the deportation measure.

The applicant, a Sudanese national, entered Belgium unlawfully with the intention to reach the UK. He was detained pending removal and he submitted an asylum application but withdrew it soon after, following reports that Belgium was working with Sudan to identify and repatriate Sudanese nationals who had unlawfully entered Belgium. While still in detention, the applicant attended a meeting with the Sudanese embassy, and he was issued a travel permit to return to Sudan. He requested his release and the Court of First Instance of Brussels held that he could not be deported before a ruling on his detention. The deportation was cancelled, but the applicant was taken to the airport and allegedly threatened with sedatives to board the plane, so he signed a statement authorising his departure and boarded the flight. The ECtHR found a violation of the ECHR, Article 3 holding that the applicant's withdrawal of his application for asylum did not exonerate the authorities from their obligations. In addition, the court found that the Belgian authorities did not adequately assess the risk of ill treatment prior to the removal of the applicant and they did not provide adequate safeguards during the identification meeting between the applicant and the Sudanese embassy. The ECtHR also found a violation of Article 13 since the authorities removed the applicant despite the deportation order being cancelled, thus depriving him of any effective remedy.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1279

Entry bans (CJEU judgment)

European Union, EU: Court of Justice of the European Union [CJEU], *JZ*, 17/09/2020

The CJEU ruled on the interpretation of Article 11 (entry bans) of the Return Directive.

The CJEU held that Article 11 of the Return Directive "does not preclude national legislation permitting the imprisonment of a third country national to whom the return procedure established by the said directive has been applied and who is staying illegally in the territory of the relevant Member State with no justified ground for non-return" (*Achughbabian* judgment). However, the CJEU highlighted that the entry ban produces effects only from the moment the individual leaves the territory of the Member State (*Ouhrami* judgment). Thus, if the third country national has not left the territory, a punishment can be imposed only on the basis of an initial illegal stay and not on the basis of breaching an entry ban. In addition, to avoid arbitrariness, the national criminal legislation must be sufficiently accessible, precise and foreseeable.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1176

Conditions for the removal of illegally-staying third country nationals (CJEU judgment)

European Union,EU: Court of Justice of the European Union [CJEU], *MO* v *Subdelegacion del Gobierno en Toledo*, 08/10/2020

The CJEU ruled on the removal of third country nationals from Spain.

The case concerned a question from Spanish national authorities regarding conditions for the removal of illegally-staying third country nationals, in application of the Return Directive. Based on its established case law, the CJEU held that a directive cannot, of itself,

impose obligations on an individual, since a provision of a directive may not be relied upon as such by a Member State against such an individual (*Portgás*, C-425/12). The court further concluded that the Return Directive must be interpreted as meaning that the competent national authority may not rely directly on the provisions of the directive in order to adopt a return decision and to enforce that decision, even in the absence of such aggravating circumstances. This is the case where national legislation makes provision, in the event of a third country national who is staying illegally in the territory of a Member State, for either a fine or removal, and the latter measure may be adopted only if there are aggravating circumstances concerning the national, in addition to the illegal stay.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1232

Return to Afghanistan during the COVID-19 pandemic

Germany, DE: Regional Administrative Court [Verwaltungsgerichte], *Applicant (Afghanistan)* v *Federal Office for Migration and Refugees (BAMF)*, 02/09/2020

DE: The Regional Administrative Court dismissed the request for a ban on a deportation to Afghanistan during the COVID-19 pandemic.

The applicant was an Afghan national of Tajik ethnicity and Sunni religion. His first asylum application was rejected, and on 14 July 2020, the applicant lodged a subsequent application, arguing that he suffered from chronic depression and due to the COVID-19 pandemic in Afghanistan, there is at least a right to a ban on deportation, since in addition to the effects of the disease as such, there was also economic deterioration (lost wages, rising unemployment and food prices) and stigmatisation of returnees in connection with COVID-19. The subsequent application was rejected as inadmissible. On appeal, the court held that the general situation in Afghanistan does not amount to inhuman or degrading treatment within the meaning of the ECHR, Article 3 and the situation for single male Afghan citizens who are capable of working is not as serious that deportation would constitute a violation of the article. It also assessed the medical evidence submitted and rejected the complaint.

The judgment cited the EASO report "Afghanistan: Key socio-economic indicators - Focus on Kabul City, Mazar-e Sharif and Herat City", August 2020.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1257

Return to Nigeria during the COVID-19 pandemic

Germany, DE: Regional Administrative Court [Verwaltungsgerichte], *Applicant (Nigeria)* v *Federal Office for Migration and Refugees (BAMF)*, 01/09/2020

DE: The Regional Administrative Court held that a return to Nigeria is not precluded by the COVID-19 pandemic.

The applicant was a national of Nigeria whose request for international protection was rejected in Germany. On appeal, the Regional Administrative Court held that, taking into consideration the country of origin information and the evidence brought by the applicant, he should be able to secure his livelihood even after his return, as the applicant did not substantiate any concrete risk in the context of the COVID-19 pandemic. The court further added that, even if the economic situation in Nigeria may worsen due to the effects of the COVID-19 pandemic, it does not consider it to be sufficiently likely at the time of the decision that the economic and social conditions will develop so negatively that the applicant will not be able to at least secure the subsistence level.

Permanent link to the case law:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1318

Note

The EASO Case Law Database contains summaries of cases related to international protection pronounced by national courts of EU+ countries and by the Court of Justice of the EU and the European Court of Human Rights.

The summaries are reviewed by the EASO Information and Analysis Sector and are drafted in English, using translation software.

More extensive summaries for the cases presented in this Case Law Newsletter are available on the EASO Case Law Database, which can be accessed at https://caselaw.easo.europa.eu

The database serves as a centralised platform on jurisprudential developments related to asylum and cases are available in the Latest updates, Digest of cases and through the Search bar.

For any other information, please contact caselawdb@easo.europa.eu