Newsletter on European Asylum Issues for Judges

2012/2

NEAIS

Quarterly update on

- *Treaties*
- *Legislation and*
- *Jurisprudence*

on

- *European Asylum Issues*

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Editorial

Welcome to the second edition of NEAIS: a Newsletter on European Asylum Issues. This newsletter is designed for judges who need to keep up to date with European developments in the area of asylum. This newsletter contains European legislation and jurisprudence on four central themes regarding asylum: (1) qualification for protection, (2) procedural safeguards, (3) responsibility sharing and (4) reception conditions of asylum seekers. On each subject NEAIS will provide a list of: (a) measures already adopted, (b) measures in preparation and (c) relevant jurisprudence.

On all other issues regarding Migration we would refer the reader to the other newsletter: NEMIS, the Newsletter on European Migration issues.

Judgments

We would like to draw your attention to some recent judgments of the ECtHR on article 3 in expulsion cases.

In **Othman (Abu Qatada) v. UK**, the Court found that the fact that the applicant, a high profile Islamist belonging to a category of prisoners frequently ill-treated in Jordan, was held not to be in real risk of ill-treatment if being deported to Jordan, due to the information provided about the 'diplomatic assurances' that had been obtained by the UK government in order to protect his Convention rights upon deportation; the Court took into account the particularities of the memorandum of understanding agreed between the UK and Jordan, and the modalities of monitoring the Jordanian authorities' compliance with the assurances.

In the case **Labsi v. Slovakia** however, the Court was not satisfied with diplomatic assurances. An Algerian man, convicted in France of preparing a terrorist act, and convicted in his absence in Algeria of membership of a terrorist organisation, had been expelled to Algeria upon rejection of his asylum request in Slovakia. On the basis of the existing information about the situation in Algeria for persons suspected of terrorist activities, the Court found that there had been substantial grounds for believing that he faced a real risk of being exposed to treatment contrary to art. 3. The responding government's invocation of the security risk represented by the applicant was dismissed due to the absolute guarantee under art. 3. Assurances given by the Algerian authorities concerning the applicant's treatment upon return to Algeria were found to be of a general nature, and they had proven insufficient since the request for a visit by a Slovak official to the applicant, held in detention upon return, had not been followed.

In **S.F. and Others v. Sweden** the ECtHR noted, observing that the human rights situation in Iran gives rise to grave concern, that it is not only the leaders of political organisations or other high-profile persons who are detained, but that anyone who demonstrates or in any way opposes the current regime in Iran may be at risk of being detained and ill-treated or tortured. The Court found that they had been involved in extensive and genuine political and human rights activities in Sweden that were of relevance for the determination of the risk on return, given their existing risk of identification and their belonging to several risk categories. Thus, their sur place activities taken together with their past activities and incidents in Iran lead the Court to conclude that there would be substantial grounds for believing that they would be exposed to a real risk of treatment contrary to art. 3 if deported to Iran in the current circumstances.

Input from judges

The more national jurisprudence the editors receive from judges, the more relevant this newsletter will become. You are therefore more than welcome to provide us with your judgments, regarding the relevant interpretation of EU on legal instruments. Do feel free to forward this newsletter to any colleagues you think might be interested. Please contact us if you have any inquiries.

Nijmegen, 12 July 2012, Carolus Grütters & Tineke Strik

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1 Qualification for Protection

1.1 Qualification for Protection: Adopted Measures

Directive 2011/95

Qualification for protection-2

* OJ 2011 L 337/9 — UK, IRL opt out
* impl. date Dec. 2013
* Recast of Dir. 2004/83

Directive 2004/83

Qualification for protection-1

* OJ 2004 L 304/12
* impl. date 10 Oct. 2006
* Revised by Dir. 2011/95

☞ CJEU C-57/09 & C-101/09, B and D	[9 Nov. 2010]
☞ CJEU C-31/09, Bolbol	[17 June 2010]
☞ CJEU C-175/08, Abdullah a.o.	[2 Mar. 2010]
☞ CJEU C-465/07, Elgafaji	[17 Feb. 2009]
☞ CJEU C-285/12, Diakite	[pending]
☞ CJEU C-201/12, X vs The Netherlands	[pending]
☞ CJEU C-364/11, El Kott a.o.	[pending]
☞ CJEU C-277/11, M.M.	[pending]
☞ CJEU C-71/11 and C-99/11, Z.	[pending]

Directive 2001/55

Temporary Protection

* OJ 2001 L 212/12

ECHR art. 3 (qual.)

European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

* ETS 005
* impl. date 1950
* art. 3: Prohibition of Torture, Inhuman or Degrading Treatment or Punishment

☞ ECtHR Ap.no. 33809/08, Labsi vs Slovakia	[15 May 2012]
☞ ECtHR Ap.no. 52077/10, S.F. v. Sweden	[15 May 2012]
☞ ECtHR Ap.no. 24027/07, Babar Ahmad v. UK	[10 Apr. 2012]
☞ ECtHR Ap.no. 27765/09, Hirsi v. Italy	[23 Feb. 2012]
☞ ECtHR Ap.no. 8139/09, Othman v. UK	[17 Jan. 2012]
☞ ECtHR Ap.no. 23505/09, N. v. Sweden	[20 July 2010]
☞ ECtHR Ap.no. 25904/07, N.A. v. UK	[17 July 2008]
☞ ECtHR Ap.no. 1948/04, Salah Sheekh v. Netherlands	[11 Jan. 2007]
☞ ECtHR Ap.no. 24245/03, D. v. Turkey	[22 June 2006]
☞ ECtHR Ap.no. 2345/02, Said v. Netherlands	[5 July 2005]
☞ ECtHR Ap.no. 25964/94, Venkadajalasarma	[17 Feb. 2004]
☞ ECtHR Ap.no. 40035/98, Jabari v. Turkey	[11 July 2000]
☞ ECtHR Ap.no. 24573/94, H.L.R. v. France	[27 Apr. 1997]
☞ ECtHR Ap.no. 13163/87, Vilvarajah v. UK	[30 Oct. 1991]
☞ ECtHR Ap.no. 15576/89, Cruz Varas v. Sweden	[20 Mar. 1991]
☞ ECtHR Ap.no. 14038/88, Soering v. UK	[7 July 1989]

CAT art. 3

UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

* 1465 UNTS 85
* impl. date 1984
* art. 3: Protection against Refoulement

☞ CAT 379/2009, Bakatu-Bia v. Sweden [3 June 2011]
☞ CAT 373/2009, M.A. and L.G. v. Sweden [19 Nov. 2010]
☞ CAT 300/2006, A.T. v. France [11 May 2007]
☞ CAT 281/2005, E.P. v. Azerbaijan [1 May 2007]
☞ CAT 279/2005, C.T. and K.M. v. Sweden [22 Jan. 2007]
☞ CAT 233/2003, Agiza v. Sweden [20 May 2005]
☞ CAT 43/1996, Tala v. Sweden [15 Nov. 1996]

1.2 Qualification for Protection: Proposed Measures

* nothing to report

1.3 Qualification for Protection: Jurisprudence

1.3.1 CJEU Judgments on Qualification for Protection

☞ CJEU C-57/09 & C-101/09, ***B and D***, [9 Nov. 2010]
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art 12(2)(b) & (c)
* ref. from 'Bundesverwaltungsgericht' (Germany)
* *The fact that a person has been a member of an organisation (which, because of its involvement in terrorist acts, is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism) and that that person has actively supported the armed struggle waged by that organisation, does not automatically constitute a serious reason for considering that that person has committed 'a serious non-political crime' or 'acts contrary to the purposes and principles of the United Nations.*

☞ CJEU C-31/09, ***Bolbol***, [17 June 2010]
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art 12(1)(a)
* ref. from 'Fővárosi Bíróság' (Hungary)
* *Right of a stateless person, i.e. a Palestinian, to be recognised as a refugee on the basis of the second sentence of Article 12(1)(a)*

☞ CJEU C-175/08, ***Abdullah a.o.***, [2 Mar. 2010]
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art 2(c), 11 & 14
* ref. from 'Bundesverwaltungsgericht' (Germany)
* *When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.*

☞ CJEU C-465/07, ***Elgafaji***, [17 Feb. 2009]
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art. 2(e), 15(c)
* ref. from 'Raad van State' (Netherlands)
* *Minimum standards for determining who qualifies for refugee status or for subsidiary protection status - Person eligible for subsidiary protection - Article 2(e) - Real risk of suffering serious harm - Article 15(c) - Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of armed conflict*

1.3.2 CJEU pending cases on Qualification for Protection

New
☞ CJEU C-285/12, ***Diakite***
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art 15(c)
* ref. from 'Raad van State' (Belgium)
* *On the meaning of "internal conflict".*

New
☞ CJEU C-201/12, ***X vs The Netherlands***
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art. 9(1)(a); 2(c); 10(1)(d)
* ref. from 'Raad van State' (Netherlands)
* *On homosexuality*

☞ CJEU C-364/11, ***El Kott a.o.***
* interpr. of Dir. 2004/83 on ***Qualification for protection-1***
* ref. from 'Fővárosi Bíróság' (Hungary)
* *Does cessation of the agency's protection or assistance mean residence outside the agency's area of operations, cessation of the agency and cessation of the possibility of receiving the agency's protection or assistance or, possibly, an involuntary obstacle caused by legitimate or objective reasons such that the person entitled thereto is unable to avail himself of that protection or assistance?*

☞ CJEU C-277/11, ***M.M.***
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art. 4(1)
* ref. from 'High Court' (Ireland)
* *In a case where an applicant seeks subsidiary protection status following a refusal to grant refugee status and it is proposed that such an application should be refused, does the requirement to cooperate with an applicant imposed on a MS [in Article 4(1)] require the administrative authorities of the MS in question to supply such applicant with the results of such an assessment before a decision is finally made so as to enable him or her to address those aspects of the proposed decision which suggest a negative result?*

☞ CJEU C-71/11 and C-99/11, ***Z.*** (opinion due 19 Apr. 2012)
* interpr. of Dir. 2004/83 on ***Qualification for protection-1*** art. 2(c) and 9(1)(a)
* ref. from 'Bundesverwaltungsgericht' (Germany)
* *If the core area of religious freedom can also comprise certain religious practices in public: Does it (1) suffice in that case, in order for there to be a severe violation of religious freedom, that the applicant feels that such practice of his faith is indispensable in order for him to preserve his religious identity, (2) or is it further necessary that the religious community to which the applicant belongs should regard that religious practice as constituting a central part of its doctrine, (3) or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?*

1.3.3 ECtHR Judgments on Qualification for Protection

New

☞ ECtHR Ap.no. 33809/08, ***Labsi vs Slovakia***, [15 May 2012]

* violation of ECHR art. 3 (qual.)
* *An Algerian man, convicted in France of preparing a terrorist act, and convicted in his absence in Algeria of membership of a terrorist organisation, had been expelled to Algeria upon rejection of his asylum request in Slovakia. On the basis of the existing information about the situation in Algeria for persons suspected of terrorist activities, the Court found that there had been substantial grounds for believing that he faced a real risk of being exposed to treatment contrary to art. 3. The responding government's invocation of the security risk represented by the applicant was dismissed due to the absolute guarantee under art. 3. Assurances given by the Algerian authorities concerning the applicant's treatment upon return to Algeria were found to be of a general nature, and they had proven insufficient since the request for a visit by a Slovak official to the applicant, held in detention upon return, had not been followed.*
  The applicant's expulsion only one working day after the Slovak Supreme Court's judgment, upholding the dismissal of his asylum request, had effectively prevented him from attempting redress by a complaint to the Slovak Constitutional Court.
  Expulsion of the applicant in disregard of an interim measure issued by the Court under Rule 39, preventing the Court from properly examining his complaints and from protecting him against treatment contrary to art. 3, was a violation of the right to individual application under art. 34.

New

☞ ECtHR Ap.no. 52077/10, ***S.F. v. Sweden***, [15 May 2012]

* violation of ECHR art. 3 (qual.)
* *Observing that the human rights situation in Iran gives rise to grave concern, and that the situation appears to have deteriorated since the Swedish domestic authorities determined the case and rejected the applicants' request for asylum in 2008-09, the Court noted that it is not only the leaders of political organisations or other high-profile persons who are detained, but that anyone who demonstrates or in any way opposes the current regime in Iran may be at risk of being detained and ill-treated or tortured. Acknowledging that the national authorities are best placed to assess the facts and the general credibility of asylum applicants' story, the Court agreed that the applicant's basic story was consistent notwithstanding some uncertain aspects that did not undermine the overall credibility of the story. While the applicants' pre-flight activities and circumstances were not sufficient independently to constitute grounds for finding that they would be in risk of art. 3 treatment if returned to Iran, the Court found that they had been involved in extensive and genuine political and human rights activities in Sweden that were of relevance for the determination of the risk on return, given their existing risk of identification and their belonging to several risk categories. Thus, their sur place activities taken together with their past activities and incidents in Iran lead the Court to conclude that there would be substantial grounds for believing that they would be exposed to a real risk of treatment contrary to art. 3 if deported to Iran in the current circumstances.*

New

☞ ECtHR Ap.no. 24027/07, ***Babar Ahmad v. UK***, [10 Apr. 2012]

* no violation of ECHR art. 3 (qual.)
* *In a case concerning six alleged international terrorists who have been detained in the UK pending extradition to the USA, the Court held that neither their conditions of detention at a 'supermax' prison in USA (ADX Florence) nor the length of their possible sentences (mandatory sentence of life imprisonment without the possibility parole for one of the applicants, and discretionary life sentences for the others) would make such extradition being in violation of art. 3.*

☞ ECtHR Ap.no. 27765/09, ***Hirsi v. Italy***, [23 Feb. 2012]

* interpr. of ECHR art. 3 (qual.)
* *For the first time the Court applied Article 4 of Protocol no. 4 (collective expulsion) in the circumstance of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with article 3 ECHR, as it transferred them to Libya 'in full knowledge of the facts' and circumstances in Libya.*

☞ ECtHR Ap.no. 8139/09, ***Othman v. UK***, [17 Jan. 2012]
* no violation of ECHR art. 3 (qual.)
* referral to the Grand Chamber requested; refused by the ECtHR Panel on 9 May 2012
* Notwithstanding widespread and routine occurrence of torture in Jordanian prisons, and the fact that the applicant as a high profile Islamist was in a category of prisoners frequently ill-treated in Jordan, the applicant was held not to be in real risk of ill-treatment if being deported to Jordan, due to the information provided about the 'diplomatic assurances' that had been obtained by the UK government in order to protect his Convention rights upon deportation; the Court took into account the particularities of the memorandum of understanding agreed between the UK and Jordan, as regards both the specific circumstances of its conclusion, its detail and formality, and the modalities of monitoring the Jordanian authorities' compliance with the assurances.
Holding that ECHR art. 5 applies in expulsion cases, but that there would be no real risk of flagrant breach of art. 5 in respect of the applicant's pre-trial detention in Jordan.
Holding that deportation of the applicant to Jordan would be in violation of ECHR art. 6, due to the real risk of flagrant denial of justice by admission of torture evidence against him in the retrial of criminal charges.

☞ ECtHR Ap.no. 23505/09, ***N. v. Sweden***, [20 July 2010]
* violation of ECHR art. 3 (qual.)
* *The Court observed that women are at particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. The Court could not ignore the general risk to which she might be exposed should her husband decide to resume their married life together, or should he perceive her filing for divorce as an indication of an extramarital relationship; in these special circumstances, there were substantial grounds for believing that the applicant would face various cumulative risks of reprisals falling under Art. 3 from her husband, his or her family, and from the Afghan society.*

☞ ECtHR Ap.no. 25904/07, ***N.A. v. UK***, [17 July 2008]
* violation of ECHR art. 3 (qual.)
* *The Court has never excluded the possibility that a general situation of violence in the country of destination will be of a sufficient level of intensity as to entail that any removal thereto would necessarily breach Art. 3, yet such an approach will be adopted only in the most extreme cases of general violence where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return*

☞ ECtHR Ap.no. 1948/04, ***Salah Sheekh v. Netherlands***, [11 Jan. 2007]
* violation of ECHR art. 3 (qual.)
* *There was a real chance that deportation to 'relatively safe' areas in Somalia would result in his removal to unsafe areas, hence there was no 'internal flight alternative' viable. The Court emphasised that even if ill-treatment be meted out arbitrarily or seen as a consequence of the general unstable situation, the asylum seeker would be protected under Art. 3, holding that it cannot be required that an applicant establishes further special distinguishing features concerning him personally in order to show that he would be personally at risk.*

☞ ECtHR Ap.no. 24245/03, ***D. v. Turkey***, [22 June 2006]
* violation of ECHR art. 3 (qual.)
* *Deportation of woman applicant in view of the awaiting execution of severe corporal punishment in Iran would constitute violation of Art. 3, as such punishment would inflict harm to her personal dignity and her physical and mental integrity; violation of Art. 3 would also occur to her husband and daughter, given their fear resulting from the prospective ill-treatment of D.*

☞ ECtHR Ap.no. 2345/02, ***Said v. Netherlands***, [5 July 2005]
* violation of ECHR art. 3 (qual.)
* *Asylum seeker held to be protected against refoulement under Art. 3; the Dutch authorities had taken the failure to submit documents establishing his identity, nationality, or travel itinerary as affecting the credibility of his statements; the Court instead found the applicant's statements consistent, corroborated by information from Amnesty International, and thus held that substantial grounds had been shown for believing that, if expelled, he would be exposed to a real risk of illtreatment as prohibited by Art. 3*

☞ ECtHR Ap.no. 25964/94, ***Venkadajalasarma***, [17 Feb. 2004]
* no violation of ECHR art. 3 (qual.)
* *Current situation in Sri Lanka makes it unlikely that Tamil applicant would run a real risk of being subject to ill-treatment after his expulsion from the Netherlands*

☞ ECtHR Ap.no. 40035/98, ***Jabari v. Turkey***, [11 July 2000]
* violation of ECHR art. 3 (qual.)
* *Holding violation of Article 3 in case of deportation that would return a woman who has committed adultery to Iraq.*

☞ ECtHR Ap.no. 24573/94, ***H.L.R. v. France***, [27 Apr. 1997]
* no violation of ECHR art. 3 (qual.)
* *Finding no violation of Article 3 in case of expulsion of a citizen of Columbia as there was no 'relevant evidence' of risk of ill-treatment by non-state agents, whereby authorities 'are not able to obviate the risk by providing adequate protection'.*

☞ ECtHR Ap.no. 13163/87, ***Vilvarajah v. UK***, [30 Oct. 1991]
* no violation of ECHR art. 3 (qual.)
* *Finding no breach of Art. 3 although applicants claimed to have been subjected to ill-treatment upon return to Sri Lanka; this had not been a foreseeable consequence of the removal of the applicants, in the light of the general situation in Sri Lanka and their personal circumstances; a mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Art. 3, and there existed no special distinguishing features that could or ought to have enabled the UK authorities to foresee that they would be treated in this way.*

☞ ECtHR Ap.no. 15576/89, ***Cruz Varas v. Sweden***, [20 Mar. 1991]
* no violation of ECHR art. 3 (qual.)
* *Recognizing the extra-territorial effect of Art. 3 similarly applicable to rejected asylum seekers; finding no Art. 3 violation in expulsion of Chilean national denied asylum, noting that risk assessment by State Party must be based on facts known at time of expulsion.*

☞ ECtHR Ap.no. 14038/88, ***Soering v. UK***, [7 July 1989]
* violation of ECHR art. 3 (qual.)
* *Holding extradition from UK to USA of German national charged with capital crime and at risk of serving on death row is a violation of Article 3 recognising the extra-territorial effect of the ECHR.*

1.3.4 CAT Judgments on Qualification for Protection

☞ CAT 379/2009, ***Bakatu-Bia v. Sweden***, [3 June 2011]
* violation of CAT art. 3
* *The present human rights situation in the Democratic Republic of the Congo, is such that, in the prevailing circumstances, substantial grounds exist for believing that the complainant is at risk of being subjected to torture if returned to the Democratic Republic of the Congo.*

☞ CAT 373/2009, ***M.A. and L.G. v. Sweden***, [19 Nov. 2010]
* violation of CAT art. 3
* *Return of longtime PKK member to Turkey where he is wanted under anti-terrorism laws would constitute a breach of art. 3.*

☞ CAT 300/2006, ***A.T. v. France***, [11 May 2007]
* violation of CAT art. 3
* *Violation of the Convention when France charged dual French/Tunisian national of terrorism, revoked his French citizenship, and expelled him to Tunisia while his asylum and CAT claims were still pending.*

☞ CAT 281/2005, ***E.P. v. Azerbaijan***, [1 May 2007]
* violation of CAT art. 3
* *Violation of the Convention when Azerbaijan disregarded Committee's request for interim measures and expelled applicant who had received refugee status in Germany back to Turkey where she had previously been detained and tortured.*

☞ CAT 279/2005, ***C.T. and K.M. v. Sweden***, [22 Jan. 2007]
* violation of CAT art. 3
* *Rwandan women repeatedly raped in detention in Rwanda by state officials have substantial grounds to fear torture if returned while ethnic tensions remain high. Complete accuracy seldom to be expected of victims of torture, and inconsistencies in testimony do not undermine credibility if they are not material.*

☞ CAT 233/2003, ***Agiza v. Sweden***, [20 May 2005]
* violation of CAT art. 3
* *The non-refoulement under CAT is absolute even in context of national security concerns; insufficient diplomatic*
assurances were obtained by sending country.

☞ CAT 43/1996, ***Tala v. Sweden***, [15 Nov. 1996]
* violation of CAT art. 3
* *Contradictions and inconsistencies in testimony of asylum seeker attributed to post-traumatic stress disorder resulting from torture.*

1.3.5 National Judgments on Qualification for Protection

☞ **Germany:** BVerwGE 10 C 13.10 [17 Nov. 2011]
* no violation of Dir. 2004/83 on ***Qualification for protection-1***
* art. 2(e), 4(4), 15(c)
* Munich Higher Adm. Court
* full text available at: http://cmr.jur.ru.nl/neais/Germany/BVerwGE10C1310.pdf
* (1) In order for a substantial individual danger to be presumed, Section 60 (7) Sentence 2 of the Residence Act requires a considerable probability that the individual concerned will be threatened with harm to the legally protected interests of life or limb.
(2) For a finding of the requisite density of danger, in addition to a quantitative determination of the risk of death or injury, a general appraisal is also required that also assesses the situation for the delivery of medical care

2 Asylum Procedure

2.1 Asylum Procedure: Adopted Measures

Directive 2005/85
Asylum Procedures
* OJ 2005 L 326/13
* impl. date 1 Dec. 2007

☞ CJEU C-69/10, Samba Diouf [28 July 2011]
☞ CJEU C-133/06, Eur. Parliament v. Eur. Union [6 May 2008]
☞ CJEU C-175/11, H.I.D. [pending]

ECHR art. 3 (proc.)

European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

* ETS 005
* art. 3: Protection against Refoulement

☞ ECtHR Ap.no. 27765/09, Hirsi a.o. v. Italy [23 Feb. 2012]
☞ ECtHR Ap.no. 30696/09, M.S.S. v. Belgium and Greece [21 Jan. 2011]
☞ ECtHR Ap.no. 246/07, Ben Khemais v. Italy [24 Feb. 2009]
☞ ECtHR Ap.no. 45223/05, Sultani v. France [20 Sep. 2007]
☞ ECtHR Ap.no. 13284/04, Bader v. Sweden [8 Nov. 2005]
☞ ECtHR Ap.no. 38885/02, N. v. Finland [26 July 2005]
☞ ECtHR Ap.no. 40035/98, Jabari v. Turkey [11 July 2000]
☞ ECtHR Ap.no. 25894/94, Bahaddar v. Netherlands [19 Feb. 1998]

ECHR art. 13 (proc.)

European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

* ETS 005
* art. 13: Right to Effective Remedy

☞ ECtHR Ap.no. 33809/08, Labsi vs Slovakia [15 May 2012]
☞ ECtHR Ap.no. 9152/09, I.M. v. France [2 Feb. 2012]
☞ ECtHR Ap.no. 30471/08, Abdolkhani v. Turkey [22 Sep. 2009]
☞ ECtHR Ap.no. 25389/05, Gebremedhin [26 Apr. 2007]
☞ ECtHR Ap.no. 51564/99, Conka v. Belgium [5 Feb. 2002]

2.2 Asylum Procedure: Proposed Measures

Directive

Recast of Procedures Directive

* COM (2009) 554, Oct. 2009 — UK, IRL opt out
* EP plenary vote, April 2011; amended text proposed by Commission, June 2011 (COM (2011) 319)

2.3 Asylum Procedure: Jurisprudence

2.3.1 CJEU Judgments on Asylum Procedure

☞ CJEU C-69/10, ***Samba Diouf***, [28 July 2011]

* interpr. of Dir. 2005/85 on ***Asylum Procedures***
* ref. from 'Tribunal Administratif' (Luxembourg)
* *On (1) the remedy against the decision to deal with the application under an accelerated procedure and (2) the right to effective judicial review in a case rejected under an accelerated procedure. Art. 39 does not imply a right to appeal against the decision to assess the application for asylum in an accelerated procedure, provided that the reasons which led to this decision can be subject to judicial review within the framework of the appeal against the rejection of the asylum claim.*

☞ CJEU C-133/06, ***Eur. Parliament v. Eur. Union***, [6 May 2008]

* interpr. of Dir. 2005/85 on ***Asylum Procedures***
* *Under Article 202 EC, when measures implementing a basic instrument need to be taken at Community level, it is the Commission which, in the normal course of events, is responsible for exercising that power. The Council must properly explain, by reference to the nature and content of the basic instrument to be implemented, why exception is being made to that rule.*
  In that regard, the grounds set out in recitals 19 and 24 in the preamble to Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, which relate respectively to the political importance of the designation of safe countries of origin and to the potential consequences for asylum applicants of the safe third country concept, are conducive to justifying the consultation of the Parliament in respect of the establishment of the lists of safe countries and the amendments to be made to them, but not to justifying sufficiently a reservation of implementing powers which is specific to the Council.

2.3.2 CJEU pending cases on Asylum Procedure

☞ CJEU C-175/11, ***H.I.D.***

* interpr. of Dir. 2005/85 on ***Asylum Procedures*** art. 39
* ref. from 'High Court' (Ireland)
* *Whether Art. 39 when read in conjunction with its Recital (27) and Article 267 TFEU to be interpreted to the effect that the effective remedy thereby required is provided for in national law when the function of review or appeal in respect of the first instance determination of applications is assigned by law to an appeal to the Tribunal established under Act of Parliament with competence to give binding decisions in favour of the asylum applicant on all matters of law and fact relevant to the application notwithstanding the existence of administrative or organisational arrangements*

2.3.3 ECtHR Judgments on Asylum Procedure

New ☞ ECtHR Ap.no. 33809/08, ***Labsi vs Slovakia***, [15 May 2012]

* violation of ECHR art. 13 (proc.)
* *An Algerian man, convicted in France of preparing a terrorist act, and convicted in his absence in Algeria of membership of a terrorist organisation, had been expelled to Algeria upon rejection of his asylum request in Slovakia. On the basis of the existing information about the situation in Algeria for persons suspected of terrorist activities, the Court found that there had been substantial grounds for believing that he faced a real risk of being exposed to treatment contrary to art. 3. The responding government's invocation of the security risk represented by the applicant was dismissed due to the absolute guarantee under art. 3. Assurances given by the Algerian authorities concerning the applicant's treatment upon return to Algeria were found to be of a general nature, and they had proven insufficient since the request for a visit by a Slovak official to the applicant, held in detention upon return, had not been followed.*
  The applicant's expulsion only one working day after the Slovak Supreme Court's judgment, upholding the dismissal of his asylum request, had effectively prevented him from attempting redress by a complaint to the Slovak Constitutional Court.
  Expulsion of the applicant in disregard of an interim measure issued by the Court under Rule 39, preventing the Court from properly examining his complaints and from protecting him against treatment contrary to art. 3, was a violation of the right to individual application under art. 34.

☞ ECtHR Ap.no. 27765/09, ***Hirsi a.o. v. Italy***, [23 Feb. 2012]

* interpr. of ECHR art. 3 (proc.)
* *For the first time the Court applied Article 4 of Protocol no. 4 (collective expulsion) in the circumstance of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with article 3 ECHR, as it transferred them to Libya 'in full knowledge of the facts' and circumstances in Libya.*

☞ ECtHR Ap.no. 9152/09, ***I.M. v. France***, [2 Feb. 2012]
* violation of ECHR art. 13 (proc.)
* *The Court therefore observed, with regard to the effectiveness of the domestic legal arrangements as a whole, that while the remedies of which the applicant had made use had been available in theory, their accessibility in practice had been limited by the automatic registration of his application under the fast-track procedure, the short deadlines imposed and the practical and procedural difficulties in producing evidence, given that he had been in detention and applying for asylum for the first time.*

☞ ECtHR Ap.no. 30696/09, ***M.S.S. v. Belgium and Greece***, [21 Jan. 2011]
* violation of ECHR art. 3 (proc.)
* *A deporting State is responsible under ECHR Art. 3 for the foreseeable consequences of the deportation of an asylum seeker to another EU Member State, even if the deportation is being decided in accordance with the Dublin Regulation; the responsibility of the deporting State comprises not only the risk of indirect refoulement by way of further deportation to risk of ill-treatment in the country of origin, but also the conditions in the receiving Member State if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.*

☞ ECtHR Ap.no. 30471/08, ***Abdolkhani v. Turkey***, [22 Sep. 2009]
* violation of ECHR art. 13 (proc.)
* *Holding a violation of Art. 13 in relation to complaints under Art. 3; the notion of an effective remedy under Art. 13 requires independent and rigorous scrutiny of a claim to risk of refoulement under Art. 3, and a remedy with automatic suspensive effect.*

☞ ECtHR Ap.no. 246/07, ***Ben Khemais v. Italy***, [24 Feb. 2009]
* violation of ECHR art. 3 (proc.)
* *Violation of Art. 3 due to deportation of the applicant to Tunisia; 'diplomatic assurances' alleged by the respondent Government could not be relied upon; violation of Art. 34 as the deportation had been carried out in spite of an ECtHR decision issued under Rule 39 of the Rules of Court.*

☞ ECtHR Ap.no. 45223/05, ***Sultani v. France***, [20 Sep. 2007]
* no violation of ECHR art. 3 (proc.)
* *Finding no violation of Art. 3, despite the applicant's complaint that the most recent asylum decision within an accelerated procedure had not been based on an effective individual examination; the Court emphasized that the first decision had been made within the normal asylum procedure, involving full examination in two instances, and held this to justify the limited duration of the second examination which had aimed to verify whether any new grounds could change the previous rejection; in addition, the latter decision had been reviewed by administrative courts at two levels; the applicant had not brought forward elements concerning his personal situation in the country of origin, nor sufficient to consider him as belonging to a minority group under particular threat*

☞ ECtHR Ap.no. 25389/05, ***Gebremedhin***, [26 Apr. 2007]
* violation of ECHR art. 13 (proc.)
* *Holding that the particular border procedure declaring 'manifestly unfounded' asylum applications inadmissible, and refusing the asylum seeker entry into the territory, was incompatible with Art. 13 taken together with Art.3; emphasising that in order to be effective, the domestic remedy must have suspensive effect as of right.*

☞ ECtHR Ap.no. 13284/04, ***Bader v. Sweden***, [8 Nov. 2005]
* violation of ECHR art. 3 (proc.)
* *Asylum seeker held to be protected against refoulement due to a risk of flagrant denial of fair trial that might result in the death penalty; such treatment would amount to arbitrary deprivation of life in breach of Art. 2; deportation of both the asylum seeker and his family members would therefore give rise to violations of Articles 2 and 3*

☞ ECtHR Ap.no. 38885/02, ***N. v. Finland***, [26 July 2005]
* violation of ECHR art. 3 (proc.)
* *Asylum seeker held to be protected against refoulement under Art. 3, despite the Finnish authorities' doubts about his identity, origin, and credibility; two delegates of the Court were sent to take oral evidence from the applicant, his wife and a Finnish senior official; while retaining doubts about his credibility on some points, the Court found that the applicant's accounts on the whole had to be considered sufficiently consistent and credible; deportation would therefore be in breach of Art. 3.*

☞ ECtHR Ap.no. 51564/99, ***Conka v. Belgium***, [5 Feb. 2002]
* violation of ECHR art. 13 (proc.)
* *The detention of rejected Roma asylum seekers before deportation to Slovakia constituted a violation of Art. 5; due to the specific circumstances of the deportation the prohibition against collective expulsion under Protocol 4 Art. 4 was violated; the procedure followed by the Belgian authorities did not provide an effective remedy in accordance with Art. 13, requiring guarantees of suspensive effect.*

☞ ECtHR Ap.no. 40035/98, ***Jabari v. Turkey***, [11 July 2000]
* violation of ECHR art. 3 (proc.)
* *Given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3*

☞ ECtHR Ap.no. 25894/94, ***Bahaddar v. Netherlands***, [19 Feb. 1998]
* no violation of ECHR art. 3 (proc.)
* *Although prohibition of ill-treatment contained in Article 3 of Convention is also absolute in expulsion cases, applicants invoking this Article are not dispensed as a matter of course from exhausting available and effective domestic remedies and normally complying with formal requirements and time-limits laid down by domestic law.*

  In the instant case applicant failed to comply with time-limit for submitting grounds of appeal – failed to request extension of time-limit even though possibility open to him – no special circumstances absolving applicant from compliance – even after time-limit had expired applicant had possibility to lodge fresh applications to domestic authorities either for refugee status or for residence permit on humanitarian grounds – Court notes at no stage during domestic proceedings was applicant refused interim injunction against expulsion – thus no imminent danger of ill-treatment

2.3.4 CAT Judgments on Asylum Procedure

No cases yet

2.3.5 National Judgments on Asylum Procedure

No cases yet

3 Responsibility Sharing

3.1 Responsibility Sharing: Adopted Measures

Regulation 343/2003

Dublin II

* OJ 2003 L 50/1
* impl. date 1 Sep. 2003
* implemented by Regulation 1560/2003 (OJ 2003 L 222/3)

☞ CJEU C-620/10, Kastrati [3 May 2012]
☞ CJEU C-493/10, M.E. [21 Dec. 2011]
☞ CJEU C-411/10, N.S. [21 Dec. 2011]
☞ CJEU C-19/08, Petrosian [29 Jan. 2009]
☞ CJEU C-666/11, M [pending]
☞ CJEU C-648/11, M.A. [pending]
☞ CJEU C-528/11, Halaf [pending]
☞ CJEU C-245/11, K. [pending]
☞ CJEU C-4/11, Puid [pending]

Regulation 2725/2000

Eurodac

* OJ 2000 L 316/1
* impl. date 15-1-2003
* implemented by Regulation 407/2002 (OJ 2002 L 62/1)

ECHR art. 3+13

European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

* ETS 005

☞ ECtHR Ap.no. 30696/09, M.S.S. v. Belgium and Greece [21 Jan. 2011]
☞ ECtHR Ap.no. 32733/08, K.R.S. v. UK [2 Dec. 2008]
☞ ECtHR Ap.no. 43844/98, T.I. v. UK [7 Mar. 2000]

3.2 Responsibility Sharing: Proposed Measures

Amendment

Dublin II and Eurodac

* COM (2008) 820 and 825, Dec. 2008 UK, IRL opt in
* under discussion; EP first-reading vote, May 2009; discussed at JHA Council, 4 June 2009; discussion on Dublin II amendments restarted under Belgian Presidency; new version of Eurodac proposal (COM (2010) 555) proposed Oct. 2010

3.3 Responsibility Sharing: Jurisprudence

3.3.1 CJEU Judgments on Responsibility Sharing

New

- ☞ CJEU C-620/10, ***Kastrati***, [3 May 2012]
- * interpr. of Reg. 343/2003 on ***Dublin II*** art. 2(c)
- * ref. from 'Kammarrätten i Stockholm, Migrationsöverdomstolen' (Sweden)
- * *The withdrawal of an application for asylum within the terms of Art. 2(c) Dublin II, which occurs before the MS responsible for examining that application has agreed to take charge of the applicant, has the effect that that regulation can no longer be applicable. In such a case, it is for the MS within the territory of which the application was lodged to take the decisions required as a result of that withdrawal and, in particular, to discontinue the examination of the application, with a record of the information relating to it being placed in the applicant's file.*

- ☞ CJEU C-493/10, ***M.E.***, [21 Dec. 2011]
- * interpr. of Reg. 343/2003 on ***Dublin II*** art. 3(2)
- * ref. from 'High Court' (Ireland)

- ☞ CJEU C-411/10, ***N.S.***, [21 Dec. 2011]
- * interpr. of Reg. 343/2003 on ***Dublin II*** art. 3(2)
- * ref. from 'Court of Appeal (England and Wales)' (UK)
- * *On (1) the concept of 'safe countries' and (2) Transfer of an asylum seeker to the MS responsible and (3) Rebuttable presumption of compliance, by that MS, with fundamental rights.*

- ☞ CJEU C-19/08, ***Petrosian***, [29 Jan. 2009]
- * interpr. of Reg. 343/2003 on ***Dublin II*** art. 20(1)(d) & 20(2)
- * ref. from 'Kammarrätten i Stockholm, Migrationsöverdomstolen' (Sweden)
- * *On (1) Taking back by a MS of an asylum seeker whose application has been refused and who is in another MS where he has submitted a fresh asylum application and (2)Start of the period for implementation of transfer of the asylum seeker and (3) Transfer procedure on the subject-matter of an appeal having suspensive effect.*

3.3.2 CJEU pending cases on Responsibility Sharing

New

- ☞ CJEU C-666/11, ***M***
- * interpr. of Reg. 343/2003 on ***Dublin II*** art. 3(2) and 19(4)
- * ref. from 'Oberverwaltungsgericht für das Land Nordrhein Westfalen' (Germany) 19-12-2011
- * *Does the asylum seeker have a right, enforceable by him in the courts, to require a MS to examine the assumption of responsibility under art. 3(2) and to inform him about the grounds for its decision?*

- ☞ CJEU C-648/11, ***M.A.***
- * interpr. of Reg. 343/2003 on ***Dublin II*** art. 6
- * ref. from 'Court of Appeal (England & Wales)' (UK)
- * *On determining the MS responsible for examining an asylum application lodged in one of the MS by a TCN, where an applicant for asylum who is an unaccompanied minor with no member of his or her family legally present in another MS has lodged claims for asylum in more than one MS, which MS does the second paragraph of article 6 make responsible for determining the application for asylum?*

- ☞ CJEU C-528/11, ***Halaf***
- * interpr. of Reg. 343/2003 on ***Dublin II*** art. 3(2)
- * ref. from 'Administrativen sad Sofia-grad' (Bulgaria)
- * *On (1) Legislation of a MS where application is made not providing either criteria or rules of procedure for the application of the sovereignty clause, and (2) Admissible evidence of non compliance with European Union law on asylum where there is no judgment of the CJEU declaring that by reason of those infringements the MS responsible has failed to fulfil its obligations in relation to asylum.*

☞ CJEU C-245/11, ***K.***
* interpr. of Reg. 343/2003 on ***Dublin II*** art. 3(2) and 15
* ref. from 'Asylgerichtshof' (Austria)
* *On the question whether, in the accessory interpretation and application of Art. 3 or 8 of the ECHR (Article 4 or Article 7 of the Charter), more extensive notions of 'inhuman treatment' or 'family', at variance with the interpretation developed by the European Court of Human Rights, may be applied?*

☞ CJEU C-4/11, ***Puid***
* interpr. of Reg. 343/2003 on ***Dublin II*** art. 3(2)
* ref. from 'Hessischer Verwaltungsgerichtshof' (Germany)
* *On the obligation of a MS to take responsibility for the processing of an asylum application if there is a risk of infringement of the fundamental rights of the asylum-seeker or a failure to apply the minimum standards.*

3.3.3 ECtHR Judgments on Responsibility Sharing

☞ ECtHR Ap.no. 30696/09, ***M.S.S. v. Belgium and Greece***, [21 Jan. 2011]
* violation of ECHR art. 3+13
* *A deporting State is responsible under ECHR Art. 3 for the foreseeable consequences of the deportation of an asylum seeker to another EU Member State, even if the deportation is being decided in accordance with the Dublin Regulation; the responsibility of the deporting State comprises not only the risk of indirect refoulement by way of further deportation to risk of ill-treatment in the country of origin, but also the conditions in the receiving Member State if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.*

☞ ECtHR Ap.no. 32733/08, ***K.R.S. v. UK***, [2 Dec. 2008]
* no violation of ECHR art. 3+13
* *Based on the principle of intra-community trust, it must be presumed that a MS will comply with its obligations. In order to reverse that presumption the applicant must demonstrate in concreto that there is a real risk of his being subjected to treatment contrary to Article 3 of the Convention in the country to which he is being removed.*

☞ ECtHR Ap.no. 43844/98, ***T.I. v. UK***, [7 Mar. 2000]
* no violation of ECHR art. 3+13
* *The Court considered that indirect removal to an intermediary country, which was also a Contracting Party, left the responsibility of the transferring State intact. Subsequently, the transferring State was required not to deport a person where substantial grounds had been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country.*
  In this case the Court considered that there was no reason to believe that Germany would have failed to honour its obligations under Article 3 of the Convention and protect the applicant from removal to Sri Lanka if he submitted credible arguments demonstrating that he risked ill-treatment in that country.

3.3.4 CAT Judgments on Responsibility Sharing

No cases yet

3.3.5 National Judgments on Responsibility Sharing

No cases yet

4 Reception Conditions

4.1 Reception Conditions: Adopted Measures

Decision 573/2007

European Refugee Fund (2008-2013)

* OJ 2007 L 144/1
* amended by Decision 458/2010 (OJ 2010 L 129/1)

Council Decision 2004/904

Refugee Fund (2005-2010)

* OJ 2004 L 381/52

Directive 2003/9

Reception Conditions

* OJ 2003 L 31/18 IRL opt out
* impl. date Feb. 2005

☞ CJEU C-179/11, CIMADE & GISTI [pending]

Decision 2000/596

European Refugee Fund (2000-2004)

* OJ 2000 L 252/12

ECHR art. 3 (reception)

European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

4.2 Reception Conditions: Proposed Measures

Decision

Amendment of Refugee Fund

* COM (2009) 456, 2 Sep. 2009 UK opt in
* EP first-reading vote, May 2010; Council discussions restarted, spring 2011; EP/Council deal, Feb. 2012; first reading position adopted by Council, 8 Mar. 2012;

Amendment

Reception Directive

* COM (2008) 815, Dec. 2008 UK, IRL opt out
* UK and Ireland opt out; amended text proposed by Commission, June 2011 (COM (2011) 320)

4.3 Reception Conditions: Jurisprudence

4.3.1 CJEU Judgments on Reception Conditions

☞ CJEU no cases yet,

4.3.2 CJEU pending cases on Reception Conditions

☞ CJEU C-179/11, ***CIMADE & GISTI***
* interpr. of Dir. 2003/9 on ***Reception Conditions***
* ref. from 'Conseil d'État' (France)
* *Does the obligation, incumbent on the first MS, to guarantee the minimum reception conditions cease at the moment of the acceptance decision by the State to which the referral was made, upon the actual taking charge or taking back of the asylum seeker, or at some other date?*

4.3.3 ECtHR Judgments on Reception Conditions

☞ ECtHR Ap.no. 30696/09, ***M.S.S. v. Belgium and Greece***, [21 Jan. 2011]
* violation of ECHR art. 3
* *A deporting State is responsible under ECHR Art. 3 for the foreseeable consequences of the deportation of an asylum seeker to another EU Member State, even if the deportation is being decided in accordance with the Dublin Regulation; the responsibility of the deporting State comprises not only the risk of indirect refoulement by way of further deportation to risk of ill-treatment in the country of origin, but also the conditions in the receiving Member State if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.*

4.3.4 CAT Judgments on Reception Conditions

No cases yet

4.3.5 National Judgments on Reception Conditions

No cases yet

5 Miscellaneous

Regulation 439/2010
European Asylum Support Office
* OJ 2010 L 132/11