



Asylum Case Law in 2020



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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.

Methodology

Asylum cases presented in this overview are based on the [EASO Case Law Database](#) which presents more extensive summaries of each case. The database serves as a centralised platform on jurisprudential developments related to asylum. The cases are gathered from various sources, including EASO research, EASO networks, judges, members of courts and tribunals, independent experts and NGOs. We would like to express our appreciation for their time and effort in registering these cases in the EASO Case Law Database and thus contributing to shared knowledge on asylum systems in EU+ countries.

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Acronyms and abbreviations

BAMF	Federal Agency for Care and Assistance Services (<i>Bundesagentur für Betreuungs- und Unterstützungsleistungen</i> , Austria)
BVwG	<i>Bundesverwaltungsgericht</i> (Federal Administrative Court, Austria)
CALL	Council for Alien Law Litigation (Belgium)
CEAS	Common European Asylum System
CESEDA	<i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> (Code of the entry and residence regulation, and asylum right, France)
CGRS	Commissioner General for Refugees and Stateless Persons (Belgium)
CIE	<i>Centro de Internamiento de Extranjeros</i> (Detention Centres for Foreigners, Spain)
CJEU	Court of Justice of the European Union
CNDA	Court Nationale du Droit D'Asile (National Court of Asylum, France)
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
EU+	European Union Member States, Iceland, Liechtenstein, Norway and Switzerland
EURODAC	European Asylum Dactyloscopy Database
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
FGM/C	Female genital mutilation/cutting
FIS	Finnish Immigration Service
ICCPR	International Covenant on Civil and Political Rights
IPAT	International Protection Appeals Tribunal (Ireland)
LGBTQ+	Lesbian, gay, bisexual, trans-gender, queer and others
NDGAP	National Directorate-General for Aliens Policing (Hungary)
NGO	Non-governmental organisation
NOAS	Norwegian Organisation for Asylum Seekers
OAU	Organization of African Unity
OFII	Office for Immigration and Integration (<i>Office Français de l'Immigration et de l'Intégration</i> , France)
OFPRA	Office for the Protection of Refugees and Stateless Persons (<i>Office Français de Protection des Réfugiés et Apatrides</i> , France)
PBGB	Police and Border Guard Board (Estonia)
PKK	Kurdistan Workers' Party
PPU	Preliminary ruling procedure
SEM	State Secretariat for Migration (Switzerland)
UN	United Nations
UNCRC	UN Committee on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees

Main highlights

The *Asylum Case Law in 2020* contains summaries of decisions and judgments related to international protection pronounced in 2020 by national courts and tribunals¹ of EU+ countries, the Court of Justice of the EU (CJEU), the European Court of Human Rights (ECtHR) and the UN Committee on the Rights of the Child. Some cases may not directly concern claims for asylum, but they are included in this overview as they can be relevant for the assessment of asylum claims or for the stakeholders involved in asylum procedures.

Over 2020, courts and tribunals issued judgments that covered a wide range of topics related to the asylum procedure. In the context of the COVID-19 outbreak, judicial institutions reviewed emergency measures which they immediately annulled or confirmed, underlining that procedures and safeguards in asylum practices must be aligned with the framework of the Common European Asylum System (CEAS) even in a situation of emergency. A marked amount of jurisprudential developments were noted on time limits, the organisation of personal interviews, the Dublin procedure and implementation of transfers, reception of asylum applicants, assessing the COVID-19 situation in countries of origin during the review of an application, and potential impediments to return.

On access to procedure, both the CJEU and the ECtHR analysed cases related to collective expulsions, with specific guidance provided by the ECtHR in [M.K. and Others v Poland](#) where it reiterated the fundamental principles clarified by the same court in 2020 in its Grand Chamber judgment of [N.D. and N.T. v Spain](#). National courts and tribunals also ruled on collective expulsions and various impediments to the registration of applications.

With regard to the Dublin procedure, national courts received many appeals related to transfer modalities, time limits and the state of asylum systems, reception and health situations in the responsible countries in light of the COVID-19 pandemic. For example, higher courts in Germany and the Netherlands ruled that the Dublin III Regulation, Article 29, does not allow an extension, interruption or suspension of the 6-month time limit for a transfer to be implemented. In addition, transfers to specific countries, for example Bulgaria, Greece and Italy, were assessed.

Procedural safeguards, such as the obligation to conduct a personal interview prior to an inadmissibility decision, were clarified by the CJEU, while national courts adopted important decisions on the provision of personal interviews in subsequent applications or in procedures involving vulnerable applicants. The appeals procedure, including time limits, legal aid and the suspensive effect, were topics which were extensively covered in the jurisprudence of the CJEU and national judicial bodies.

In order to determine if applicants are to be granted international or humanitarian protection, courts and tribunals relied widely on updated country of origin information and conducted thorough evidence and credibility assessments on safe countries of origin, the level of indiscriminate violence, the availability of the internal flight alternatives and specific grounds of persecution. They assessed grounds related to religion, political opinion, membership of a particular social group (including related to military conscription, vulnerable applicants and medical conditions) and grounds for exclusion. Noteworthy developments consisted of national jurisprudence on the cessation of the

¹ The compilation includes judgments from: Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and Switzerland.

UNRWA's capacity to offer protection and assistance in its areas of operation, with the Belgian CALL changing its case law based on recent and updated country of origin information on the situation in the Gaza Strip.

Regarding reception conditions, the CJEU ruled on the access to basic social assistance for vulnerable third-country nationals while pending a return, and the ECtHR found in two cases that national authorities violated the European Convention, Article 3, due to inhuman and degrading living conditions of applicants for international protection. Judicial institutions in EU+ countries also reviewed specific measures related to material reception conditions and the freedom of movement of asylum applicants in Spain and Slovenia.

On detention, the CJEU pronounced two landmark cases ([FMS and Others](#) and [European Commission v Hungary](#)) and found that the conditions for applicants and those subject to a return at the transit zones of Röszke and Tompa in Hungary constituted detention. On the same topic, the ECtHR decided in [R.R. and Others v Hungary](#) that there had been a violation of the European Convention, Articles 3, 5(1) and 5(4) for the living conditions in the Röszke transit zone, the extended duration of the stay of the applicants in the transit zone, the delays in the examination of the asylum claims and the lack of judicial review of the applicants' detention. National courts also scrutinised the lawfulness of detention measures and found, for example in Malta, that asylum applicant remained in detention without a legal basis or without an effective remedy.

European courts examined cases concerning non-discrimination between nationals and beneficiaries of international protection, including equal treatment based on gender recognition. National courts extensively analysed access to integration facilities, family reunification and the cessation and withdrawal of protection.

European courts ruled on cases related to a risk of ill treatment of third-country nationals in return and removal procedures. Referencing EASO country guidance and country of origin reports, the courts clarified procedural safeguards for an expulsion based on a threat to national security.

Lastly, the UN Committee on the Rights of the Child issued several views on age assessment procedures, access to legal representation and interpretation, the hearing of minors pending a Dublin transfer, and the best interests of the child in return proceedings. The Committee highlighted that the best interests of the child and the individual circumstances, together with any psychological distress or traumatic experience, must be taken into consideration in asylum procedures involving minors.

1 Access to the asylum procedure

1.1 Suspension of registrations due to COVID-19 restrictions

The registration of asylum applications was affected by health and movement restrictions imposed at the beginning of the pandemic. The courts began ruling on the restrictions, and for example in France, the Council of State [ordered](#) the resumption of registrations of asylum applications in Ile-de-France on 30 April 2020. On 8 July 2020, the Council of State also [ruled](#) on a case concerning an application made in a train at the border but which was not registered by the border police and found that pandemic restrictions cannot justify a refusal to register an asylum application. The council noted that, by refusing entry to the territory, the authorities manifestly infringed the right to asylum. It also clarified that, given that the registration of asylum applications continued in particularly urgent cases, national legal provisions during the COVID-19 pandemic and public health reasons could not be used as a justification for refusing to register asylum applications.

1.2 European courts

1.2.1 Transit zones in Hungary

Following the infringement procedure against Hungary, the Grand Chamber of the CJEU ruled on 17 December 2020 in [European Commission v Hungary](#) (C-808/18) that Hungary failed to fulfil its obligations under the recast Asylum Procedures Directive, Articles 3 and 6 when third-country nationals arriving from Serbia had to apply for international protection only in the transit zones of Röszke and Tompa, while at the same time it systematically limited the number of people who could enter the transit zones daily.

Furthermore, on 25 June 2020, in [Ministerio Fiscal \[Spain\] v V.L.](#) (C-36/20 PPU), the CJEU ruled that, when adjudicating on the legality of the detention of a third-country national, judicial authorities can receive an application for international protection even though they are not competent under national law to register the applications. The court noted that magistrates adjudicating on such cases fall within the concept of 'other authorities', within the meaning of the recast Asylum Procedures Directive, Article 6(1), sub-paragraph 2.

1.2.2 The Strasbourg Court on collective expulsions

The ECtHR ruled in [M.K. and Others v Poland](#) that the consistent practice of returning applicants to Belarus amounted to collective expulsions in breach of Article 4, Protocol 4 of the European Convention on Human Rights (ECHR). The court noted that the Polish authorities refused to accept asylum applications at the Polish border from Chechen applicants. The court further noted that the authorities did not undertake an adequate review of applications and had consistently ignored the interim measures issued by the ECtHR, continuing to remove applicants to Belarus despite the risk of chain-*refoulement* and treatment contrary to the European Convention.

1.2.3 Reasons for inadmissibility

In the case of [M.S., M.W., G.S.](#) of 10 December 2020, the CJEU ruled on the reasons for inadmissibility of an asylum application in a Member State, namely Ireland, which is not bound by the recast Asylum Procedures Directive but is bound by the recast Qualification Directive. The case concerned three

applications lodged in Ireland by persons who benefited from subsidiary protection in Italy. The CJEU held that Ireland is not precluded from considering an application to be inadmissible when the applicant benefits from subsidiary protection in another Member State, even though Ireland is not bound by the recast Asylum Procedures Directive, which allows an application to be rejected as inadmissible when an applicant has been granted either refugee status or subsidiary protection in another Member State.

1.3 National courts

1.3.1 Collective expulsions

In Slovenia, the Administrative Court [ruled](#) on 22 June 2020 that the national police committed collective expulsions to Bosnia and Herzegovina. The Administrative Court of Slovenia found that the Slovenian police had violated the EU Charter, Article 18 (the right to access to asylum procedure), Article 19(1) (the prohibition of collective expulsions) and Article 19(2) (the principle of *non-refoulement*) in its procedural dimension. The Administrative Court based its reasoning on ECtHR case law (including the right to information, access to legal assistance and to interpreters) and CJEU case law in relation to Article 6 and 8 and recitals 25-28 of the recast Asylum Procedures Directive. The Administrative Court also adjudicated on non-pecuniary damages and imposed an obligation to the Ministry of the Interior to allow the applicant to come to the territory of Slovenia for the purpose of examining his asylum application. On appeal lodged by the Ministry of the Interior, the judgment of the Administrative Court was quashed by the Supreme Court ([I Up 128/2020](#) from 28 October 2020) and the case was sent back in its entirety to the Administrative Court, which pronounced a new judgment on 7 December 2020 (I U 1686/2020-126) deciding in the same way as in the first court proceedings and giving instructions to the applicant that he may claim pecuniary damages in the proceedings before the civil court.²

A civil court in Italy [ruled](#) that returns to Slovenia based on informal readmission agreements were illegal. The applicant, a Pakistani national, arrived in Italy through Bosnia and Herzegovina, Croatia and Slovenia, and expressed his wish to apply for asylum to the Italian police. Within a few hours, he was rejected to Slovenia, then to Croatia and then back to Bosnia and Herzegovina. According to the court decision, the Italian authorities should have known, based on UNHCR and civil society sources, that readmission to Slovenia would result in informal readmission to Croatia and then return to Bosnia and Herzegovina and that the applicant would be at risk of ill treatment by the police in the other countries.

1.3.2 Registration

On 29 October 2020, the Italian Court of Appeal of Rome [held](#) that administrative authorities and police prevented an applicant from lodging subsequent asylum applications and accessing reception facilities violated fundamental rights and dignity. The case concerned an applicant who attempted to submit again his application based on new elements, after having received a negative decision, but was obstructed by the Questura in Rome. After a deportation order was issued and his last application was rejected as inadmissible on grounds of allegedly delaying the removal, the court of first instance issued an interim order instructing the Questura to receive the application and to allow his presence

² The judgment refers to the EASO Judicial analysis [Asylum procedures and the principle of non-refoulement](#), 2018.

on the territory, including providing access to reception facilities. 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.

In France, the Council of State [found](#) that the authorities had manifestly infringed the right to asylum when both the border police and the judge on appeal refused to allow entry from Italy of a woman from the Central African Republic and her 5-year-old son, even though she expressed her wish to apply for asylum.

2 Dublin procedure

2.1 COVID-19 and the Dublin procedure

At the start of the COVID-19 pandemic in March 2020, the closure of borders and restrictions on air traffic significantly impacted Dublin transfers which led to questions on whether the 6-month time limit provided by Article 29(1) of the Dublin III Regulation for the implementation of transfers can be interrupted or extended given the temporary impossibility to execute a transfer. The issue at stake is the potential shift of responsibility for processing the asylum application back to the Member State that requested the transfer, in accordance with Article 29(2) of the Dublin III Regulation.

German administrative courts adopted different approaches, with some deciding that an *ex officio* decision by BAMF to suspend the execution of a transfer decision does not interrupt the 6-month time limit for transfers under the Dublin III Regulation, Article 29(1),³ while other courts decided that such a suspension of the execution interrupts the time limit for transfers.⁴ However, the higher courts and the federal administrative court concluded that a suspension of the time limit for a Dublin transfer is contrary to EU law.

In a case from 9 July 2020, the Higher Administrative Court thoroughly [analysed](#) the provisions of Article 29 and the national law, to rule that the second sentence of paragraph 1 makes a separation between the issue of the actual possibility of transfer from the issue of the suspensive effect of a legal review of the transfer decision; thus the wording shows that regardless of the practical possibility of transfer, the transfer deadline is either 6 months after the acceptance of a transfer request by another Member State or the final decision on a legal review with suspensive effect. Consequently, the court held that the suspension decision provided for in national law cannot suspend the transfer period under the Dublin III Regulation for it did not originate from an appeal against the transfer decision, but from the asylum authority itself.

Furthermore, the German Federal Administrative Court [ruled](#) in a judgment on 18 September 2020 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. The BAMF decision was annulled as contrary to EU law and the court 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.

On the same issue, in the Netherlands, the Court of the Hague found that Dublin III Regulation provides no basis for either the interruption of the 6-month period for a transfer or its extension in case Dublin

³ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Nigeria\) v Federal Office for Migration and Refugees \(BAMF\)](#), ECLI:DE:VGAC:2020:0610.9K2584.19A.00, 10 June 2020; Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Afghanistan\) v Federal Office for Migration and Refugees](#), 28 August 2020.

⁴ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), ECLI:DE:VGOSNAB:2020:0512.5B95.20.00, 12 May 2020; Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Iran\) v Federal Office for Migration and Refugees \(BAMF\)](#), ECLI:VGD:2020:0721.22K8760.18A.00, 21 July 2020; Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Iraq\) v Federal Office for Migration and Refugees \(BAMF\)](#), ECLI:DE:VGKARLS:2020: 0826.A1K1026.20.00, 26 August 2020.

transfers cannot take place, for example due to border closures. In a case from 21 April 2020, the Court of the Hague [stated](#) that the Dublin III Regulation does not provide the possibility for the Member States to extend or interrupt the transfer period due to an impossibility to implement it. Moreover, the court underlined that an applicant must be informed quickly about the Member State which is responsible for his application, this being a principle precluding any provisional measure. Similarly, the same court [annulled](#) a decision of the Dutch State Secretary for Justice and Security not to process an application for international protection because another Member State was responsible under the Dublin III Regulation. The court found that the authorities must ensure effective access to international protection procedures and must not undermine the speedy processing of applications for international protection. It also ruled that the Dublin III Regulation does not provide any possibility for an extension of the time limit for a transfer by the asylum authority in the present circumstances. The “Commission Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement” of 17 April 2020 reached the same conclusion.

National courts also assessed if a transfer to certain Member States may entail an exposure to a risk of inhuman and degrading treatment due to the health situation in a Member State severely affected by the COVID-19 pandemic. For Dublin transfers to Italy, the Luxembourg Administrative Court [held](#) on 22 September 2020 that the health situation in Italy has not been found to be so serious as to entail a risk of violation of Article 3 of the ECHR or Article 4 of the EU Charter if the applicant is transferred. In contrast, the Court of the Hague in the Netherlands stated in a judgment of 8 April 2020 that the State Secretary shall determine when and whether the transfer of a vulnerable third-country national can actually take place, considering the COVID-19 situation in Italy. In addition, although the transfer was assessed as practically impossible, the Court of the Hague ruled that this fact does not change Italy’s responsibility to examine the asylum application.

Earlier in March 2020, and before the COVID-19 outbreak affected Austria, the Federal Administrative Court [ruled](#) in a case concerning a Dublin transfer to Italy of a Nigerian mother and her two children that developments in Italy were not sufficiently assessed in order to determine if the transfer was possible; consequently, the court referred the case back to the determining authority for a thorough examination.

2.2 Minors in the Dublin procedure

On 30 October 2020, the UN Committee on the Rights of the Child held in [E.A. and U.A. v Switzerland](#) that Swiss authorities have violated Articles 3 and 12 of the Convention on the Rights of the Child for not hearing a minor applicant pending a Dublin transfer and for not having addressed with due diligence the individual circumstances, for example psychological distress and traumatic experience of having fled the country of origin, in the best interests of the child.

The best interests of the child in the Dublin procedure were also assessed by the Dutch Council of State in a [case](#) concerning a 15-year-old unaccompanied minor who applied for international protection in the Netherlands while having a sibling in Sweden. After Sweden accepted the take charge request, the applicant claimed before the court that her best interests were not considered as she does not have a good relationship with the sibling, who does not want to take care of her and she has another relative in the Netherlands, where she would rather stay. Also hearing the position of Nidos, the Dutch guardianship organisation for unaccompanied minors, the Council of State declared the appeal well-founded and annulled the decision of the lower court, noting that the starting point in the assessment must be the unification of the child with family members, whenever possible. In addition,

the authorities cannot ask a Member State to be responsible without first examining the best interests of the child.

2.3 Risk of absconding

The French Council of State [ruled](#) that asylum applicants can be considered to have absconded when they have been informed in a language that they understand about the exact arrangements for a Dublin transfer (the judge does not specify that the information must be written) and they deliberately refrain from complying with the instructions. The Council of State further mentioned that the fact of being late for the departure, at the indicated place and without invoking a valid reason for this, must be considered as absconding.

Furthermore, CALL in Belgium [noted](#), based on the CJEU judgment in [Jawo](#) (C-163/17), that the mere fact that the applicants did not return the declaration on voluntary return within the legal time limit cannot be automatically interpreted as an indication that they deliberately wanted to abscond and prevent a transfer. Thus, not returning the declaration on voluntary return within the legal time limit cannot automatically lead to a decision on the prolongation of the transfer period.

2.4 Appeals against a decision to refuse to take responsibility for an asylum application

In a case concerning an asylum applicant who first applied for international protection in Greece but later requested family reunification in Sweden because his wife was already a beneficiary of international protection, the Swedish Migration Court of Appeal [held](#) that the Dublin III Regulation only provides for the right to an effective remedy against a transfer decision, not against a negative decision adopted on a request made by the applicant for Sweden to take responsibility for his application based on Article 9 of the Dublin III Regulation, as family member of a beneficiary of international protection.

2.5 Dublin transfers and reception conditions in responsible states

In several cases, EU Member States' courts dealt with requests for a suspension of the Dublin transfer due to shortcomings in the asylum and reception systems in the respective countries. For example, the Swiss Federal Administrative Court [held](#) that, although the reception system in Bulgaria presents shortcomings, the analysis has to be conducted on a case-by-case basis. In that case, the applicant was a vulnerable person with a health condition that justified the suspension of the transfer by the court.

In contrast, in a case concerning a transfer to Italy, the Supreme Administrative Court in Portugal [ruled](#) that there were no obstacles since no indications were found of a systemic failure to provide adequate reception conditions or systemic flaws in the asylum procedure, or a risk of inhuman or degrading treatment. Similarly, with regard to a Dublin transfer to Greece, the Finnish Supreme Administrative Court [stated](#) that, despite some shortcomings in the reception and asylum system, there are no longer systemic deficiencies and the transfer can be implemented. The situation in Greece was assessed as having significantly improved since 2011 when Dublin transfers to the country were suspended.

Similarly, the Court of the Hague in the Netherlands [assessed](#) in two cases concerning vulnerable applicants that Italy was the responsible state under Dublin III Regulation and that, despite shortcomings in the Italian reception system, third-country nationals are accommodated adequately.

In addition, the Italian authorities confirmed they can provide reception for vulnerable applicants, with due respect to human rights and the Reception Directive.

2.6 Medical condition not precluding a Dublin transfer

The Swiss Federal Administrative Court [found](#) that a medical condition that requires soft medication and regular medical examinations does not prevent a Dublin transfer to Spain. In addition, the Swiss authorities took the particular situation into consideration and duly informed the Spanish authorities of the applicant's health situation.

2.7 Article 17 (discretionary clauses)

Irish courts dealt with cases where applicants requested the application of Article 17 for various reasons, including based on Brexit. For example, the High Court [ruled](#) in a case concerning an applicant from Lesotho who appealed a Dublin transfer and requested that Article 17(1) be applied. The court ruled that an opinion expressed by the Tribunal on whether Ireland should apply the sovereignty clause does not prevent the Minister to exercise it on behalf of the Executive. Moreover, the court held that the Dublin III Regulation does not require an effective remedy in respect of the state's exercise of its discretion under Article 17(1).

Most recently, on 18 December 2020, the Court of Appeal [stated](#) that Ireland can no longer exercise the discretionary clause under Article 17 when another state has taken responsibility under Article 29 of the Dublin III Regulation. More specifically, the Minister can no longer assume responsibility for assessing the applicant's request for international protection. The case can still be reviewed by the Supreme Court if requested by the applicant. Previously, on 24 July 2020, the Supreme Court [ruled](#) that there was no indication in the national legislation to suggest that the matter of discretion has been transferred from the Minister to the administrative bodies deciding on refugee status. The Supreme Court found no sign of any such delegation or of any basis on which that discretion could ever be exercised by anyone other than the Minister.

On the effects of Brexit, the High Court [held](#) that, although the UK will no longer be an EU member, there is no reason to consider that the UK would not continue to fulfil its obligations under the Geneva Convention and the ECHR after withdrawing from the EU or that the withdrawal will result in a real risk of being subject to inhuman or degrading treatment.

2.8 Article 19 (cessation of responsibilities)

In a case involving an applicant who had left the EU for more than 3 years, the Italian Court of Cassation [held](#) that Italy was the competent state in accordance with Article 19(2) of the Dublin III Regulation and the subsequent application must be considered as a new application and a new determination procedure must be started.

2.9 Article 28 (detention)

In Czechia, an applicant was detained under Article 28(3) of the Dublin III Regulation in order to secure his transfer to Bulgaria. On the date of the transfer, which was set up within the 6-week period, he acted inappropriately and was denied access to the flight. The Ministry of the Interior ordered a new detention with the same purpose of securing the transfer. The applicant appealed and invoked that

his detention exceeded the 6-week deadline. The Czech Supreme Administrative Court rejected his claim and [ruled](#), in line with the CJEU case [Khir Amayry](#), that the applicant cannot benefit from his own wrong-doing by relying on the alleged expiry of the period for the transfer, which the applicant intentionally avoided. Thus, the overall duration of the detention did not go beyond the period of time which was necessary for the transfer procedure.

3 First instance procedures

3.1 COVID-19

The risks arising from the COVID-19 pandemic in the country of origin were assessed in several cases as part of the elements considered when assessing the need for international protection. In Germany, the Regional Administrative Court of Düsseldorf [held](#) that the COVID-19 pandemic does not have a significant implication on the general humanitarian situation in Somalia. The case concerned a Somali national whose asylum request was dismissed on 18 September 2018 by a decision of the Federal Office for Migration and Refugees (BAMF). The court also noted that the applicant would not be exposed to a risk due to Al-Shabaab militant group. On the same issue, the Belgian Council for Alien Law Litigation (CALL) [rejected](#) the claim of a Georgian national who applied for asylum alleging she was the victim of harassment and domestic violence. She then appealed claiming that the COVID-19 pandemic substantially changed her situation, but the court observed that only a generic argumentation was provided. It noted that risks caused by a pandemic are not considered as caused by an actor of persecution, as foreseen under Belgian legislation and the recast Qualification Directive, Article 6.

Courts also examined emergency measures adopted during the COVID-19 pandemic, measures which concerned panel formations and adjustments to first instance procedures. On 8 June 2020, the French Council of State [ruled](#) on emergency measures which were introduced regarding the single-judge formation and the use of videoconferencing in the CNDA. The council decided to suspend the application of these provisions after it observed the operational difficulties at the CNDA and the proportion of members that could be considered particularly vulnerable to COVID-19. Additionally, the council considered allegations that these provisions are not justified and proportionate, the general and systematic nature of the exemption adopted, and the particular importance for asylum seekers of the guarantee that their appeal will be examined by a collegiate formation.

On 16 December 2020, the Dutch Council of State [confirmed](#) that the COVID-19 pandemic led to a force majeure in asylum procedures and thus the time limit for pronouncing a decision was automatically suspended. In a case concerning an applicant who appealed before the Court of the Hague against the lack of a decision on her application, arguing that the extension was not legal, the Council of State held that the COVID-19 outbreak made it physically impossible to conduct interviews and therefore decisions on asylum applications were temporarily halted. This was applicable to all cases in the period 16 March 2020 to 16 May 2020, even if the case was already delayed.

3.2 Time limits

The Supreme Court in Spain [considered](#) that the time limits set for decisions on inadmissibility or rejection in applications submitted in detention centres should be the same as in border procedures. According to Article 21 of Law No 12/2009, the decision on an application made at the border post must be taken within 4 days of its submission, and if this deadline expires, the application must be dealt with under the regular procedure. In addition, Article 25(2) provides that the same urgent procedure shall apply to foreigners who apply for international protection while in detention centres. The Supreme Court considered that the time limit for inadmissibility or rejection of the asylum application in first instance had been exceeded in this case, and the ordinary procedure had to be

initiated, with the consequence that a return or a removal could not be enforced until a decision was made on the asylum request.

3.3 Legal aid

The Bulgarian Supreme Administrative Court [found](#) procedural irregularities due to lack of legal aid and social assistance when interviewing minors. The case concerned a mother and her two children who had their application for international protection rejected by the State Agency for Refugees (SAR), without being provided with adequate support and legal aid throughout the process as SAR failed to notify the Social Assistance Directorate of their application. Additionally, the rejection was based solely on the mother's refugee history and no assessment was made for the application of the two minors. The Administrative Court of Sofia and the Supreme Administrative Court annulled the SAR's decision and referred the case back for re-examination.

3.4 Personal interviews

3.4.1 Provision of an interview prior to an inadmissibility decision

In the [Milkiyas Addis](#) case, the CJEU ruled on the provision of the personal interview prior to an inadmissibility decision. The case concerned an Eritrean applicant who applied for asylum in Germany and his application was rejected as inadmissible as he had already been granted refugee status in Italy. He appealed the inadmissibility decision as he was not provided with a personal interview. The CJEU noted that the recast Asylum Procedures Directive, Article 14(1), which establishes the obligation to provide a personal interview, also applies to decisions on admissibility. Furthermore, according to the directive, failure to provide a personal interview would lead to the annulment of the inadmissibility decision only where, on appeal, the applicant would be denied a personal hearing in compliance with Article 15.

3.4.2 Personal interview during subsequent application procedures

The Finnish Supreme Administrative Court referred a [case](#) back for reconsideration to the Finnish Immigration Service (FIS) for not conducting an asylum interview in a subsequent application procedure. Following a subsequent application submitted by the applicant, the FIS decided to continue the asylum procedure after a preliminary examination. During the procedure, only one of the applicants was heard by the FIS, while an interview for one of the adult applicants was considered unnecessary. The Supreme Court noted that the lodging of an application with the police was not equivalent to an asylum interview as defined by Article 97a of the Aliens Act.

3.4.3 Personal interview for vulnerable applicants

The Supreme Administrative Court of Finland [ruled](#) on special procedural guarantees for a vulnerable applicant who allegedly suffered sexual violence inflicted by Al-Shabaab. The applicant, a Somali woman, was interviewed by a male officer and a male interpreter. Her application was rejected on credibility grounds and her appeal against the negative decision was dismissed without an oral hearing by the Administrative Court. The applicant argued before the Supreme Administrative Court that she could not comprehensibly present all grounds in the asylum procedure because both the interpreter and the interviewer were men. 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. The case was sent back to the determining authority.

The German High Administrative Court [ruled](#) on the right of a dependent minor to a personal interview and on the situation in Syria. The applicant, a Syrian national, applied for international protection upon arrival in Germany, with her mother and sibling, based on the unstable situation and war in Syria. During the asylum procedure, only the mother was interviewed, and BAMF granted subsidiary protection. The High Administrative Court stated that the Asylum Act does not provide for the cases when minors are to be heard and under the Asylum Act minors are treated as part of the family as a whole. Section 24(1), Sentence 6 of the Asylum Act only regulates that the hearing is not required if the asylum application for a child born in the federal territory younger than 6 years has been made and the facts of the case have been sufficiently clarified based on the content of the procedural files of the parents or one of the parents. This means, however, that a hearing (not of this child, but) of the parents is dispensable, who otherwise in the case of underage children - depending on the age of the children - have to be heard in their place or included in their hearing. According to the court, this does not allow direct conclusions to be drawn as to when underage children are to be heard nor can it be inferred from European law that the applicant should have been heard by the Federal Office before a decision was made. The High Administrative Court dismissed the appeal and, after reviewing the situation of returning rejected Syrian applicants, concluded that the applicant did not prove an individual risk of persecution if returned to justify refugee status.

3.4.4 Interviews by videoconference

In December 2020, the Belgian Council of State [suspended](#) the CGRS pilot project to hold interviews by videoconference for applicants from open centres after an action to suspend it was lodged by several NGOs. The decision did not respect the Royal Decree of 11 July 2003, which states that interviews would take place in person. The interim judge ordered the suspension of the CGRS decision, finding that the decision included rules relating to the short-term organisation of videoconference interviews with asylum applicants staying in open centres. Additionally, the intention to develop a longer-term framework for interviews by videoconference, alongside in person interviews, was also included in the decision. The judge held that the CGRS did not have the competence to change the rules by which personal interviews are organised and that such a change must be done by Royal Decree.

3.5 Decision at first instance

Based on the [Gnandi](#) CJEU judgment, the Higher Federal Court in Germany [ruled](#) that, in order to combine a decision rejecting an asylum application with a return decision in the form of a deportation warning conforming with the Return Directive, it should be ensured that the foreigner is allowed to stay until the relevant appeal against the rejection of the application is resolved, and that this appeal has its full effect.

In Austria, an applicant for international protection whose first instance decision was notified by videoconference for which he was not present contested the decision and invoked that only the interview can be done remotely and the notification of a decision by electronic means has no legal basis. The Supreme Administrative Court [confirmed](#) that a notification done in a remote/video

interview does not have a legal basis. The court also confirmed that an oral communication of a decision must be conducted by a formal announcement of its content to the present parties. When a party is not present, the decision could not be notified, in accordance with the Asylum Law.

4 Second instance procedures

4.1 COVID-19

Courts reviewed claims that COVID-19 measures affected the time limit to lodge an appeal and they reviewed the changes to court procedures which were brought by the new measures. In June 2020, the Belgian CALL [concluded](#) that the time limit for an appeal is strict and the quarantine of social workers cannot be seen as a force majeure. In another case, CALL [held](#) that second instance procedural changes due to COVID-19 measures comply with procedural guarantees. It further held that the applicant did not demonstrate how the right to equal treatment is infringed and that, by allowing a written procedure, a greater number of actions can be dealt with within a reasonable time. Thus, the changes in proceedings imposed by the exceptional COVID-19 measures comply with all procedural guarantees provided in the EU Charter and the ECtHR. In France, the Council of State [ruled](#) on emergency measures of a single-judge formation and the use of videoconferencing in the CNDA. In the Netherlands, the Council of State [ruled](#) on COVID-19 restrictions affecting the right to be heard in person before the court. In another case, the Council of State [ruled](#) on COVID-19 affecting the public pronouncement of court decisions in asylum cases.

4.2 European courts

4.2.1 The scope of appeal procedures

On 19 March 2020, the CJEU ruled in [PG](#) (C-406/18) on the scope of appeal and reassessment when an administrative decision is annulled and referred back to the first instance authority. The court ruled that the recast Asylum Procedures Directive, Article 46(3) must be interpreted as meaning that it does not preclude national legislation conferring courts the power to solely annul the decisions of competent authorities in matters of international protection, excluding the power to amend them. If a case is referred to the competent administrative authority, a new decision should be adopted within a short period of time and in compliance with the judgment that annulled the decision. In addition, if the determining authority adopts a contrary decision after the referral without establishing new elements to justify a new assessment, in the absence of any other means to ensure compliance with the previous judgment, the court must amend the new decision by disapplying, if necessary, the national law that prohibits such a course of action.

4.2.2 Time limits on appeal

In the same case, [PG](#) (C-406/18), the CJEU noted that the recast Asylum Procedures Directive, Article 46(3), read in light of the EU Charter, Article 47, must be interpreted as not precluding national legislation providing the court with a period of 60 days to decide, if within this time period the court can ensure the effectiveness of substantive and procedural guarantees provided by EU law. Otherwise, the court must disapply the national legislation setting this time limit and render a judgment as promptly as possible.

In the case of [LH](#) (C-564/18) pronounced on 19 March 2020, the CJEU ruled on the compatibility of short time limits in appeals against inadmissibility decisions with the requirements of the right to effective remedy provided in the recast Asylum Procedures Directive, Article 46(3). The CJEU noted that the recast Asylum Procedures Directive, Article 46 authorises Member States to set time limits

and procedural rules in accordance with the principles of procedural autonomy, equivalence and effectiveness. Furthermore, the CJEU held that an 8-day time limit might be sufficient in clearly inadmissible cases but may be insufficient for the court to provide an effective remedy with all the relevant substantive and procedural guarantees. As in *PG*, the CJEU also noted that if the time limit is insufficient, the court must disapply the national legislation setting the time limit.

Regarding time limits for appeals in subsequent application procedures, on 9 September 2020, the CJEU interpreted the Asylum Procedure Directive, Article 46 in the case of *JP* (C-651/19), in which the issue raised concern over the short time limits in this type of procedure and the notice of decisions. In this case the asylum decision was notified to the applicant by registered post sent to the head office of the Belgian CGRS and 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. The CJEU considered, in principle, that the Belgian law which 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 conforms to EU law, provided that applicants are informed about the consequences of not specifying an address for service of the decision. When the applicants' access to the head office is not rendered excessively difficult, the procedural safeguards and the principle of equivalence are thus respected. In addition, the CJEU held that the recast Asylum Procedures Directive, Article 46, read in light of the EU Charter, Article 47, does not preclude a 10-day time limit for appeal against a decision of inadmissibility in a subsequent application for international protection.

4.3 National courts

4.3.1 Suspensive effect in subsequent applications procedure

The Irish Supreme Court [ruled](#) on 31 March 2020 that the right to remain in the territory ceases once the determining authority made a recommendation to dismiss a subsequent application.

The Polish Supreme Administrative Court [dismissed](#) a request to suspend the effects of a decision rejecting a subsequent application as inadmissible. The court noted that the burden of proof lies with the applicant, who must demonstrate the risk of causing significant damage with consequences difficult to reverse. The court also distinguished between the right to remain on the territory following a refusal to grant international protection and the absence of such an obligation when the subsequent application was rejected as inadmissible.

4.3.2 Provision of legal aid in appeal procedures

The Administrative Court for International Protection in Cyprus [held](#) on 16 October 2020 that legal aid cannot be granted for appeals that have no chance of success, even without examining the applicant's financial resources.⁵ A similar outcome was reached by the same court in another [case](#) pronounced on the same day.

⁵ The court referenced the EASO Judicial analysis on [Evidence and credibility assessment in the context of the Common European Asylum System](#), (2018).

Furthermore, the Finnish Supreme Administrative Court [ruled](#) that the denial of legal aid in anticipation of the outcome should be applied exceptionally and the assessment of success chances of an appeal should be treated with caution when deciding on legal aid requests. In the case concerned, the Administrative Court and the Legal Aid Office had refused legal aid to an applicant in appeal procedures against the FIS decision to reject his third application for international protection. His legal aid request was rejected on the ground that an appeal procedure would be ineffective as the applicant had provided no new elements in his application for international protection. The Supreme Administrative Court overturned this decision and concluded that the applicant should be granted legal aid.

4.3.3 The reasoning of decisions on appeal

In the Netherlands, in January 2020, the Administrative Division of the Council of State [started](#) its new working method on the reasoning of decisions, which allows the court to reject an application using a standard template decision developed to provide more context for the ground of refusal compared to the previous standard short motivation.⁶

⁶ See also Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary of Justice and Security (No. 2)*, 15/01/2020, ECLI:NL:RVS:2020:62, available at <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1271>; Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary of Justice and Security (No. 1)*, 15/01/2020, ECLI:NL:RVS:2020:63, available at <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1270>

5 Assessment of applications

5.1 Evidence and credibility assessment

In Switzerland, the Federal Administrative Court [ruled](#) that new evidence, such as positive asylum applications of relatives, presented on appeal is a ground for reconsidering the asylum claim. The case concerned a Sri Lankan applicant who claimed that he was questioned by Sri Lankan soldiers after interfering with political posters, he was ordered to present himself for checks and was beaten and sexually assaulted by soldiers. His application was rejected, and on appeal the applicant submitted further evidence related to the positive asylum decisions of his relatives in Switzerland. The Federal Administrative Court noted that the asylum authorities should consult the asylum files of the applicant's close relatives and address any relevant statements. For this reason, even though initially the applicant was unable to provide credible evidence, the new evidence including the transcripts of relative's interviews, qualified as substantial changes due to the close connection between the asylum claims. The court ruled that the applicant's asylum claim should be reassessed.

A Romanian County Court [held](#) that fear of persecution can be based on acts targeting those in the same group and not personally the applicant. The case concerned an unaccompanied minor from Bangladesh whose application was rejected due to a lack of credibility as he could not provide details of his father's political activities, which he claimed put him at risk of persecution. After a second appeal, the Suceava County Court granted asylum to the applicant. The court considered the UNHCR Handbook, country of origin information and the European Parliament Resolution 2018/2927(RSP) regarding the situation of human rights in Bangladesh. It noted that a request for asylum may refer to persecution suffered by people from the same group as the applicant, which can prove the eventuality that the applicant may be exposed to a risk of persecution. Additionally, considering the applicant's young age and linguistic difficulties, the court noted that the minor's effort to substantiate his allegations was genuine.

The Irish High Court [ruled](#) that refusal to give evidence under oath entitled the lower court to draw inferences regarding credibility in the assessment of an asylum claim. In the case, an Albanian national's applications for asylum were rejected by the Refugee Applications Commissioner and by the International Protection Office. After the IPAT pronounced a negative decision, the applicant argued that the evidence at the tribunal was not taken under oath and requested the IPAT to re-hear the case. The High Court noted the importance and need for an oath in the international protection context where decisions are based on credibility and where the events being attested to cannot be considered by direct proof.

For cases on credibility assessment in claims concerning persecution based on sexual orientation, see [Section 5.5.6](#).

5.2 Safe country of origin

In Italy, the Court of Cassation [ruled](#) on the retroactivity of the decree establishing a safe country of origin list in the appeal procedures. In a case concerning a national of Ghana, the Court of Cassation held that the effects on the procedure by adding a country on the safe country of origin list, following the Ministerial Decree of 4 October 2019, are applicable only after the entry into force of the legislative provision. According to the concept of fair trial in Article 111 of the Constitution, there

cannot be changes on an asylum applicant's obligation to provide evidence during an appeal procedure. This was considered particularly applicable in this case, where the entry into force of the list made it considerably more difficult for an applicant coming from a country considered safe, to provide well-founded evidence.

The Czech Supreme Administrative Court [ruled](#) on the safe country concept for a citizen of both Croatia and Serbia, who applied for international protection as Serbia had requested his extradition in order to enforce a criminal sentence and claimed that in Serbian prisons he would face a real risk to his life. The Ministry of the Interior rejected the application as inadmissible and the Municipal Court in Prague dismissed the appeal. The Supreme Administrative Court ruled that if a person holds citizenships of two countries, it may be sufficient to state grounds for fear of persecution or serious harm only in relation to one of them if the applicant is unable to benefit from the effective protection of the other state. In such a case, the applicant only needs to provide reasons related to one of them as it effectively prevents him from obtaining protection in either state. It further noted that in this case, Croatia could not effectively prevent the applicant's extradition to Serbia. With regards to Serbia, the designation of a third country as a safe country of origin cannot be an absolute guarantee of the safety of its nationals. The Supreme Administrative Court emphasised that the applicant did not allege grounds for a well-founded fear of persecution or threat of serious harm toward the Member State but a third country. The court concluded that the annulment of the Municipal Court and the administrative authority decisions was the only solution compliant with international law obligations, which at the same time did not contravene EU law.

The Administrative Court in Cyprus [considered](#) Pakistan a safe country of origin for an applicant who claimed to have left the country for political reasons and danger from the Taliban but did not give details of the party he referred to. During his interview, the applicant stated that he would not face any problems upon return to Pakistan. The Administrative Court for International Protection, to which the applicant appealed, found Pakistan to be a safe country of origin according to the Decree of the Minister of the Interior published on 8 May 2020, his allegations to be unproven and rejected his appeal as inadmissible.

The Irish High Court [rejected](#) the request to challenge the allegedly unlawful designation of Georgia as a safe country of origin, while in another case the Irish High Court [granted](#) leave for judicial review against the designation of South Africa as safe country of origin. Concerning the latter case, the High Court noted that South Africa does not appear to be generally designated as a safe country of origin by other EU Member States and that the allegations invoked by the applicant on the availability of state protection in the country of origin are substantial and granted leave for judicial review. The case is not final.

5.3 Religious persecution

The German Regional Administrative Court [recognised](#) refugee status for a Russian national based on his religious beliefs and practice as a Jehovah's witness. The applicant claimed in his interview that he had intensively practiced and promoted his beliefs since he became a Jehovah's Witness in 2005, even clandestinely and under the prohibition in Russia. On appeal, the Regional Administrative noted, through an analysis of European courts and national courts case law on freedom of religion, that the relevant factor is that compliance with a certain religious practice in the public sphere is important to preserve religious identity to the applicant. The court considered country of origin information and noted that Russian authorities are targeting individuals and their religious practice, including

Jehovah's Witnesses, by opening criminal investigations, withdrawing parental rights, confiscating possessions and even imprisonment. The court concluded that the fears of the applicant are justified, and that the applicant is entitled to be granted refugee status. The decision is not final and can be appealed against before the Higher Administrative Court.

In Finland, the Supreme Administrative Court [ruled](#) on persecution based on religious grounds for Jehovah's Witnesses. The case concerned Russian nationals who are Jehovah's Witnesses and who applied for international protection based on a risk of persecution for religious beliefs and activities. They reported being actively involved in Russia at religious gatherings and activities and that on several occasions they were harassed by private persons or state authorities for their preaching activities. After Jehovah's Witnesses were banned as an extreme organisation, the applicants conducted their activities in secret before leaving Russia in 2017. Their applications were rejected by the Finnish Immigration Service (FIS) and an appeal reached the Supreme Administrative Court. The court 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, and took into consideration the seriousness of the possible consequences of religious practice and the impact of the restrictions on religious freedom. It stated that a ban on participating in religious activities may amount to persecution if infringements of the prohibition may result in being subject to justice offences and/or to inhuman or degrading treatment. 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 could not be considered to have the protection of state authorities.

5.4 Political opinion

The Czech Supreme Administrative Court [ruled](#) on international protection based on fear of persecution due to political opinions. The applicant was an Azerbaijani national who claimed to be a Shi'ite forced to join the Yeni Azerbaijan Partiyasi (YAP) as a teacher. He fled the country with his family and their first application for international protection was dismissed by Belgium for lack of evidence. After returning to Azerbaijan, they were harassed and attacked. They fled again to Europe, applied for asylum in Germany and they were transferred to Czechia, considered the responsible state under the Dublin III Regulation. Their request for international protection was again dismissed. On appeal, the Supreme Administrative Court took the view that the applicant was not persecuted for exercise of political rights, though such a conclusion did not exclude that his refusal to participate in the YAP actions was in fact a latent manifest of his political opinion. The court noted that opinions held about policies or methods of potential actors of persecution fall within the scope of the recast Qualification Directive, Article 10(1e), and the administrative authority failed to conduct a personal interview about the applicant's political opinions and his relationship with YAP. The court therefore quashed the regional court's ruling and Ministry of the Interior's decision regarding all applicants.

The French CNDA [recognised](#) the refugee status of a journalist from Yemen who supported the former President Saleh. The applicant claimed that as a journalist he would be exposed to persecution or serious harm because of his political views. The applicant was detained and suffered abuse from the intelligence services and was accused of sharing information. OFPRA rejected the application, which the applicant appealed. The CNDA looked into the particular risks faced by journalists when they are perceived as being opponents and targets of persecution. The court noted that the latest developments of the situation in Yemen confirm the fears of persecution of the applicant, and thus allowed the appeal and recognised his refugee status.

5.5 Membership of a particular social group

5.5.1 Military conscription

On 19 November 2020, the CJEU interpreted the recast Qualification Directive, Article 9, in the case of [EZ](#) (C-238/19) 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. A Syrian national was refused refugee status but granted subsidiary protection in Germany. He claimed that he would 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(2e) and (3). The CJEU held that, where the law of a country of origin does not provide for the possibility of refusing to perform military service, the recast Qualification Directive, Article 9(2e) must be interpreted as not precluding the finding of a refusal to perform military service, even if this refusal was not formalised by the person. In the context of a civil war where crimes are systematically committed by the army, a refusal to perform military service is linked to an assumption that the military service will involve the commission of crimes. A refusal of military conscription in such circumstances can be considered to be an expression of political or religious beliefs and linked to the grounds of persecution. The court considered that there is a strong presumption of a connection between the reasons mentioned in Articles 2(d) and 10 of the directive and the prosecution and punishment for a refusal to perform the military service referred to in Article 9(2e). However, it concluded that it is for the national courts to ascertain the plausibility of that connection in light of the circumstances at issue.

5.5.2 Minors

The United Nations Committee on the Rights of the Child ruled on an age assessment in [M.B.](#), a case concerning procedures in Spain. On arrival to Spain after being intercepted on a boat, a Guinean national was registered by the police as an adult even though he stated he was a minor. He was transferred to a Detention Centre for Foreigners (CIE), where he applied for asylum as an adult as he believed he would not be considered as a minor. His representatives were able to obtain his birth certificate, and he was released from the CIE and housed in a social residence for adults. He was not assigned a guardian nor recognised as a minor. The committee underlined the importance of the determination of age of a young person who claims to be a child, of the presumption of authenticity attached to the documentation a minor may present, and of access to legal representation and interpretation throughout the age determination procedure. Given these elements, the Committee stated that Spain had violated Articles 3 and 12 of the Convention on the Rights of the Child. The committee further recommended Spain to adopt several measures to bring its age determination procedure in conformity with the Convention.

As mentioned in [Section 3.3](#) above, the Bulgarian Supreme Administrative Court [found](#) procedural irregularities due to lack of legal aid and social assistance when interviewing minors. The case concerned a mother and her two children who had their application for international protection rejected solely due to the mother's refugee history, without an assessment of the minors' application. The Administrative Court of Sofia and the Supreme Administrative Court annulled the SAR's decision and referred the case back for re-examination.

5.5.3 Gender-based violence

The French CNDA [ruled](#) that Somali children and adolescents not subjected to FGM constitute a particular social group considering that FGM is almost universally practiced throughout the country and considered a social norm.

The Irish High Court [overturned](#) a lower court decision for failure to properly assess country of origin information on gender-based violence in Nigeria. The High Court noted that the International Protection Appeals Tribunal (IPAT) took into consideration country of origin information on domestic violence, whereas it should have assessed the availability of state protection for serious harm. The High Court concluded that country of origin reports showed negative results on laws, implementation of relevant legislation and investigation related to gender-based violence and the IPAT failed to weigh country of origin information against the presumption of state protection.

In addition, the Italian Civil Court of Bologna [ruled](#) in the case of a minor asylum applicant, victim of FGM/C in Sierra Leone, quashing the initial decision of the Territorial Commission for the Recognition of International Protection of Bologna not to grant refugee status due to a lack of credibility. The civil court found the applicant's narrative credible, coherent with her young age, and consistent with country of origin information. The judge granted refugee status and acknowledged the violence experienced by the applicant, in particular the FGM/C, which constitutes a severe violation of human rights and is considered a form of gender-based violence, inflicting severe harm, both physical and psychological, and constitutes persecution, to which she would risk being submitted again if sent back to Sierra Leone. In addition, there were other risks for her, related to the possibility of being obliged to take the role of cutter and to be forced to marry.

5.5.4 Forced marriage

The French CNDA [held](#) that girls and women from the Nanka ethnic group at risk of forced marriage are a particular social group. The applicant, a national of Burkina Faso from the Nanka ethnic group, was rejected international protection by OFPRA. She appealed before the CNDA, which identified for the first time a social group formed in Burkina Faso of "women from the Nanka ethnic group who, like the applicant, refuse to submit to an imposed marriage or try to evade it". The applicant invoked fears of being exposed to persecution or serious harm by family members without being able to benefit from state protection if returned. According to country of origin reports consulted by the CNDA, forced marriage can still be observed in rural areas of Burkina Faso, and it is commonly practised within the applicant's ethnic group. Thus, the CNDA recognised her refugee status.

In another case, concerning a Palestinian applicant from the Gaza Strip who refused a forced marriage, the CNDA [recognised](#) that the UNRWA could not ensure the applicant's protection and granted refugee status. The applicant arrived in France with a student visa and applied for international protection on grounds of a fear of persecution by family members for religious reasons and a refusal of an arranged marriage. Following a negative decision, the applicant appealed before the CNDA, which considered that the applicant was subject to continuous psychological pressure from her family for refusing forced marriage. It was assessed that the applicant found herself in a serious state of personal insecurity, forcing her to leave the operational area of the UNRWA, which could no longer offer protection to the applicant, in accordance with the Geneva Convention.

5.5.5 Medical conditions

In Italy, the Civil Court of Milan [granted](#) refugee protection to a Guinean national suffering from epilepsy based on his belonging to a particular social group because of his disease and risks of persecution in his country of origin. The Court of Milan held that the stigma and social persecution of people with epilepsy are characteristics for belonging to a particular social group. Considering multiple country of origin reports, the court assessed that the Guinean health system is deficient and lacks facilities, people with epilepsy are discriminated against by family and the community due to cultural beliefs, and state authorities cannot protect nationals suffering from such beliefs. 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 health care and work, and enjoyment of a dignified life with full exercise of civil and political rights. The court concluded that the applicant is perceived to be different from the rest of society, that he has a feeling of a distinct identity in the country of origin and there is a nexus between acts of persecution and membership of a particular social group.

In the absence of protection alternatives, CALL granted subsidiary protection status to a vulnerable applicant with psychological disorders. CALL [held](#) that in light of the applicant's personal condition mainly related to dissociative disorders and PTSD, the applicant, compared to another person, runs an increased risk of serious danger to life or person as a result of indiscriminate violence in Kabul, Afghanistan.

5.5.6 LGBTQ+

On 17 November 2020, the ECtHR held in [B and C v Switzerland](#) that an expulsion order to The Gambia of a homosexual applicant in the absence of a new assessment of risks would constitute a violation of the ECHR, Article 3. Following a negative decision and a refusal to register a same-sex partnership with the second applicant, the first applicant, B., who was a Gambian national, 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 The Gambia due to his sexual orientation. The ECtHR noted that sexual identity is part of the identity of a person and no person should be requested to conceal it to avoid persecution. It also looked at the situation in The Gambia, where homosexual acts carry a criminal penalty. It also held, in accordance with its previous case law and the case law of the CJEU ([X, Y and Z v Minister voor Immigratie en Asiel](#), C-201/12), that the mere existence of criminal laws in the country of destination do not render a removal contrary to Article 3 of the Convention. The decisive factor is whether these laws might be applied in practice, which was not the case in The Gambia. The court also noted that there were no reports of individual acts of 'rogue' officers, which may be due to under-reporting and fear of state discrimination. Regarding possible ill treatment by non-state actors, the court held that there are reports of widespread homophobia and discrimination against the LGBTQ+. It further held that the Swiss authorities did not properly analyse the availability of state protection and that there are indications of the unwillingness of state authorities to provide protection. The court concluded that, in the absence of a fresh assessment of risks, the deportation would constitute a violation of Article 3 of the Convention.

In Greece, the Appeals Authority [recognised](#) refugee status to an Iranian national based on persecution due to homosexuality and ruled on the respect for integrity and private life during the personal interview. The Appeals Authority noted that the procedure for assessing the credibility of the applicant's claim and the detailed questions concerning his sexual activities and motives were contrary to the EU Charter, Articles 3 and 7. The Appeals Authority also took into account the situation in Iran,

where sexual minorities are often subjected to abuses and harassment by state actors. It also considered the possibility of state protection and internal protection and concluded that the applicant's appeal is admissible and he should be granted refugee status.

The Estonian Supreme Court [ruled](#) on the assessment of credibility in cases concerning persecution based on sexual orientation in the case of an applicant from Uganda, whose request for international protection was rejected by the Police and Border Guard Board (PBGB) as unfounded. The court highlighted that the applicant's statements on sexual orientation should constitute the starting point for the assessment of the facts and the assessment criteria of statements or other evidence must be in accordance with the right to respect for private and family life. In addition, the court noted the importance of appropriate training of staff, use of suitable interviewing techniques and acknowledged that the greater the risk of persecution for the applicant as to the veracity of his allegation of sexual orientation, the more careful the assessment of the facts and circumstances must be. Finally, the possibility of holding a hearing should be considered in cases where the outcome depends to a large extent on the credibility of the applicant and of the explanations provided.

The French CNDA [recognised](#) refugee status for an applicant who was at risk upon return to Lebanon, where homosexuals are a particular social group at risk of persecution. The CNDA noted that the applicant would not benefit from state protection and the legislation provides that homosexuality is a criminal offence punished by up to 1 year's imprisonment and a monetary fine.

According to a [ruling](#) of the Swiss Federal Administrative Court, unbearable psychological pressure deriving from the situation of homosexuals in Syria justifies granting refugee status. The court noted that Syrian legislation criminalises same-sex relations and state protection does not exist. The court added that updated country of origin information reveals that it is impossible for homosexuals to openly live in Syria, and the court concluded that concealment and suppression of sexual orientation as a result of persistent fear of outing and lack of protection from state or private actors amounts to unacceptable psychological pressure.

The Administrative Tribunal of Luxembourg [rejected](#) a request for international protection for misleading the authorities about sexual orientation. The case concerned an applicant for international protection from Nigeria, who mentioned only during the second interview his alleged attraction for men after, in previous interviews, he gave other reasons for leaving, while his overall statements about his alleged sexual orientation were considered inconsistent, confusing and imprecise.

5.5.7 Slavery

The German Federal Constitutional Court [found](#) a violation of the right to legal protection for a Mauritanian asylum applicant who feared persecution as a former slave. The court held that the decisions of the Administrative Court and the Higher Administrative Court were based on violations of fundamental rights and a violation of her right to a hearing and effective legal protection. They had failed to consider the evidence brought by the applicant regarding the difficulties of securing a livelihood given her status of a former slave tribe member. The evidence brought by the applicant showed that extreme poverty and exclusion from society still affects former slave women in Mauritania. The case was referred back to the Greifswald Administrative Court for a new decision.

5.6 Non-state actors of persecution

Ruling on persecution by non-state actors in Venezuela, the Belgian CALL [noted](#) that based on country of origin information it cannot be said that state protection against non-state actors of persecution or serious harm is totally absent throughout Venezuela. However, due to the general security situation, and taking into account the individual circumstances of the applicant concerned, the standard of proof to rebut the presumption of protection by actors should be set at a low level. CALL further noted that the precarious socio-economic and humanitarian situation in Venezuela does not automatically fall within the scope of the domestic provision which transposes the recast Qualification Directive, Article 15(b). The council added that the level and nature of violence, as well as its impact, vary from one region to another. Although armed confrontations may be classified as an armed conflict, the council concluded that such conflict should be accompanied by indiscriminate violence in order to grant subsidiary protection, which is not the case for the State of Táchira.

In Belgium, the issue of indiscriminate violence and persecution by non-state actors was also analysed in relation to applicants from El Salvador requesting international protection due to alleged fear of persecution by gangs. CALL [held](#) that state protection against gangs is not available or effective in El Salvador, but the applicant has the burden of proving that this protection would not be possible. As in the case law on Venezuela, the presumption of protection by actors should be set at a low level. CALL also clarified the criteria to fulfil in order to take into consideration a fear on the grounds of belonging to a particular social group. The council considered that a stay abroad is not in itself sufficient to give rise to a well-founded fear of being persecuted on return to El Salvador. Finally, the council noted that despite the high degree of targeted violence, there was no proof of indiscriminate violence in El Salvador.

The Irish High Court referred a case back to IPAT to properly assess the applicant's family as actors of potential persecution upon return to Nigeria. The High Court [stated](#) that the IPAT did not provide any reason for the fact that it based its decision on certain preferred country of origin reports and noted country of origin reports relevant to trafficked women, which is key for a claim based on risk of family harm.

5.7 Indiscriminate violence

5.7.1 Indiscriminate violence in Somalia

The French CNDA [ruled](#) that the indiscriminate violence in Somalia (Lower Shabelle and Mogadishu) does not reach a level that would justify granting subsidiary protection. The case concerned a Somali applicant whose application for international protection was rejected. On appeal, the CNDA ruled that the applicant did not fulfil the requirements of the Geneva Convention and dismissed the application. Regarding subsidiary protection, the CNDA assessed whether the conflict in the area of interest of the applicant, including the region where the applicant has to return and on the route to reach his area, may cause indiscriminate violence that can expose the applicant to serious and individual threat to his life. The court ruled that in the province of Lower Shabelle, the applicant's area of interest, and Mogadishu, through which the applicant would have to enter Somalia, there was no indiscriminate violence of such level that would expose anyone to a serious and individual threat to life or person.

The CNDA stated that the evidence presented by the applicant on his personal situation was not sufficient to justify international protection and dismissed the appeal.⁷

The German Federal Administrative Court [rejected](#) subsidiary protection due to the poor humanitarian situation in Somalia for an applicant who based her request mainly on threats from Al Shabaab. The court held that inhuman or degrading treatment by reason of a poor humanitarian situation is only applicable if such treatment originates from an actor within the meaning of the Asylum Act. The Federal Administrative Court further held that in the absence of individual circumstances that increase danger, indiscriminate violence must attain an especially high level for there to be a serious threat to life or to physical integrity within the meaning of the Asylum Act. For the minimum threshold of the level of violence, it is required to have not only an approximate quantitative determination of the risk of death and injury but also an overall assessment of how the person is affected individually.

5.7.2 Indiscriminate violence in Afghanistan

In France, the CNDA [reassessed](#) the level of violence in the Nangarhar province as exceptional and continuous, granting subsidiary protection to the applicant. The case concerned an Afghan national who applied for international protection and was initially rejected. On appeal, the CNDA reassessed the situation in Afghanistan and concluded that the level of indiscriminate violence generated by armed conflict in the Nangarhar province is of exceptional intensity. Since June 2020, mere presence in the region exposed the person to a serious and individual threat to life. The CNDA ruled that the applicant should be granted subsidiary protection. The judgment was based on recent country of origin information reports published by EASO, the UN Secretary-General, and data collected by the United Nations Mission in Afghanistan (UNAMA), the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) and the NGO ACLED.

On 19 November 2020, the CNDA, in the formation of *Chambres Reunies* (combined chambers), ruled on two cases on the process for assessing the level of violence generated by an armed conflict for the purposes of applying subsidiary protection. The court interpreted the application of Article L. 712-1 c) of the CESEDA in the context of appeals brought by [M.M.](#) and [M.N.](#), Afghan nationals, whose applications for international protection were rejected. The CNDA held that it is necessary to determine whether the conflict generates in the part of the country of interest to the applicant indiscriminate violence exposing him to a serious and individual threat against his life or person and, if applicable, the level of such violence. The CNDA noted that the need for such an assessment results from the CJEU judgment in [Elgafaji](#) (C-465/07). The assessment of the level of violence is based on both quantitative and qualitative criteria assessed in the light of relevant sources at the date of the decision. The choice of these sources must comply with the requirements of European directives and consider the recommendations of EASO. With regard to the case under analysis, the CNDA held that the situation in Herat, and respectively in Panjsher and Kabul airport, its province and the province of Parwan, was not of such a nature that any person would be exposed to indiscriminate violence by mere presence in the area. Thus, the CNDA rejected the appeal, concluding that the applicant did not provide sufficient evidence that he would be exposed to a real risk of suffering serious harm.⁸

⁷ The court cited: EASO, [Judicial practical guide on country of origin information](#), 2018; EASO, [Country of Origin Information report South and Central Somalia](#), 2014.

⁸ 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;

5.7.3 Indiscriminate violence in Iraq (the importance of personal circumstances)

The Supreme Administrative Court in Finland [granted](#) refugee status for a Sunni applicant at risk of being subject to violations of justice and lack of protection upon return to Iraq. The Supreme Administrative Court analysed the possibility of subsidiary protection, noting that this requires a serious and personal risk arising from arbitrary violence in the event of an armed conflict, influenced by collective factors but also personal circumstances. It noted that personal circumstances can include circumstances from which an increased risk of serious harm arises when compared with the rest of the population. It found that this was not applicable in this case. However, the Supreme Administrative Court also considered that the applicant had reason to fear being subjected to violations of justice in his home country that were causally linked to his past experiences, religion and political opinion. It also held that in Baghdad it was not possible for the applicant to obtain effective protection from the authorities and therefore he was granted asylum.

5.8 Internal flight alternative

5.8.1 Senegal

The Civil Court of Florence in Italy [reverted](#) the first instance decision in an application of a Senegalese national since it ruled that the region of Casamance in Senegal should not be considered a safe flight alternative. The applicant submitted an international protection application claiming fear of persecution based on sexual orientation. The Territorial Commission rejected the request as it was deemed unfounded in light of the inclusion of Senegal in the list of safe third countries. On appeal, the Civil Court found that Senegal prosecutes same-sex couples and that people found to break these provisions are punished with reclusion. Moreover, it stated that the Casamance region cannot be considered safe due to an ongoing internal low-intensity conflict and it is declared unsafe for members of the LGBTI community, journalists, rights activists and potential victims of FGM. The Civil Court considered that the Ministry of Foreign Affairs should have excluded the region of Casamance from being considered a safe area. It concluded that the initial decision was unlawful and suspended its execution.

5.8.2 Afghanistan

The Austrian Constitutional Court [ruled](#) on criteria to assess the internal flight alternative for a return to Afghanistan. The court held that, in order to assess an internal flight alternative, sufficiently up-to-date country reports must be used and this applies in particular to countries with rapidly-changing security situations. In this case, the lower court, the Federal Administrative Court (BVwG) assumed that the applicant, who had lived outside of his country of origin for a long time, could have an internal flight alternative in Herat or Mazar-e Sharif, as he grew up in Iran, was single, young and able to work, without a family network in Afghanistan. The lower court based its decision on 2018 UNHCR guidelines and, in part, on EASO's 2018 report "Country-Guidance: Afghanistan - Guidance note and common analysis". However, the Constitutional Court noted that the UNHCR guidelines do not refer to asylum applicants who have lived outside of Afghanistan for a long time and EASO's report notes that an internal flight alternative is not possible for this group of persons if there is no support network at the

The EASO Report [Afghanistan: individuals targeted by armed actors in the conflict](#), December 2017; The EASO Report [Afghanistan Anti-Government Elements \(AGEs\)](#), 2020.

destination so that an individual assessment is needed, including the available support network, local knowledge or links with Afghanistan, and social and economic background. Since the applicant left Afghanistan at the age of about 2 years old and lived in Iran until he left Austria, the Constitutional Court concluded that it is necessary in the continuing proceedings to state the reasons of the exceptional circumstances that justify that the applicant might be able to return to Afghanistan without being subjected to a risk of violations of Article 2 (right to life) and Article 3 ECHR (prohibition of torture, degrading or inhuman treatment or punishment).

In a [case](#) concerning another Afghan applicant, the Austrian Constitutional Court confirmed the Federal Administrative Court decision that, considering the personal circumstances, the applicant can use an internal flight alternative in Mazar-e Sharif to return to Afghanistan. The Constitutional Court held that in this case the lower court dealt sufficiently with the applicant's situation, finding that the applicant is young and capable of working and had received six years of schooling in Iran. In addition, he had professional experience and did not belong to any vulnerable group, he was familiar with the cultural and social realities and could benefit from return assistance, which would allow him to obtain support for starting a business.

The Swiss Federal Administrative Court [assessed](#) internal flight alternatives in Afghanistan and concluded that state actors cannot provide protection due to the Taliban being present throughout the country. In the case, the applicant claimed he feared persecution from the Taliban due to family members' pro-government activities, his brother's violent death and vulnerability to being recruited by the Taliban. The applicant fled Afghanistan around the same date as three cousins, two of whom were granted asylum based on the same facts. After his application was rejected by the State Secretariat for Migration on grounds of credibility, on appeal, the Federal Administrative Court took into consideration the fact that the applicant was a minor at the moment that the application was lodged, he was from a district in Afghanistan largely controlled by the Taliban,⁹ and was particularly vulnerable to be recruited by the Taliban. The court concluded that the applicant must reasonably fear persecution and met the requirements for being granted refugee status. As for the internal flight alternative, and based on updated country of origin information, the court held that the Taliban are acting throughout the country and the Afghan security forces cannot provide efficient protection to the applicant.

5.8.3 Syria

On 29 May 2020, the Refugee Board in Denmark [dismissed](#) the asylum request of a Syrian applicant, considering that there was a change in the situation in Damascus. The applicant applied for asylum due to a fear of threats from her former spouse and his family in Syria, following her request for a divorce and referring to the general situation in Syria. The Refugee Appeals Board considered that the threats had ceased at the time, her conflict with the family is not of a nature or intensity to justify the need for protection, and neither the applicant nor her family has at any time experienced problems with the Syrian authorities. The Refugee Appeals Board observed that the applicant had family in Syria, so that she would not be considered a single woman without a network. Furthermore, the board considered that the situation in Damascus was no longer of such a nature that a person would be in a real risk of being subjected to abuses contrary to Article 3 of the ECHR.

⁹ The judgment cites the EASO Country of Origin Information Report [Afghanistan, Anti-Government Elements \(AGEs\)](#), August 2020.

On the same day, the Danish Refugee Board also [dismissed](#) the asylum request of a Syrian family, a married couple and their minor child from the Jobar municipality in Damascus who applied for asylum due to the fear of being arrested and killed by the authorities as their sons have escaped military service. Based on the evidence available, the board held that the applicants had not shown any likelihood that they would be at risk of persecution or abuse. Additionally, it considered that the situation in Damascus no longer justified the conclusion that a person would be at real risk of being subjected to abuses contrary to Article 3 of the ECHR solely because of mere presence in the territory.

5.9 Exclusion

5.9.1 UNRWA as actor of protection

National courts in Belgium, France, the Netherlands and Switzerland analysed UNRWA's ability to provide assistance in the Gaza Strip and in Lebanon.

In the Netherlands, the Court of The Hague [ruled](#) that the UNRWA is unable to provide protection in the Gaza Strip. The case concerned a stateless applicant that claimed that the situation in Gaza offered his family no prospect of a normal life due to serious insecurities. The State Secretary for Justice and Security refused the application on the ground that the applicant could return to UNRWA's mandate area and receive assistance. The Court of the Hague, considering CJEU case law and other sources, noted that it was plausible that the applicant was in a situation of serious insecurity and that the UNRWA was unable to provide appropriate assistance. It concluded that the UNRWA is unable to provide Gaza citizens with their daily necessities and it is not mandated nor equipped to protect them against war violence. The Court of the Hague ordered the State Secretary to take a new decision in according with this judgment.

However, the Belgian CALL [held](#) that despite the COVID-19 pandemic the UNRWA continued to provide assistance to Palestinian refugees in the Gaza Strip. The applicant, a Palestinian national, lodged an application for international protection in Belgium and his request was dismissed by the CGRS. On appeal, the applicant claimed that the UNRWA does not provide adequate aid and assistance and that the COVID-19 crisis put additional pressure on the organisation, preventing it from performing its duties properly. After assessing the available evidence, CALL rejected the complaint and held that the UNRWA continued to provide assistance to Palestinian refugees in the Gaza Strip. Thus, it rejected the argument that the UNRWA is no longer in a position to fulfil its core mission in the fields of education, health and assistance.

In another case, CALL [held](#) that updated country of origin information is needed to assess if UNRWA assistance had ceased in the Gaza Strip and if the applicant would be entitled to refugee status. The case concerned a Palestinian from Gaza whose request for international protection was rejected by the CGRS. The applicant submitted an appeal claiming that the UNRWA does not provide effective protection and that the residents of Gaza live in a constant state of violence and insecurity. CALL noted that it does not appear that the UNRWA had formally ceased to exist, but that it continued to carry out certain activities in the field in 2020, despite the difficulties it faced. It noted however that the information provided by the CGRS appeared to indicate that the risk that the UNRWA would no longer

be able to fulfil its mission is real and imminent. The council considered that more accurate and recent information were essential, annulled the contested decision and referred the case back to the CGRS.¹⁰

Regarding UNRWA's area of operations in Lebanon, the CALL [assessed](#) the situation in Lebanon and the assistance provided by the UNRWA during the COVID-19 pandemic. The applicant's request for international protection was rejected in 2015 on exclusion grounds as it was ruled that the UNRWA was able to provide aid and assistance within the meaning the Geneva Convention, Article 1D and he could return to Lebanon under UNRWA's mandate. The application was rejected again as inadmissible in 2019, and on appeal, the applicant submitted reports according to which the humanitarian crisis in the Palestinian territories of Lebanon was worsening and the COVID-19 outbreak would add additional difficulties. CALL noted that the reports and elements submitted by the applicant did not demonstrate that he would be at risk of inhuman and degrading treatment due to the situation in Lebanon, and his appeal was dismissed.

The CNDA [ruled](#) that a Palestinian from Lebanon suffering from a serious chronic disease is entitled to refugee status as the UNRWA is unable to provide adequate medical care in Lebanon. The applicant's disease affects haemoglobin production and requires regular blood transfusions, which the UNRWA refused to provide due to the high costs. In addition, he claimed to have been kidnapped by members of Ansar Allah, close to Hezbollah, and was tortured for 6 days before being released. His application was dismissed by the French Office for the Protection of Refugees and Stateless Persons. On appeal, the CNDA held that Palestinian refugees from Lebanon do not have access to the public health system and must rely exclusively on the services offered by the UNRWA and the Palestinian Red Crescent, which are insufficient and systematically underfunded. Therefore, the CNDA granted refugee status as the UNRWA is unable to provide the applicant with sufficient access to tertiary health care for most serious illnesses and to the medicines on which he is dependent for his survival.

The Swiss Federal Administrative Court partially [annulled](#) a decision on appeal so that a further assessment could be done on UNRWA's ability to provide medical care. The applicant, an ethnic Palestinian who was registered with the UNRWA in Lebanon, requested asylum on the ground that UNRWA was no longer able to provide him with the necessary protection and assistance. He suffers from multiple sclerosis and mental health problems and his application was rejected by the State Secretariat for Migration. The Federal Administrative Court considered that, due to the applicant's medical condition, further assessment was needed on UNRWA's medical infrastructure, the affordability of medicines and the ability to treat multiple sclerosis. Despite a support network in Lebanon and Switzerland and the UNRWA covering 80% of the cost of treatment, it should be assessed whether the applicant can meet the financial burden.

5.9.2 War crimes

CALL [ruled](#) on the exclusion of an Algerian applicant who committed a war crime in the exercise of his duties in the Algerian army in the 1990s. The CGRS rejected the application on the ground that there

¹⁰ Following an update of the country information at the beginning of 2021, CALL has changed its jurisprudence and in three [recent](#) decisions from [February](#) and [March](#) 2021 ruled that refugee status must be granted to UNRWA-registered applicants from Gaza, because assistance and protection in Gaza is ineffective due to the UNRWA's difficulties. Conseil du Contentieux des Etrangers (CALL). See also CALL Press release <https://www.rvv-cce.be/fr/actua/lassistance-et-protection-lunrwa-ont-cesse-detre-effectives-gaza>, 12 March 2021.

were serious reasons to believe that he is guilty of crimes, in particular at the *Centre Territorial de Recherche et d'Investigation* (CTRI) in Blida, a place where, according to available information, torture and murder were systematic. The council considered that all elements constituting a war crime were present. The council considered that there were serious reasons to believe that the applicant conducted investigations and identified persons suspected of terrorism, resulting in their murder or torture. It further considered that this is a substantial and sufficient contribution to engaging his personal responsibility in the sense of Article 25 of the Rome Statute. The council added that the acts of which the applicant was accused were part of the fight against terrorism did not justify murder and torture of people, whether proven terrorists or not. Accordingly, the council noted that the applicant did not present any grounds to exclude his personal responsibility from the crimes and that he should be excluded from international protection on the basis of the Geneva Convention, Article 1F(a).

In addition, CALL [ruled](#) on the exclusion of a Rwandan applicant on the grounds that there are serious reasons to believe that he committed war crimes and crimes against humanity as a member of the Rwandan Patriotic Front (RPF) during the 1994 genocide. The Rwandan national applied for international protection on grounds of persecution for political reasons. The applicant declared having, as a RPF sergeant, carried out numerous round-ups of civilians who were later killed during the genocide and noted his affiliation with the opposition party Rwanda National Congress (RNC) in Belgium. The council considered that the claim to international protection on grounds of persecution was well-founded. However, the council also noted that all the material elements of a crime against humanity were present and that the applicant could not in these case use grounds for excluding responsibility as the orders received by superiors were manifestly unlawful. The council further noted that the applicant did not present any grounds to exclude personal responsibility with regards to his participation in crimes against humanity. Therefore, it excluded the applicant from international protection on the basis of the Geneva Convention, Article 1F(a).

5.9.3 Serious non-political crimes

On 23 April 2020, CALL [ruled](#) on the exclusion of an applicant based on serious non-political crimes outside the host country. The applicant, a Turkish national, was sentenced on several occasions for drug trafficking in Germany. The CGRS rejected the asylum application mainly on the grounds that there were serious reasons to believe that he was guilty of a non-political crime outside the host country, namely Belgium. The applicant claimed that the offences he was accused of were committed in Germany at a time when he enjoyed refugee status and, therefore, that they did not fall within the scope of the exclusion clause. The council considered that the host country or the country of refuge was the one in which the applicant was applying for international protection and not the one in which the acts were committed. The council concluded that there were reasons to believe that the applicant was guilty of serious non-political crimes outside the host country and excluded him from international protection on the basis of Article 1F(b) of the Geneva Convention.¹¹

In another case concerning two Albanian applicants, CALL [applied](#) the exclusion clause on the grounds that there were serious reasons to believe that they were guilty of a serious non-political crime outside the host country. The applicants applied for international protection on grounds of persecution due to a vendetta between their family and the family of the person they killed in 2004. They had been found guilty of the murder by the Albanian Court of Appeal in Tirana. The council considered that the

¹¹ The Council referred to the EASO Judicial Analysis on [Exclusion: Articles 12 and 17 of the Qualification Directive \(2011/95/UE\)](#), January 2016.

applicants did not establish that the judgments were the result of corruption or that their reasoning was flawed. Also, the council noted that neither national law nor the relevant provisions of international law provide for the existence of grounds for expiation or mitigation of responsibility that might deny the exclusion of international protection. In light of these elements, the council considered that the fact that they had expressed regret, served their sentences and benefited from early release, and that a period of time had elapsed since the offences were committed, did not allow the conclusion that these circumstances were sufficient to prevent the application of the exclusion clauses.¹²

5.9.4 Acts contrary to the purposes and principles of the United Nations

The CNDA in France [ruled](#) to exclude from the benefit of international protection a Central African national sentenced by the International Criminal Court to 11 months of imprisonment for witness-tampering. The applicant applied for international protection on grounds of risk of persecution for political opinions in case of a return. His application was rejected by the French Office for the Protection of Refugees and Stateless persons (OFPRA) and reached the CNDA on appeal. The CNDA ruled that the interference with the administration of international criminal justice and the offence of witness-tampering in particular constitutes an act contrary to the purposes and principles of the United Nations as it undermines the credibility and integrity of testimonies. Therefore, the court rejected the appeal lodged by the applicant against the OFPRA decision by which his request for asylum was denied.

The French Council of State [ruled](#) on whether expressing sympathy on the Internet for armed groups opposed to the Syrian regime constitutes a serious threat to public order, public security or state security. The case concerned a Syrian national who was rejected international protection on grounds that he was linked with the al-Nosra group in Syria and involved in sending jihadists from Turkey to Syria. On appeal, the French CNDA granted subsidiary protection to the applicant. The Council of State confirmed the decision and noted that the evidence did not demonstrate serious reasons to believe that the applicant would constitute a serious threat to public order, public security or state security, given the absence of any report or surveillance measure decided against him. Subsidiary protection was granted on the grounds that the applicant, if returned to his country of origin, would run a real risk of being subjected to a serious threat.

The French Council of State [held](#) that actions in support of an organisation that commits, prepares or incites terrorist acts by participating significantly in their financing constitute acts contrary to the purposes and principles of the United Nations. The case concerned a Sri Lankan national whose refugee status was withdrawn by OFPRA after his criminal conviction for acts in connection with a terrorist organisation. The Council of State recalled that the definition of terrorist acts comparable to acts contrary to the purposes and principles of the United Nations supporting and financing an organisation that commits, prepares or incites the commission of terrorist acts. The council further noted that having served the sentence or not representing a threat to public order had no impact as the application of this exclusion clause is linked to the existence of danger on the state of refuge.

The CNDA in France [ruled](#) on the exclusion from refugee status of a former head of the ‘Amazons’ of Muammar Gaddafi. The applicant, a Libyan national, served for the former Libyan head of state, Muammar Gaddafi, and exercised important functions with his close female guard. Her

¹² The Council referred to the EASO Judicial Analysis on [Exclusion: Articles 12 and 17 of the Qualification Directive \(2011/95/UE\)](#), January 2016.

application for asylum was rejected by OFPRA, which found that there are serious reasons to believe that she contributed or assisted in the commission of acts contrary to the purposes and principles of the United Nations without seeking at any time to prevent or to dissociate from them. The appeal was rejected by the CNDA, which held that the applicant unreservedly assumed a leading role in the system of trafficking and sexual exploitation of a large number of young women within the structure known as the Amazons and set up for the benefit of Muammar Gaddafi.

The Swedish Migration Court of Appeal [ruled](#) that when a case is dealt with as a national security case, not only exclusion clauses must be considered but also protection grounds must be examined. The case concerned a person whose application was rejected and prohibited from returning to Sweden. The Migration Court of Appeal ruled that, as it was recommended by the Security Police, the case contained sensitive issues and different security interests prevailed. If a residence permit is contemplated, it is necessary to examine whether there are grounds for refusing the alien's status or residence permit. However, the Migration Agency rejected the application because there were no grounds for protection and no other grounds for granting a residence permit. There was therefore no need to examine whether the applicant should be excluded from refugee status. The Migration Court found the applicant asylum report to be reliable. It then found that he had been recruited to a terrorist organisation in his home country and that he was at risk of persecution by the authorities because of his links with the organisation. The Migration Court of Appeal noted, however, that the Migration Court did not address the issue of exclusion from refugee status and did not rule on whether the applicant should be refused refugee status and residence permit because of his links with a terrorist organisation. The judgment of the Migration Court was annulled and the case referred back for further consideration.

The Czech Supreme Administrative Court [ruled](#) on an application for international protection from a Turkish national of Kurdish ethnicity. The applicant claimed a well-founded fear of persecution on the basis of his nationality and political opinion, as he was suspected by Turkish authorities of being a PKK (Kurdistan Workers' Party) member or supporter. The administrative authority did not grant international protection and the Regional Court in Ostrava dismissed the applicant's action for annulment. On appeal, the Supreme Administrative Court quashed the judgment of the administrative authority and the Regional Court. It found irrelevant that the applicant had expressed, during the interview with the administrative authority, his support for the political goals of the PKK, even though the PKK has been included on the EU list of terrorist organisations. The Supreme Administrative Court confirmed that, in accordance with the recast Qualification Directive, Article 10(2), it is immaterial, when assessing if the applicant has a well-founded fear of being persecuted, whether he possesses the characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution. The persecution of the applicant for the reason of his real or attributed political opinion was in this case closely related to other reasons, namely nationality. The Supreme Administrative Court also noted that the administrative authority and the Regional Court failed to offer persuasive arguments for why they believed that the applicant would be able to find internal protection in other parts of Turkey. The court instructed the administrative authority that in the course of further procedure it is obliged to grant refugee status to the applicant unless new circumstances would arise. The court emphasised that if this binding legal opinion was disregarded by the administrative authority the administrative courts would be subsequently obliged to directly grant refugee status.

5.10 Implicit withdrawal of an application

The Supreme Administrative Court in Slovenia [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 and the decision was upheld by the Supreme Administrative Court.

In Greece, the Administrative Court of Appeal [confirmed](#) a decision to discontinue the examination of an application due to an unjustified absence at the personal interview. The court noted that the applicant did not attend the interview at the notified date and time and the determining authority lawfully discontinued the examination and rejected his request to continue the procedures as he only invoked vague, unclear and not specific arguments.

5.11 Forms of protection

The Italian Civil Court of Naples [granted](#) a residence permit on humanitarian grounds to a Pakistani applicant due to the COVID-19 situation in the country of origin. The applicant originally applied for refugee status and subsidiary protection, but the applications were rejected. However, assessing of its own motion the security situation resulting from the COVID-19 pandemic in Pakistan (scarce health services especially for the poor and the high number of positive COVID-19 cases in the Punjab region) in combination to the applicant's profile (lack of ties with his country of origin and integration in Italy) the court granted a residence permit on humanitarian protection grounds.

Also in Italy, the Turin Tribunal [granted](#) humanitarian protection to a Guinean national by applying the *non-refoulement* principle and considering the vulnerable situation of the applicant and his socio-economic integration in Italy.

6 Reception conditions

6.1 COVID-19 and reception conditions

During COVID-19 restrictions, reception conditions were provided even when applicants would have normally been excluded from receiving these benefits under normal circumstances.

In Czechia, the Supreme Administrative Court [ordered](#) the Ministry of the Interior to continue providing accommodation in an asylum centre to a family of applicants from Kirgizstan who had lost their status of applicants for international protection. The court justified this urgent interim measure by the exceptional circumstances due to the COVID-19 pandemic, as it would have been very difficult or virtually impossible for the applicants to find another accommodation in Czechia and their eventual voluntary return to the country of origin was at that time completely excluded.

Similarly, due to the difficulties in finding suitable accommodation during the pandemic, the Italian Civil Court [ordered](#) interim measures which suspended the execution of a decision revoking accommodation in a reception centre for an asylum applicant.

6.2 European courts on social assistance and living conditions

At the European level, the CJEU ruled on the effects of return decisions on the provision of social assistance and the ECtHR examined living conditions in relation to the European Convention, Article 3.

On 30 September 2020, in the case of [LM \(C-402/19\)](#), the CJEU ruled on the interpretation of the Return Directive, Articles 5, 13 and 14(1b) and on the consequences of the automatic suspensive effect of a return decision on social assistance benefits. The CJEU held 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 an irreversible deterioration of health, and the third-country national does not have the means to provide for himself.

In July 2020, the ECtHR ruled in the case of [N.H. and Others v France](#), where it found inhuman and degrading living conditions of applicants for international protection left without means of subsistence and acknowledged a violation of the European Convention, Article 3. The applicants' complaints regarded the lack of material and financial support to which they were entitled under French law that led to inhuman and degrading living conditions for several months. According to the court, such living conditions, combined with the lack of an appropriate response from the French authorities, led to a situation that was incompatible with the European Convention, Article 3.

In [B.G. and Others v France](#), the ECtHR held unanimously in September 2020 that the living conditions in a temporary tent camp in a carpark did not violate the European Convention, Article 3. 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 based on Article 3. The court also noted that the authorities had provided for basic needs,

medical supervision for the children and accommodation in a permanent structure was offered 3 months and 11 days after their arrival in the camp.

6.3 National courts reviewing reception-related measures

National courts reviewed several aspects of reception conditions for asylum applicants, including the provision of benefits and the moment from which the provision takes place, the limitations of certain benefits or their withdrawal, and the equal treatment between applicants for international protection and EU+ nationals.

6.3.1 Provision of material reception conditions

The French Administrative Tribunal of Lille [rejected](#) a request for interim measures to continue food and beverage distribution in the centre of Calais. The request was made by associations that asked the interim relief judge to suspend the decree prohibiting the distribution of food and beverages by several associations in the city centre for an alleged violation of fundamental freedoms of migrants and the associations. 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.

6.3.2 Start of material reception conditions

In Belgium, the Brussels Court of First Instance [underlined](#) that material reception conditions should be provided from the moment of (online) registration. The court condemned the Belgian state for not providing access to material reception to applicants who made their application electronically because of the temporary suspension of registrations of applications during the COVID-19 pandemic.

Further limitations were examined in Belgium by the Council of State who issued an [opinion](#) on the planned amendment to the Reception Act, which would allow the federal agency for the reception of asylum seekers to limit material reception conditions for applicants submitting a subsequent application (until the application is found to be admissible) or applicants in the Dublin procedure. The court specifically noted that an automatic exclusion from material reception conditions is not possible and referred back to the CJEU judgment of [Jawo](#) to underline that a general refusal of material reception conditions for applicants in the Dublin procedure is not permitted.

6.3.3 Withdrawal of reception measures

The Italian Administrative Tribunal of Molise ruled in a [case](#) where reception measures were withdrawn due to serious or repeated breaches of the rules of the facility in which the asylum applicant was accommodated. The tribunal applied the [Haqbin](#) judgment, which held that Directive 2013/33/EU, Article 20(4) and (5), read in the light of the EU Charter, Article 1, must be interpreted as meaning that a Member State cannot withdraw, even temporarily, material reception conditions if that would deprive the applicant of the most basic needs and it must impose sanctions that comply with the principle of proportionality and respect for human dignity. Thus, in the light of the [Haqbin](#) judgment, the court disappplied the Legislative Decree No 142/2015, Article 23(e).

6.3.4 Restrictions on freedom of movement

The issue of restrictions on the freedom of movement of applicants arose in Spain regarding applicants in Ceuta and Melilla, in Slovenia in a [case](#) concerning an applicant who was deemed to have lodged an asylum application to delay a removal and in the [case](#) of an applicant who left the reception centre without explanation. The Spanish Supreme Court held that both applicants from [Ceuta](#) and [Melilla](#) have the right to freedom of movement throughout the entire territory of the country and may choose to reside in any region of Spain, while under the obligation to notify the authorities of any change of address.

6.3.5 Equal treatment

In Italy, the Constitutional Court [ruled](#) that Law-Decree No 113/2018, Article 13 was unconstitutional and discriminated between Italian citizens and asylum applicants as it excluded asylum applicants from being enrolled in civil registries of municipalities, which consequently precluded them from obtaining identity documents and accessing other services.

Furthermore, in Poland, the Supreme Administrative Court [held](#) that neither the “Act on family support and the foster care system” nor the “Act on the granting of protection to foreigners on the territory of the Republic of Poland” preclude a foreign national from receiving support from various sources financed from public funds. Therefore, the fact that a foreign national has obtained assistance based on the provisions of the act on the granting of protection to foreigners on Polish territory does not preclude him from benefiting from the measures provided for under the ‘Good start’ programme and cannot constitute an argument in favour of refusing to grant such funds.

7 Detention

7.1 Detention and COVID-19

In Luxembourg, an applicant held in detention awaiting deportation challenged his detention arguing that his deportation could not take place due to the COVID-19 pandemic and there was insufficient reasoning for his detention. The Administrative Tribunal [ruled](#) that COVID-19 measures are only temporary and there was no evidence that deportation could not eventually take place.

The same court [ruled](#) on the prolongation of detention while a return was not possible due to COVID-19 travel restrictions. The case concerned a national of Morocco who was due to be returned but his detention was prolonged due to the COVID-19 pandemic. The court noted that a risk of absconding was presumed in this case while the deportation of the applicant was postponed only for a certain time. Thus, the court concluded that the detention measure was legal and proportionate.

In Lithuania, the Regional Court [decided](#) not to impose detention for an applicant who breached the reception centre rules (including COVID-19 health regulations). The court assessed the applicant's case and concluded that the grounds for the detention of an alien as enshrined by both national and EU laws were not fulfilled and therefore the applicant cannot be detained. The court also held that there was no evidence in the case that the applicant posed a threat to state security or public order, nor that he would abscond.

The Swiss Federal Court [ordered](#) the release of a third-country national from detention while pending a removal due to COVID-19 travel restrictions, as it was found to be contrary to the European Convention, Article 5. However, this did not rule out the possibility of him being taken back into deportation detention if the pandemic situation in Algeria changes fundamentally. As a milder measure and an alternative to detention pending a removal, the applicant may be required to report to the police.

7.2 Detention reviewed by European courts

As mentioned in Section 1 on access to procedures, the CJEU's Grand Chamber examined several aspects in the judgment [European Commission v Hungary](#) of 17 December 2020. The CJEU confirmed its previous finding in [FMS and Others](#) that the conditions in which applicants and those subject to return were held in the transit zones of Röszke and Tompa amounted to detention, as they could not lawfully and freely leave the area. The CJEU also noted all the safeguards that need to be provided in detention.

In a similar situation, the ECtHR ruled in [R.R. and Others v Hungary](#) that there had been a violation of the European Convention, Article 3 for the confinement of minors who are vulnerable, the lack of the state's attention to assess the needs of the applicants, and the living conditions in the Röszke transit zone. The court also found that the extended duration of the stay of the applicants in the transit zone, the considerable delays in the examination of the asylum claims, the conditions of the stay and the lack of judicial review of the applicants' detention in the transit zone amounted to a violation of the Convention, Article 5 (1) and (4).

On 25 June 2020, the CJEU ruled in [Ministerio Fiscal \[Spain\] v V.L.](#) (C-36/20 PPU) that the fact that it is not possible to find accommodation in a humanitarian reception centre cannot justify holding an applicant for international protection in detention.

Concerning the lawfulness of detaining a Russian national by the Slovak authorities in view of an extradition to Russia, the ECtHR found in [Shiksaitov v Slovakia](#) a violation of the European Convention, Article 5 due to the authorities' lack of diligence in determining the admissibility of extradition to the country of origin, despite refugee status being granted by another EU Member State. The applicant was granted refugee status in Sweden based on political opinions, but an international arrest warrant was issued against him for acts of terrorism committed in Russia and he was detained by Slovak authorities when apprehended at the border. The court held that the Slovak authorities failed to proceed actively and diligently when gathering relevant information and determining the legal aspects of the case, and that the grounds for detention had not been valid for the whole period.

The ECtHR ruled in [Nur and Others v Ukraine](#) on the legality of the detention of minors placed in a temporary holding facility in Ukraine because they were unable to present identity documents. The case concerned two applicants who complained about the lawfulness of their detention and not having access to a procedure to challenge the decision. The court found that the applicants had been held in the temporary holding facility for longer than the 10 days allowed by domestic law. In addition, under the European Convention, Article 5(4), the court held that the applicants were not given access to a procedure to examine speedily the lawfulness of the detention. One of the applicants complained about the detention conditions and about the alleged lack of medical and psychological assistance, but the court rejected this complaint.

7.2.1 Length of detention

In [MK v Hungary](#) concerning a Pakistani applicant who was detained for more than 5 months after illegally crossing the Hungarian border, pending identification and asylum procedures, the ECtHR found a violation of the European Convention, Article 5(1). The ruling was based on the unjustified duration of the detention and that the case was declared admissible in the meantime and the applicant was granted subsidiary protection.

7.2.2 Minors

In [Bilalova and Others v Poland](#), the ECtHR held that detaining minors for more than 6 months in closed facilities pending the analysis of their asylum applications is contrary to the European Convention, Article 5(1). The ECtHR found a violation of the same provision in [Moustahi v France](#) as unaccompanied minors were placed in *de facto* administrative detention with unrelated adults and were not provided with the right to an effective remedy.

7.2.3 Families

In [A.B. and Others v Poland](#), the ECtHR ruled on administrative detention in a case of asylum applicants with a small child who complained about a violation of their right to private and family life after being placed in administrative detention and that the authorities had not considered alternative measures to detention. The court stated that the placement measure was taken to prevent illegal immigration and to control the entry and residence of aliens. In addition, the court held that there was a risk of absconding, thus the administrative detention had been justified. The court also concluded that there

were no particular concerns about the living conditions in the centre. However, the court found a violation of the European Convention, Article 8, for the failure to provide sufficient reasons to justify the 10-month detention without considering alternative measures for a family with a small child.

7.2.4 Conditions of detention

The ECtHR held in [E.K. v Greece](#) that there had been no violation of the Convention, Article 3 concerning the conditions of detention in the Soufli and Feres border posts, the Attika Sub-Directorate for Aliens (Petrour Ralli) and the Amygdaleza Detention Centre, where the applicant had been detained. However, the court concluded that there had been a violation of the Convention, Article 5(4).

7.2.5 Detention pending a removal

On 2 July 2020, the CJEU held in the [WM case](#) that illegally-staying third-country nationals may be detained for the purpose of a removal following an individual examination. The case concerned the interpretation of the Return Directive, Article 16(1) and the lawfulness of the detention of a Tunisian national who was held separated from ordinary prisoners as he was considered to pose a serious threat to the life and limb of others or to national security.

In [M.S. v Slovakia and Ukraine](#), the ECtHR found a violation of the Convention, Article 5(2) and (4), as there was no evidence that the applicant had been informed, in a language that he understood, of the reasons for his detention. There was also no evidence that the applicant had been provided with a lawyer and an interpreter during the proceedings pending an expulsion.

7.3 Detention reviewed by national courts

7.3.1 Deprivation of liberty

In Switzerland, the Federal Administrative Court [ruled](#) in a case of an applicant who submitted an appeal for being allocated to a special reception centre for uncooperative applicants due to disruptive behaviour at the federal asylum centre where he was residing. The applicant complained about deprivation of liberty within the meaning of the European Convention, Article 5 and under the European Convention, Article 13, as the State Secretariat for Migration did not issue a formal and contestable decision on the allocation to a special centre. The Federal Administrative Court concluded that there was no deprivation of liberty when an asylum applicant is assigned to a special reception centre due to his conduct and an effective remedy was provided.

7.3.2 Legality of detention

The Estonian Supreme Court [assessed](#) whether detention due to repeated irregular border crossings can be justified on public security grounds. The case concerned an applicant who was found illegally crossing the border and made an application for international protection while being detained. The court ruled that there was no genuine, serious threat to public security to justify detention and noted that the risk should be evaluated with regard not only to the evidence of danger but also to specific circumstances in favour of the person, such as family ties, accommodation and income.

In Malta, the Court of Magistrates [ordered](#) on 29 October 2020 the immediate release of an illegally-detained applicant with a medical condition, while noting the significant number of illegally-detained asylum applicants overall. 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, the applicant and others remain detained without a legal basis.

In November 2020, the court again [ordered](#) the immediate release of detained asylum applicants due to arbitrariness and a lack of a 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 the 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 First Hall Civil Court in Malta [found](#) a violation of the ECHR, Articles 5 and 8, and the Constitution of Malta for the re-arrest of asylum applicants who were not provided with an effective remedy against detention or a return order. The two applicants from Mali were systematically detained, and the court concluded that the arrest was illegal as the applicants did not have the possibility to challenge the legality of detention and to access a lawyer. Furthermore, a written return decision had not been produced and the authorities did not take into consideration less coercive measures to identify the applicants and implement a return.

7.3.3 Alternative measures to detention

In Italy, the Justice of the Peace [revoked](#) an alternative measure to detention enabling the applicant to present original identity documents in a regularisation procedure. The Albanian national had made a request for regularisation under Legislative Decree No 34/2020, Article 103, and requested the revocation of the alternative measure to detention. The measure comprised of presenting himself at the detention centre for repatriation and submitting original identity documents. The Justice of the Peace in Rome revoked the alternative measure and did not merely suspend it, due to the time elapsed since the measure was implemented in his case. By revoking the measure and not merely suspending it, the Justice of the Peace enabled the applicant to receive back the identity documents and duly present them for the regularisation procedure.

In Sweden, the Migration Court of Appeal [clarified](#) the legal framework on supervision as an alternative measure to detention. If a third-country national is in custody as part of a return procedure covered by the Return Directive and submits an asylum application solely to delay or prevent the enforcement of a return decision, there are grounds for detaining the asylum seeker under the Aliens Act and the recast Reception Conditions Directive. When the conditions for detention in such a situation are met, there is also a basis for supervision. The court noted that the possibility for Member States to supervise a third-country national is regulated by national law. In addition, the court noted that supervision can thus be used instead of detention, but this presupposes that there is a ground for detention.

7.3.4 Families

In Belgium, the Council of State [assessed](#) the amendments to the royal decree regulating the administrative detention of foreigners. The Council of State 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 only had access to outdoor areas for 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.

8 Content of protection

8.1 European courts

8.1.1 Family reunification

On 16 July 2020, in [B. M. M. and Others v Belgium](#), the CJEU ruled that in determining whether a family member is a minor in family reunification applications, the date of submission of the application for entry and residence is to be taken into account and not the date of the decision. The case concerned applicants who were still minors when they initiated proceedings but reached majority age by the time a decision was pronounced. The CJEU also noted that the action against the rejection of an application for family reunification of a minor child cannot be rejected as inadmissible on the sole ground that the child has reached majority during the court proceedings.

8.1.2 Equal treatment

On 2 April 2020, the Grand Chamber of the CJEU ruled in the case of [I.N.](#) on non-discrimination between nationals and asylum beneficiaries who subsequently become nationals of an EU+ country. The case concerned a national of Russia, who was granted asylum in Iceland and subsequently became a national. He was arrested in Croatia and, based on an international notice by Interpol in Moscow, Russia sought his extradition from Croatia. Before the Supreme Court of Croatia, I.N. invoked a risk of torture and inhuman and degrading treatment in the event of extradition to Russia. In a reference for a preliminary ruling, the CJEU held that the requested Member State must first verify the risk of the person being subjected to the death penalty, torture or inhuman or degrading treatment or punishment. In the context of this verification, the fact that the person, before acquiring the nationality of the EFTA state, was granted asylum specifically because of the prosecution which gave rise to the extradition request constitutes a particularly serious element. Furthermore, the court ruled that, before considering executing that request, Croatia must inform the EFTA state (Iceland) to enable it to request the surrender of its national, provided that it is competent to prosecute him for acts committed outside the national territory. The CJEU further held that, in this case, which concerned a national of a third state rather than an EU citizen, Articles 18 (non-discrimination based on nationality) and 21 (freedom of movement and residence for EU citizens) of the TFEU are not applicable. It added that the situation in question did fall within the scope of EU law, specifically the EEA Agreement. The court further held that, because I.N. had been granted asylum in Iceland, it was a particularly serious factor for the purposes of the assessment and in the absence of developments in Russia, Croatia should refuse the extradition.

On 16 July 2020, in [Rana v Hungary](#), the ECtHR ruled on access to a gender recognition procedure for an Iranian asylum beneficiary in Hungary. The application for a gender and name change was rejected in Hungary by the Immigration and Citizenship Office without an analysis on the merits and the office informed the applicant that gender reassignments were registered by the Office of the Registrar of Births, Marriages and Deaths which, in the applicant's case, was not possible as the existing legislation only provided such changes for those whose birth had been registered in Hungary. The ECtHR found that by refusing access to the legal gender recognition procedure, Hungarian authorities had not struck a fair balance between public interest and the applicant's right to respect for his private life.

8.2 National courts

8.2.1 Integration facilities

In 2020 there were several cases in which integration facilities for beneficiaries of international protection offered by other EU+ countries were analysed before the courts.

The conditions in Bulgaria were analysed by the Court of the Hague on 19 October 2020. It was [held](#) that Bulgaria does not offer proper integration facilities to beneficiaries of international protection. The case concerned a Syrian woman with four (now) adult children who were granted refugee status in Bulgaria and subsequently entered the Netherlands and submitted applications for temporary asylum residence permits. The applicants argued that Bulgaria has no integration facilities for permit holders, they cannot obtain an identity document without accommodation and are unable to obtain accommodation without an ID. The court held that permit holders in Bulgaria do not have access to social housing, as this is available only to Bulgarian nationals, and due to the legal impossibility of obtaining an identity document, it is impossible for the applicants to access private housing. The court further concluded that access to housing and other rights in Bulgaria would be legally and factually impossible for the applicants, as for 7 years the Bulgarian authorities had made no effort to provide integration facilities.

Similarly, the conditions offered to beneficiaries of international protection in Greece were analysed by courts in Switzerland and Czechia. In February 2020, the Swiss Federal Administrative Court [assessed](#) living conditions in Greece for a beneficiary of subsidiary protection and concluded that, despite irregularities in accessing low-cost housing or the labour market, a lower standard of living would not expose the applicant to a serious risk of inhuman and degrading treatment. Thus, the court decided that a removal to Greece is possible.

In Czechia, the Supreme Administrative Court [ruled](#) in November 2020 that the situation in Greece was generally considered improved. In addition, the Supreme Administrative Court referred to the principle of mutual trust and the judgment of the CJEU in [Ibrahim and others](#) (C-297/17, C-318/17, C-319/17 and C-438/17), adding that, even when considering the Common European Asylum System and the principle of mutual trust between Member States, the authorities cannot disregard the risk of inhuman or degrading treatment. The court further added that the burden of proof is on the applicant who must raise, during the interview, any doubts about possible risks. In this case however, the complaint was dismissed considering the applicant's passivity in alleging anything specific in this regard or provide any evidence to prove the risks of inhuman or degrading treatment in Greece due to extreme material deprivation or other inhuman situation.

8.2.2 Family reunification

The term 'child' for the purpose of these procedures was [interpreted](#) by the Irish Supreme Court on 9 June 2020 as including non-biological children who were adopted by the sponsor.

8.2.3 Cessation of protection

In Estonia, the Circuit Court of Tallinn [rejected](#) the cessation of protection status for the family of a beneficiary of subsidiary protection who flew once to Afghanistan, his country of origin. The court held that the SBGB should have assessed the best interests of the children for which cessation was

considered and should have taken into consideration their integration path and their social ties with Estonia.

When assessing the cessation of refugee status, the Supreme Administrative Court in Finland [held](#) on 29 May 2020 that the authorities must take into account the need for individual protection of the refugee. In this case the beneficiary, a Vietnamese national, had travelled twice to the country of origin. However, considering that the trip was done using the refugee travel document and Vietnamese visa, and not on a Vietnamese passport, the court considered that the beneficiary had not voluntarily used the protection of the country of origin. The court made reference to the CJEU case of [Aydin Salahadin Abdulla and Others v Bundesrepublik Deutschland](#) (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08).

In a similar case, the same court [decided](#) on 25 November 2020 on the criteria for cessation of refugee status. The Supreme Administrative Court stated that for the termination of refugee status the FIS must establish that the circumstances based on which A. was granted the status ceased to exist and there was a significant and lasting change in circumstances. It was held that the FIS decision has not provided any information on whether the ethnic reasons for granting A. refugee status had ceased and that the applicant's age and good health were irrelevant in the assessment of the refugee status cessation. Moreover, the Supreme Administrative Court concluded that there had been no significant and permanent change in the security situation in A.'s country of origin and that, in order to cease the refugee status, the criteria which led to the granting of the status can no longer be considered valid. The Supreme Administrative Court underlined that the assessment on the cessation of refugee status does not include an assessment on whether, on grounds of changed country of origin information, an applicant has the possibility to settle safely in another area of his/her country of origin.

In contrast, when a person voluntarily obtains a passport from the country of origin, the national is considered to have put himself/herself under the protection of the authorities in the country of origin. This was the case in France, where the CNDA [decided](#) to cease the protection afforded to a Russian national who had requested and obtained a Russian Federation passport at the Strasbourg consulate. The CNDA applied the cessation clause in the absence of any other reasons to maintain the refugee status.

8.2.4 Withdrawal of protection

In Germany, the Regional Administrative Court [held](#) in February 2020 that a 6-year imprisonment sentence for serious rape justifies the withdrawal of subsidiary protection. On the question of the danger to the general public emanating from the perpetrator pursuant to the Asylum Act, Section 4(2), Sentence 1, No 4, it was held that a concrete danger of repetition exists if there is a serious threat of new comparable criminal acts by the foreigner in the future. In this context, facts that may result in a favourable prognosis for the foreigner constitute a weighty indication. However, they are not a presumption against the existence of a risk of repetition.

In France, the Council of State [decided](#) in February 2020 on a case concerning an Ingushetian whose refugee status was revoked by OFPRA due to national security concerns. The CNDA annulled the first instance decision holding that the applicant's remarks praising terrorism had not been made in public and, based on the applicant's statements, the existence of proceedings in Ukraine for criminal association in relation to terrorism could not be considered established, as she had been called to the police in Ukraine but she had not been arrested. In contrast, the Council of State considered that the CNDA erred when it considered that there was no national security concern simply due to the fact that

the applicant's statements had not been made in public. Furthermore, the Council of State sent the case back to the CNDA holding that a decision should not be made based solely on the applicant's statements and that further investigation was needed.

In Czechia, the Supreme Administrative Court [ruled](#) on 23 April 2020 on the withdrawal of refugee status due to a conviction for a particularly serious crime (burglary and extortion). According to the Supreme Administrative Court, the assessment of a particularly serious crime must be done with reference to the qualification of the crime by national criminal law and, in line with the CJEU's judgment in *Ahmed*, may include the nature of the act at issue, the consequences of that act, the form of procedure used to prosecute the crime, the nature of the penalty provided and taking into account whether most jurisdictions also classify the act at issue as a serious crime. In addition, the Supreme Administrative Court concluded that the additional component of "danger for the national security" is added to the condition of "conviction of particularly serious crime" and that administrative authorities are obliged to examine among other things if the danger is actual and present.

In Belgium, on 19 May 2020, CALL [dismissed](#) the withdrawal of refugee protection for alleged extremist and terrorist activities. The determining authority, the CGRS, had based its decision to withdraw protection on notes from the CUTA (Coordination Unit for Threat Analysis), which had classified the applicant at threat level 3 ('serious'). The council held that the notes of CUTA can be decisive if they contain concrete, sufficiently objective and weighty information from which a real and current danger to national security can be inferred, but it considered that this was not the case, as mere suspicions or unsubstantiated suppositions are not sufficient. Furthermore, that it was not possible to ascertain the activities in which the applicant had engaged in since the recognition of the refugee status in Belgium.

In Denmark, on 27 May 2020, the Refugee Appeals Board [withdrew](#) the residence permit of a Somali national on the basis of the general conditions in Mogadishu as the basis for the residence permit was no longer present. The applicant had relatives in Somalia and had been living in Denmark for 8 years, had learned Danish, completed 9 classes and the theoretical part of a plumbing training, and had been employed on a permanent basis by a transport company as a driver. The board thus considered that he had a substantial connection both with Denmark and Somalia, and the withdrawal of the residence permit would constitute an interference of some intensity with his right to privacy. However, the Refugee Appeals Board held that even if the person has a significant connection to Denmark and the withdrawal would be "an interference of some intensity in his right to privacy", the withdrawal is legitimate and serves a recognised purpose, it weighs more heavily on the basis of an overall assessment and is capable of justifying the interference. Thus, the Refugee Appeals Board upheld the decision to withdraw international protection.

9 Return

9.1 COVID-19 and return

In addition to assessing updated country of origin information prior to a return or deportation, national courts assess now review COVID-19-related economic and health situations and the travel restrictions to determine the possibility of return.

German regional administrative courts banned the deportation of vulnerable applicants who would not be able to ensure a minimum level of subsistence due to the pandemic, in addition to factoring in other aspects in the country of origin. This was the case for an elderly Armenian couple suffering from serious illnesses,¹³ a minor Ethiopian girl at risk of female genital mutilation (FGM)¹⁴ and a young Ethiopian man who would be unable to establish a new livelihood and find employment due to the COVID-19 pandemic, among other factors.¹⁵ The same conclusion was reached by regional administrative courts with regard to the humanitarian and economic situation in Afghanistan, coupled with individual circumstances and health conditions; thus, a ban on deportation was allowed considering that it would be very unlikely that the applicants would be able to secure a minimum level of subsistence.¹⁶ Similarly, the Higher Federal Administrative Court [held](#) that the lower court must consider the effects of the COVID-19 pandemic on the situation of the person to be returned to the country of origin. The court further stated that actual conditions in Kabul have deteriorated to such an extent due to the global COVID-19 pandemic that the question of the deportation of a person without minimum subsistence conditions and family and social networks are crucial. The Higher Court concluded that a return would put the person at risk of treatment contrary to the European Convention, Article 3 and banned the deportation. The same approach was [confirmed](#) in a recent judgment from December 2020 by the Higher Administrative Court.

The German Federal Constitutional Court [issued](#) interim measures on 9 February 2021 to an applicant and stayed the implementation of a return order pending a decision on the constitutional complaint. The Federal Constitutional Court based its decision on the fact that the administrative court failed to properly assess the possibility of return to Afghanistan under the current economic and humanitarian crisis caused by COVID-19 and the individual circumstances of the applicant, precisely if he would be able to reach his place safely, to connect with family/social network and to have ensured a minimum level of subsistence upon return.

¹³ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicants \(Armenia\) v Federal Office for Migration and Refugees \(BAMF\)](#), 6 July 2020.

¹⁴ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Ethiopia\) v Federal Office for Migration and Refugees \(BAMF\)](#), 27 May 2020.

¹⁵ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Ethiopia\) v Federal Office for Migration and Refugees \(BAMF\)](#), 19 May 2020.

¹⁶ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Afghanistan\) v Federal Office for Migration and Refugees \(BAMF\)](#), 3 June 2020; Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Afghanistan\) v Federal Office for Migration and Refugees \(BAMF\)](#), 17 August 2020; Germany

The Austrian Federal Administrative Court [granted](#) suspensive effects to an appeal against a return decision based on a risk related to the COVID-19 in relation to two vulnerable applicants who fell into a risk group due to age and previous illnesses if returned to India.

Conversely, in other cases national courts assessed that the individual situation coupled with the COVID-19 situation did not expose the applicants to risks of inhuman and degrading treatment contrary to the European Convention, Article 3, and dismissed the requests for bans on deportation, for example to Afghanistan,¹⁷ Nigeria,¹⁸ Tunisia,¹⁹ Colombia,²⁰ Gaza Strip²¹ and Ethiopia.²²

9.2 European courts and the UN on expulsion and deportation

9.2.1 Relying directly on the Return Directive

In [MO](#) (C-568/19), which concerned the removal of third country nationals from Spain, the CJEU ruled 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. When national legislation provides for either a fine or the removal of third-country nationals staying illegally in the territory of a Member State and the latter measure may be adopted only if there are aggravating circumstances concerning the national, in addition to the illegal stay, the national authorities may not rely directly on the Return Directive to adopt and enforce a return decision.

9.2.2 The right to an effective remedy and the risk of ill treatment

On 30 September 2020, the CJEU ruled in [B. \(C-233/19\)](#) and [LM \(C-402/19\)](#), on the interpretation of the Return Directive, Articles 5, 13 and 14(1b) and on the consequences of the automatic suspensive effect of a return decision on social assistance benefits. The CJEU held that according to the Return Directive a third-country national must have an effective remedy against a return decision and such a 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*.

¹⁷ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [X \(Afghanistan\) vs Commissioner General for Refugees and Stateless Persons](#), 15 July 2020.

¹⁸ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Nigeria\) v Federal Office for Migration and Refugees \(BAMF\)](#), 24 August 2020; Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Nigeria\) v Federal Office for Migration and Refugees \(BAMF\)](#), 27 August 2020; Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Nigeria\) v Federal Office for Migration and Refugees \(BAMF\)](#), 1 September 2020.

¹⁹ Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicants \(Tunisia\) v Federal Office for Migration and Refugees \(BAMF\)](#), 17 July 2020.

²⁰ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [X \(Colombia\) v Office of the Commissioner General for Refugees and Stateless Persons \(Commissaire général aux réfugiés et aux apatrides, CGRS\)](#), 24 November 2020.

²¹ Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], [X \(Palestine\) v Office of the Commissioner General for Refugees and Stateless Persons \(Commissaire général aux réfugiés et aux apatrides, CGRS\)](#), 16 June 2020.

²² Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Ethiopia\) v Federal Office for Migration and Refugees \(BAMF\)](#), 17 June 2020; Germany, Regional Administrative Court [Verwaltungsgerichte], [Applicant \(Ethiopia\) v Federal Office for Migration and Refugees \(BAMF\)](#), 3 July 2020.

([Gnandi](#) judgment). Furthermore, 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.

In [D. and Others v Romania](#), the ECtHR found no risk of ill treatment upon a return concerning an Iraqi national who was convicted in Romania for migrant smuggling. The only violation found in this case concerned the ECHR, Article 13, for the lack of a suspensive effect in the procedure directed against the expulsion measure.

Similarly, the ECtHR found no risk of death or ill treatment contrary to the ECHR, Articles 2 and 3, due to lack of credible evidence, in the event of a return of a rejected asylum applicant to Iran ([M.R. v Switzerland](#)) or to Sudan. ([S.A. v the Netherlands](#))

However, in [M.A. v Belgium](#), the ECtHR found multiple violations related to a deportation that was implemented against a Sudanese applicant, despite a court decision that cancelled the expulsion because the applicant was deprived of an effective remedy. The court reiterated that the withdrawal of the asylum application did not exonerate the authorities from their obligations, and in addition, no proper assessment of the risk of ill treatment upon return was adequately conducted.

9.2.3 Collective expulsions

Morocco applicants who had attempted to cross the fence of the Melilla enclave in Spain complained of a collective expulsion upon return procedure. In [N.D. and N.T. v Spain](#), the ECtHR found that there has been no violation of Article 4, Protocol 4 of the ECHR because the applicants had in fact placed themselves in an unlawful situation when they had deliberately attempted to enter Spain on 13 August 2014 by crossing the Melilla border protection structures as part of a large group and at an unauthorised location, taking advantage of the group's large numbers and using force. Thus, the applicants deliberately chose not to use the legal procedures to enter Spain.

In [Asady and Others v Slovakia](#), concerning a group of 19 Afghan nationals who contested individual return decisions, the ECtHR held that there was no evidence provided to sustain the allegations on a collective expulsion, thus no breach of the Convention was found.

In contrast, in [M.K. and Others v Poland](#), the ECtHR ruled against Poland for a consistent practice of returning applicants to Belarus, amounting to collective expulsions, contrary to Article 4, Protocol 4 of the ECHR. In fact, although applicants clearly stated to Polish authorities their intention to seek international protection when arriving at the Terespol border crossing, the Polish authorities returned them, infringed the *non-refoulement* principle, deprived the applicants of access to the asylum procedures and put them at risk contrary to the European Convention, Article 3.

In [Moustahi v France](#), a case concerning two children who have unlawfully entered French territory in Mayotte, the ECtHR found that the placement of minors in detention with adults is contrary to the best interest of the children. The court held that the French authorities did not take appropriate measures for the effective protection of the children and had not taken account of the situation that they risked facing on returning to their country of origin. The court concluded that the return decision was adopted and implemented without a reasonable and objective examination of the situation of the minors, in breach of Article 4, Protocol 4 of the ECHR (prohibition of collective expulsions).

9.2.4 National security

The ECtHR ruled in [M.A. and Others v Bulgaria](#) that an intended expulsion to China of five asylum applicants based on national security grounds would entail a risk of treatment contrary to Articles 2 and 3 of the Convention, including the risk of death. The court found that Bulgarian authorities, namely the Supreme Administrative Court, failed to properly examine the applicants' allegations with regard to the risk of ill treatment in case of expulsion and to apply the *non-refoulement* principle. On the national security grounds invoked by Bulgaria, the court stated that these considerations are irrelevant and that "whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion or extradition".

In [Muhammad and Muhammad v Romania](#), the ECtHR clarified the procedural safeguards relating to the expulsion of aliens based on national security. Two general principles were highlighted by the court: first, the safeguard provided is more important when the information provided to the person is limited; and second, where there are particularly significant repercussions for the person's situation, the counterbalancing safeguards must be strengthened accordingly. Due to the significantly limited information provided by the Romanian authorities to the Pakistani nationals on the reasons for expulsion, national security reasons, stages of the procedure and access to classified documentation, and the lack of safeguards, the court found a violation of Article 1, Protocol 7 of the ECHR.

Similarly, in [Bou Hassoun v Bulgaria](#), the ECtHR found procedural shortcomings and a lack of an effective remedy for an expulsion order based solely on national security grounds, based on an assessment by the National Security Services. The judicial review was assessed as not having provided any meaningful evaluation of the expulsion measure, thus Article 13 of the ECHR was violated.

9.2.5 Entry bans

In addition, in [JZ](#) (C-806/18) the CJEU interpreted the Return Directive, Article 11 and stated that an entry ban is applicable only from the moment when an applicant leaves the territory of the Member State. If an applicant is staying illegally in a Member State and has a return decision, he/she can be imprisoned. Moreover, the punishment imposed if the third-country national has not left the territory can be in relation only to the initial illegal stay and not in connection with an entry ban. However, the criminal law must be accessible, foreseeable and precise in order to avoid arbitrariness.

9.2.6 Minors

The UN Committee on the Rights of the Child [ruled](#) that Denmark failed to take into consideration the best interests of the child when ordering the return to China of a mother and her children born to unmarried parents. In fact, the mother complained that the Danish authorities did not take into account when deciding on the asylum application that a return to China would entail the risk of the children being separated from the mother and not being registered in the local registries, thus further hindering their access to health, education and social services.

9.2.7 Right to family life

In [Makdoudi v Belgium](#), the ECtHR ruled that the removal order of a Tunisian applicant without considering his paternity status was contrary to Article 8 of the ECHR. The court underlined that

national authorities failed to provide sufficient reasoning for the return order and its necessity in a democratic society.

In [Bou Hassoun v Bulgaria](#), concerning a Syrian national against whom an expulsion order was taken by the Bulgarian authorities on national security grounds, the ECtHR ruled that the impugned measure was contrary to Article 8 of the ECHR for a lack of sufficient reasoning and sufficient evaluation of the expulsion measure.

9.2.8 Removal to Afghanistan

Afghan nationals whose asylum applications were rejected by the Netherlands and deportation orders were issued against them complained before the ECtHR of a risk of ill treatment upon return. In [A.S.N. and Others v the Netherlands](#), the court found unanimously that there would be no violation of the ECHR, Article 3, in case of deportation because the applicants did not demonstrate they risked, if returned, a situation that will attain the minimum level of severity.²³

In [M.S. v Slovakia and Ukraine](#), the ECtHR found a violation of the ECHR, Articles 3 and 13, as the Ukrainian authorities failed to assess the real-risk of ill-treatment in the event of the applicant's return to Afghanistan, failed to ensure that the applicant had legal representation and an opportunity to challenge the expulsion decision and had examined an outdated country of origin information report.

In contrast, in [M.H. v Finland](#), the ECtHR found no violation of Articles 2 and 3 on a deportation to Afghanistan and rejected the case as inadmissible due to being manifestly ill-founded. Based on recent and updated country of origin information, the court concluded that the situation would not entail a risk of violating the Convention and found that the applicant is familiar with the culture and language in Afghanistan.²⁴

The UN Human Rights Committee [ruled](#) on the risk of irreparable harm in the case of a deportation of an Afghan couple who had sexual relations outside of marriage and held that the Danish Refugee Appeals Board failed to properly assess the risk. Thus, it concluded that a return to Afghanistan would amount to a violation of the ICCPR, Articles 6 and 7.

9.3 National courts on return

9.3.1 Risk of forced return to Syria

The Court of Appeal in Norway [rejected](#) a request to cancel an expulsion to Ukraine because the applicant would not face the risk of being forced to return from Ukraine to Syria. In fact, the applicant had resided in Ukraine for a long period as a student, and evidence from UNHCR revealed no risk of forced return to Syria.

²³ The judgment cited EASO reports, [Afghanistan – Individuals targeted under societal and legal norms, Country of Origin Information Report](#), December 2017, [Country Guidance: Afghanistan](#), June 2019.

²⁴ The court cites two reports by EASO: [Afghanistan: Key socio-economic indicators, State protection, and mobility in Kabul City, Mazar-e-Sharif, and Herat City](#) of August 2017 and on the internal flight alternative [Country Guidance on Afghanistan – Guidance note and common analysis](#) of 21 June 2018.

9.3.2 Return to Nigeria

The Austrian Federal Administrative Court [held](#) that there was no evidence of a risk of repression or a violation of the right to family life if a Nigerian national were returned. The court found that his convictions for drug offences constitute a threat to the public security and the unlimited entry ban was also justified.²⁵

9.3.3 Family ties

The Icelandic Supreme Court [clarified](#) that an independent assessment of family ties is necessary prior to ordering a deportation based on state security and public interest. The Supreme Court found that a deportation of the father has repercussions also on his children's lives and an interference into the right to family life has to be assessed based on a number of criteria, such as the seriousness of the offence, the risk of repeated offences, and social, family and cultural ties. The lower courts should have given particular importance to the relationship between the applicant and his children in the assessment of the deportation and the interference to his right to family life, including to all for specialised assistance.

In a similar case, the Finnish Supreme Administrative Court [weighted](#) the public interest for deportation based on criminal offences of the applicant, and the applicant's right to family life, his integration in Finland and the best interests of the child to conclude that the expulsion would not be proportionate and necessary as provided by the ECHR, Article 8(2).

²⁵ The Austrian Federal Administrative Court mentions, inter alia, EASO - Country Guidance: [Nigeria](#), EASO - Country of Origin Information Report - [Nigeria - Security Situation](#), EASO – Country of Origin Information report – [Nigeria – Targeting of individuals](#) and EASO Country of Origin Information Report [Nigeria Country Focus](#).

10 Relocations and resettlement

In a procedure initiated by the European Commission against Poland, Czechia and Hungary, the CJEU [concluded](#) an infringement by the three EU Member States by failing to fulfil their obligations to implement a Council decision on the relocation of beneficiaries of international protection from Greece and Italy. In addition, Poland and Czechia failed to fulfil their obligations under an earlier Council decision on relocation, to which Hungary was not bound.

In addition, the Spanish Supreme Court [found](#) in a case concerning Syrian nationals who were granted subsidiary protection by lower courts that, according to the national legislation in force, the beneficiaries of a resettlement programme approved by the government in cooperation with UNHCR must be granted refugee status and not subsidiary protection. The court noted that the mere fact of being a beneficiary of a resettlement programme leads automatically to granting refugee status and a different interpretation and application would result into personal circumstances, making it impossible to grant protection provided for in the protection framework regulated by the law.

11 Other developments

11.1 Restrictions on NGOs

With particular relevance to NGOs working in asylum, the CJEU ruled in [European Commission v Hungary](#) (C-78/18) that the restrictions imposed by Hungary on the financing of civil society organisations, including those working in the field of asylum and providing free legal aid to asylum applicants, were discriminatory and unjustified. The action was brought by the European Commission which invoked a failure by Hungary to fulfil its obligations. The court stated that the legal provisions that impose obligations of registration, declaration and publication of certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and providing for the possibility of applying penalties to organisations that do not comply with those obligations, were contrary to EU law.

11.2 Statelessness

In [Sudita Keita v Hungary](#), the ECtHR ruled on the state's positive obligation to provide an effective and accessible procedure to regularise the status of a stateless person in Hungary. The case concerned a stateless person whose legal status in Hungary was uncertain for a 15-year period, without access to health care, employment or the right to marry. Hungary failed to provide an effective and accessible procedure that would allow the applicant to regularise his stay in the country.

In [Denny Zhao v the Netherlands](#), the UN Human Rights Committee held that the Netherlands had violated the ICCPR by failing to recognise that a minor was stateless and eligible for international protection.

12 Annex. List of cases

- Austria, Constitutional Court [Verfassungsgerichtshof Österreich], Applicant (Afghanistan) v Federal Administrative Court (Bundesverwaltungsgericht - BVwG), E3446/2019, 25 February 2020. Link: <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1460>
- Austria, Constitutional Court [Verfassungsgerichtshof Österreich], Applicant (Afghanistan) v Federal Administrative Court (Bundesverwaltungsgericht - BVwG), E4399/2019, ECLI:AT:VFGH:2020:E4399.2019, 04 March 2020. Link: <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1462>
- Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], Applicants (Nigeria) v Austrian Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl- BFA), W144 2229518-1, ECLI:AT:BVWG:2020:W144.2229518.1.00, 13 March 2020. Link: <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1439>
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- Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], X (Rwanda) v Commissioner General for Refugees and Stateless Persons, No 233980, 12 March 2020. Link: <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1587>
- Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], X v Office of the Commissioner General for Refugees and Stateless Persons (Commissaire général aux réfugiés et aux apatrides, CGRS), no. 236 640, 09 June 2020. Link: <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1216>
- Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], X (Palestine) v Office of the Commissioner General for Refugees and Stateless Persons (Commissaire général aux réfugiés et aux apatrides, CGRS), case no 238938, 24 July 2020. Link: <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1261>
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- Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], X (Afghanistan) v Commissioner General for Refugees and Stateless Persons, no. 238 596, 15 July 2020. Link: <https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1212>
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