Newsletter on European Asylum Issues for Judges

2024/2

NEAIS

Quarterly update (since 2012) of a full overview of

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

on

- *European Asylum Issues*

Published by the Centre for Migration Law (CMR)
Radboud University Nijmegen (NL), in close co-operation with
the University of London (UK), Aarhus University (DK),
and the International Association of Refugee and Migration Judges (IARMJ)

New in this Issue of NEAIS

About

NEAIS is designed for judges who need to keep up to date with European developments in the area of asylum.
NEAIS contains European legislation and jurisprudence on 4 central themes:
(1) qualification for protection; (2) procedural safeguards; (3) responsibility sharing and (4) reception conditions.
NEAIS is not about other migration issues or free movement. We would like to refer to:
NEMIS (Newsletter on European Migration Issues) and
NEFIS (Newsletter on European Free Movement issues).

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subscribe email to carolus.grutters@ru.nl
ISSN 2213-249X

CMR Centre for Migration Law

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Editorial

Welcome to the **second** issue of **NEAIS** in 2024. We would like to draw your attention to the following.

ECtHR judgments on Qualification

G.H. v Belgium (9568/22) is inadmissible since the applicants, claiming risk of violence and extortion in El Salvador, despite the refusal of asylum had not been subject to a removal order.

V. v. France (22283/21), about the removal of a citizen of Chechen origin to Russia, is manifestly unfounded.

In ***A.K. v. France*** (14997/19) there is no violation of art. 3 ECHR in case of removal of the applicants to Senegal and Guinea, on the ground that the medical treatment, of which the applicants were in need, is unavailable.

In ***A.D. a.o. v. Sweden*** (22283/21) there is no violation of art. 3 by removal to Albania. It had not been demonstrated that the Albanian authorities are unable or unwilling to obviate any risk of ill-treatment by non-state actors seemingly faced by the applicants by providing appropriate protection.

ECtHR judgments on Asylum Procedure

In ***Sherov a.o. v. Poland*** (54029./17) there is a violation of art. 3 by the refusal of entry at the applicants' repeated attempts to enter Poland. This is part of a wider policy of not receiving applications for international protection from persons presenting themselves at the Polish Ukrainian border and of returning those persons to Ukraine,

ECtHR judgments on Reception Conditions

In ***A.Q. a.o. v. Greece*** (59758/16) the complaint concerning a lack of appropriate medical assistance is rejected as inadmissible.

In ***A.R. and Others v. Greece*** (59841/19, 15782/20, 21997/20) the ECtHR concludes a violation of art. 3 due to the living conditions in Reception and Identification Centres as well as the lack of adequate medical assistance.

In ***W.S. c. Greece*** (65275/19) there is a violation of art. 3 due to inadequate living conditions and detention conditions for an unaccompanied minor asylum seeker.

CtAT Views on Qualification

In ***N.A. v Switzerland*** (1096/2021) the CtAT decides the case of an Afghan national who flees via Iran and Turkye, to Romania, where he applies for asylum. He had to stay in a metal container without a bed, furniture or toilet, and he is severely beaten. Subsequently he was taken to a reception centre where he was threatened with expulsion to Serbia. A.N. traveled to Italy and to Switzerland where he applied for asylum. Switzerland requests Romania to take A.N. back under the Dublin III regulation, which Romania accepts. The argument that the expulsion to Romania would violate art 3 CAT because Romania has systemic deficiencies in its asylum and reception system is not accepted by Swiss courts.
The CtAT refers a.o. to the adopted view of the Human Rights Committee of the ICCPR in Jasin v Denmark (2360/2014) in a similar case regarding a Dublin transfer, and to ECtHR 21 Jan 2011, in M.S.S. v Belgium and Greece. In its view in this case, the CtAT states that there is not sufficient evidence provided by the complainant in support of his allegations of torture and ill-treatment by the Romanian police. Thus, there is no violation of the CAT.

CJEU Judgments both on Qualification and Asylum Procedure

In ***S.N. & L.N.*** (C-563/22) the CJEU has ruled that Art. 40 APD II read in conjunction with the second sentence of Art. 12(1)(a) QD II must be interpreted as meaning that the authority ruling on the merits of a subsequent application for international protection is required to examine the factual elements submitted in support of that application, including when those facts have already been assessed by the authority which definitively rejected a first application for international protection.
The second sentence of Art. 12(1)(a) of QD II must be interpreted as meaning that UNRWA's protection or assistance, from which an applicant for international protection, a stateless person of Palestinian origin, benefits, must be considered to have ceased within the meaning of that provision when:
(i) that body finds itself unable, for whatever reason, including by reason of the general situation in the sector of that body's area of operations, in which that stateless person had his or her habitual residence, to ensure to that stateless person, taking into account, where applicable, his or her state of vulnerability, dignified living conditions, consistent with its mission, without him or her being required to demonstrate that he or she is specifically targeted by that general situation by reason of elements specific to his or her personal situation, and
(ii) that stateless person of Palestinian origin would find himself or herself, if he or she were to return to that sector, in a state of serious insecurity, taking into account, where applicable, his or her state of vulnerability, since the administrative and judicial authorities are required to carry out an individual assessment of each application for international protection based on that provision, within the framework of which the age of the person concerned may be relevant.

UNRWA's assistance or protection must, in particular, be considered to have ceased vis-à-vis the applicant when, for whatever reason, that body is no longer able to provide to any stateless person of Palestinian origin staying in the sector of that body's area of operations where that applicant had his or her habitual residence, dignified living conditions or minimum security conditions. Whether UNRWA's protection or assistance must be considered to have ceased must be assessed at the time from which that stateless person left the sector of UNRWA's area of operations in which he or she had his or her habitual residence, to that when the competent administrative authorities rule on his or her application for international protection or that when the competent court rules on any appeal directed against the decision rejecting that application.

CJEU Judgments on Qualification

In ***K. & L.*** (C-646/21) the CJEU has ruled that art. 10(1)(d) and (2) QD II must be interpreted as meaning that depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a MS may be regarded as belonging to 'a particular social group', constituting a 'reason for persecution' capable of leading to the recognition of refugee status.
Art. 24(2) of the Charter must be interpreted as precluding the competent national authority from deciding upon an application for international protection submitted by a minor without having concretely determined the best interests of that minor in the context of an individual assessment.

In ***Hamm*** (C-352/22) the CJEU has ruled that Art. 21(1) QD II read in conjunction with Art. 18 + 19(2) of the Charter must be interpreted as meaning that, where a third-country national who has been granted refugee status in one MS is the subject in another MS, on whose territory he or she resides, of an extradition request from his or her country of origin, the requested MS cannot authorise extradition unless it has initiated an exchange of information with the authority that granted the requested individual refugee status and where that status has not been revoked by that authority.

AG conclusions on Qualification

In ***Keren*** (C-158/23) the AG concludes that the QDII
* does not preclude national legislation which requires refugees to attend civic integration courses, provided that that obligation does not limit access to the rights conferred on them by that directive and, in particular, by Chapter VII thereof, and takes account of their specific needs.
* precludes national legislation which imposes on refugees the obligation to bear high costs of integration programmes, without the national authorities having previously carried out an individual assessment of their financial and social situation, on the ground that that obligation is incompatible with the obligation to ensure access to integration programmes and does not create pre-conditions which guarantee access to those programmes;
* does not preclude national legislation which requires refugees to sit a civic integration examination covering oral and written skills in the official language of the host Member State and knowledge of the society of that Member State; and
* precludes national legislation which requires refugees to pass such an examination, on pain of having to repay a loan and receiving a fine, as it jeopardises the attainment of the objectives of QD II and undermines the effectiveness of Article 34 thereof.

New CJEU cases on Qualification

In ***Galte*** (C-63/24) the question is whether there is an obligation to take into consideration the sentence already served by that person, the pardon or amnesty granted to that person, or any other circumstance of a similar nature?

In ***Kaduna & Abkez*** (C-224/24 + C-290/24) the question is what the consequence is of the decision of a MS to include third country nationals to the protection of the directive and the options for an individual MS to end this protection.

CJEU Judgments on Asylum Procedure

The case ***Edo*** (C-694/23) is withdrawn after reference to CJEU 22 Feb 2022, C-483/20.

In ***Q.Y.*** (C-753/22) the CJEU has ruled that Art. 3(1) APD II must be interpreted as meaning that where the competent authority of a MS cannot exercise the option available to it under the last of those provisions to reject as inadmissible an application for international protection made by an applicant, to which another MS has already granted such protection, on account of a serious risk that that applicant will be subjected, in that other MS, to inhuman or degrading treatment, within the meaning of art. 4 of the Charter, that authority must carry out a new, individual, full and up-to-date examination of that application in a new international protection procedure conducted in accordance with Directives 2011/95 and 2013/32. Within the framework of that examination, that authority must nevertheless take full account of the decision of that other MS to grant international protection to that applicant and of the elements on which that decision is based.

AG conclusions on Asylum Procdure

In ***C.V.*** (C-406/22) the AG has concluded that art. 37(1) APD II must be interpreted as meaning that the fact that a third country, designated as a safe country of origin within the meaning of the provisions referred to above, has invoked art. 15 ECHR does not automatically prevent its continued designation as a safe country of origin. However, such an invocation must be taken into account by the competent authorities for the purposes of deciding whether the designation as a safe country of origin can be maintained, in the light of, in particular, the scope of the measures derogating from the obligations under the ECHR as defined in the notice submitted under art. 15 ECHR and its implementation in practice.

In ***Elliniko Symvoulio*** (C-134/23) the AG has concluded that the APD II does not preclude national legislation designating a third country as generally safe for certain categories of applicants for international protection where, notwithstanding its legal obligation, that country has generally suspended the admission or readmission of those applicants and there is no foreseeable prospect of a change in that position.
However, it precludes national legislation providing for the adoption of a decision that an application for international protection is inadmissible pursuant to the concept of 'safe third country' where, from the time when the application is examined, the Member State is certain that the third country concerned will not permit the applicant to enter its territory.

New CJEU cases on Asylum Procedure

In ***Multan*** (C-431/24) the question is whether the APD II allows for a limited access to confidential information.

CJEU Judgments on Dublin

In ***A.H.Y.*** (C-359/22) the CJEU ruled that Art. 27(1) Dublin III must be interpreted as not requiring MSs to make available an effective remedy against a decision adopted under the discretionary clause contained in Art. 17(1) of that regulation.
Art. 47 Charter must be interpreted as not applying to a situation in which an applicant for international protection who is the subject of a transfer decision has requested the MS which adopted that decision to exercise its discretion under Article 17(1) Dublin III or has sought a judicial remedy against the outcome of that request, with the result that that provision of the Charter a fortiori does not preclude a MS from implementing, in those circumstances, a transfer decision before that request or any action challenging the outcome of that request has been determined.
The first subparagraph of Art. 29(1) Dublin III must be interpreted as meaning that the six-month time limit to proceed to the transfer of an applicant for international protection which is laid down in that provision starts to run from acceptance of the request by another MS to take charge or to take back the person concerned or from the final decision on an appeal against or review of a transfer decision where there is a suspensive effect in accordance with art. 27(3) of that regulation, and not from the date of the final decision on an action challenging the decision of the requesting MS, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Art. 17(1) of that regulation to examine the application for international protection.

Cases ***B.U.*** (C-80/22) and ***O.V.*** (C-217/22) were withdrawn with reference to CJEU 30 Nov. 2023, C-228/21, C.Z.A.

New CJEU cases on Dublin

In ***Tudmur*** (C-185/24) the CJEU is asked to interpret the principle of inerstate trust.

New CJEU cases on Reception Conditions

In ***S.A. & R.J.*** (C-97/24) the Irish judge wants to know where "force majeure" is not found as a defence in a Directive or implementing Regulations, whether such a defence is nonetheless available as a defence to a Francovich damages claim for a breach of an EU law obligation that confers rights on individuals which derive from the fundamental right to human dignity contained in Art. 1 Charter.

In ***Sidi Bouzidi*** (C-184/24) the question is whether art. 20 RCD II and the principles set out by the CJEU in its judgments of 12 Nov. 2019, C-233/2018 and 1 Aug. 2022, C-422/2021, in so far as they preclude the administrative authority of the MS from ordering, as a sanction, the withdrawal of reception measures where that decision would be detrimental to the basic vital needs of the foreign national applying for international protection and of his family, preclude national legislation which permits, following a reasoned individual assessment, relating also to the necessity and proportionality of the measure, withdrawal of reception, not for sanctioning reasons, but because the conditions for being granted it are no longer met, in particular, on account of the foreign national's refusal, on grounds which do not relate to covering basic vital needs and protecting human dignity, to agree to the transfer to another accommodation centre, designated by the administrative authority on account of objective organisational needs and guaranteeing, under the responsibility of the administrative authority itself, that the material reception conditions equivalent to those enjoyed at the centre of origin will be maintained, where the refusal to transfer and subsequent decision ordering the withdrawal place the foreign national in the position of being unable to meet basic needs of personal and family life?

=.=
Nijmegen, June 2024, Carolus Grütters.

1 Qualification for Protection

1.1 Qualification for Protection: Adopted Measures

case law sorted in chronological order

Directive 2004/83 — **Qualification I**

On minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons

* OJ 2004 L 304/12 — impl. date: 10-10-2006

* Replaced by Dir. 2011/95 Qualification II

CJEU Judgments

☞	CJEU	29 June	2023,	C-756/21	***X. / IPAT (IE)***	4(1)+4(5)(e)
☞	CJEU	20 Jan.	2021,	C-255/19	***Home dpt / O.A. (UK)***	2(e)+7+11
☞	CJEU	24 Apr.	2018,	C-353/16	***M.P.***	2(e)+15(b)
☞	CJEU	9 Feb.	2017,	C-560/14	***M.***	4
☞	CJEU	31 Jan.	2017,	C-573/14	***Lounani***	12(2)(c)+12(3)
☞	CJEU	24 June	2015,	C-373/13	***T.***	21(2)+(3)
☞	CJEU	26 Feb.	2015,	C-472/13	***Shepherd***	9(2)+12(2)
☞	CJEU	18 Dec.	2014,	C-562/13	***Abdida***	15(b)
☞	CJEU	18 Dec.	2014,	C-542/13	***M'Bodj***	28+29
☞	CJEU	2 Dec.	2014,	C-148/13	***A., B., C.***	4
☞	CJEU	17 July	2014,	C-481/13	***Qurbani***	14(6)
☞	CJEU	8 May	2014,	C-604/12	***H.N.***	
☞	CJEU	30 Jan.	2014,	C-285/12	***Diakite***	15(c)
☞	CJEU	7 Nov.	2013,	C-199/12	***X., Y., Z***	9(1)(a)+10(1)(d)
☞	CJEU	19 Dec.	2012,	C-364/11	***El Kott a.o.***	12(1)(a)
☞	CJEU	22 Nov.	2012,	C-277/11	***M.M.***	4(1)
☞	CJEU	5 Sep.	2012,	C-71/11	***Y. & Z.***	2(c)+9(1)(a)
☞	CJEU	9 Nov.	2010,	C-57/09	***B. & D.***	12(2)(b)+(c)
☞	CJEU	17 June	2010,	C-31/09	***Bolbol***	12(1)(a)
☞	CJEU	2 Mar.	2010,	C-175/08	***Salahadin Abdulla a.o.***	2(c)+11+14
☞	CJEU	17 Feb.	2009,	C-465/07	***Elgafaji***	2(e)+15(c)

See further: § 1.3.1 and 1.3.2

Directive 2011/95 — **Qualification II**

Revised directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection

* OJ 2011 L 337/9 — impl. date: 22-12-2013 — UK, IRL opt out

* Recast of Dir. 2004/83 Qualification I

New	☞ CJEU	18 June	2024,	C-352/22	***Hamm***	21(1)
New	☞ CJEU	13 June	2024,	C-563/22	***S.N. & L.N.***	12+15
New	☞ CJEU	11 June	2024,	C-646/21	***K. & L. / Stscr (NL)***	10(1)(d)
	☞ CJEU	29 Feb.	2024,	C-222/22	***J.F. / Bundesamt (AT)***	5(3)
	☞ CJEU	16 Jan.	2024,	C-621/21	***W.S.***	17
	☞ CJEU	23 Nov.	2023,	C-374/22	***X.X.X.***	2(j)+23
	☞ CJEU	23 Nov.	2023,	C-614/22	***X.X.X.***	23
	☞ CJEU	9 Nov.	2023,	C-125/22	***X. & Y. / Stscr (NL)***	15(b)+(c)
	☞ CJEU	5 Oct.	2023,	C-294/22	***S.W.***	12(1)(a)
	☞ CJEU	21 Sep.	2023,	C-151/22	***S. & A. / Stscr (NL)***	10(1)(e)+4(3)-(5)
	☞ CJEU	6 July	2023,	C-402/22	***M.A.***	14(4)(b)
	☞ CJEU	6 July	2023,	C-8/22	***X.X.X.***	14(4)(b)
	☞ CJEU	6 July	2023,	C-663/21	***A.A. / Bundesamt Asyl (AT)***	14(4)(b)
	☞ CJEU	12 Jan.	2023,	C-280/21	***P.I. / Migracijos (LT)***	10(1)(e)+10(2)
	☞ CJEU	22 Sep.	2022,	C-159/21	***G.M. / Aliens Police (HU)***	17(1)(b)
	☞ CJEU	3 Mar.	2022,	C-349/20	***N.B. & A.B.***	12(1)(a)
	☞ CJEU	22 Feb.	2022,	C-483/20	***X.X.X.X.***	23(2)
	☞ CJEU	9 Nov.	2021,	C-91/20	***L.W.***	3+23(2)
	☞ CJEU	28 Oct.	2021,	C-462/20	***ASGI***	29
	☞ CJEU	26 Oct.	2021,	C-456/21	***E. & F. / Stscr (NL)***	10(1)(d)
	☞ CJEU	9 Sep.	2021,	C-768/19	***S.E. / Germany***	2(j)+11
	☞ CJEU	10 June	2021,	C-901/19	***C.F. & D.N. / Germany***	2(f)+15(c)
	☞ CJEU	13 Jan.	2021,	C-507/19	***Germany / X.T. (DE)***	12(1)(a)
	☞ CJEU	19 Nov.	2020,	C-238/19	***E.Z.***	9(2)+(3)
	☞ CJEU	23 May	2019,	C-720/17	***Bilali***	19
	☞ CJEU	14 May	2019,	C-391/16	***M. a.o.***	14(4)+(6)
	☞ CJEU	21 Nov.	2018,	C-713/17	***Ayubi***	29
	☞ CJEU	4 Oct.	2018,	C-56/17	***Fathi***	9
	☞ CJEU	4 Oct.	2018,	C-652/16	***Ahmedbekova***	4+3
	☞ CJEU	13 Sep.	2018,	C-369/17	***Shajin Ahmed***	17(1)(b)
	☞ CJEU	25 July	2018,	C-585/16	***Alheto***	12(1)(a)
	☞ CJEU	25 Jan.	2018,	C-473/16	***F.***	4
	☞ CJEU	1 Mar.	2016,	C-443/14	***Alo & Osso***	33+29
	CJEU pending cases					
	☞ CJEU AG	6 June	2024	C-158/23	***Keren***	34
	☞ CJEU AG	9 Nov.	2023	C-608/22	***A.H.***	9(1)(b)+4(3)
New	☞ CJEU	(pending)		C-63/24	***Galte***	12(2)(b)
	☞ CJEU	(pending)		C-551/23	***Cassen***	13
	☞ CJEU	(pending)		C-454/23	***K.A.M.***	14(4)(a)+12
	☞ CJEU	(pending)		C-352/23	***Changu***	2(h)+3
	☞ CJEU	(pending)		C-217/23	***Laghman***	10(1)(d)
	☞ CJEU	(pending)		C-123/23	***Khan Yunis***	33(2)(d)

See further: § 1.3.1 and 1.3.2

Regulation 2303/2021 — **EU Asylum Agency**

On the European Union Agency for Asylum

* OJ 2021 L 468/1 — DK opt out; IRL opt in: 20 Aug. 2023

* Repeals Regulation 439/2010 on EASO

Regulation 439/2010 — **EASO**

On the European Asylum Support Office

* OJ 2010 L 132/11 — impl. date: 08-06-2010 — UK, IRL opt in

* Repealed by Reg. 2303/2021 on EUAA

Directive 2001/55 — **Temporary Protection**

On minimum standards for giving temporary protection in the event of a mass influx of displaced persons

* OJ 2001 L 212/12
* Council implementing Decision 2022/382

Due to the invasion of Russian armed forces in Ukraine on 24 Feb. 2022, the Council has established the existence of a mass influx of displaced persons within the meaning of Art. 5 TPDir on 4 March 2022.
* This is formalised in Council Implementing Decision 2022/32 stating that de validity of the TPDir is at least until 4 March 2023.
* During the Council meeting of 13/14 October 2022, the Council announced that the Temporary Protection Directive would be extended, in conformity with Art. 4(1) for a period of 12 months until 4 March 2024.
* During the Council meeting of 28 September 2023, the Council agreed to extend the temporary protection from 4 March 2024 to 4 March 2025.

New	☞ CJEU	(pending)	C-244/24	***Kaduna***	4+7(1)
	☞ CJEU	(pending)	C-753/23	***Krasiliva***	8+11

See further: § 1.3.1 and 1.3.2

ECHR — **Non-Refoulement**

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

* ETS 005 impl. date: 1953

* art. 3: Prohibition of Torture, Inhuman or Degrading Treatment or Punishment
art. 2: Right to Life

ECtHR Judgments

New	☞	ECtHR	7 May	2024	22283/21	***A.D. a.o. v SE***	3
New	☞	ECtHR	18 Apr.	2024	48932/20	***V. v FR***	3+2
New	☞	ECtHR	18 Apr.	2024	14997/19	***S.N. v FR***	3
New	☞	ECtHR	16 Apr.	2024	9568/22	***F.O. & G.H. v BE***	3
	☞	ECtHR	19 Mar.	2024	27584/20	***K.J. a.o. v RU***	2+3+5
	☞	ECtHR	15 Feb.	2024	53254/20	***U. v FR***	3
	☞	ECtHR	5 Dec.	2023	30919/20	***H.A. v UK***	3
	☞	ECtHR	24 Oct.	2023	23048/19	***A.M.A. v NL***	3+3
	☞	ECtHR	13 July	2023	13869/22	***Carvajal Barrios v ES***	3
	☞	ECtHR	13 July	2023	4677/20	***A.A. v SE***	3
	☞	ECtHR	29 June	2023	9839/22	***Bijan Balahan v SE***	3
	☞	ECtHR	15 June	2023	37550/22	***Iquioussen v FR***	3
	☞	ECtHR	6 Oct.	2022	18207/21	***S. v FR***	3
	☞	ECtHR	14 Sep.	2022	49857/20	***R. v FR***	3
	☞	ECtHR	21 June	2022	1557/19	***Akkad v TR***	3+5+13
	☞	ECtHR	21 June	2022	40462/16	***M.N. a.o. v TR***	3
	☞	ECtHR	29 Apr.	2022	28492/15	***Khasanov v RU***	3
	☞	ECtHR	29 Mar.	2022	45761/18	***N.K. v RU***	3+5(4)+34
	☞	ECtHR	22 Mar.	2022	55978/20	***T.K. a.o. v LT***	3
	☞	ECtHR	7 Dec.	2021	57467/15	***Savran v DK***	3
	☞	ECtHR	14 Sep.	2021	71321/17	***M.D. a.o. v RU***	3+2+5(1)+5(4)
	☞	ECtHR	22 July	2021	39126/18	***E.H. v FR***	3+13
	☞	ECtHR	24 June	2021	59687/17	***Khatchaturov v AM***	3
	☞	ECtHR	15 Apr.	2021	5560/19	***K.I. v FR***	3
	☞	ECtHR	16 June	2020	6040/17	***M.R. v CH***	2+3
	☞	ECtHR	2 June	2020	49773/15	***S.A. v NL***	3
	☞	ECtHR	25 Feb.	2020	68377/17	***A.S.N. v NL***	3
	☞	ECtHR	20 Feb.	2020	5115/18	***M.A. a.o. v BG***	2
	☞	ECtHR	14 Jan.	2020	75953/16	***D. a.o. v RO***	2
	☞	ECtHR	3 Dec.	2019	29343/18	***N.M. v RU***	3
	☞	ECtHR	19 Nov.	2019	28492/15	***T.K. v RU***	3
	☞	ECtHR	14 Nov.	2019	25244/18	***N.A. v FI***	3+2
	☞	ECtHR	5 Nov.	2019	32218/17	***A.A. v CH***	3
	☞	ECtHR	10 Oct.	2019	34016/18	***O.D. v BG***	3+13
	☞	ECtHR	8 Oct.	2019	65122/17	***S.B. v RU***	3
	☞	ECtHR	8 Oct.	2019	30261/17	***R.K. v RU***	3
	☞	ECtHR	1 Oct.	2019	57467/15	***Savran v DK***	3
	☞	ECtHR	11 June	2019	35332/17	***S.S. v RU***	3+5(4)
	☞	ECtHR	21 May	2019	36321/16	***O.O. v RU***	3
	☞	ECtHR	23 Oct.	2018	61689/16	***A.N. a.o. v RU***	3
	☞	ECtHR	4 Sep.	2018	17675/18	***Saidami v DE***	3
	☞	ECtHR	10 July	2018	14319/17	***X. v NL***	3
	☞	ECtHR	19 Apr.	2018	46240/15	***A.S. v FR***	3
	☞	ECtHR	1 Feb.	2018	9373/15	***M.A. v FR***	3
	☞	ECtHR	18 Jan.	2018	21417/17	***I.K. v CH***	3
	☞	ECtHR	9 Jan.	2018	36417/16	***X. v SE***	3
	☞	ECtHR	19 Dec.	2017	60342/16	***A. v CH***	3+2
	☞	ECtHR	7 Nov.	2017	54646/17	***X. v DE***	3
	☞	ECtHR	7 Nov.	2017	31189/15	***T.M. a.o. v RU***	3
	☞	ECtHR	7 Nov.	2017	58182/14	***K.I. v RU***	3
	☞	ECtHR	11 July	2017	43538/11	***E.P. v NL***	3
	☞	ECtHR	20 June	2017	41282/16	***M.O. v CH***	3
	☞	ECtHR	30 May	2017	50364/14	***N.A. v CH***	3+2
	☞	ECtHR	16 May	2017	15993/09	***M.M. v NL***	3
	☞	ECtHR	28 Mar.	2017	20669/13	***S.M. v FR***	3
	☞	ECtHR	14 Feb.	2017	52722/15	***S.K. v RU***	3
	☞	ECtHR	26 Jan.	2017	16744/14	***X. v CH***	3
	☞	ECtHR	13 Dec.	2016	41738/10	***Paposhvili v BE***	3
	☞	ECtHR	23 Aug.	2016	59166/12	***J.K. a.o. v SE***	3
	☞	ECtHR	26 July	2016	14348/15	***U.N. v RU***	3
	☞	ECtHR	5 July	2016	29094/09	***A.M. v NL***	3
	☞	ECtHR	16 June	2016	34648/14	***R.D. v FR***	3
	☞	ECtHR	7 June	2016	7211/06	***R.B.A.B. v NL***	3
	☞	ECtHR	10 May	2016	49867/08	***Babajanov v TR***	3
	☞	ECtHR	23 Mar.	2016	43611/11	***F.G. v SE***	3
	☞	ECtHR	19 Jan.	2016	27081/13	***Sow v BE***	3
	☞	ECtHR	19 Jan.	2016	58689/12	***M.D. & M.A. v BE***	3
	☞	ECtHR	12 Jan.	2016	13442/08	***A.G.R. v NL***	3

☞ ECtHR	1 Dec.	2015	17724/14	***Tadzhibayev v RU***	3
☞ ECtHR	15 Oct.	2015	40081/14	***L.M. a.o. v RU***	2+3
☞ ECtHR	10 Sep.	2015	4601/14	***R.H. v SE***	3
☞ ECtHR	1 Sep.	2015	76100/13	***M.K. v FR***	3
☞ ECtHR	18 June	2015	4455/14	***L.O. v FR***	3
☞ ECtHR	8 Apr.	2015	71398/12	***M.E. v SE***	3
☞ ECtHR	8 Apr.	2015	49341/10	***W.H. v SE***	3
☞ ECtHR	26 Feb.	2015	1412/12	***M.T. v SE***	3
☞ ECtHR	15 Jan.	2015	80086/13	***A.F. v FR***	3
☞ ECtHR	15 Jan.	2015	68900/13	***Eshonkulov v RU***	3
☞ ECtHR	15 Jan.	2015	18039/11	***A.A. v FR***	3
☞ ECtHR	11 Dec.	2014	74759/13	***Fozil Nazarov v RU***	3
☞ ECtHR	18 Nov.	2014	52589/13	***M.A. v CH***	3
☞ ECtHR	4 Sep.	2014	140/10	***Trabelsi v BE***	3
☞ ECtHR	4 Sep.	2014	17897/09	***M.V. & M.T. v FR***	3
☞ ECtHR	24 July	2014	34098/11	***A.A. a.o. v SE***	3
☞ ECtHR	8 July	2014	58363/10	***M.E. v DK***	3
☞ ECtHR	3 July	2014	71932/12	***Mohammadi v AT***	3
☞ ECtHR	17 Apr.	2014	39093/13	***Gayratbek Saliyev v RU***	3
☞ ECtHR	17 Apr.	2014	20110/13	***Ismailov v RU***	3
☞ ECtHR	3 Apr.	2014	68519/10	***A.A.M. v SE***	3
☞ ECtHR	27 Feb.	2014	35/10	***Zarmayev v BE***	3
☞ ECtHR	7 Jan.	2014	58802/12	***A.A. v CH***	3
☞ ECtHR	19 Dec.	2013	11161/11	***B.K.A. v SE***	3
☞ ECtHR	19 Dec.	2013	7974/11	***N.K. v FR***	3
☞ ECtHR	19 Dec.	2013	1231/11	***T.H.K. v SE***	3
☞ ECtHR	19 Dec.	2013	48866/10	***T.A. v SE***	3
☞ ECtHR	3 Dec.	2013	28127/09	***Ghorbanov a.o. v TR***	3
☞ ECtHR	19 Sep.	2013	10466/11	***R.J. v FR***	3
☞ ECtHR	5 Sep.	2013	886/11	***K.A.B. v SE***	3
☞ ECtHR	5 Sep.	2013	61204/09	***I. v SE***	3
☞ ECtHR	27 June	2013	71680/10	***A.G.A.M. v SE***	3
☞ ECtHR	6 June	2013	50094/10	***M.E. v FR***	3
☞ ECtHR	30 May	2013	25393/10	***Rafaa v FR***	3
☞ ECtHR	18 Apr.	2013	18372/10	***Mo.M. v FR***	3
☞ ECtHR	16 Apr.	2013	17299/12	***Aswat v UK***	3
☞ ECtHR	9 Apr.	2013	70073/10	***H. & B. v UK***	3
☞ ECtHR	28 Mar.	2013	2964/12	***I.K. v AT***	3
☞ ECtHR	29 Jan.	2013	60367/10	***S.H.H. v UK***	3
☞ ECtHR	15 May	2012	52077/10	***S.F. v SE***	3
☞ ECtHR	15 May	2012	33809/08	***Labsi v SK***	3
☞ ECtHR	10 Apr.	2012	24027/07	***Babar Ahmad v UK***	3
☞ ECtHR	23 Feb.	2012	27765/09	***Hirsi Jamaa v IT***	3
☞ ECtHR	17 Jan.	2012	8139/09	***Othman v UK***	3
☞ ECtHR	20 July	2010	23505/09	***N. v SE***	3
☞ ECtHR	17 July	2008	25904/07	***N.A. v UK***	3
☞ ECtHR	11 Jan.	2007	1948/04	***Salah Sheekh v NL***	3
☞ ECtHR	22 June	2006	24245/03	***D. v TR***	3
☞ ECtHR	5 July	2005	2345/02	***Said v NL***	3
☞ ECtHR	17 Feb.	2004	58510/00	***Venkadajalasarma v NL***	3
☞ ECtHR	11 July	2000	40035/98	***Jabari v TR***	3
☞ ECtHR	27 Apr.	1997	24573/94	***H.L.R. v FR***	3
☞ ECtHR	15 Nov.	1996	22414/93	***Chahal v UK***	3
☞ ECtHR	30 Oct.	1991	13163/87	***Vilvarajah v UK***	3
☞ ECtHR	20 Mar.	1991	15576/89	***Cruz Varas v SE***	3
☞ ECtHR	7 July	1989	14038/88	***Soering v UK***	3

See further: § 1.3.3

CAT				Non-Refoulement		
UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment						
*	1465 UNTS 85			impl. date: 1987		
*	art. 3: Protection against Refoulement					
	CtAT Views					
☞	CtAT	27 July	2023	C/77/D/1016/2020	***O.R. v SE***	3
☞	CtAT	21 Apr.	2023	C/76/D/984/2020	***Nijimbere v SE***	3
☞	CtAT	21 Apr.	2023	C/76/D/1044/2020	***N.U. v FI***	3
☞	CtAT	25 Jan.	2023	C/92/D/130/2020	***S.E.M.A. v FR***	3+8+12+20+37
☞	CtAT	11 Nov.	2022	C/75/D/1081/2021	***X. & Y. v CH***	3
☞	CtAT	27 July	2022	C/74/D/905/2018	***A. & B. v AZ***	3
☞	CtAT	27 July	2022	C/74/D/949/2019	***A.S. v SE***	3
☞	CtAT	22 July	2022	C/74/D/887/2018	***A.Y. v CH***	3
☞	CtAT	21 July	2022	C/74/D/954/2019	***F.K.M. v NL***	3
☞	CtAT	28 Apr.	2022	C/73/D/914/2019	***T.A. v CH***	3
☞	CtAT	28 Apr.	2022	C/73/D/872/2018	***Yacob Berhane v CH***	3
☞	CtAT	28 Apr.	2022	C/73/D/881/2018	***K.M. v CH***	3
☞	CtAT	22 Apr.	2022	C/73/D/862/2018	***T.B. v CH***	3
☞	CtAT	24 Nov.	2021	C/72/D/918/2019	***A.A. v SE***	3
☞	CtAT	19 Nov.	2021	C/72/D/824/2017	***D.B. v***	3
☞	CtAT	12 Nov.	2021	C/72/D/1000/2020	***P.S. v SE***	3
☞	CtAT	12 Nov.	2021	C/72/D/916/2019	***Y. v CH***	3
☞	CtAT	27 July	2021	C/71/D/790/2016	***D.Z. v CH***	3
☞	CtAT	6 Dec.	2019	C/68/D/860/2018	***T.M. v SE***	3
☞	CtAT	5 Dec.	2019	C/68/D/863/2018	***X v NL***	3
☞	CtAT	5 Dec.	2019	C/68/D/882/2018	***Flor A.C. Paillalef v CH***	3+22
☞	CtAT	5 Aug.	2019	C/67/D/775/2016	***X. v CH***	3
☞	CtAT	2 Aug.	2019	C/68/D/857/2017	***Cevdet Ayaz v SR***	3+15
☞	CtAT	2 Aug.	2019	C/67/D/816/2017	***X., Y. a.o. v SE***	3
☞	CtAT	6 May	2019	C/66/D/829/2017	***C.F.T. v CH***	3+22
☞	CtAT	3 May	2019	C/66/D/757/2016	***M.J.S. v NL***	3+22
☞	CtAT	24 Apr.	2019	C/66/D/729/2016	***I.A. v SE***	3
☞	CtAT	23 Apr.	2019	C/66/D/776/2016	***X & Y v CH***	3+22
☞	CtAT	1 May	2017	C/60/D/623/2014	***N.K. v NL***	3
☞	CtAT	20 Nov.	2015	C/56/D/613/2014	***F.B. v NL***	3
☞	CtAT	4 May	2015	C/54/D/490/2012	***E.K.W. v FI***	3
☞	CtAT	17 Dec.	2013	C/51/D/387/2009	***Dewage v AT***	3
☞	CtAT	31 May	2013	C/50/D/439/2010	***M.B. v CH***	3
☞	CtAT	31 May	2013	C/50/D/467/2011	***Y.B.F. a.o. v CH***	3
☞	CtAT	21 May	2013	C/50/D/431/2010	***Y. v CH***	3
☞	CtAT	23 Nov.	2012	C/49/D/385/2009	***M.A.F. a.o. v SE***	3+22
☞	CtAT	23 Nov.	2012	C/49/D/432/2010	***H.K. v CH***	3
☞	CtAT	23 May	2012	C/48/D/391/2009	***M.A.M.A. a.o. v SE***	3
☞	CtAT	21 Nov.	2011	C/47/D/381/2009	***Faragollah a.o. v CH***	3
☞	CtAT	3 June	2011	C/46/D/379/2009	***Bakatu-Bia v SE***	3
☞	CtAT	26 May	2011	C/46/D/336/2008	***Harminder Singh Khalsa v CH***	3
☞	CtAT	30 Nov.	2010	C/45/D/339/2008	***Said Amini v DK***	3
☞	CtAT	19 Nov.	2010	C/45/D/373/2009	***Aytulun v SE***	3
☞	CtAT	11 May	2007	C/38/D/300/2006	***Tebourski v FR***	3
☞	CtAT	1 May	2007	C/38/D/281/2005	***E.P. v AZ***	3
☞	CtAT	22 Jan.	2007	C/37/D/279/2005	***C.T. and K.M. v SE***	3
☞	CtAT	24 May	2005	C/34/D/233/2003	***Agiza v SE***	3
☞	CtAT	15 Nov.	1996	C/17/D/43/1996	***Tala v SE***	3

See further: § 1.3.4

ICCPR				Prohibition of Torture	
International Covenant on Civil and Political Rights					
* 999 UNTS 14668				impl. date: 1976	
* art. 7: Prohibition of torture or cruel, inhuman or degrading treatment or punishment					
HRC Views					
☞ HRC	13 Mar.	2020	C/128/D/3300/2019	***A.E. v SE***	7
☞ HRC	13 Mar.	2020	C/128/D/3032/2017	***J.I. v SE***	7
☞ HRC	14 Mar.	2019	C/125/D/2345/2014	***M.M. v DK***	7+6+13+14
☞ HRC	14 Mar.	2019	C/125/D/2494/2014	***S.F. v DK***	7+6
☞ HRC	18 Oct.	2018	C/124/D/2734/2016	***Fahmo M. Hussein v DK***	7
☞ HRC	16 July	2018	C/123/D/2423/2014	***K.H. v DK***	7+6
☞ HRC	9 July	2018	C/123/D/2328/2014	***H.A. v DK***	7+6
☞ HRC	26 Mar.	2018	C/122/D/2753/2016	***C.L. & Z.L. v DK***	7+6
☞ HRC	26 Mar.	2018	C/122/D/2642/2015	***S. v DK***	7+9
☞ HRC	22 Mar.	2018	C/122/D/2595/2015	***A.A. v DK***	7
☞ HRC	22 July	2015	C/114/D/2360/2014	***Warda Osman Jasin v DK***	7
☞ HRC	16 July	2015	C/114/D/2370/2014	***A.H. v DK***	7
☞ HRC	25 Mar.	2011	C/101/D/1763/2008	***Ernst Sigan Pillai a.o. v CA***	7
☞ HRC	11 May	2010	C/98/D/1544/2007	***Hamida v CA***	7
See further: § 1.3.5					

CRC				Best Interests of the Child	
Convention on the Rights of the Child					
* 1577 UNTS 27531				impl. date: 02-09-1990	
* art. 3: Best interests of the child					
Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014					
CtRC Views					
☞ CtRC	1 June	2022	C/90/D/99/2019	***S.K. v DK***	3
☞ CtRC	10 Feb.	2022	C/89/D/74/2019	***K.S. & M.S. v CH***	3
☞ CtRC	22 Sep.	2021	C/88/D/95/2019	***M.K.A.H. v CH***	3+6+12+16+22+27+28
☞ CtRC	31 May	2021	C/87/D/86/2019	***G.R. a.o. v CH***	3+6+24+37
☞ CtRC	4 Feb.	2021	C/86/D/51/2018	***A.B. v FI***	3+19+22
☞ CtRC	4 Feb.	2021	C/86/D/76/2019	***R.Y.S. v ES***	3+8+12+16+20+22+27
☞ CtRC	27 Sep.	2018	C/79/D/11/2017	***N.B.F. v ES***	3+12
☞ CtRC	25 Jan.	2018	C/77/D/3/2016	***K.Y.M. v DK***	3
See further: § 1.3.6					

CEDAW				Discrimination against Women	
Convention on the Elimination of All Forms of Discrimination against Women					
* 1249 UNTS 20378				impl. date: 03-09-1981	
* Art. 2: condemnation of discrimination against women in all its forms and agreement to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.					
CtEDAW Views					
☞ CtEDAW	15 May	2023	C/85/D/173/2021		2+3+5+16
See further: § 1.3.1 and 1.3.2					

1.2 Qualification for Protection: Proposed Measures

Regulation	Qualification III
Replacing qualification directive	
* COM (2016) 466, 13 July 2016	
* Provisional agreement between Council and Parliament	

1.3 Qualification for Protection: Jurisprudence

case law sorted in alphabetical order

1.3.1 CJEU Judgments on Qualification for Protection

☞ CJEU (GC) 2 Dec. 2014, C-148/13 ***A., B., C.*** EU:C:2014:2406
AG 17 July 2014 EU:C:2014:2111
* interpr. of Dir. 2004/83 Qualification I, 4
* joined cases: C-148/13 + C-149/13 + C-150/13
* ref. from Raad van State (Netherlands) 20 Mar. 2013
* *Art 4(3)(c) must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals. Art 4 must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts.*

☞ CJEU 6 July 2023, C-663/21 ***A.A. / Bundesamt Asyl (AT)*** EU:C:2023:540
AG 16 Feb. 2023 EU:C:2023:114
* interpr. of Dir. 2011/95 Qualification II, 14(4)(b)
* ref. from Verwaltungsgerichtshof (Austria) 20 Oct. 2021
* *Art. 14(4)(b) QDir II must be interpreted as meaning that the application of that provision is conditional on the competent authority establishing that the revocation of refugee status constitutes a proportionate measure having regard to the danger posed by the TCN concerned to a fundamental interest of the society of the MS in which that TCN is present. To that end, that competent authority must balance that danger against the rights which must be guaranteed, in accordance with that directive, to persons fulfilling the substantive conditions of Art. 2(d) of that directive, without, however, that competent authority also being required to verify that the public interest in the return of that TCN to his or her country of origin outweighs that TCN's interest in the continuation of international protection, in the light of the extent and nature of the measures to which that TCN would be exposed if he or she were to return to his or her country of origin.*

☞ CJEU (GC) 18 Dec. 2014, C-562/13 ***Abdida*** EU:C:2014:2453
AG 4 Sep. 2014 EU:C:2014:2167
* interpr. of Dir. 2004/83 Qualification I, 15(b)
* ref. from Court du Travail de Bruxelles (Belgium) 21 Oct. 2013
* *Although the CJEU was asked to interpret art 15(b) of the QD, the Court ruled on another issue related to the Returns Directive. To be read in close connection with C-542/13 [M'bodj] ruled on the same day by the same composed CJEU. It is clear from par 27, 41, 45 and 46 of the judgment in M'Bodj (C-542/13) that Art. 2(c) and (e), 3 and 15 of Dir. 2004/83 are to be interpreted to the effect that applications submitted under that national legislation do not constitute applications for international protection within the meaning of Art. 2(g) of that directive. It follows that the situation of a TCN who has made such an application falls outside the scope of that directive, as defined in Art. 1 thereof.*

☞ CJEU 4 Oct. 2018, C-652/16 ***Ahmedbekova*** EU:C:2018:801
AG 28 June 2018 EU:C:2018:514
* interpr. of Dir. 2011/95 Qualification II, 4+3
* ref. from Administrativen sad Sofia-grad (Bulgaria) 19 Dec. 2016
* *Article 4 must be interpreted as meaning that, in carrying out the assessment of an application for international protection on an individual basis, account must be taken of the threat of persecution and of serious harm in respect of a family member of the applicant for the purpose of determining whether the applicant is, because of his family tie to the person at risk, himself exposed to such a threat.*
Article 3 must be interpreted as permitting a MS, when granting international protection to a family member pursuant to the system established by that directive, to provide for an extension of the scope of that protection to other family members, provided that they do not fall within the scope of a ground for exclusion laid down in Article 12 and that their situation is, due to the need to maintain family unity, consistent with the rationale of international protection.

☞ CJEU (GC) 25 July 2018, C-585/16 ***Alheto*** EU:C:2018:854
AG 17 May 2018 EU:C:2018:327
* interpr. of Dir. 2011/95 Qualification II, 12(1)(a)
* see also § 2.3.1
* ref. from Administrativen sad Sofia-grad (Bulgaria) 18 Nov. 2016
* *Art 12(1)(a) must be interpreted as meaning that the processing of an application for international protection lodged by a person registered with the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) requires an examination of the question whether that person receives effective protection or assistance from that agency, provided that that application has not been previously rejected on the basis of a ground of inadmissibility or on the basis of a ground for exclusion other than that laid down in the first sentence of Article 12(1)(a). The second sentence of Article 12(1)(a) must be interpreted as:*
(a) precluding national legislation which does not lay down or which incorrectly transposes the ground for no longer applying the ground for exclusion from being a refugee contained therein;
(b) having direct effect; and
(c) being applicable even if the applicant for international protection has not expressly referred to them.

☞ CJEU (GC) 1 Mar. 2016, C-443/14 ***Alo & Osso*** EU:C:2016:127
AG 6 Oct. 2015 EU:C:2015:665
* interpr. of Dir. 2011/95 Qualification II, 33+29
* joined cases: C-443/14 + C-444/14
* ref. from Bundesverwaltungsgericht (Germany) 25 Sep. 2014
* *A residence condition imposed on a beneficiary of subsidiary protection status, such as the conditions at issue in the main proceedings, constitutes a restriction of the freedom of movement guaranteed by that article, even when it does not prevent the beneficiary from moving freely within the territory of the Member State that has granted the protection and from staying on a temporary basis in that territory outside the place designated by the residence condition.*
Art. 29 and 33 must be interpreted as precluding the imposition of a residence condition, such as the conditions at issue in the main proceedings, on a beneficiary of subsidiary protection status in receipt of certain specific social security benefits, for the purpose of achieving an appropriate distribution of the burden of paying those benefits among the various institutions competent in that regard, when the applicable national rules do not provide for the imposition of such a measure on refugees, third-country nationals legally resident in the MS concerned on grounds that are not humanitarian or political or based on international law or nationals of that Member State in receipt of those benefits.
Art. 33 must be interpreted as not precluding a residence condition, such as the conditions at issue in the main proceedings, from being imposed on a beneficiary of subsidiary protection status, in receipt of certain specific social security benefits, with the objective of facilitating the integration of third-country nationals in the MS that has granted that protection — when the applicable national rules do not provide for such a measure to be imposed on third-country nationals legally resident in that MS on grounds that are not humanitarian or political or based on international law and who are in receipt of those benefits — if beneficiaries of subsidiary protection status are not in a situation that is objectively comparable, so far as that objective is concerned, with the situation of third-country nationals legally resident in the MS concerned on grounds that are not humanitarian or political or based on international law, it being for the referring court to determine whether that is the case.

☞ CJEU 28 Oct. 2021, C-462/20 ***ASGI*** EU:C:2021:894
* interpr. of Dir. 2011/95 Qualification II, 29
* ref. from Tribunale di Milano (Italy) 14 Sep. 2020
* *Art. 29 must be interpreted as precluding national legislation which excludes third-country nationals from eligibility for a card granted to families allowing access to discounts or price reductions when purchasing goods and services supplied by public or private entities, if such a card comes within an assistance scheme established by the public authorities to which recourse may be had by an individual who does not have resources sufficient to meet his or her own basic needs and those of his or her family.*

☞ CJEU 21 Nov. 2018, C-713/17 ***Ayubi*** EU:C:2018:929
* interpr. of Dir. 2011/95 Qualification II, 29
* ref. from Landesverwaltungsgericht Oberösterreich (Austria) 18 Dec. 2017
* *Art. 29 precludes national legislation, which provides that refugees with a temporary right of residence in a MS are to be granted social security benefits which are less than those received by nationals of that MS and refugees who have a permanent right of residence in that MS. A refugee may rely on the incompatibility of legislation, with Art. 29(1) before the national courts in order to remove the restriction on his rights provided for by that legislation.*

☞ CJEU (GC) 9 Nov. 2010, C-57/09 ***B. & D.*** EU:C:2010:661
AG 1 June 2010 EU:C:2010:302
* interpr. of Dir. 2004/83 Qualification I, 12(2)(b)+(c)
* joined cases: C-57/09 + C-101/09
* ref. from Bundesverwaltungsgericht (Germany) 10 Feb. 2013
* *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 23 May 2019, C-720/17 ***Bilali*** EU:C:2019:448
AG 24 Jan. 2019 EU:C:2019:63
* interpr. of Dir. 2011/95 Qualification II, 19
* ref. from Verwaltungsgerichtshof (Austria) 28 Dec. 2017
* *Art. 19(1) of QD II read in conjunction with Art. 16 must be interpreted as meaning that a Member State must revoke subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion.*

☞ CJEU (GC) 17 June 2010, C-31/09 ***Bolbol*** EU:C:2010:351
AG 4 Mar. 2010 EU:C:2010:119
* interpr. of Dir. 2004/83 Qualification I, 12(1)(a)
* ref. from Fővárosi Bíróság (Hungary) 26 Jan. 2009
* *Right of a Palestinian stateless person to be recognised as a refugee on the basis of the second sentence of Art. 12(1)(a)*

☞ CJEU 10 June 2021, C-901/19 ***C.F. & D.N. / Germany*** EU:C:2021:472
AG 11 Feb. 2021 EU:C:2021:116
* interpr. of Dir. 2011/95 Qualification II, 2(f)+15(c)
* ref. from Verwaltungsgerichtshof Baden-Württemberg (Germany) 29 Nov. 2019
* *Art. 15(c) QD II, must be interpreted as precluding the interpretation of national legislation according to which, where a civilian is not specifically targeted by reason of factors particular to his or her personal circumstances, a finding of serious and individual threat to that civilian's life or person by reason of 'indiscriminate violence in situations of ... armed conflict', within the meaning of that provision, is subject to the condition that the ratio between the number of casualties in the relevant area and the total number of individuals composing the population of that area reach a fixed threshold.*
Art. 15(c) QD II must be interpreted as meaning that, in order to determine whether there is a 'serious and individual threat', within the meaning of that provision, a comprehensive appraisal of all the circumstances of the individual case, in particular those which characterise the situation of the applicant's country of origin, is required.
Thus, subsidiary protection can not be depending on a minimum number of civilian casualties and deaths in the country of origin.

☞ CJEU 30 Jan. 2014, C-285/12 ***Diakite*** EU:C:2014:39
AG 18 July 2013 EU:C:2013:500
* interpr. of Dir. 2004/83 Qualification I, 15(c)
* ref. from Raad van State (Belgium) 7 June 2012
* *On a proper construction of Art. 15(c) and the content of the protection granted, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.*

☞ CJEU 26 Oct. 2021, C-456/21 ***E. & F. / Stscr (NL)*** EU:C:2021:901
* interpr. of Dir. 2011/95 Qualification II, 10(1)(d)
* withdrawn
* ref. from Rechtbank Den Haag (zp Den Bosch) (Netherlands) 23 July 2021
* *Must Art. 10(1)(d) QD II be interpreted as meaning that western norms, values and actual conduct which third-country nationals adopt while staying in the territory of the MS and participating fully in society for a significant part of the phase of their lives in which they form their identity are to be regarded as a common background that cannot be changed or characteristics that are so fundamental to identity that a person should not be forced to renounce them?*

☞ CJEU 19 Nov. 2020, C-238/19 ***E.Z.***
AG 28 May 2020 EU:C:2020:404
* interpr. of Dir. 2011/95 Qualification II, 9(2)+(3)
* ref. from Verwaltungsgericht Hannover (Germany) 20 Mar. 2019
* *1. Article 9(2)(e) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted must be interpreted as not precluding, where the law of the State of origin does not provide for the possibility of refusing to perform military service, that refusal from being established in a situation in which the person concerned has not formalised his or her refusal through a given procedure and has fled his or her country of origin without presenting himself or herself to the military authorities.*
2. Article 9(2)(e) of Directive 2011/95 must be interpreted as meaning that, in respect of a conscript who refuses to perform his or her military service in a conflict but who does not know what his or her future field of military operation will be, in the context of all-out civil war characterised by the repeated and systematic commission of the crimes and acts referred to in Article 12(2) of that directive by the army using conscripts, it should be assumed that the performance of military service will involve committing, directly or indirectly, such crimes or acts, regardless of his or her field of operation.
3. Article 9(3) of Directive 2011/95 must be interpreted as requiring there to be a connection between the reasons mentioned in Article 10 of that directive and the prosecution and punishment referred to in Article 9(2)(e) of that directive.
4. Article 9(2)(e) in conjunction with Article 9(3) of Directive 2011/95 must be interpreted as meaning that the existence of a connection between the reasons mentioned in Article 2(d) and Article 10 of that directive and the prosecution and punishment for refusal to perform the military service referred to in Article 9(2)(e) of that directive cannot be regarded as established solely because that prosecution and punishment are connected to that refusal. Nevertheless, there is a strong presumption that refusal to perform military service under the conditions set out in Article 9(2)(e) of that directive relates to one of the five reasons set out in Article 10 thereof. It is for the competent national authorities to ascertain, in the light of all the circumstances at issue, whether that connection is plausible.

☞ CJEU (GC) 19 Dec. 2012, C-364/11 ***El Kott a.o.*** EU:C:2012:826
AG 13 Sep. 2012 EU:C:2012:569
* interpr. of Dir. 2004/83 Qualification I, 12(1)(a)
* ref. from Fővárosi Bíróság (Hungary) 11 July 2011
* *The cessation of protection or assistance from organs or agencies of the UN other than the UNHCR 'for any reason' includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the MS responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency.*
The fact that a person is ipso facto 'entitled to the benefits of the directive' means that that MS must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive.

☞ CJEU (GC) 17 Feb. 2009, C-465/07 ***Elgafaji*** EU:C:2009:94
EU:C:2008:479
* interpr. of Dir. 2004/83 Qualification I, 2(e)+15(c)
* ref. from Raad van State (Netherlands) 17 Oct. 2017
* *Art. 15(c) QD must be interpreted as meaning that the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances. The existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place (assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred) reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.*

☞ CJEU 25 Jan. 2018, C-473/16 ***F.*** EU:C:2018:36
AG 5 Oct. 2017 EU:C:2017:739
* interpr. of Dir. 2011/95 Qualification II, 4
* ref. from Szegedi Közigazgatási és Munkaügyi Bíróság (Hungary) 29 Aug. 2016
* *Art. 4 must be interpreted as meaning that it does not preclude the authority responsible for examining applications for international protection, or, where an action has been brought against a decision of that authority, the courts or tribunals seized, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant, provided that the procedures for such a report are consistent with the fundamental rights guaranteed by the Charter, that that authority and those courts or tribunals do not base their decision solely on the conclusions of the expert's report and that they are not bound by those conclusions when assessing the applicant's statements relating to his sexual orientation.*
Art. 4 read in the light of Art. 7 of the Charter, must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.

☞ CJEU 4 Oct. 2018, C-56/17 ***Fathi*** EU:C:2018:803
AG 25 July 2018 EU:C:2018:621
* interpr. of Dir. 2011/95 Qualification II, 9
* see also § 2.3.1
* ref. from Administrativen sad Sofia-grad (Bulgaria) 3 Feb. 2017
* *Art. 9 is to be interpreted that the prohibition to act against a state religion considered to be criminal in accordance with the national law of the applicant's country of origin constitute an act of persecution if these acts are in practice punished with imprisonment.*

☞ CJEU 22 Sep. 2022, C-159/21 ***G.M. / Aliens Police (HU)*** EU:C:2022:708
AG 28 Apr. 2022 EU:C:2022:326
* interpr. of Dir. 2011/95 Qualification II, 17(1)(b)
* ref. from Fővárosi Törvényszélk (High Court) (Hungary)
* *See also details under Asylum Procedure*
(...)
(3) Art. 17(1)(b) QD II must be interpreted as not precluding an applicant from being excluded from being eligible for subsidiary protection, pursuant to that provision, on the basis of a criminal conviction of which the competent authorities were already aware when they granted to that applicant, at the end of a previous procedure, refugee status which was subsequently withdrawn.

☞ CJEU 13 Jan. 2021, C-507/19 ***Germany / X.T. (DE)*** EU:C:2021:3

* interpr. of Dir. 2011/95 Qualification II, 12(1)(a)

* ref. from Bundesverwaltungsgericht (Germany) 3 July 2019

* *The second sentence of Art. 12(1)(a) must be interpreted as meaning that, in order to determine whether the protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has ceased, it is necessary to take into account, as part of an individual assessment of all the relevant factors of the situation in question, all the fields of UNRWA's area of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein.*
The same sentence must be interpreted as meaning that UNRWA's protection or assistance cannot be regarded as having ceased where a stateless person of Palestinian origin left the UNRWA area of operations from a field in that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, first, if that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and in which he or she could receive protection or assistance from UNRWA and, secondly, if he or she could not reasonably expect, on the basis of the specific information available to him or her, to receive protection or assistance from UNRWA in the field to which he or she travelled or to be able to return at short notice to the field from which he or she came, which is for the national court to verify.

☞ CJEU 8 May 2014, C-604/12 ***H.N.*** EU:C:2014:302

AG 7 Jan. 2013 EU:C:2013:714

* interpr. of Dir. 2004/83 Qualification I

* ref. from Supreme Court (Ireland) 27 Dec. 2012

* *The QD does not preclude a national procedural rule under which an application for subsidiary protection may be considered only after an application for refugee status has been refused, provided that: (1) it is possible to submit the application for refugee status and the application for subsidiary protection at the same time and, (2) the national procedural rule does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time, which is a matter to be determined by the referring court.*

New ☞ CJEU 18 June 2024, C-352/22 ***Hamm***

AG 19 Oct. 2023 EU:C:2023:794

* interpr. of Dir. 2011/95 Qualification II, 21(1)

* ref. from Oberlandesgericht Hamm (Germany) 1 June 2022

* *Art. 21(1) QD II read in conjunction with Art. 18 + 19(2) of the Charter must be interpreted as meaning that, where a third-country national who has been granted refugee status in one MS is the subject in another MS, on whose territory he or she resides, of an extradition request from his or her country of origin, the requested MS cannot authorise extradition unless it has initiated an exchange of information with the authority that granted the requested individual refugee status and where that status has not been revoked by that authority.*

☞ CJEU 20 Jan. 2021, C-255/19 ***Home dpt / O.A. (UK)*** EU:C:2021:36

AG 30 Apr. 2020 EU:C:2020:342

* interpr. of Dir. 2004/83 Qualification I, 2(e)+7+11

* ref. from Upper Tribunal (UK) 26 Mar. 2019

* *Art. 11(1)(e) QD I must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in respect of the cessation of refugee status must be the same as those which arise, in relation to the granting of that status, from Art. 2(c) of that directive, read together with Art. 7(1) and (2) thereof;*
Art. 11(1)(e) QD I read together with Art. 7(2), must be interpreted as meaning that any social and financial support provided by private actors, such as the family or the clan of a third country national concerned, falls short of what is required under those provisions to constitute protection and is, therefore, of no relevance either to the assessment of the effectiveness or availability of the protection provided by the State within the meaning of Art. 7(1)(a) of that directive, or to the determination, under Art. 11(1)(e) of that directive, read together with Art. 2(c) thereof, of whether there continues to be a well-founded fear of persecution.

☞ CJEU 29 Feb. 2024, C-222/22 ***J.F. / Bundesamt (AT)*** EU:C:2024:192

AG 15 June 2023 EU:C:2023:485

* interpr. of Dir. 2011/95 Qualification II, 5(3)

* *Art. 5(3) must be interpreted as precluding national legislation which makes the recognition of the status of refugee following a subsequent application within the meaning of Art. 2(q) of the Asylum Procedures Dir., based on a risk of persecution arising from circumstances which the applicant has created by his or her own decision since leaving his or her country of origin, subject to the condition that those circumstances must constitute the expression and continuation of convictions held by the applicant in that country.*

New ☞ CJEU (GC) 11 June 2024, C-646/21 ***K. & L. / Stscr (NL)*** EU:C:2024:487
AG 13 July 2023 EU:C:2023:581
* interpr. of Dir. 2011/95 Qualification II, 10(1)(d)
* ref. from Rechtbank Den Haag (zp Den Bosch) (Netherlands) 25 Oct. 2021
* *Art. 10(1)(d) and (2) QD II must be interpreted as meaning that depending on the circumstances in the country of origin, women who are nationals of that country, including minors, who share as a common characteristic the fact that they genuinely come to identify with the fundamental value of equality between women and men during their stay in a MS may be regarded as belonging to 'a particular social group', constituting a 'reason for persecution' capable of leading to the recognition of refugee status.*
Art. 24(2) of the Charter must be interpreted as precluding the competent national authority from deciding upon an application for international protection submitted by a minor without having concretely determined the best interests of that minor in the context of an individual assessment.

☞ CJEU (GC) 9 Nov. 2021, C-91/20 ***L.W.*** EU:C:2021:898
AG 12 May 2021 EU:C:2021:384
* interpr. of Dir. 2011/95 Qualification II, 3+23(2)
* ref. from Bundesverwaltungsgericht (Germany) 18 Dec. 2019
* *Art. 3 and 23(2) QD II must be interpreted as not precluding a MS from granting, under more favourable national provisions, as a derived right and for the purpose of maintaining family unity, refugee status to the minor child of a TCN who has been recognised as a refugee, including in the case where that child was born in the territory of that MS and, through that child's other parent, has the nationality of another third country in which he or she would not be at risk of persecution, provided that the child is not caught by a ground for exclusion referred to in Art. 12(2) QD II and that the child is not, through his or her nationality or any other element characterising his or her personal legal status, entitled to better treatment in that MS than that resulting from the grant of refugee status. It is not relevant in that regard to ascertain whether it is possible and reasonably acceptable for the child and the child's parents to move to that other third country.*

☞ CJEU (GC) 31 Jan. 2017, C-573/14 ***Lounani*** EU:C:2017:71
AG 31 May 2016 EU:C:2016:380
* interpr. of Dir. 2004/83 Qualification I, 12(2)(c)+12(3)
* ref. from Conseil d'État (Belgium) 11 Dec. 2014
* *Article 12(2)(c) QD I must be interpreted as meaning that it is not a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established that an applicant for international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Decision 2002/475/JHA on combating terrorism.*
Article 12(2)(c) and Article 12(3) QD I must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, such as those of which the defendant in the main proceedings was convicted, may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council. For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted, by the courts of a Member State, on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.

☞ CJEU 9 Feb. 2017, C-560/14 ***M.*** EU:C:2017:101
AG 3 May 2016 EU:C:2016:320
* interpr. of Dir. 2004/83 Qualification I, 4
* ref. from Supreme Court (Ireland) 5 Dec. 2014
* *The right to be heard, as applicable in the context of Qualification I, does not require, as a rule, that, where national legislation, such as that at issue in the main proceedings, provides for two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, the applicant for subsidiary protection is to have the right to an interview relating to his application and the right to call or cross-examine witnesses when that interview takes place.*
An interview must nonetheless be arranged where specific circumstances, relating to the elements available to the competent authority or to the personal or general circumstances in which the application for subsidiary protection has been made, render it necessary in order to examine that application with full knowledge of the facts, a matter which is for the referring court to establish.

☞ CJEU (GC) 14 May 2019, C-391/16 ***M. a.o.*** EU:C:2019:413
AG 12 June 2018 EU:C:2018:486
* interpr. of Dir. 2011/95 Qualification II, 14(4)+(6)
* joined cases: C-391/16 + C-77/17 + C-78/17
* ref. from Nejvyšší správní soud (Czechia) 13 Feb. 2017
* *Consideration of Art. 14(4) to (6) of QD II has disclosed no factor of such a kind as to affect the validity of those provisions in the light of Art. 78(1) TFEU and Art. 18 of the Charter of Fundamental Rights of the European Union.*

☞ CJEU 6 July 2023, C-402/22 ***M.A.*** EU:C:2023:543
AG 17 May 2023 EU:C:2023:420
* interpr. of Dir. 2011/95 Qualification II, 14(4)(b)
* ref. from Raad van State (Netherlands) 30 June 2022
* *Article 14(4)(b) must be interpreted as meaning that:*
(a) a crime which, in view of its specific features, is exceptionally serious, in so far as it is one of the crimes which most seriously undermine the legal order of the community concerned, constitutes a 'particularly serious crime' within the meaning of that provision. In order to assess whether a crime for which a third-country national has been convicted by a final judgment has such a degree of seriousness, account must be taken, inter alia, of the penalty provided for and the penalty imposed for that crime, the nature of that crime, any aggravating or mitigating circumstances, whether or not that crime was intentional, the nature and extent of the harm caused by that crime and the procedure used to punish it;
(b) the existence of a danger to the community of the MS in which the third-country national concerned is present cannot be regarded as established by the mere fact that he or she has been convicted by a final judgment of a particularly serious crime;
(c) the application of that provision is subject to the competent authority establishing that the threat which the TCN concerned represents to one of the fundamental interests of the society of the MS in which he or she is present is genuine, present and sufficiently serious and that the revocation of refugee status constitutes a measure that is proportionate to that threat.

☞ CJEU 22 Nov. 2012, C-277/11 ***M.M.*** EU:C:2012:744
AG 26 Apr. 2012 EU:C:2012:253
* interpr. of Dir. 2004/83 Qualification I, 4(1)
* ref. from High Court (Ireland) 6 June 2011
* *The requirement that the MS concerned cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1)QD, cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged – before adopting its decision – to inform the applicant that it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard.*
However, in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance, in each of those procedures, of the applicant's fundamental rights and, more particularly, of the right to be heard in the sense that the applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection. See also C-560/14 (M).

☞ CJEU (GC) 24 Apr. 2018, C-353/16 ***M.P.*** EU:C:2018:276
AG 24 Oct. 2017 EU:C:2017:795
* interpr. of Dir. 2004/83 Qualification I, 2(e)+15(b)
* ref. from Supreme Court (UK) 22 June 2016
* *Art. 2(e) and 15(b) QD I read in the light of Art. 4 of the Charter, must be interpreted as meaning that a third country national who in the past has been tortured by the authorities of his country of origin and no longer faces a risk of being tortured if returned to that country, but whose physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of him committing suicide on account of trauma resulting from the torture he was subjected to, is eligible for subsidiary protection if there is a real risk of him being intentionally deprived, in his country of origin, of appropriate care for the physical and mental after-effects of that torture, that being a matter for the national court to determine.*

☞ CJEU (GC) 18 Dec. 2014, C-542/13 ***M'Bodj*** EU:C:2014:2452
AG 17 July 2014 EU:C:2014:2133
* interpr. of Dir. 2004/83 Qualification I, 28+29
* ref. from Grondwettelijk Hof (Belgium) 17 Oct. 2013
* *Art. 28 and 29 do not require a MS to grant the social welfare and health care benefits provided for in those measures to a TCN who has been granted leave to reside in the territory of that MS under national legislation, which allows a foreign national who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment to reside in that MS, where there is no appropriate treatment in that foreign national's country of origin or in the third country in which he resided previously, unless such a foreign national is intentionally deprived of health care in that country. To be read in close connection with C-562/13 [Abdadi] ruled on the same day by the same composed CJEU.*

☞ CJEU 3 Mar. 2022, C-349/20 ***N.B. & A.B.*** EU:C:2022:151

* interpr. of Dir. 2011/95 Qualification II, 12(1)(a)

* ref. from First-tier Tribunal (UK) 29 July 2020

* *1. The second sentence of Art. 12(1)(a) QD I, must be interpreted as meaning that, in order to assess whether the protection or assistance from the United Nations Relief and Works Agency (for Palestine Refugees in the Near East) (UNRWA) has ceased, so that a person may claim ipso facto 'refugee status' for the purposes of that provision, account must be taken, in the context of an assessment carried out on an individual basis, of the relevant circumstances as they exist not only at the time of that person's departure from the UNRWA area of operations, but also at the time when the competent administrative authorities consider an application for refugee status or the judicial authorities concerned rule on the appeal against a decision refusing to grant such status.*
2. The second sentence of Art. 12(1)(a) QD I must be interpreted as meaning that, in the context of the analysis of whether the protection or assistance from the UNRWA has ceased, so that a person may claim ipso facto 'refugee status' for the purposes of that provision, where the person concerned establishes that he or she has been forced to leave the UNRWA area of operations for reasons beyond his or her control and independent of his or her volition, it is for the MS, if it considers that the person is now in a position to return to that area and receive that protection or assistance there, to establish that that is the case.
3. The second sentence of Art. 12(1)(a) QD I must be interpreted as meaning that, in order to determine whether the protection or assistance from the UNRWA has ceased, within the meaning of that provision, so that a person who has applied for international protection has been forced to leave that body's area of operations, it is not necessary to establish that UNRWA or the State in whose territory it operates intended to inflict harm on that person or to deprive him or her of assistance, by act or omission. For the purposes of that provision, it is sufficient to establish that UNRWA's assistance or protection has in fact ceased for any reason, so that that body is no longer in a position, for objective reasons or reasons relating to the person's individual situation, to guarantee him or her living conditions commensurate with its mission.
4. The second sentence of Art. 12(1)(a) I, read in conjunction with Art. 1(D) of the Refugee Convention, must be interpreted as meaning that, in the context of the assessment of the conditions required to determine whether the protection or assistance from the UNRWA has ceased, so that a person may claim ipso facto 'refugee status' for the purposes of that provision of QD I, account must be taken of the assistance provided to that person by civil society actors, such as non-governmental organisations, provided that UNRWA has a formal relationship of cooperation with them, of a stable nature, in which they assist UNRWA in carrying out its mandate.

☞ CJEU 12 Jan. 2023, C-280/21 ***P.I. / Migracijos (LT)*** EU:C:2023:13

AG 30 June 2022 EU:C:2022:506

* interpr. of Dir. 2011/95 Qualification II, 10(1)(e)+10(2)

* ref. from Supreme Court (Lithuania) 30 Apr. 2021

* *Art. 10(1)(e) and (2) of QD II must be interpreted as meaning that the concept of 'political opinion' includes attempts by an applicant for international protection, within the meaning of Art. 2(h) and (i), to defend his personal material and economic interests by legal means against non-State actors acting illegally, where those actors, on account of their connections with the State via corruption, are in a position to exploit, to the applicant's detriment, the mechanism by which that State imposes penalties for criminal offences, in so far as those attempts are perceived by the actors of persecution as opposition or resistance as part of a matter related to those actors or their policies and/or methods.*

☞ CJEU 17 July 2014, C-481/13 ***Qurbani*** EU:C:2014:2101

* interpr. of Dir. 2004/83 Qualification I, 14(6)

* interpr. of Refugee Convention [art. 31]

* ref. from Oberlandesgericht Bamberg (Germany) 9 Sep. 2013

* *Although the Court accepted in Bolbol (C-31/09) and El Karem (C-364/11) that it had jurisdiction to interpret the provisions of the Geneva Convention to which EU law made a renvoi, it must be noted that the present request for a preliminary ruling contains no mention of any rule of EU law which makes a renvoi to Article 31 of the Geneva Convention and, in particular, no mention of Article 14(6) of Directive 2004/83. The point should also be made that the present request contains nothing which suggests that the latter provision is relevant in the case in the main proceedings. Therefore, the Court rules that it has no jurisdiction to reply to the questions..*

☞ CJEU 21 Sep. 2023, C-151/22 ***S. & A. / Stscr (NL)*** EU:C:2023:688

* interpr. of Dir. 2011/95 Qualification II, 10(1)(e)+4(3)-(5)

* ref. from Raad van State (Netherlands) 16 Feb. 2022

* *Art. 10(1)(e) and (2) must be interpreted as meaning that, in order for the opinions, ideas or beliefs of an applicant who has not yet attracted the negative interest of the potential actors of persecution in his or her country of origin to fall within the concept of 'political opinion' or 'political characteristic', it is sufficient for that applicant to claim that he or she has or expresses those opinions, thoughts or beliefs. That is without prejudice to the assessment of whether the applicant's fear of being persecuted on account of his or her political opinions is well founded.*
Art. 4(3) to (5) must be interpreted as meaning that, for the purposes of assessing whether an applicant's fear of persecution on account of his or her political opinions is well founded, the competent authorities of the MS must take account of the fact that those political opinions, owing to the degree of conviction with which they are expressed or the possible engagement by that applicant in activities to promote those opinions, could have attracted or may attract the negative interest of the actors of potential persecution in that applicant's country of origin. It is not however required that the same opinions be so deeply rooted in the applicant that he or she could not refrain, if returned to his or her country of origin, from manifesting them, thereby exposing himself or herself to the risk of suffering acts of persecution within the meaning of Art. 9 of that directive.

☞ CJEU 9 Sep. 2021, C-768/19 ***S.E. / Germany*** EU:C:2021:709
AG 25 Mar. 2021 EU:C:2021:247
* interpr. of Dir. 2011/95 Qualification II, 2(j)+11
* ref. from Bundesverwaltungsgericht (Germany) 15 Aug. 2019
* *(1) Art. 2(j) QD II, must be interpreted as meaning that where an asylum seeker has entered the host MS where his minor and unmarried child is located and wish to derive a right to asylum obtained by this child under the legislation in force in that MS granting such a right to persons falling within the third indent of Art. 2(j), the date on the decision on the application for international protection submitted by that asylum seeker is relevant for the assessment of whether the beneficiary of international protection is a 'minor' within the meaning of that provision, is the date on which that applicant for asylum – possibly informally – applied for asylum.*
(2) The third indent of Art. 2(j), read in conjunction with Art. 23(2) and Art. 7 Charter, must be interpreted as meaning that the term 'member of the family' does not require the effective resumption of family life between the parent of the beneficiary of international protection and his child.
(3) Art. 2(j), read in conjunction with Art. 23(2), must be interpreted as meaning that the rights of the family members of the child with subsidiary protection (in particular the benefits referred to in Art. 24-35) continue to exist even after that person has reached the age of majority for the period of validity of the residence permit issued to them pursuant to Art. 24 (2).

New ☞ CJEU 13 June 2024, C-563/22 ***S.N. & L.N.*** EU:C:2024:494
AG 11 Jan. 2024 EU:C:2024:33
* interpr. of Dir. 2011/95 Qualification II, 12+15
* ref. from Administrativen sad Sofia-grad (Bulgaria) 22 Aug. 2022
* *Art. 40 APD II read in conjunction with the second sentence of Art. 12(1)(a) QD II must be interpreted as meaning that the authority ruling on the merits of a subsequent application for international protection is required to examine the factual elements submitted in support of that application, including when those facts have already been assessed by the authority which definitively rejected a first application for international protection.*
The second sentence of Art. 12(1)(a) of QD II must be interpreted as meaning that UNRWA's protection or assistance, from which an applicant for international protection, a stateless person of Palestinian origin, benefits, must be considered to have ceased within the meaning of that provision when:
(i) that body finds itself unable, for whatever reason, including by reason of the general situation in the sector of that body's area of operations, in which that stateless person had his or her habitual residence, to ensure to that stateless person, taking into account, where applicable, his or her state of vulnerability, dignified living conditions, consistent with its mission, without him or her being required to demonstrate that he or she is specifically targeted by that general situation by reason of elements specific to his or her personal situation, and
(ii) that stateless person of Palestinian origin would find himself or herself, if he or she were to return to that sector, in a state of serious insecurity, taking into account, where applicable, his or her state of vulnerability, since the administrative and judicial authorities are required to carry out an individual assessment of each application for international protection based on that provision, within the framework of which the age of the person concerned may be relevant.
UNRWA's assistance or protection must, in particular, be considered to have ceased vis-à-vis the applicant when, for whatever reason, that body is no longer able to provide to any stateless person of Palestinian origin staying in the sector of that body's area of operations where that applicant had his or her habitual residence, dignified living conditions or minimum security conditions. Whether UNRWA's protection or assistance must be considered to have ceased must be assessed at the time from which that stateless person left the sector of UNRWA's area of operations in which he or she had his or her habitual residence, to that when the competent administrative authorities rule on his or her application for international protection or that when the competent court rules on any appeal directed against the decision rejecting that application.

☞ CJEU 5 Oct. 2023, C-294/22 ***S.W.*** EU:C:2023:733
AG 4 May 2023 EU:C:2023:388
* interpr. of Dir. 2011/95 Qualification II, 12(1)(a)
* ref. from Conseil d'État (France) 3 May 2022
* *On the protection of a sick Palestinian refugee in France who has no access to care and treatment by UNRWA. The CJEU rules that the second sentence of Art. 12(1)(a) of QD II must be interpreted as meaning that the protection or assistance of UNRWA must be regarded as having ceased when that agency becomes unable to ensure that a stateless person of Palestinian origin enjoying such protection or assistance has access to the healthcare and medical treatment without which that person is exposed to a real risk of imminent death or to a real risk of suffering a serious, rapid and irreversible decline in his or her state of health or a significant reduction in life expectancy. It is for the national court to ascertain whether there is such a risk.*

☞ CJEU (GC) 2 Mar. 2010, C-175/08 ***Salahadin Abdulla a.o.*** EU:C:2010:105
AG 15 Sep. 2009 EU:C:2009:551
* interpr. of Dir. 2004/83 Qualification I, 2(c)+11+14
* ref. from Bundesverwaltungsgericht (Germany) 29 Apr. 2008
* *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 13 Sep. 2018, C-369/17 ***Shajin Ahmed*** EU:C:2018:713

* interpr. of Dir. 2011/95 Qualification II, 17(1)(b)

* ref. from Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) 16 June 2017

* *Article 17(1)(b) must be interpreted as precluding legislation of a MS pursuant to which the applicant for subsidiary protection is deemed to have 'committed a serious crime' within the meaning of that provision, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under the law of that MS. It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned.*

☞ CJEU 26 Feb. 2015, C-472/13 ***Shepherd*** EU:C:2015:117

AG 11 Nov. 2014 EU:C:2014:2360

* interpr. of Dir. 2004/83 Qualification I, 9(2)+12(2)

* ref. from Bayerisches Verwaltungsgericht München (Germany) 2 Sep. 2013

* *This case is about an American soldier who works at maintenance on helicopters and fears that he contributes to the commission of war crimes. So, he deserts the army and applies for asylum in Germany expecting to be prosecuted in the USA. The Court restricts the issue to the interpretation of desertion in the context of persecution and does not elaborate on the definition of 'war crimes'.*
The Court states that the factual assessment which it is for the national authorities alone to carry out, under the supervision of the courts, in order to determine the situation of the military service concerned, must be based on a body of evidence capable of establishing, in view of all the circumstances of the case, particularly those concerning the relevant facts as they relate to the country of origin at the time of taking a decision on the application and to the individual position and personal circumstances of the applicant, that the situation in question makes it credible that the alleged war crimes would be committed. Further, the refusal to perform military service must constitute the only means by which the applicant for refugee status could avoid participating in the alleged war crimes, and, consequently, if he did not avail himself of a procedure for obtaining conscientious objector status, any protection under Article 9(2)(e) is excluded, unless that applicant proves that no procedure of that nature would have been available to him in his specific situation.
Article 9(2)(b) and (c) must be interpreted as meaning that, in circumstances such as those in the main proceedings, it does not appear that the measures incurred by a soldier because of his refusal to perform military service, such as the imposition of a prison sentence or discharge from the army, may be considered, having regard to the legitimate exercise, by that State, of its right to maintain an armed force, so disproportionate or discriminatory as to amount to acts of persecution for the purpose of those provisions.

☞ CJEU 24 June 2015, C-373/13 ***T.*** EU:C:2015:413

AG 11 Sep. 2014 EU:C:2014:2218

* interpr. of Dir. 2004/83 Qualification I, 21(2)+(3)

* ref. from Verwaltungsgerichtshof Baden Württemberg (Germany) 2 July 2013

* *A residence permit, once granted to a refugee, may be revoked, either pursuant to Article 24(1) QD, where there are compelling reasons of national security or public order, or pursuant to Article 21(3), where there are reasons to apply the derogation from the principle of non-refoulement laid down in Article 21(2).*
Support for a terrorist organisation (included on the list annexed to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism), may constitute one of the 'compelling reasons of national security or public order' within the meaning of Article 24(1) QD, even if the conditions set out in Article 21(2) QD are not met. In order to be able to revoke, on the basis of Article 24(1) QD, a residence permit granted to a refugee on the ground that that refugee supports such a terrorist organisation, the competent authorities are nevertheless obliged to carry out, under the supervision of the national courts, an individual assessment of the specific facts concerning the actions of both the organisation and the refugee in question.
Where a MS decides to expel a refugee whose residence permit has been revoked, but suspends the implementation of that decision, it is incompatible with that directive to deny access to the benefits guaranteed by Chapter VII of the same directive, unless an exception expressly laid down in the directive applies.

☞ CJEU (GC) 16 Jan. 2024, C-621/21 ***W.S.*** EU:C:2024:47

AG 20 Apr. 2023 EU:C:2023:314

* interpr. of Dir. 2011/95 Qualification II, 17

* ref. from Administrativen sad Sofia-grad (Bulgaria) 6 Oct. 2021

* *The Grand Chamber rules that:*
*(1) Art. 10(1)(d) must be interpreted as meaning that depending on the circumstances in the country of origin, **women** in that country as a whole and more restricted groups of women who share an additional common characteristic may be regarded as **belonging to 'a particular social group'**, as a 'reason for persecution' capable of leading to the recognition of refugee status.*
*(2) Art. 9(3) must be interpreted as meaning that where an applicant claims a fear of being persecuted in his or her country of origin by non-State actors, it is **not necessary** to establish a link between one of the reasons for persecution referred to in Article 10(1) of that directive and such acts of persecution, if such a link can be established between one of those reasons for persecution and the absence of protection from those acts by the actors of protection referred to in Article 7(1) of that directive.*
(3) Art. 15(a) and (b) must be interpreted as meaning that the concept of 'serious harm' covers the real threat to the applicant of being killed or subjected to acts of violence inflicted by a member of his or her family or community due to the alleged transgression of cultural, religious or traditional norms, and that that concept is therefore capable of leading to the recognition of subsidiary protection status, within the meaning of Art. 2(g) of that directive.

☞ CJEU 29 June 2023, C-756/21 — ***X. / IPAT (IE)*** — EU:C:2023:523
AG 16 Feb. 2023 — EU:C:2023:121

* interpr. of Dir. 2004/83 — Qualification I, 4(1)+4(5)(e)
* ref. from High Court (Ireland) 9 Dec. 2021
* *Art. 4(1) must be interpreted as meaning that:*
(a) the duty of cooperation laid down in that provision requires the determining authority to obtain (i) up-to-date information concerning all the relevant facts as regards the general situation prevailing in the country of origin of an applicant for asylum and international protection and (ii) a medico-legal report on his or her mental health, where there is evidence of mental health problems resulting potentially from a traumatic event which occurred in that country of origin and the use of such a report is necessary or relevant in order to assess the applicant's genuine need for international protection, provided that the modalities of the use of such a report comply, inter alia, with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union;
(b) the finding – in the context of a second level of judicial scrutiny provided for by national law – of a breach of the duty of cooperation laid down in that provision need not necessarily entail, by itself, the annulment of the decision dismissing an appeal brought against a decision rejecting an application for international protection, since the applicant for international protection may be required to demonstrate that the decision dismissing the appeal might have been different in the absence of that breach.
Art. 4(5)(e) must be interpreted as meaning that:
a false statement, contained in the initial application for international protection, which was explained and withdrawn by the applicant for asylum at the first available opportunity, is not capable, by itself, of preventing the establishment of the applicant's general credibility, for the purposes of that provision.
See also § 2 on Asylum Procedure.

☞ CJEU 9 Nov. 2023, C-125/22 — ***X. & Y. / Staatssecretaris (NL)*** — EU:C:2023:843
AG 8 June 2023 — EU:C:2023:469

* interpr. of Dir. 2011/95 — Qualification II, 15(b)+(c)
* ref. from Rechtbank Den Haag (zp Den Bosch) (Netherlands) 22 Feb. 2022
* *On the issue of individual circumstances and serious harm in the context of subsidiary protection. The CJEU has ruled that Art. 15 QD II must be interpreted as meaning that in order to determine whether an applicant for international protection is eligible for subsidiary protection, the competent national authority must examine all the relevant factors, relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, before identifying the type of serious harm that those factors may potentially substantiate.*
Art. 15(c) QD II must be interpreted as meaning that in order to assess whether there is a real risk of suffering a type of serious harm as defined in that provision, the competent national authority must be able to take account of factors relating to the individual position and personal circumstances of the applicant other than the mere fact of coming from an area of a given country where 'the most extreme cases of general violence', within the meaning of the judgment ECtHR 17 July 2008, 25904/07, N.A. v the UK.

☞ CJEU 7 Nov. 2013, C-199/12 — ***X., Y., Z*** — EU:C:2013:720
AG 11 July 2013 — EU:C:2013:474

* interpr. of Dir. 2004/83 — Qualification I, 9(1)(a)+10(1)(d)
* joined cases: C-199/12 + C-200/12 + C-201/12
* ref. from Raad van State (Netherlands) 27 Apr. 2012
* *The court ruled on the issue whether homosexuals - for the the assessment of the grounds of persecution - may be regarded as being members of a social group.*
Art. 10(1)(d) must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.
Article 9(1), read together with Article 9(2)(c), must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.
Article 10(1)(d), read together with Article 2(c), must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member States are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.

☞ CJEU 6 July 2023, C-8/22 — ***X.X.X.*** — EU:C:2023:520
AG 16 Feb. 2023 — EU:C:2023:114

* interpr. of Dir. 2011/95 — Qualification II, 14(4)(b)
* ref. from Conseil d'État (Belgium) 2 Dec. 2021
* *Art. 14(4)(b) QDir II must be interpreted as meaning that the existence of a danger to the community of the MS in which the TCN concerned is present cannot be regarded as established by the mere fact that he or she has been convicted by a final judgment of a particularly serious crime.*

☞ CJEU 23 Nov. 2023, C-374/22 ***X.X.X.*** EU:C:2023:902
AG 20 Apr. 2023 EU:C:2023:318
* interpr. of Dir. 2011/95 Qualification II, 2(j)+23
* ref. from Conseil d'État (Belgium) 8 June 2022
* *Art. 23 of QD II must be interpreted as not requiring the MS to grant the parent of a child who has refugee status in a MS the right to international protection in that MS.*

☞ CJEU 23 Nov. 2023, C-614/22 ***X.X.X.*** EU:C:2023:903
* interpr. of Dir. 2011/95 Qualification II, 23
* ref. from Conseil d'État (Belgium) 24 Sep. 2022
* *Art. 20 and 23 of QD II must be interpreted as not requiring the MS to grant the parent, and also 'family member' within the meaning of Art. 2(j), of a child who has refugee status in a MS the right to international protection in that MS.*

☞ CJEU (GC) 22 Feb. 2022, C-483/20 ***X.X.X.X.*** EU:C:2022:103
AG 30 Sep. 2021 EU:C:2021:780
* interpr. of Dir. 2011/95 Qualification II, 23(2)
* ref. from Conseil d'État (Belgium) 30 June 2020
* *Art. 33(2)(a) APD II, must be interpreted as not precluding a MS from exercising the option available to it under that provision to refuse to grant an application for international protection on the ground that it is inadmissible because the applicant has already been granted refugee status by another MS, where that applicant is the father of a child who is an unaccompanied minor who has been granted subsidiary protection in the first Member State, without prejudice, nevertheless, to the application of Art. 23(2) QD II about family unity..*

☞ CJEU (GC) 5 Sep. 2012, C-71/11 ***Y. & Z.*** EU:C:2012:558
AG 19 Apr. 2012 EU:C:2012:224
* interpr. of Dir. 2004/83 Qualification I, 2(c)+9(1)(a)
* joined cases: C-71/11 + C-99/11
* ref. from Bundesverwaltungsgericht (Germany) 2 Mar. 2011
* *1. Art. 9(1)(a) QD means that not all interference with the right to freedom of religion which infringes Article 10(1) EU Charter is capable of constituting an 'act of persecution' within the meaning of that provision of the QD;*
– there may be an act of persecution as a result of interference with the external manifestation of that freedom, and
– for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) EU Charter may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 QD.
2. Article 2(c) QD must be interpreted as meaning that the applicant's fear of being persecuted is well founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

1.3.2 CJEU pending cases on Qualification for Protection

☞ CJEU C-608/22 ***A.H.***
AG 9 Nov. 2023 EU:C:2023:856
* interpr. of Dir. 2011/95 Qualification II, 9(1)(b)+4(3)
* joined cases: C-608/22 + C-609/22
* ref. from Verwaltungsgerichtshof (Austria) 14 Sep. 2023
* *The AG concludes that Art. 9(1)(b) of QD II must be interpreted as meaning that the concept of 'acts of persecution' includes an accumulation of discriminatory acts and measures adopted by a country against women and girls to restrict or even prohibit, inter alia, their access to education and healthcare, their gainful employment, their participation in public life and politics, their freedom of movement and freedom to take part in sports, depriving them of protection against gender-based and domestic violence and requiring them to cover their entire body and face, in so far as those acts and measures have the cumulative effect of depriving those women and girls of their most basic rights in society and thus undermine full respect for human dignity, as enshrined in Art. 2 TEU and Art. 1 of the Charter.*
The AG also concludes that Art. 4(3) QD II does not preclude the competent national authorities from concluding, in the context of examining the individual status and personal circumstances of the applicant, required for the purposes of the individual assessment of the application for international protection, that there is a well-founded fear of being subjected to such acts of persecution on account of her gender, without having to look for other factors particular to her personal circumstances.

☞ CJEU C-551/23 **Cassen**

* interpr. of Dir. 2011/95 Qualification II, 13
* ref. from Raad van State (Netherlands) 30 Aug. 2023
* *On the issue how to deal with an asylum request of a TCN who has already been granted international protection in Greece but faces inhuman conditions in Greece.*

☞ CJEU C-352/23 **Changu**

* interpr. of Dir. 2011/95 Qualification II, 2(h)+3
* ref. from Administrativen sad Sofia-grad (Bulgaria) 29 May 2023
* *On the question whether the possibility provided for in national law of granting protection on 'humanitarian grounds' be compatible with the standards of international protection under Article 3 of QD II.*

New ☞ CJEU C-63/24 **Galte**

* interpr. of Dir. 2011/95 Qualification II, 12(2)(b)
* ref. from Lietuvos vyriausiasis administracinis teismas (Lithuania) 26 Jan. 2024
* *On the criminal record of a refugee. Is there an obligation to take into consideration the sentence already served by that person, the pardon or amnesty granted to that person, or any other circumstance of a similar nature?*

☞ CJEU C-454/23 **K.A.M.**

* interpr. of Dir. 2011/95 Qualification II, 14(4)(a)+12
* ref. from Dioikitiko Dikastirio Diethnous Prostasias (Cyprus) 19 June 2023
* *On the issue whether art. 14(4)(a) can be interpreted as meaning that it allows refugee status to be revoked based on the past conduct or alleged acts of the refugee outside and prior to entering the State of refuge which are not included in the conduct which constitutes grounds for exclusion from being a refugee, having regard to the provisions of Art. 1(F) Ref. Convention and Art. 12 of QD II on exclusion, which explicitly set out the grounds on which a person may be excluded from being a refugee.*

New ☞ CJEU C-244/24 **Kaduna**

* interpr. of Dir. 2001/55 Temporary Protection, 4+7(1)
* joined cases: C-244/24 + C-290/24
* ref. from Rechtbank Den Haag (zp Amsterdam) (Netherlands) 29 Mar. 2024
* *On the meaning of the decision of a MS to include third country nationals to the protection of the directive and the options for an individual MS to end this protection.*

☞ CJEU C-158/23 **Keren**

AG 6 June 2024 EU:C:2024:461

* interpr. of Dir. 2011/95 Qualification II, 34
* ref. from Raad van State (Netherlands) 15 Mar. 2023
* *Compatibility of national integration requirements with QD II. The AG concludes that the QDII*
  ** does not preclude national legislation which requires refugees to attend civic integration courses, provided that that obligation does not limit access to the rights conferred on them by that directive and, in particular, by Chapter VII thereof, and takes account of their specific needs.*
  ** precludes national legislation which imposes on refugees the obligation to bear high costs of integration programmes, without the national authorities having previously carried out an individual assessment of their financial and social situation, on the ground that that obligation is incompatible with the obligation to ensure access to integration programmes and does not create pre-conditions which guarantee access to those programmes;*
  ** does not preclude national legislation which requires refugees to sit a civic integration examination covering oral and written skills in the official language of the host Member State and knowledge of the society of that Member State; and*
  ** precludes national legislation which requires refugees to pass such an examination, on pain of having to repay a loan and receiving a fine, as it jeopardises the attainment of the objectives of QD II and undermines the effectiveness of Article 34 thereof.*

☞ CJEU C-123/23 **Khan Yunis**

* interpr. of Dir. 2011/95 Qualification II, 33(2)(d)
* ref. from Verwaltungsgericht Minden (Germany) 28 Oct. 2022
* *About a Palestinian refugee. Must Article 33(2)(d) read in conjunction with Article 2(q), be interpreted as precluding legislation of a MS under which an application for international protection lodged in that MS is to be rejected as inadmissible if an application for international protection previously lodged in another MS has been finally rejected by that other MS as unfounded?*

☞ CJEU C-753/23 **Krasiliva**

* interpr. of Dir. 2001/55 Temporary Protection, 8+11
* ref. from Nejvyšší správní soud (Czechia) 7 Dec. 2023
* *Does Art. 8(1) having regard also to the MS' agreement not to apply Art. 11 of that directive, preclude national legislation under which an application for a residence permit for the purpose of giving temporary protection is inadmissible if the foreign national has applied for a residence permit in another MS or has already been granted a permit in another MS?*
  Does a person enjoying temporary protection have the right to an effective remedy before a tribunal under Art. 47 of the Charter against the failure of a MS to grant a residence permit within the meaning of Art. 8(1)?

☞ CJEU C-217/23 ***Laghman***

* interpr. of Dir. 2011/95 Qualification II, 10(1)(d)

* *Is the wording contained in Art. 10(1)(d): 'that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society', to be interpreted as meaning that a group only has a distinct identity in the relevant country if it is perceived as being different by the surrounding society, or is it necessary to assess separately whether a 'distinct identity' exists, irrespective of whether the group is regarded as being different by the surrounding society?*

1.3.3 ECtHR Judgments on Torture and Degrading Treatment (Art. 3)

☞ ECtHR 19 Dec. 2017, 60342/16 ***A. v CH*** CE:ECHR:2017:1219JUD006034216

* no violation of ECHR, 3+2

* *The applicant was an Iranian national who applied for asylum in 2009, claiming to have been imprisoned and tortured after taking part in a demonstration. This application was rejected as the Swiss authorities found his account not to be credible. In a subsequent asylum application he claimed to have converted to Christianity while in Switzerland and therefore to be at risk of death penalty for apostasy if returned to Iran.*
The Court referred to the domestic authorities that had found that, even assuming the applicant's conversion to be genuine and lasting, Christian converts would only face a real risk of ill-treatment upon return to Iran if manifesting their faith in a manner that would lead to them being perceived as a threat to the Iranian authorities. That required a certain level of public disclosure which was not found to be the case for the applicant who was an ordinary member of a Christian circle. His case was thus contrasted with the situation where it was established that the persons concerned were deeply committed to their faith and considered public practice of it essential to preserve their religious identity (cf. CJEU 5 Sep 2012, C -71/11 and C-99/11, Y and Z).
As there were no indications that the two sets of domestic proceedings in which the applicant had been examined in person were flawed, and having regard to the reasoning of the Swiss authorities and the reports on the situation of Christian converts in Iran, the Court found no grounds to consider the domestic authorities' assessment inadequate.

☞ ECtHR 7 Jan. 2014, 58802/12 ***A.A. v CH*** CE:ECHR:2014:0107JUD005880212

* violation of ECHR, 3

* *The applicant was a Sudanese asylum seeker, claiming to originate from the region of North Darfur. He alleged to have fled his village after it had been attacked and burnt down by the Janjaweed militia that had killed his father and many other inhabitants, and mistreated himself.*
The ECtHR noted that the security and human rights situation in Sudan is alarming and has deteriorated in the last few months. Political opponents of the government are frequently harassed, arrested, tortured and prosecuted, such risk affecting not only high-profile people, but anyone merely suspected of supporting opposition movements.
As the applicant had been a member of the Darfur rebel group SLM-Unity in Switzerland for several years, the Court noted that the Sudanese government monitors activities of political opponents abroad. While acknowledging the difficulty in assessing cases concerning sur place activities, the Court had regard to the fact that the applicant had joined the organisation several years before launching his present asylum request when it was not foreseeable for him to apply for asylum a second time. In view of the importance of art. 3 and the irreversible nature of the damage that results if the risk of ill-treatment materialises, the Court preferred to assess the claim on the grounds of the political activities effectively carried out by the applicant. As he might at least be suspected of being affiliated with an opposition movement, the Court found substantial grounds for believing that he would be at risk of being detained, interrogated and tortured on arrival at the airport in Sudan.

☞ ECtHR 15 Jan. 2015, 18039/11 ***A.A. v FR*** CE:ECHR:2015:0115JUD001803911

* violation of ECHR, 3

* *Case of deportation to Sudan. The applicant was an asylum seeker originating from the South Darfur region and belonging to a non-Arab tribe. He had arrived in France in October 2010, was arrested and issued with a removal order, released and then rearrested a number of times. He lodged an asylum application in June 2011.*
The applicant stated that one of his brothers had joined the JEM opposition movement in Sudan, and that he himself had shared the movement's ideas but refused to be involved in its armed activities. He alleged that the Sudanese authorities had interrogated and tortured him several times in order to extract information about JEM. A medical certificate produced by the applicant was brief, yet giving credibility to his allegations of ill-treatment, and the French government had not commented on this certificate. The applicant's allegation to have been given a prison sentence for providing support to the Sudanese opposition forces was not supported by any document, but the Court considered this as reflecting the fact that the Sudanese authorities were convinced of the applicant's involvement in a rebel movement.
As to the inconsistencies in the applicant's account, the ECtHR held that his description of events in Sudan had remained constant both before the Court itself and before the French asylum office OFPRA. Only the chronology was differing slightly, and the Court stated that mere discrepancy in the chronological account was no major inconsistency, noting that the asylum application had been examined in the accelerated procedure with little time left for the applicant to prepare his case. Thus, the decisive part of the applicant's account was credible.
Referring to its previous finding of the human rights situation in Sudan as alarming, particularly as regards political opponents (A.A. v. Switzerland, 7 January 2014, 58802/12), the Court considered the applicant to be at serious risk of ill-treatment both as belonging to an ethnic minority and because of his supposed links with an opposition group.

☞ ECtHR 5 Nov. 2019, 32218/17 ***A.A. v CH*** CE:ECHR:2019:1105JUD003221817

* violation of ECHR, 3

* *The applicant was an asylum seeker of Hazara ethnicity who had fled Afghanistan after converting to Christianity. The Swiss authorities had rejected his application as they found that he would not be exposed to serious harm in Afghanistan as a result of his conversion. The Court noted that according to international sources Afghans who had become Christians or were suspected of conversion would be exposed to a risk of persecution by various groups in Afghanistan, including State persecution resulting in the death penalty. It found that the Swiss authorities, while accepting the applicant's conversion, had not considered his practice of the Christian faith since his baptism or how he could, if returned, continue to practise it in Afghanistan. The domestic authorities had merely presumed that he would have an internal protection alternative by living in Kabul with his uncles and cousins as his conversion was not known to these relatives. This implied that the applicant would be obliged to change his social conduct by confining it to a strictly private level and would thus have to live a life of deceit and could be forced to renounce contact with other Christians. The Swiss Federal Administrative Court had thus not engaged in a sufficiently serious examination of the consequences of the applicant's conversion.*

☞ ECtHR 13 July 2023, 4677/20 ***A.A. v SE*** CE:ECHR:2023:0713JUD000467720

* no violation of ECHR, 3

* *The applicant is a Libyan national who was born in 1988 and lives in Gothenburg (Sweden). He arrived in Sweden, via Spain, in 2012 and applied for asylum, claiming that he was at risk from the Libyan mafia. The migration authorities rejected his request, but could not enforce their decision to return him to Spain as he had absconded. In 2015 he reapplied for asylum in Sweden, this time claiming that he was on a wanted list in Libya and would be at risk of ill-treatment if returned because he had worked for the Gaddafi regime. This request was also rejected.*
While recognising that the situation in Libya remained fragile, the ECtHR found no reason to question the Swedish authorities' and courts' conclusion that the situation in Libya was not so serious that all Libyan nationals seeking asylum needed international protection. The ECtHR concluded that the applicant had failed to substantiate that he would be at risk of being killed or subjected to ill-treatment upon returning to Libya. Accordingly, his removal would not be in violation of Art. 2 or 3.

☞ ECtHR 24 July 2014, 34098/11 ***A.A. a.o. v SE*** CE:ECHR:2014:0724JUD003409811

* no violation of ECHR, 3

* *The applicants were four Somali citizens, a father and his three children born in 1990, 1994 and 1997. They applied for asylum in Sweden, claiming to be members of the Sheikal clan and having lived together in southern Somalia since 1999. The Swedish authorities, referring to language analysis and to their various explanations as well as A.A.'s several passport stamps from Somaliland and northern Somalia, found it much more likely that they had been living in Somaliland for years before leaving for Sweden, and that they could consequently be returned there.*
While there were no indications that the applicants had any affiliations with the majority Isaaq clan in Somaliland, the ECtHR found strong reasons to question the veracity of the applicants' account of their origin in southern Somalia and their denial of any ties with northern Somalia. They could therefore be expected to provide a satisfactory explanation for the discrepancies alleged by the Swedish authorities. Such explanation had not been provided, and the Court further noted that the applicants had not contested the findings of the language analyst before the domestic authorities, and that A.A. had provided contradictory statements about a crucial event and had been vague about the situation in southern and central Somalia.
Against this background, the Court was satisfied that the assessment by the Swedish authorities that the applicants must have been former residents of Somaliland before leaving Somalia, was adequate and sufficiently supported by relevant materials. At the same time the Court noted the intention to remove the applicants directly to Somaliland, and that a fresh assessment would have to be made by the Swedish authorities in case the applicants should not gain admittance to Somaliland. Their deportation to Somaliland would therefore not involve a violation of art. 3.

☞ ECtHR 3 Apr. 2014, 68519/10 ***A.A.M. v SE*** CE:ECHR:2014:0403JUD006851910

* no violation of ECHR, 3

* *The applicant was an Iraqi Sunni Muslim originating from Mosul. Despite certain credibility issues concerning an alleged arrest warrant and in absentia judgment, the ECtHR considered him to be at real risk of ill-treatment by al-Qaeda in Iraq due to his refusal to apologise for offensive religious statements and to having had an unveiled woman in his employment.*
Based on considerations similar to those in W.H. v. Sweden (8 April 2015, 49341/10), however, the Court found that the applicant would be able to relocate safely in KRI. Therefore his deportation would not involve a violation of art. 3 provided that he is not returned to parts of Iraq situated outside KRI. One dissenting judge considered this to be insufficient in order to comply with the guarantees for internal relocation as required under the Court's case law.

New ☞ ECtHR 7 May 2024, 22283/21 ***A.D. a.o. v SE*** CE:ECHR:2024:0507JUD002228321

* no violation of ECHR, 3

* *About the removal of Albanian asylum seekers. The ECtHR found no reasons to depart from the Swedish authorities' assessment that it had not been demonstrated that the Albanian authorities are unable or unwilling to obviate any risk of ill-treatment by non-state actors seemingly faced by the applicants by providing appropriate protection.*

☞ ECtHR 15 Jan. 2015, 80086/13 ***A.F. v FR*** CE:ECHR:2015:0115JUD008008613

* violation of ECHR, 3

* *Case of deportation (similar to A.A. v. France, 15 January 2015, 18039/11). The applicant was a Sudanese asylum seeker who submitted that he risked ill-treatment on account of his ethnic origin and his supposed links with the JEM movement.*
The French asylum authorities had considered his statements on both ethnicity and region of origin as evasive and confused, but the ECtHR noted that they had failed to state the grounds for their finding as to the lack of credibility. The Court considered the applicant's account of ill-treatment due to his supposed links with JEM to be particularly detailed and compatible with the international reports available on Sudan, and it was supported by a medical certificate. The inconsistencies referred to by the French government were therefore not sufficient to cast doubt on the facts alleged by the applicant. A second asylum application made by him under a false identity did also not discredit all his statements before the Court.
Given the suspicions of the Sudanese authorities towards Darfuris having travelled abroad, the Court considered it likely that the applicant would attract their unfavourable attention. Due to his profile and the generalised acts of violence being perpetrated against members of the Darfur ethnic groups, deportation of the applicant to Sudan would expose him to risk of ill-treatment in violation of art. 3.

☞ ECtHR 27 June 2013, 71680/10 ***A.G.A.M. v SE*** CE:ECHR:2013:0627JUD007168010

* no violation of ECHR, 3

* *The eight cases concerned ten Iraqi nationals having applied for asylum in Sweden. Their applications had been rejected and the ECtHR noted that the Swedish authorities had given extensive reasons for their decisions. The Court further noted that the general situation in Iraq was slowly improving, and concluded that it was not so serious as to cause by itself a violation of art. 3 in the event of a person's return to the country.*
The applicants in two of the cases alleged to be at risk of being victims of honour-related crimes, and the Court found that the events that had led the applicants to leave Iraq strongly indicated that they would be in danger upon return to their home towns. The Court also found these applicants unable to seek protection from the authorities in their home regions of Iraq, nor would any protection provided be effective, given reports that 'honour killings' were being committed with impunity. However, these two applicants were considered able to relocate to regions away from where they were persecuted by a family or clan, as tribes and clans were region-based powers and there was no evidence to show that the relevant clans or tribes in their cases were particularly influential or powerful or connected with the authorities or militia in Iraq. Furthermore, the two applicants were both Sunni Muslims and there was nothing to indicate that it would be impossible or even particularly difficult for them to find a place to settle where they would be part of the majority or, in any event, be able to live in relative safety.
The applicants in the other six cases were Iraqi Christians whom the Court considered able to relocate to the three northern governorates of Dahuk, Erbil and Sulaymaniyah, forming the Kurdistan Region of northern Iraq. According to international sources, this region was a relatively safe area where the rights of Christians were generally being respected and large numbers of this group had already found refuge. The Court pointed to the preferential treatment given to the Christian group as compared to others wishing to enter the Kurdistan Region, and to the apparent availability of identity documents for that purpose. Neither the general situation in that region, including that of the Christian minority, nor any of the applicants' personal circumstances indicated the existence of a risk of inhuman or degrading treatment. Furthermore, there was no evidence to show that the general living conditions would not be reasonable, the Court noting in particular that there were jobs available in Kurdistan and that settlers would have access to health care as well as financial and other support from UNHCR and local authorities.

☞ ECtHR 12 Jan. 2016, 13442/08 ***A.G.R. v NL*** CE:ECHR:2016:0112JUD001344208

* no violation of ECHR, 3

* joined cases: 13442/08 + 25077/06 + 46856/07 + 8161/07 + 39575/06

* *These five cases concerned Afghan asylum seekers who had been excluded from refugee status under art. 1F of the UN Refugee Convention due to their past activities as more or less high ranking officers in the former Afghan army or intelligence service until the collapse of the communist regime in 1992. They claimed that their forcible return to Afghanistan would expose them to a real risk of ill-treatment.*
In A.G.R. v. NL (12 January 2016, 13442/08) the Court found, apart from the applicant's unsubstantiated claims, nothing in the case file specifically indicating whether, and if so why, the Mujahideen would have been interested in the applicant on alleged occasions in 1992 and 1995. It further found no tangible elements showing that the applicant had since 2005 attracted the negative attention of any governmental or non-governmental body or any private individual in Afghanistan. The Court further noted that since 2010 the UNHCR has no longer classified people who have worked for the KhAD/WAD under the former Afghan regime as one of the specific categories of persons exposed to a potential risk of persecution in Afghanistan.
As to the general security situation in Afghanistan, the Court did not find that there was a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of an individual being returned to Afghanistan.

☞ ECtHR 30 May 2017, 23378/15 ***A.I. v CH*** CE:ECHR:2017:0530JUD002337815

* violation of ECHR, 2+3

* *The applicant was a Sudanese national who applied for asylum in Switzerland in 2012. During his stay in Switzerland, he had been an active member of two organisations opposing the current government of Sudan.*
The Court confirmed its previous findings that the human rights situation in Sudan was alarming, in particular for political opponents, and that it had further deteriorated since 2014. Individuals suspected of being members or supporters of rebel groups, are still being arrested and tortured, such risk of ill-treatment not solely affecting high-profile opponents, but everyone opposing or being suspected of opposing the Sudanese regime. That regime was also known to carry out surveillance of opposition activities abroad
Despite the fact that the Court did not find it substantiated that the Sudanese authorities had shown any interest in the applicant while he was still in Sudan and until his arrival to Switzerland, the Court accepted that he had been actively and increasingly involved in the opposition groups during his stay as an asylum seeker in that country. Given the risk for everyone suspected of opposing the regime, and the surveillance of political opponents abroad, it could not be excluded that the applicant had attracted the attention of the intelligence services. Thus, there were reasonable grounds to believe that he would risk being arrested and tortured on arrival in the airport of Khartoum.

☞ ECtHR 29 Oct. 2015, 44095/14 ***A.L. (X.W.) v RU*** CE:ECHR:2015:1029JUD004409514

* violation of ECHR, 2+3

* *The applicant Chinese national had been arrested in Russia on suspicion of having murdered a policeman in China. It was undisputed that there was a substantial and foreseeable risk that, if deported to China, he might be given the death penalty after trial on the capital charge of murder. Referring to previous judgments concerning the evolving interpretation of arts. 2 and 3 as regards the permissibility of the death penalty, as well as to Russia's commitments to abolish the death penalty, the Court concluded that the applicant's forcible return to China would expose him to a real risk of treatment contrary to arts. 2 and 3. Russia was held to have violated art. 3 on account of the applicant's solitary confinement in a detention centre for aliens, and on account of the detention conditions in a police station where he had been held for two days.*

☞ ECtHR 5 July 2016, 29094/09 ***A.M. v NL*** CE:ECHR:2016:0705JUD002909409

* no violation of ECHR, 3

* *No violation of art. 13 in conjunction with art. 3 due to the absence of a second level of appeals with suspensive effect in asylum cases. No violation of ECHR art. 3 in case of deportation to Afghanistan.*
The Court reiterated that where a complaint concerns risk of treatment contrary to art. 3, the effectiveness of the remedy for the purposes of art. 13 requires imperatively that the complaint be subject to independent and rigorous scrutiny by a national authority and that this remedy has automatic suspensive effect. Therefore, the requirements of art. 13 must take the form of a guarantee and not of a mere statement of intent or a practical arrangement. Since appeal to the Regional Court in the Netherlands has automatic suspensive effect, and given the powers of this appeal court in asylum cases, a remedy complying with these requirements had been at the applicant's disposal.
The same requirements apply when considering the question of effectiveness in the context of exhaustion of domestic remedies under art. 35(1). A further appeal to the Administrative Jurisdiction Division could therefore not be regarded as an effective remedy that must be exhausted for the purposes of art. 35(1). At the same time, however, art. 13 does not compel States to set up a second level of appeal when the first level of appeal is in compliance with the abovementioned requirements. Thus, art. 13 had not been violated. No violation of art. 3 was found in case of deportation of the applicant to Afghanistan. The Court referred to the applicant's account of his activities and situation in Afghanistan since the fall of the communist regime in 1992. It held that there was no indication that he had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his past activities since his departure from the country in 2002. The Court further noted that UNHCR does not include persons involved in the former communist regime or Hezb-e Wahdat in their potential risk profiles in respect of Afghanistan. Finally, neither the applicant's Hazara origin nor the general security situation in Afghanistan was considered as constituting the basis of a real risk of ill-treatment.

☞ ECtHR 24 Oct. 2023, 23048/19 ***A.M.A. v NL*** CE:ECHR:2023:1024JUD002304819

* violation of ECHR, 3+3

* *The applicant from Bahrain applied for asylum in the NL, which was rejected. Due to all sorts of electronic deficiencies, his appeal was too late and therefor inadmissible. In 2018 he was expelled to Bahrain. A week later his lawyer informed the Dutch authorities that the applicant had been arrested on arrival in Bahrain and detained immediately. Subsequently, he was sentenced to life imprisonment in Bahrain.*
The ECtHR has accepted that States may confine the assessment of a subsequent asylum application to an examination of the question whether relevant new facts have been brought forward, and that when no such facts are found they are not required to conduct their assessment with the same thoroughness. However, the examination of that question should not be carried out in a too restrictive a manner (see M.D. and M.A. v. Belgium). These principles seem to correspond to the reasoning adopted by the CJEU in its judgment in L.H. As regards the case at hand, the ECtHT notes that the new documents do not appear to have been easy to come by, as they do not appear to be publicly available records. By bluntly concluding that no probative value could be attached to these documents, without any prior assessment of their potential relevance in the light of all the other information regarding the individual situation of the applicant and of the general situation in Bahrain, the competent authorities took too narrow an approach, which cannot be regarded as ensuring the careful and rigorous examination expected of them.
Thus, the respondent State failed to discharge its procedural obligation under Art. of the Convention to properly assess in the context of the "last-minute" proceedings the alleged risk of treatment contrary to that provision before removing the applicant from the Netherlands.
This case is officially unanimously considered as a violation of the procedural obligations under art. 3. It is, however, also relevant under qualification. See, in that context, the partly concurring and partly dissenting opinion of judge Serghides.

☞ ECtHR 23 Oct. 2018, 61689/16 ***A.N. a.o. v RU*** CE:ECHR:2018:1023JUD006168916

* violation of ECHR, 3

* *The applicant Uzbekistan and Tajikistan nationals claimed that the requested extradition to their countries of origin would expose them to risk of ill-treatment.*
The Court referred to its previous case law holding that individuals whose extradition was sought by Uzbek or Tajik authorities on charges of religiously or politically motivated crimes constitute vulnerable groups facing a real risk of treatment contrary to art. 3. As the present applicants had in the extradition and expulsion cases consistently and specifically argued that they had been prosecuted for religious extremism and faced a risk of ill-treatment, the Russian authorities had at their disposal sufficiently substantiated complaints. The Court would therefore have to examine whether the authorities had discharged their obligation to assess these claims adequately. Referring to the national courts' simplistic rejections of the claims, and to their reliance on assurances from the Tajik and Uzbek authorities despite their formulation in standard terms, the Court found that they had failed to assess the claims adequately through reliance on sufficient relevant material. In its independent examination of the claims the Court found no basis for a conclusion that the criminal justice system of Tajikistan or Uzbekistan or the specific treatment of persons prosecuted for religiously and politically motivated crimes had improved. Removal of the applicants would therefore expose them to a real risk of treatment contrary to art. 3.

☞ ECtHR 19 Apr. 2018, 46240/15 ***A.S. v FR*** CE:ECHR:2018:0419JUD004624015

* no violation of ECHR, 3

* *The applicant Moroccan national had been sentenced to seven years' imprisonment for involvement in conspiracy to carry out terrorist attacks in France, Morocco and other countries. In that connection he had been deprived of his acquired French nationality and expelled to Morocco where he was arrested and placed in detention. The Court observed that Morocco had taken action to prevent risks of torture and inhuman and degrading treatment, thus distinguishing the case from M.A. v. France (9373/15). The nature of the applicant's conviction explained why he might be subjected to control and supervisory measures on his return to Morocco, such measures not amounting ipso facto to treatment contrary to art. 3. The Court noted that despite his release and contacts with a lawyer the applicant had failed to present any evidence such as medical certificates to show that his conditions of detention had exceeded the severity threshold required for violation of art. 3. He had also not presented any evidence to prove that persons presented as his accomplices had sustained inhuman or degrading treatment. As the French authorities had deported the applicant to Morocco despite an ECtHR indication under Rule 39, art. 34 had been violated. Moreover, the Court held that by serving the expulsion order on the applicant on the day of his release, yet more than one month after the order had been issued, and deporting him immediately upon release, the authorities had given him insufficient time effectively to request interim measures from the Court.*

☞ ECtHR 25 Feb. 2020, 68377/17 ***A.S.N. v NL*** CE:ECHR:2020:0225JUD006837717

* no violation of ECHR, 3

* joined cases: 68377/17 + C-530/18

* *The applicants are Afghan nationals and Sikhs who used to live in Afghanistan. The family applied for asylum in the Netherlands, telling the Dutch authorities that they had left Afghanistan after one of the applicant's sister had been kidnapped while on the way to the Gurdwara (Sikh temple) and that her brother had received a ransom demand signed by the Taliban and had then himself disappeared. The Dutch authorities rejected both the initial and a subsequent asylum application, which decisions were upheld in court. Main point was that the applicants' account of events lacked credibility and that they had not made a plausible case for believing that they feared persecution.*
The ECtHR concludes that the general situation in Afghanistan cannot be deemed such that any removal there would necessarily breach Art. 3 of the Convention, and that the situation of Sikhs in Afghanistan cannot be deemed such that they belong to a group that is systematically exposed to a practice of ill-treatment. The Court also finds that in this present case the severity threshold has not been met in the present case. Moreover, it has also not been established that the case is so very exceptional that the humanitarian grounds against removal are compelling.

☞ ECtHR 21 June 2022, 1557/19 ***Akkad v TR*** CE:ECHR:2022:0621JUD000155719

* violation of ECHR, 3+5+13

* *This case concerns the applicant's allegation that he had been subjected to forced and unlawful expulsion to Syria by the Turkish authorities under the guise of a "voluntary return". In 2018 the applicant, who had a valid residence permit in Türkiye and had been granted "temporary protection" status, was arrested near the Meriç river while attempting to enter Greece. He was removed to Syria two days later.*
The ECtHR found that substantial grounds had been shown for believing that the applicant faced a real risk of treatment contrary to Art. 3 in Syria and that the Turkish authorities had exposed him, in full knowledge of the facts, to the risk of treatment in breach of the Convention. It also held that the handcuffing of the applicant – in pairs with other single Syrian men during a bus journey lasting around 20 hours – amounted to degrading treatment. The applicant was also unable to challenge his removal to Syria. And the ECtHR found that the applicant had been deprived of his liberty from the time of his arrest close to the Greek border at Meriç until his removal to Syria. It noted that the legal safeguards provided for by domestic law in relation to the detention of persons facing expulsion had not been complied with.

☞ ECtHR 16 Apr. 2013, 17299/12 ***Aswat v UK*** CE:ECHR:2013:0416JUD001729912

* violation of ECHR, 3

* *An alleged international terrorist who had been detained in the UK pending extradition to the USA claimed that such extradition would not be compatible with art. 3. The case was originally processed together with Babar Ahmad a.o. v. UK (24027/07), but was adjourned in order to obtain further information. The Court distinguished this case from the former one, due to the severity of the applicant's mental health condition. In light of the medical evidence there was a real risk that extradition would result in a significant deterioration of the applicant's mental and physical health, amounting to treatment in breach of art. 3. The Court pointed to his uncertain future in an undetermined institution, possibly the highly restrictive regime in the 'supermax' prison ADX Florence, and to the different and potentially more hostile prison environment than the high-security psychiatric hospital in the UK where the applicant was currently detained.*

☞ ECtHR 19 Dec. 2013, 11161/11 ***B.K.A. v SE*** CE:ECHR:2013:1219JUD001116111

* no violation of ECHR, 3

* *The applicant was an Iraqi citizen, a Sunni Muslim from Baghdad. He claimed to be at risk of persecution because he had worked as a professional soldier in 2002-03 during the Saddam Hussein regime and had been a member of the Ba'ath party, and because of a blood feud after he had accidentally shot and killed a relative in Iraq.*
The ECtHR first considered the general situation in Iraq, and referred to international reports attesting to a continued difficult situation, including indiscriminate and deadly attacks by violent groups, discrimination and heavy-handed treatment by authorities. In the Court's view, though, it appeared that the overall situation has been slowly improving since the peak in violence in 2007, and the Court saw no reason to alter the position taken in this respect four years ago in the case of F.H. v. Sweden (20 January 2009, 32621/06). It noted that the applicant had not claimed that the general circumstances on their own would preclude return, but asserted that this situation together with his personal circumstances would put him at risk of treatment prohibited by art. 3.
As regards the applicant's personal situation, the Court noted that the Swedish Migration Court had found his story coherent and detailed. The Court considered former members of the Ba'ath party and the military to be at risk today only in certain parts of Iraq and only if some other factors are at hand, such as the individual having held a prominent position in either organisation. Given the long time passed since the applicant left these organisations and the fact that neither he nor his family had received any threats because of this involvement for many years, the Court found no indication of risk of ill-treatment on this account. However, it did accept the Swedish Court's assessment of the risk of retaliation and ill-treatment from his relatives as part of the blood feud, noting that it may be very difficult to obtain evidence in such matters. While the applicant was thus at risk of treatment contrary to art. 3, the Court accepted the domestic authorities' finding that these threats were geographically limited to Diyala and Baghdad and that he would be able to settle in another part of Iraq, for instance in Anbar the largest province in the country. In a dissenting opinion, one of the judges held this finding to reflect a failure to test the requisite guarantees in connection with internal relocation of applicants under art. 3.

☞ ECtHR 10 May 2016, 49867/08 ***Babajanov v TR*** CE:ECHR:2016:0510JUD004986708

* violation of ECHR, 3

* *Violation of ECHR arts. 3 and 5. The case concerned the alleged illegal deportation of an Uzbek asylum seeker from Turkey to Iran. The applicant had fled Uzbekistan in 1999 due to fear of persecution because he is a Muslim. Travelling via Tajikistan, Afghanistan and Pakistan he had stayed in Iran as an asylum seeker from 2005 to 2007 before fleeing for Turkey.*
The applicant claimed that in September 2008 he had been arrested and placed in detention along with 29 other asylum seekers, driven to the border and deported to Iran. The Government submitted that the applicant had been deported to Iran as a 'safe third country' in accordance with domestic law following an assessment of his asylum claim. He had subsequently entered Turkey illegally again and was currently living in hiding there.
The Court limited its examination to ascertaining whether the Turkish authorities had fulfilled their procedural obligations under art. 3. It found it established that the applicant was an asylum seeker residing legally in Turkey on the day of his deportation, and that he had been deported to Iran in the absence of a legal procedure providing safeguards against unlawful deportation and without a proper examination of his asylum claim. As the applicant had adduced evidence capable of proving that there were substantial grounds for believing that, if deported to Iran with the risk of refoulement to Uzbekistan, he would be exposed to a real risk of treatment contrary to art. 3, the Turkish authorities had been under an obligation to address his arguments and carefully assess the risk of ill-treatment. In the absence of such rigorous examination of the applicant's claim of a risk of ill-treatment if removed to Iran or to Uzbekistan, his deportation to Iran had amounted to a violation of art. 3.
While finding no need for a separate examination of the same facts under art. 13, and that the applicant did not have victim status as regards his complaints of a current threat of deportation from Turkey, the Court held that his detention in connection with the deportation in 2008 had been in violation of art. 5 (1) and (2).

☞ ECtHR 10 Apr. 2012, 24027/07 ***Babar Ahmad v UK*** CE:ECHR:2012:0410JUD002402707

* no violation of ECHR, 3

* *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 a violation of art. 3.*

☞ ECtHR 29 June 2023, 9839/22 ***Bijan Balahan v SE*** CE:ECHR:2023:0629JUD000983922

* no violation of ECHR, 3

* *The applicant is a dual national of Iran and the USA and is currently being detained in Sweden. He faces extradition to the USA where he is wanted in the State of California on charges for serious criminal offences, including torture, aggravated mayhem and grand theft. No evidence of a real risk of a life imprisonment sentence without parole or with a 61-year minimum term before parole eligibility, if applicant extradited to, and convicted in, the USA: no violation.*

☞ ECtHR 13 July 2023, 13869/22 ***Carvajal Barrios v ES*** CE:ECHR:2023:0713JUD001386922

* inadmissible application ECHR, 3

* *The case concerned the extradition of Mr Carvajal Barrios to the United States, where he is wanted for drug-smuggling offences. The applicant is a Venezuelan national who was born in 1960 and is in detention in Estremera (Community of Madrid). He was a member of the Venezuelan intelligence agency, including head of counter-espionage under Venezuelan President Hugo Chávez. In July 2014, while working as Venezuelan consul in Aruba (Kingdom of the Netherlands), he was arrested on that island pursuant to a United States Department of State arrest warrant. As a result of his diplomatic immunity, he was ultimately expelled from Aruba, rather than extradited to the United States.*
The ECtHR reiterated that in the extradition context, in order to comply with Art. 3, Spain was not required to examine the availability of procedural safeguards in the United States because scrutinising the relevant law and practice of that State would be unduly difficult for the national authorities deciding on extradition requests, and this would be an over-extensive interpretation of the responsibility of a Contracting State. It largely referred to the principles established in ECtHR GC 3 Nov 2022, 22854/20, Sanchez-Sanchez v. the UK.

☞ ECtHR (GC) 15 Nov. 1996, 22414/93 ***Chahal v UK*** CE:ECHR:1996:1115JUD002241493

* violation of ECHR, 3

* *This case is about an order for deportation to India of Sikh separatist for national security reasons. The ECtHR is persuaded (12 votes to 7) by evidence corroborated from different objective sources that until mid-1994 elements of Punjab police accustomed to act without regard to human rights of suspected Sikh militants, including pursuing them outside home State. Despite recent (i.e. 1996) improvement in human rights situation in Punjab and efforts of Indian authorities to bring about reform, problems persist with regard to observance of human rights by certain members of security forces in Punjab and elsewhere in India. Against this background, assurances of the Indian Government are inadequate guarantee of safety. The applicant's high profile is likely to make him target of hard-line elements in security forces.*

☞ ECtHR 20 Mar. 1991, 15576/89 ***Cruz Varas v SE*** CE:ECHR:1991:0320JUD001557689

* no violation of ECHR, 3

* *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 22 June 2006, 24245/03 ***D. v TR*** CE:ECHR:2006:0622JUD002424503

* violation of ECHR, 3

* *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 14 Jan. 2020, 75953/16 ***D. a.o. v RO*** CE:ECHR:2020:0114JUD007595316

* no violation of ECHR, 2

* *The case concerned an order for the expulsion to Iraq of an Iraqi national following his conviction in Romania for having facilitated the entry to Romania of terrorists. The Court held that the general evidence submitted by the applicant was accompanied by very little information about his individual circumstances and failed to demonstrate in practical terms that there was a direct link between his conviction in Romania and the likelihood of his being subjected in Iraq to treatment contrary to Art. 2 and 3 ECHR. The actions for which the applicant had been convicted in Romania had not taken place in Iraqi territory and had no direct link with terrorism. There were therefore no serious or proven grounds to believe that if he were returned to Iraq, the applicant would run a real risk of being subjected to treatment in breach of Art. 2 and 3 ECHR.*
The Court noted that the remedies available to the applicant to challenge the expulsion order did not have suspensive effect, which was incompatible the Court's case-law in respect of Art. 13. The Court considered that the complaints under Art. 6 (right to a fair hearing) and 8 (right to respect for private and family life) were manifestly ill-founded. However, the Court decided to continue to indicate to the Government (Rule 39 of the Rules of Court) not to send the applicant back to Iraq until such time as the judgment became final or the Court gave another ruling on the subject.

☞ ECtHR 14 Sep. 2023, 44646/17 ***Diakite v IT*** CE:ECHR:2023:0914JUD004464617

* violation of ECHR, 8

* *Violation of Art. 8 by the transfer of a minor asylum seeker to an adults' reception centre and only about five months later transferring him to a minors' centre, as the authorities did not act with reasonable diligence and therefore did not comply with the positive obligation to ensure the right to respect for private life, in which the principle of presumption of minor age is an inherent element of the protection towards a foreign unaccompanied individual declaring to be a minor;*
Complaints under arts. 3 and 13 rejected as manifestly ill-founded as the minimum level of severity of the reception conditions to fall within art. 3 had not been reached.

☞ ECtHR 22 July 2021, 39126/18 ***E.H. v FR*** CE:ECHR:2021:0722JUD003912618

* no violation of ECHR, 3+13
* *Expulsion of a Moroccan national who is an activist for Western Sahara independence and thus belongs to a group, which is particularly at risk. The applicant started to challenge his return four subsequent procedures, each with suspensive effect, which were qualified as effective remedies. He was heard and, in spite of tight deadlines, enjoyed safeguards to put forward his claims.*

☞ ECtHR 11 July 2017, 43538/11 ***E.P. v NL*** CE:ECHR:2017:0711JUD004353811

* no violation of ECHR, 3
* joined cases: 43538/11 + 63104/11 + 72586/11 + 77691/11 + 41509/12 + 46051/13
* *No violation of art 3 in case of forcible return to Afghanistan. Cases declared inadmissible (similar to M.M. a.o. v. Netherlands (16 May 2017, 15993/09).*

☞ ECtHR 15 Jan. 2015, 68900/13 ***Eshonkulov v RU*** CE:ECHR:2015:0115JUD006890013

* violation of ECHR, 3
* *Case of violation of art 3: extradition to Uzbekistan, largely similar to Fozil Nazarov v. Russia (11 Dec. 2014, 74759/13). Violation of art. 5(1)(f) and art. 5(4) due to detention of the applicant pending expulsion. Violation of art. 6(2) on account of the wording of the extradition decision, amounting to a declaration of the applicant's guilt prejudging the assessment of the facts by the Uzbekistani courts.*

☞ ECtHR (GC) 23 Mar. 2016, 43611/11 ***F.G. v SE*** CE:ECHR:2016:0323JUD004361111

* violation of ECHR, 3
* *An Iranian is refused asylum in Sweden and faces expulsion to Iran. The Chamber of the Court is divided (4-3) as to the question whether the applicant risks religious persecution in Iran and the case is referred tot the Grand Chamber (2 June 2014).*
  No violation of ECHR arts. 2 and 3 on account of the applicant's political past if he were to be deported to Iran. However, there is a violation of ECHR arts. 2 and 3 in case of return to Iran without an ex nunc assessment of the consequences of the applicant's conversion.
  In contrast to the Chamber judgment 16 January 2014, which observed that the applicant had expressly stated before the domestic authorities that he did not wish to rely on his religious conversion as a ground for asylum, the Grand Chamber noted that the Swedish authorities had become aware that there was an issue of the applicant's sur place conversion. While he did rely on his conversion in his appeal to the Migration Court, and his conversion to Christianity had not been questioned during the appeal, the Migration Court had not considered this issue further and did not carry out an assessment of the risk that he might encounter, as a result of his conversion, upon return to Iran. Thus, despite being aware of the applicant's conversion and that he might therefore belong to a group of persons who, depending on various factors, could be at risk of ill-treatment, the Swedish authorities had not carried out a thorough examination of the applicant's conversion, the seriousness of his beliefs, and how he intended to manifest his Christian faith in Iran if deported. Moreover, the conversion had not been considered a 'new circumstance' justifying a re-examination of the case. The Swedish authorities had therefore never made an assessment of the risk that the applicant might encounter as a result of his conversion in case of return to Iran. The Court concluded that the applicant had sufficiently shown that his claim for asylum on the basis of his conversion merits an assessment by the national authorities.
  In light of the special circumstances of this case, the Grand Chamber quite extensively stated the general principles regarding the assessment of applications for asylum, mainly focusing on the procedural duties incumbent on States under ECHR arts. 2 and 3. While it is in principle for the applicant to submit, as soon as possible, his claim for asylum with the reasons in support of it, and to adduce evidence capable of proving substantial grounds for believing that deportation would imply a real risk of ill-treatment, in relation to claims based on a well-known general risk the obligations under arts. 2 and 3 entail that State authorities carry out an assessment of that risk of their own motion. Given the absolute nature of the rights guaranteed under arts. 2 and 3, this also applies if a State is made aware of facts relating to a specific individual that could expose him to a risk of ill-treatment, in particular in situations where the authorities have been made aware that the asylum seeker may, plausibly, be a member of a group systematically exposed to a practice of ill-treatment and there are serious reasons to believe in the existence of that practice and in his or her membership of the group concerned.

New ☞ ECtHR 16 Apr. 2024, 9568/22 ***F.O. & G.H. v BE*** CE:ECHR:2024:0416JUD000956822

* inadmissible application ECHR, 3
* *Complaint under ECHR art. 3 is rejected as inadmissible since the applicants, claiming risk of violence and extortion in El Salvador, despite the refusal of asylum had not been subject to a removal order; they were therefore not considered victims of an art. 3 violation in the sense of ECHR art. 34, and the Court held the application to be incompatible with the ECHR ratione personae.*

☞ ECtHR 11 Dec. 2014, 74759/13 ***Fozil Nazarov v RU*** CE:ECHR:2014:1211JUD007475913

* violation of ECHR, 3

* *Case of extradition or administrative removal to Uzbekistan. The applicant was an Uzbek citizen who had been accused of criminal offences relating to prohibited religious activities in Uzbekistan.*
Referring to its previous case law, the Court considered the general human rights situation in Uzbekistan alarming, with the practice of torture against persons in police custody being described as 'systematic' and 'indiscriminate', and there was no concrete evidence of any fundamental improvement. Persons charged with membership of a religious extremist organisation and terrorism, like the applicant, were at an increased risk of ill-treatment.
While the failure to seek asylum immediately after arrival in another country might be relevant for the assessment of the credibility of the applicant's allegations, it was not possible to weigh the risk of ill-treatment against the reasons for the expulsion. The Russian government had not put forward any facts or argument capable of persuading the Court to reach a different conclusion from that made in similar past cases. Due to the available material disclosing a real risk of ill-treatment to persons accused of criminal offences like those with which the applicant was charged, and to the absence of sufficient safeguards to dispel this risk, it was concluded that the applicant's forcible return to Uzbekistan would give rise to a violation of art. 3.

☞ ECtHR 17 Apr. 2014, 39093/13 ***Gayratbek Saliyev v RU*** CE:ECHR:2014:0417JUD003909313

* violation of ECHR, 3

* *The applicant was a Kyrgyz citizen of Uzbek ethnicity, wanted in Kyrgyzstan for violent offences allegedly committed during inter-ethnic riots in 2010. He was detained pending extradition, and released in 2013. His application for asylum in Russia had been refused.*
Considering the widespread and routine use of torture and other ill-treatment by law-enforcement agencies in the southern part of Kyrgyzstan in respect of members of the Uzbek community to which the applicant belonged, the impunity of law enforcement officers and the absence of sufficient safeguards for the applicant in the requesting country, the ECtHR found it substantiated that he would face a real risk of ill-treatment if returned to Kyrgyzstan. That risk was not considered to be excluded by diplomatic assurances from the Kyrgyz authorities, as invoked by Russia. Art. 3 would therefore be violated in case of his extradition to Kyrgyzstan. Also violation of art. 5(4) due to length of detention appeal proceedings.

☞ ECtHR 3 Dec. 2013, 28127/09 ***Ghorbanov a.o. v TR*** CE:ECHR:2013:1203JUD002812709

* violation of ECHR, 3

* *The applicants were 19 Uzbek citizens who had been recognised as refugees by the UNHCR both in Iran and in Turkey, and the Turkish authorities had issued them asylum-seeker cards as well as temporary residence permits. Nonetheless, they had been summarily deported from Turkey to Iran twice in 2008.*
While the complaint that they had been at risk of further deportation from Iran to Uzbekistan had been declared manifestly ill-founded by the ECtHR as the applicants had been living in Iran as recognised refugees for several years before entering Turkey, this complaint concerned the circumstances of their deportation from Turkey. The Court held these circumstances to have caused feelings of despair and fear as they were unable to take any step to prevent their removal in the absence of procedural safeguards, and the Turkish authorities had carried out the removal without respect for the applicants' status as refugees or for their personal circumstances in that most of the applicants were children who had a stable life in Turkey. Thus, the Court concluded that the suffering had been severe enough to be categorised as inhuman treatment. Violation of Art. 3, 5(1) and 5(2).

☞ ECtHR 9 Apr. 2013, 70073/10 ***H. & B. v UK*** CE:ECHR:2013:0409JUD007007310

* no violation of ECHR, 3

* joined cases: 70073/10 + 44539/11

* *Both cases concerned the removal to Kabul of failed Afghan asylum seekers who had claimed to be at risk of ill-treatment by Taliban in Afghanistan due to their past work as a driver for the UN and as an interpreter for the US forces, respectively. The UK Government was proposing to remove the applicants directly to Kabul, and the cases therefore essentially deal with the adequacy of Kabul as an internal flight alternative. It had not been claimed that the level of violence in Afghanistan was such that any removal there would necessarily breach ECHR art. 3. The Court found no evidence to suggest that there is a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of being returned to Afghanistan.*
The Court pointed to the disturbing picture of attacks carried out by the Taliban and other armed anti-government forces in Afghanistan on civilians with links to the international community, with targeted killing of civilians associated with, or perceived as supporting, the Afghan Government or the international community. Thus, the Court quoted reports about an 'alarming trend' of the assassination of civilians by anti-government forces, and the continuing conduct of a campaign of intimidation and assassination. At the same time the Court considered that there is insufficient evidence at the present time to suggest that the Taliban have the motivation or the ability to pursue low level collaborators in Kabul or other areas outside their control.
H. had left the Wardak province as an infant and had moved to Kabul where he had lived most of his life with his family. He had worked as a driver for the UN in Kabul between 2005 and 2008. Like the UK authorities, the ECtHR found no reason to suggest either that he had a high profile in Kabul such that he would remain known there or that he would be recognised elsewhere in Afghanistan as a result of his work.
B. had until early 2011 worked as an interpreter for the US forces in Kunar province with no particular profile, and had not submitted any evidence or reason to suggest that he would be identified in Kabul or that he would come to the adverse attention of the Taliban there. The Court pointed out that the UK Tribunal had found him to be an untruthful witness and found no reason to depart from this finding of fact. As regards B.'s claim that he would be unable to relocate to Kabul because he would be destitute there, the ECtHR noted that he is a healthy single male of 24 years, and found that he had failed to submit evidence suggesting that his removal to Kabul, an urban area under Government control where he still has family members including two sisters, would be in violation of art. 3.

☞ ECtHR 5 Dec. 2023, 30919/20 ***H.A. v UK*** CE:ECHR:2023:1205JUD003091920

* no violation of ECHR, 3

* *The applicant is a stateless person of Palestinian origin. He was born and raised in the Ein El-Hilweh refugee camp in Lebanon. He left the camp in 2017 for the UK where he requested asylum and humanitarian protection. He relied on several grounds, one of which was that he was at risk of harm if he refused attempts to recruit him to extremist armed groups in the camp. The UK courts accepted that extremist armed groups would attempt to recruit him but found that he had not shown that he or his family were at any risk of harm if he refused.*

☞ ECtHR (GC) 27 Apr. 1997, 24573/94 ***H.L.R. v FR*** CE:ECHR:1997:0427JUD002457394

* no violation of ECHR, 3

* *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 (GC) 23 Feb. 2012, 27765/09 ***Hirsi Jamaa v IT*** CE:ECHR:2012:0223JUD002776509

* violation of ECHR, 3

* *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 5 Sep. 2013, 61204/09 ***I. v SE*** CE:ECHR:2013:0905JUD006120409

* violation of ECHR, 3

* *A family of Russian citizens of Chechen origin applied for asylum in Sweden and submitted that they had been tortured in Chechnya and were at risk of further ill-treatment upon return to Russia.*
Despite the current situation in Chechnya, the ECtHR considers the unsafe general situation not sufficiently serious to conclude that the return of the applicants to Russia would amount to a violation of art. 3.
As far as the applicants' individual situation is concerned, the ECtHR notes that the Swedish authorities did not as such question that Mr. I had been subjected to torture. However, they had found that he had not established with sufficient certainty why he had been subjected to it and by whom, and had thus found reason to question the credibility of his statements. In line with the Swedish authorities, the ECtHR finds that the applicants had failed to make it plausible that they would face a real risk of ill-treatment.
However, the Court emphasises that the assessment of a real risk for the persons concerned must be made on the basis of all relevant factors which may increase the risk of ill-treatment. Due regard should be given to the possibility that a number of individual factors may not, when considered separately, constitute a real risk, but when taken cumulatively and considered in a situation of general violence and heightened security, the same factors may give rise to a real risk.
It was noted that Mr. I has significant and visible scars on his body, and the medical certificates held that the wounds could be consistent with his explanations as to both timing and extent of the ill-treatment. Thus, in case of a body search in connection with his possible detention and interrogation by the FSB or local law-enforcement officials upon return, these would immediately see that Mr. I has been subjected to ill-treatment in recent years, which could indicate that he took active part in the second war in Chechnya. Taking those factors cumulatively, in the special circumstances of the case, the Court finds that there were substantial grounds for believing that the applicants would be exposed to a real risk of treatment contrary to art. 3 if deported to Russia.

☞ ECtHR 28 Mar. 2013, 2964/12 ***I.K. v AT*** CE:ECHR:2013:0328JUD000296412

* violation of ECHR, 3

* *The applicant was a Russian of Chechen origin, claiming that his removal to Russia would expose him to risk of ill-treatment as his family had been persecuted in Chechnya. His father had been working the security services of former separatist President Maskarov, and had been murdered in 2001. The applicant claimed to have been arrested four times, threatened and at least once severely beaten by Russian soldiers in the course of an identity check in 2004. Together with his mother, he left Chechnya in 2004 and applied for asylum in Austria later that year. Both asylum applications were dismissed.*
While the applicant had withdrawn his appeal, allegedly due to wrong legal advice, his mother was recognised as a refugee and granted asylum in appeal proceedings in 2009. The Austrian authorities did not, in the applicant's subsequent asylum proceedings, examine the connections between his and his mother's cases, but held that his reasons for flight had been sufficiently thoroughly examined in the first proceedings.
The ECtHR was not persuaded that the applicant's grievance had been thoroughly examined, and therefore assessed his case in the light of the domestic authorities' findings in his mother's case which had accepted her reasons for flight as credible. There was no indication that the applicant would be at a lesser risk of persecution upon return to Russia than his mother, and the alternative of staying in other parts of Russia had been excluded in her case as well.
In addition to the assessment of the applicant's individual risk, the Court observed the regularly occurring human rights violations and the climate of impunity in Chechnya, notwithstanding the relative decrease in the activity of armed groups and the general level of violence. The Court referred to is numerous judgments finding violations of ECHR arts. 2 and 3, and to reports about practices of reprisals and collective punishment of relatives and suspected supporters of alleged insurgents as well as occurrences of targeted human rights violations.
While there were thus substantial grounds to believe that the applicant would face a real risk of treatment contrary to art. 3 if returned to Russia, his mental health status (described as post-traumatic stress disorder and depression) was not found to amount to such very exceptional circumstances as required to raise a separate issue under art. 3.

☞ ECtHR 18 Jan. 2018, 21417/17 ***I.K. v CH*** CE:ECHR:2018:0118JUD002141717

* no violation of ECHR, 3

* *The applicant was a Sierra Leonean national whose application for asylum had been rejected as the Swiss authorities found that his statements about his homosexuality were not credible.*
The Court pointed out that sexual orientation was a fundamental facet of an individual's identity and awareness, and in consequence individuals submitting a request for international protection based on their sexual orientation cannot be required to hide it. Noting, however, that both the administrative and the judicial authorities in Switzerland had found that the applicant's statements did not meet the requirements of plausibility, and that the documents produced by him did not call that finding into question, the Court considered that he had not adduced sufficient evidence capable of proving that he would be exposed to a real risk.

☞ ECtHR 15 June 2023, 37550/22 ***Iquioussen v FR*** CE:ECHR:2023:0615JUD003755022

* inadmissible application ECHR, 3

* *Wrong country. Applications rejected as inadmissible because the decision ordering the applicant's removal had not been taken by France, but by the Belgian authorities after the applicant had voluntarily left France for Belgium; in addition, complaints under arts. 6, 9, 10 and 13 were also found inadmissible.*

☞ ECtHR 17 Apr. 2014, 20110/13 ***Ismailov v RU*** CE:ECHR:2014:0417JUD002011013

* violation of ECHR, 3

* *The applicant was an Uzbek citizen whose extradition to Uzbekistan had been requested. The extradition request had been refused, and in parallel proceedings his application for asylum in Russia was refused.*
The ECtHR held the general human rights situation in Uzbekistan to be 'alarming', the practice of torture in police custody being described as 'systematic' and 'indiscriminate', and confirmed that the issue of ill-treatment of detainees remains a pervasive and enduring problem. As to the applicant's personal situation, the Court observed that he was wanted by the Uzbek authorities on charges of participating in a banned religious extremist organisation, 'the Islamic Movement of Uzbekistan', and a terrorist organisation, 'O'zbekiston Islomiy Harakati' and that he was held to be plotting to destroy the constitutional order of Uzbekistan. The Court referred to various international reports and its own findings in a number of judgments, pointing to the risk of ill treatment which could arise in similar circumstances. The forced return to Uzbekistan, in the form of expulsion or otherwise, would therefore give rise to a violation of art. 3. Also violation of art. 5 (1)(f) and (4) on account of detention and unavailability of any procedure for judicial review of the lawfulness of detention.

☞ ECtHR (GC) 23 Aug. 2016, 59166/12 ***J.K. a.o. v SE*** CE:ECHR:2016:0823JUD005916612

* violation of ECHR, 3

* *In contrast to the Chamber judgment [4 June 2015], the Grand Chamber held Sweden to be in violation of ECHR art. 3 in case of deportation of the applicants to Iraq. In addition to assessing the concrete complaint, the Court provided an extensive account of the general principles for the examination of cases concerning non-refoulement under art. 3.*
The applicants were a married couple and their son born in 2000. They applied for asylum in Sweden in 2010 and 2011, respectively, claiming to be at risk of persecution by al-Qaeda due to the fact that the husband had run a business in Baghdad with exclusively US American clients. Before leaving Iraq, the family had already been target of a number of attacks. The Court considered the applicants' account of events as being generally coherent, credible and consistent with relevant country of origin information. While there were differing views as to the veracity of the applicants' explanations of continued attacks or threats against them after 2008, the Court did not find it necessary to resolve this disagreement as the domestic decisions did not appear to have entirely excluded a continuing risk from al-Qaeda after 2008.
Since the applicants had previously been subjected to ill-treatment by al-Qaeda, the Court held that there was a strong indication that they would continue to be at risk from non-State actors in Iraq. Given that the deficits in both capacity and integrity of the Iraqi security and legal system have increased, and the general security situation has clearly deteriorated since 2011-12 when the Swedish authorities had decided on the asylum cases, the Court did not consider the Iraqi authorities as being able to provide the applicants with effective protection against threats by al-Qaeda or other private groups. As the State's ability to protect has been diminished throughout Iraq, internal relocation was not a realistic option in the applicants' case.

☞ ECtHR 11 July 2000, 40035/98 ***Jabari v TR*** CE:ECHR:2000:0711JUD004003598

* violation of ECHR, 3

* *Holding violation of Article 3 in case of deportation that would return a woman who has committed adultery to Iran.*

☞ ECtHR 5 Sep. 2013, 886/11 ***K.A.B. v SE*** CE:ECHR:2013:0905JUD000088611

* no violation of ECHR, 3
* *The applicant is a Somali asylum seeker, originating from Mogadishu. He applied for asylum in 2009, claiming that he had fled Somalia due to persecution by the Islamic Courts and al-Shabaab, in particular by telephone calls threatening him to stop spreading Christianity. While the Swedish authorities intended to deport the applicant to Somaliland, the ECtHR did not find it sufficiently substantiated that he would be able to gain admittance and to settle there. The Court therefore assessed his situation upon return to Somalia in the context of the conditions prevailing in Mogadishu, his city of origin.*
The general situation of violence in Mogadishu was assessed in the light of the criteria applied in Sufi and Elmi v. UK (28 June 2011, 8319/07 & 11449/07). Against the background of recent information, in particular concerning al-Shabaab, the Court's majority held that the security situation in Mogadishu has improved since 2011 or the beginning of 2012, as the general level of violence has decreased. The situation is therefore not, at present, of such a nature as to place everyone present in the city at a real risk of treatment contrary to arts. 2 or 3.
The two dissenting judges consider the majority's analysis of the general situation deficient and its conclusions premature, due to the unpredictable nature of the conflict and the volatility and instability of the situation in Mogadishu. As regards the applicant's personal situation, the Court refers to the careful examination of the case by the Swedish authorities, and the extensive reasons given for their conclusions. It further notes that the applicant does not belong to any group at risk of being targeted by al-Shabaab, and allegedly has a home in Mogadishu where his wife lives, the Court concludes that he had failed to make it plausible that he would face a real risk of being killed or subjected to ill-treatment upon return there.

☞ ECtHR 7 Nov. 2017, 58182/14 ***K.I. v RU*** CE:ECHR:2017:1107JUD005818214

* violation of ECHR, 3
* *Case is largely similar to T.M. a.o. v. Russia (7 Nov 2017, 31189/15).*

☞ ECtHR 15 Apr. 2021, 5560/19 ***K.I. v FR*** CE:ECHR:2021:0415JUD000556019

* violation of ECHR, 3
* *This case is about a Russian national of Chechen origin. He had been granted refugee status in France. However, his status was revoked on the grounds that he had been sentenced for a terrorism offence and represented a serious threat to French society. Related to CJEU 14 May 2019, C-391/16, M., in which the CJEU ruled that the withdrawal of refugee status does not affect the fact of actually being a refugee. Likewise, the ECtHR concludes that the withdrawal of refugee status does not affect as such the fact of being a refugee.*

☞ ECtHR 19 Mar. 2024, 27584/20 ***K.J. a.o. v RU*** CE:ECHR:2024:0319JUD002758420

* violation of ECHR, 2+3+5
* *The applicants are nationals of North-Korea. They were captured in Russian territorial waters, convicted of illegal fishing and sentenced to two years' imprisonment in Russia. Upon release in January 2020 their detention pending expulsion to North-Korea was ordered. The ECtHR observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The ECtHR therefore decides that it has jurisdiction to examine the present application.*
Taking into account the circumstances of S.K.'s case, which match the pattern of other cases where applicants last seen in the custody of State authorities have then disappeared, the ECtHR is satisfied that on 10 September 2020 S.K. was illegally transferred by Russian State agents into the custody of North Korean officials. Unanimous decision.

☞ ECtHR 29 Apr. 2022, 28492/15 ***Khasanov v RU*** CE:ECHR:2022:0429JUD002849215

* no violation of ECHR, 3
* joined cases: 28492/15 + 49975/15
* *This case concerns the applicants' allegation that they risked ill-treatment if extradited to Kyrgyzstan because they belonged to the Uzbek ethnic minority, who have been persecuted by the authorities since inter-ethnic clashes in 2010. The ECtHR concludes no violation of ECHR art. 3 in case of extradition of the applicants to Kyrgyzstan, the Court noting recent reports by UN human-rights bodies and international, regional and national NGOs, and concluding that the general situation in Kyrgyzstan did not call for a total ban on extraditions and that ethnic Uzbeks did not currently constitute a group which was systematically exposed to ill-treatment in the country.*

☞ ECtHR 24 June 2021, 59687/17 ***Khatchaturov v AM*** CE:ECHR:2021:0624JUD005968717

* violation of ECHR, 3
* *The applicant, a Russian national of Armenian origin, faced extradition from the Armenian authorities to Russia where criminal proceedings for attempted bribe-taking were pending against him. The applicant unsuccessfully challenged the extradition decision which became final on 30 November 2017. On that date the ECtHR granted his request for an interim measure. The core issue in the present case was whether the transfer for the purpose of extradition of the applicant, who was seriously ill, might, in itself, have resulted in a real risk of his being subjected to treatment contrary to Art. 3. Indeed, the transfer of an individual whose state of health was particularly poor might, in itself, result in such a risk. However, the assessment of the transfer's impact required a case-by-case assessment.*
In several previous cases concerning the enforcement of removal orders in respect of individuals who could be exposed to risk during transfer, the ECtHR had underlined the importance of the existence of a relevant domestic legal framework and procedure whereby the implementation of a removal order would depend on the assessment of the medical condition of the individual concerned. However, in the present case no such legal safeguards or procedure had been shown to exist. 28/09/2021

☞ ECtHR 15 Oct. 2015, 40081/14 ***L.M. a.o. v RU*** CE:ECHR:2015:1015JUD004008114

* violation of ECHR, 2+3

* *The applicants were two Syrian nationals and a stateless Palestinian having had his habitual residence in Syria. They had requested asylum and refugee status in Russia while also being subject to administrative expulsion proceedings.*
The ECtHR held that the applicants had been prevented from effectively participating in the asylum proceedings. As these had not been accessible to the applicants in practice, they could not be considered as a domestic remedy to be used. Thus, the Court pointed out that such a remedy will only be effective if it has automatic suspensive effect.
Referring to its previous case-law on art. 3 in the context of general situations of violence, in particular the judgment in Sufi and Elmi v. UK (28 June 2011, 8319/07 & 11449/07), and noting that it had not yet adopted a judgment on the alleged risk of danger to life or ill-treatment in the conflict in Syria, the Court quoted UN reports describing the situation as a 'humanitarian crisis' and speaking of 'immeasurable suffering' and massive violations of human rights and humanitarian law by all parties. The Court further noted that the applicants were originating from Aleppo and Damascus, that they were young men in particular risk of detention and ill-treatment, and that one of them was a stateless Palestinian and thus from an area directly affected by the conflict. These elements were sufficient for the Court to conclude that the applicants had put forward a well-founded allegation that their return to Syria would be in breach of arts. 2 and/or 3. As the Government had not presented any arguments, relevant information or special circumstances dispelling these allegations, the Court concluded that expelling the applicants to Syria would be in breach of these provisions. The information and material provided did not disclose any appearance of a violation of art. 3 due to the conditions in the detention centre for foreign nationals in which the applicants had been detained. There had, however, been a violation of art. 5(1)(f).

☞ ECtHR 18 June 2015, 4455/14 ***L.O. v FR*** CE:ECHR:2015:0618JUD000445514

* no violation of ECHR, 3

* *The applicant was a Nigerian national who moved to France in 2010, assisted by a person A. who told her that she could work there as baby-sitter for his children. Upon arrival in France, she was raped numerous times by A, confined to his apartment and subsequently forced into prostitution. In 2011 she applied for asylum under A.'s instructions, claiming a risk of FGM and arranged marriage in Nigeria. Upon refusal of her asylum claim in 2013, she was arrested, and asked for review of her asylum application, claiming that she was a victim of a network of human trafficking. This was also rejected.*
The ECtHR noted that the applicant's account of the conditions in which she was led into prostitution was detailed and compatible with numerous reports from reliable sources. The fact that she had lied in connection with her first asylum request was in line with the accounts of victims of prostitution networks and could not in itself deprive her later statements of probative value.
As regards the applicant's risk in case of return to Nigeria, the Court noted that A. appeared to have been acting on his own, not as part of a trafficking network, and that the applicant did not seem to be still under his influence. Against that background, the Court found that the Nigerian authorities would be able to provide the applicant with appropriate protection and to offer her assistance upon return. There were therefore no serious and current reasons to believe that she would be at real risk of treatment contrary to art. 3.

☞ ECtHR 15 May 2012, 33809/08 ***Labsi v SK*** CE:ECHR:2012:0515JUD003380908

* violation of ECHR, 3

* *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 18 Nov. 2014, 52589/13 ***M.A. v CH*** CE:ECHR:2014:1118JUD005258913

* violation of ECHR, 3

* *The applicant was an Iranian asylum seeker whose case had been rejected by the Swiss authorities. According to the applicant, he had been involved in anti-regime demonstrations from 2009 to 2011 and, as a consequence, been exposed to repressive measures, including a sentence in absentia to seven years' imprisonment, payment of a fine and 70 lashes of the whip.*
The ECtHR set out observing that the applicant would in case be returned to a country where the human rights situation gives rise to grave concern in that it is evident that the Iranian authorities frequently detain and ill-treat persons who peacefully participate in oppositional or human rights activities. Not only the leaders of political organisations or other high-profile persons, but anyone who demonstrates or in any way opposes the Iranian regime may be at risk of being detained and ill-treated or tortured.
If the alleged punishment were to be enforced, such extensive flogging would have to be regarded as torture under ECHR art. 3. The prison conditions for political prisoners would also expose him to inhuman and degrading treatment and to the risk of being tortured. As the applicant had left Iran without an exit visa and without a passport, he was likely to be arrested upon return to Iran, the alleged conviction would be discovered immediately, and the sentence was therefore likely to be enforced upon his return.
In its assessment of the evidence, the Court agreed with the Swiss authorities that the applicant's story was manifesting some weaknesses. However, the Court noted that the credibility of the accounts given by the applicant at two interviews could not be assessed in isolation, but must be seen in the light of further explanations given by the applicant. The difference in nature of the two interview hearings and the fact that almost two years had lapsed until the second interview could also explain parts of the discrepancies.
As regards the documents submitted by the applicant, the Court did not agree that the veracity of his account could be assessed without having regard to these documents merely because some of the documents were copies, and on the basis of a generalised allegation by the Swiss Government that such documents could be purchased in Iran. There was no indication that the authorities had tried to verify the authenticity of the summons submitted, the Swiss court had not provided any reason why the copy of a judgment and another summons could not be taken into account, and the court had ignored the applicant's suggestion of having the credibility of these documents assessed. Against this background, the Court held that the applicant must be given the benefit of the doubt with regard to the remaining uncertainties.

☞ ECtHR 1 Feb. 2018, 9373/15 ***M.A. v FR*** CE:ECHR:2018:0201JUD000937315

* violation of ECHR, 3

* *The applicant Algerian national had been convicted in France of involvement in a terrorist organisation and made the subject of a permanent exclusion order. Following an unsuccessful asylum application, he was arrested and immediately taken to an airport where he was removed to Algeria before the ECtHR's interim measure could be taken into account.*
While reaffirming the legitimacy for States to take very firm stand against those contributing to terrorist acts, the Court observed that reports from the UNCAT and several NGOs described the worrying situation in Algeria, particularly arrests, detention and ill-treatment or torture of persons suspected of involvement in international terrorism. Given the applicant's profile and conviction by a French judgment that had been made public, and the fact that the Algerian authorities had been aware of his conviction for serious acts of terrorism, there had been a real and serious risk that he would face treatment contrary to art. 3.
The Court noted that its interim measure had not been observed because the French authorities had prepared the applicant's expulsion in such a way as to deliberately and irreversibly lowering the level of protection by making it very difficult for him to apply to the Court for an interim measure.

☞ ECtHR 20 Feb. 2020, 5115/18 ***M.A. a.o. v BG*** CE:ECHR:2020:0220JUD000511518

* violation of ECHR, 2

* *The applicants are Uighur Muslim from China. All applicants arrived in Bulgaria from Turkey, where they had been living since leaving China. The applicants subsequently applied for asylum but the Bulgarian State Refugees Agency rejected their applications which were upheld in court. The Bulgarian Administrative Court found that the applicants had not shown that they had been persecuted, or that they were at risk. The State Agency for National Security in January 2018 ordered their expulsion on national security grounds. Applications for judicial review of that decision were dismissed. The Supreme Administrative Court concluded that the State Agency for National Security had convincingly shown that they could pose a threat to Bulgaria's national security owing to, among other things, links with the East Turkistan Islamic Movement (ETIM), which was considered to be a terrorist group.*
The ECtHR starts with pointing out that it is conscious of the difficulties faced by States in protecting their populations from terrorist violence. However, even where, as in this case, a person is alleged to have connections with terrorist organisations, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Thus, if substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Art. 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.

☞ ECtHR 26 Apr. 2022, 29836/20 ***M.A.M. v CH*** CE:ECHR:2022:0426JUD002983620

* violation of ECHR, 2+3

* *M.A.M. is a Pakistani national who had converted from Islam to Christianity while in Switzerland, where he had arrived in 2015 and where his asylum request had been rejected. In this judgment the ECtHR held, unanimously, that if the decision to expel the applicant to Pakistan were to be executed there would be a violation of Art. 2 (right to life) and Art. 3 (prohibition of torture, inhuman or degrading treatment) of the ECHR, in the absence of an assessment of the risk to which the applicant was exposed on account of the overall situation of Christian converts in Pakistan and of his own personal situation.*
The ECtHR ruled that the assessment by the Swiss authorities of the risk facing the applicant on account of his conversion to Christianity if he were expelled to Pakistan had been insufficient to uphold the rejection of his asylum request, also given that he had not been represented by a lawyer at any stage in the national proceedings. It further found that the applicant had demonstrated that his asylum request, which had been based on his religious conversion, should have been examined in greater detail by the national authorities, which should, in particular, have taken into consideration any possible developments in the overall situation of Christian converts in Pakistan and the specific circumstances of the applicant's case.

☞ ECtHR 19 Jan. 2016, 58689/12 ***M.D. & M.A. v BE*** CE:ECHR:2016:0119JUD005868912

* violation of ECHR, 3

* *The applicants were two Russian nationals of Chechen origin, having applied for asylum four times. Their first asylum claim was rejected on the ground that a personal vendetta did not constitute a reason for granting asylum. This decision was upheld on appeal, now based on lack of credibility. The applicants failed to attend a hearing before the Conseil d'Etat, and their appeals in the subsequent claims were examined in the extremely urgent procedure.*
The Court noted that, by refusing to consider the fourth asylum claim, the Belgian authorities' approach to the consideration of whether there were new elements was too restrictive, failing to meet the standard of careful and rigorous examination. There had been no assessment of the relevance, authenticity or probative value of the evidence put forward as new material which had been rejected on the basis of the assumption that, according to the dates, it could have been produced in an earlier claim. The applicants' explanations for not submitting these documents earlier had not been considered. This was held to have put an unreasonable burden of proof on the applicants.
Due to the absence of review of the risk incurred by the applicants, in view of the documents submitted in support of their fourth asylum claim, the Court held that there had been insufficient evidence for the Belgian authorities to be assured that they would not be at risk of harm if deported to Russia.

☞ ECtHR 14 Sep. 2021, 71321/17 ***M.D. a.o. v RU*** CE:ECHR:2021:0914JUD007132117

* violation of ECHR, 3+2+5(1)+5(4)

* *The applicants, who are Syrian nationals, entered Russia on different types of visas between 2011 and 2014 and did not leave when the permitted period of their stay had expired. They were independently found guilty of breaching migration regulations by District Courts, which ordered their administrative expulsion. The applicants appealed unsuccessfully against these judgments.*
The applicants had provided the District Courts with incomplete information and little or no evidence with which to assess the risks that the applicants had been facing. However, the applicants could not meaningfully participate in those proceedings, as they had fled from a war-torn country. Moreover, a certain degree of speculation was inherent in the preventive purpose of Art. 3 and it was not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment.
In those specific circumstances, it had been up to the District Courts, of their own motion, to ascertain and take into consideration information relating to Syria from "reliable and objective" international and national sources and to carry out a comprehensive analysis of whether substantial grounds had been shown for believing that there was a real risk that the applicants would face ill-treatment or death if the order for their expulsion were to be implemented.
However, the District Courts had only reviewed and upheld the reasons put forward for the applicants' expulsion (that is to say, the illegality of their conduct); they had given no meaningful assessment of any general risks that the applicants would face in the event of their forced return to Syria. Unanimous: violation.

☞ ECtHR 6 June 2013, 50094/10 ***M.E. v FR*** CE:ECHR:2013:0606JUD005009410

* violation of ECHR, 3

* *The applicant was an Egyptian belonging to the Coptic Christian community in his country of origin where he had been exposed to a number of attacks due to his religious belief. His reports of these incidents to the police had been unsuccessful, and before leaving Egypt in 2007 he was accused of proselytizing for which he was sentenced in absentia to 3 years of imprisonment.*
The ECtHR referred to reports on numerous instances of violence and other persecution against Coptic Christians in Egypt in 2010-11, and on reluctance of Egyptian authorities to prosecute the perpetrators, and found no evidence that the situation had improved. The Court found strong evidence that the applicant would be a potential prime target for persecution and violence as a convicted proselytizer, whether free or imprisoned, and pointed to the serious doubt about on the applicant's ability to receive adequate protection from the Egyptian authorities. Given his background and the situation of Coptic Christians in Egypt, art. 3 would be violated in case of enforcement of the decision to deport the applicant.
Contrary to the judgment in I.M. v. France (2 February 2012, 9152/09, see § 2.3.3), the ECtHR did not consider the examination of this case in the French 'fast-track' asylum procedure incompatible with art. 13. The Court emphasised the very substantial delay in the applicant's lodging of his asylum request (almost 3 years) and the fact that he had been able to lodge an appeal with suspensive effect against the removal order as well as an asylum request with suspensive effect. Given his delay, the applicant could not validly argue that the reduced and very short deadlines to prepare the asylum request in the special procedure had affected the accessibility of the remedies available to him, and there was therefore no violation of art. 13 in conjunction with art. 3.

☞ ECtHR 8 July 2014, 58363/10 ***M.E. v DK*** CE:ECHR:2014:0708JUD005836310

* no violation of ECHR, 3

* *The applicant stateless Palestinian, who was granted asylum in Denmark in 1993, had been expelled due to criminal offences and was deported to Syria in 2010. He claimed this to be in violation of art. 3 in that he had been tortured upon return by the Syrian authorities. The Danish Government did not challenge this allegation of ill-treatment, but contested the alleged art. 3 violation.*
In examining whether the Danish authorities were, or should have been, aware that the applicant would face a real and concrete risk of being subjected to such treatment, the ECtHR noted that the Syrian uprising and armed conflict had not yet begun at the time of deportation. It further noted that the applicant had not relied on art. 3 until a month after his deportation. Referring to an expert opinion on the ne bis in idem principle in Syrian law, provided during the expulsion case, the Court was not convinced that the Danish authorities should have been aware that the applicant would risk detention and 'double persecution' upon return to Syria. The Court also pointed out that the principle of ne bis in idem does not by itself raise an issue under art. 3.
Even while various international sources were reporting ill-treatment of detainees in Syria at the time of deportation, the Court stated that the applicant did not belong to a threatened minority, and had never been politically active or in conflict with the Syrian regime, nor been perceived as an opponent to the government due to his stay abroad. The Court therefore concluded that there were no substantial grounds to believe that he had been at risk of being subjected to treatment in breach of art. 3 upon return to Syria.

☞ ECtHR (GC) 8 Apr. 2015, 71398/12 ***M.E. v SE*** CE:ECHR:2015:0408JUD007139812

* no violation of ECHR, 3

* *The applicant (a Libyan asylum seeker) had first explained that he had been involved in illegal transport of weapons for powerful clans from southern Libya, and that he had been stopped and interrogated under torture by the authorities. Subsequently he had added to his grounds for asylum, stating that he was homosexual and had entered into a relationship with N. in Sweden. The first Chamber did not find a violation of art. 3 ECHR. After referral to the Grand Chamber, the Swedish Migration Board granted the applicant a permanent residence permit resulting in the case being struck.*

☞ ECtHR 1 Sep. 2015, 76100/13 ***M.K. v FR*** CE:ECHR:2015:0901JUD007610013

* no violation of ECHR, 3

* *The case concerned an Algerian national who had been sentenced to 9 years of imprisonment for murder and then served with a deportation order. After dismissal of his appeals against that order he requested asylum, invoking fear of reprisals in Algeria from the family of the person he had assassinated.*
While noting the different findings of the various French authorities as regards the probative value of statements submitted by the applicant in support of the alleged threats, the ECtHR shared the doubts expressed by the domestic courts in that regard. In any event, the ECtHR was not convinced that the Algerian authorities would be unable to extend the appropriate protection to the applicant, in particular if he would relocate to another part of the country. In this regard the Court noted that the applicant was a single man at 29 years of age, and that he had not established that it would be impossible for him to settle in an area where he had no close relatives in order to avoid the alleged risk. The case was therefore rejected as manifestly ill-founded.

☞ ECtHR 16 May 2017, 15993/09 ***M.M. v NL*** CE:ECHR:2017:0516JUD001599309

* no violation of ECHR, 3

* joined cases: 15993/09 + 25077/06 + 46856/07 + 8161/07 + 39575/06

* *Cases declared inadmissible. The four cases concerned Afghan asylum seekers who had been excluded from refugee status under art. 1F of the UN Refugee Convention due to past activities as high ranking officers in the former Afghan security service KhAD/WAD and as a highly placed executive official of the communist party PDPA, respectively, until the collapse of the regime in 1992. They claimed that their forcible return to Afghanistan would expose them to a real risk of ill-treatment.*
The Court noted that the applicants had not sought to flee Afghanistan when the Mujahedin seized power in 1992, but only fled after the Taliban had taken power in the country. While they had been in hiding or/and captured before their flight, the Court found no indication that, since their departure from Afghanistan, any of the four applicants had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of their involvement with the former communist regime. The Court further noted that UNHCR does not include persons involved in the former communist regime in its potential risk profiles in respect of Afghanistan. Therefore, the Court did not find it demonstrated that the applicants, on individual grounds, would be exposed to a real risk of treatment contrary to art. 3.
As to the general security situation in Afghanistan, the Court did not find that there is a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of an individual being returned to Afghanistan.

☞ ECtHR 21 June 2022, 40462/16 ***M.N. a.o. v TR*** CE:ECHR:2022:0621JUD004046216

* no violation of ECHR, 3

* *This case concerns the risk of the applicants being expelled from Türkiye to Tajikistan on the grounds that they did not have valid visas and would pose a threat to public safety owing to their participation in Koranic study classes that had not been registered with the Turkish authorities.*
The ECtHR held, unanimously, that the applicants had not succeeded in establishing that they faced a risk of being persecuted or subjected to treatment contrary to Art. 3 of the Convention in the event of their return to Tajikistan, either on account of any political or social activism in their country of origin or on account of the conditions of their arrest in Türkiye.

☞ ECtHR 20 June 2017, 41282/16 ***M.O. v CH*** CE:ECHR:2017:0620JUD004128216

* no violation of ECHR, 3

* *The applicant was an Eritrean national whose application for asylum had been rejected as his account was dismissed by the Swiss authorities as not credible, due to a number of discrepancies and lack of substance and detail in various parts, such as that concerning his departure from Eritrea and other key elements of the claim.*
The Court noted that it is evident that the human rights situation in Eritrea is of grave concern, and that people of various profiles are at risk of serious human rights violations. In that regard, it referred in particular to a 2016 judgment of the UK Upper Tribunal issuing country guidance, according to which a person whose asylum claim has not been found credible, but who is able to satisfy the authorities that he left the country illegally, and that he is of or approaching draft age, is likely to be perceived on return as a draft evader or deserter and as a result face a real risk of persecution or serious harm. However, the Court found that the general human rights situation was not such that any Eritrean national would be at risk of ill-treatment if returned to the country.
As to the applicant's personal circumstances, the Court reiterated that, as a general principle, the national authorities are best placed to assess the credibility of an individual. It further stated that the assessment by the Swiss authorities was adequate, sufficiently reasoned and supported by material originating from reliable and objective sources. The Court therefore endorsed the finding that the applicant had failed to substantiate that he would face a real risk of being subjected to treatment contrary to art. 3 in case of return to Eritrea.

☞ ECtHR 16 June 2020, 6040/17 ***M.R. v CH*** CE:ECHR:2020:0616JUD000604017

* no violation of ECHR, 2+3

* *An Iranian national applies for asylum using not his own name after arriving in Switzerland in 2009 claiming never been politically active but discriminated as a Sunni muslim. This request is rejected and upheld in court. In 2013, the applicant files a second asylum request under his own name and claims becoming politically active in Switzerland raising the interest of the Iranian authorities. This second request is also rejected. In appeal he claims that, contrary to what he had stated initially, he had been active in Iran. This claim is dismissed by the Swiss court in 2015. In 2016 the applicant lodged an third asylum application, which is also rejected. In 2017 the applicant lodges an application with the ECtHR stating new circumstances on which the ECtHR decides to apply an interim measure. Subsequently, the ECtHR rules that his claims are unsubstantiated and that his deportation would not violate artt. 2 or 3.*

☞ ECtHR 26 Feb. 2015, 1412/12 ***M.T. v SE*** CE:ECHR:2015:0226JUD000141212

* no violation of ECHR, 3

* *Expulsion case. The applicant was a Kyrgyz citizen whose asylum application in Sweden had been rejected. Before the ECtHR he exclusively complained that his expulsion to Kyrgyzstan would entail a violation of art. 3 due to his ill-health, and the Court found no reason to examine the claims relating to persecution as presented before the Swedish authorities.*
It was undisputed, and supported by medical certificates, that the applicant suffered from a chronic disease and chronic kidney failure for which he was receiving blood dialysis in Sweden. Without this regular treatment his health would rapidly deteriorate and he would die within a few weeks.
Against the background of the information provided on the availability of blood dialysis treatment in Kyrgyzstan, the Court did not find, in the special circumstances of the case, that there was a sufficiently real risk that the applicant's expulsion to Kyrgyzstan would be contrary to art. 3. The present case did not disclose the very exceptional circumstances of the case D. v. United Kingdom (2 May 1997, 30240/96) insofar as blood dialysis was available in Kyrgyzstan, the applicant's family were there and he could rely on their assistance to facilitate making arrangements for treatment, and he could also count on help from the Swedish authorities for such arrangements if necessary. Thus, the Court was taking note of the Swedish government's statements concerning its readiness to assist the applicant and take other measures to ensure that the removal could be executed without jeopardising his life upon return, and considered this particularly relevant to the overall assessment.

☞ ECtHR 4 Sep. 2014, 17897/09 ***M.V. & M.T. v FR*** CE:ECHR:2014:0904JUD001789709

* violation of ECHR, 3

* *On several occasions in 2007, the applicants (a Russian couple) had accommodated an uncle who was a former Chechen rebel. After his last stay with them they had been harassed by men supposedly affiliated with the current Chechen President Kadyrov who came to their house, interrogated them about their uncle, and threatened and maltreated them. Referring to the applicants' family connections, in particular the uncle who had participated in the Chechen rebellion, and to the previous attacks and threats on their persons, and the general situation previously as well as presently in Chechnya, the Court held that their return would result in a real risk of ill-treatment by the Russian authorities.*

☞ ECtHR 18 Apr. 2013, 18372/10 ***Mo.M. v FR*** CE:ECHR:2013:0418JUD001837210

* violation of ECHR, 3

* *The applicant had been accused of spying for the rebels in Chad, and had been taken into custody for five days, interrogated and subjected to torture. In addition, his shop had been destroyed, his possessions confiscated, and his family threatened.*
The Court held the general situation in Chad to give cause for concern, particularly for persons suspected of collaboration with the rebels. As regards the applicant's personal situation, the Court considered the medical certificates produced by him as sufficient proof of the alleged torture. As to his risk of ill-treatment in case of return, the Court noted that he had produced a warrant issued by the authorities against him, the authenticity of which had not been seriously disputed by the French Government. Due to the reasoning given by the French authorities and the fact that they had not been able to examine some of the evidence produced by the applicant, the Court could not rely on the French courts' assessment of the applicant's risk. Due to his profile, the medical certificates and the past and present situation in Chad, the Court found a real risk that he would be subjected to treatment contrary to art. 3.

☞ ECtHR 3 July 2014, 71932/12 ***Mohammadi v AT*** CE:ECHR:2014:0703JUD007193212

* no violation of ECHR, 3

* *The applicant - an Afghan asylum seeker - had arrived in Austria via Greece, Macedonia, Serbia and Hungary. As the Austrian authorities intended to transfer him to Hungary under the Dublin Regulation, he complained that this would subject him to treatment contrary to arts. 3 and 5. The ECtHR considered the case similar to Mohammed v. Austria (6 June 2013, 2283/12) and examined whether any significant changes had occurred since that judgment.*
Holding that the complaint regarding risk of arbitrary detention and detention conditions in Hungary was falling in fact under art. 3, the Court pointed out that there was no systematic detention of asylum seekers in Hungary any more, and that there had been improvements in the detention conditions.
As regards the issue of access to asylum procedures the Court stated that, since the changes in Hungarian legislation in effect since January 2013, those asylum seekers transferred under the Dublin Regulation whose claims had not been examined and decided on the merits in Hungary would have access to such an examination. As the applicant had not yet had a decision on the merits of his case, he would have a chance to reapply for asylum and have his case duly examined if returned to Hungary. The Court further held it to be consistently confirmed that Hungary was no longer relying on the safe third country concept towards Serbia. The relevant country reports did not indicate systematic deficiencies in the Hungarian asylum system, and the Court therefore concluded that the applicant would currently not be at a real individual risk of being subjected to treatment contrary to art. 3 if transferred to Hungary.

☞ ECtHR 20 July 2010, 23505/09 ***N. v SE*** CE:ECHR:2010:0720JUD002350509

* violation of ECHR, 3

* *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 17 July 2008, 25904/07 ***N.A. v UK*** CE:ECHR:2008:0717JUD002590407

* violation of ECHR, 3

* *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 30 May 2017, 50364/14 ***N.A. v CH*** CE:ECHR:2017:0530JUD005036414

* no violation of ECHR, 3+2

* *Although the applicant's situation had similarities with that in A.I. v. Switzerland (30 May 2017, 23378/15), in this case the Court found no risk of ill-treatment on return to Sudan, due to his limited participation in the activities of JEM, the fact that the applicant did not occupy a position of public exposure, that he had not been active online nor had his name cited in the activities of the organisation.*

☞ ECtHR 14 Nov. 2019, 25244/18 ***N.A. v FI*** CE:ECHR:2019:1114JUD002524418

* violation of ECHR, 3+2

* *The applicant, being the daughter of a deported Iraqi asylum seeker who was killed subsequent to his return, was considered to be indirect victim of the alleged violation of arts. 2 and 3. Since an enforceable removal order had been issued against her father at the relevant time, the fact that he had opted for assisted voluntary return did not make his return 'voluntary' in terms of his free choice, thus the respondent State's jurisdiction was engaged. Due to the absence of a genuinely free choice, the Court also held that the asylum seeker had not waived his right to protection under arts. 2 and 3. Acknowledging the need to avoid the benefit of hindsight in this case, the Court referred to the general principles concerning cases about protection against refoulement. It pointed to the fact that while certain factors may not separately constitute a real risk, they may give rise to such a risk when taken cumulatively and considered in a situation of general violence and heightened security.*

☞ ECtHR 19 Dec. 2013, 7974/11 ***N.K. v FR*** CE:ECHR:2013:1219JUD000797411

* violation of ECHR, 3

* *The applicant Pakistani citizen was seeking asylum on the basis of his fear of ill-treatment due to his conversion to the Ahmadiyya religion. He alleged to have been abducted and tortured and that an arrest warrant had been issued against him for preaching this religion. Observing that the risk of ill-treatment of persons of the Ahmadiyya religion in Pakistan is well documented, the ECtHR stated that belonging to this religion would not in itself be sufficient to attract protection under art. 3. Rather, the applicant would have to demonstrate being practising the religion openly and to be proselytising, or at least to be perceived as such. While the French authorities had been questioning the applicant's credibility, in particular regarding the authenticity of the documents presented by him, the ECtHR did not consider their decisions to be based on sufficiently explicit motivations in that regard. The Court did not find the respondent State to have provided information giving sufficient reasons to doubt the veracity of the applicant's account of the events leading to his flight, and there was therefore no basis of doubting his credibility. The Court concluded that the applicant was perceived by the Pakistani authorities not as simply practising the Ahmadiyya belief, but as a proselytiser and thus having a profile exposing him to the attention of the authorities in case of return.*

☞ ECtHR 29 Mar. 2022, 45761/18 ***N.K. v RU*** CE:ECHR:2022:0329JUD004576118

* violation of ECHR, 3+5(4)+34

* *The case concerns removal of the applicant to Tajikistan, in breach of an interim measure issued by the Court. The applicant was charged in absentia with a crime of membership of an extremist organisation by the Tajik authorities and then his administrative removal was ordered by the Russian authorities. On 28 September 2018 an interim measure was indicated by the Court preventing his administrative removal to Tajikistan. The applicant was detained in Russia in pre-trial detention facilities and in a temporary detention centre for foreigners and alleged that the conditions of such detention had been inhuman. In September 2020 the applicant was allegedly removed to Tajikistan, despite the application of the interim measure. According to this subsequent information, the applicant was ill-treated upon arrival to Tajikistan and later sentenced to a lengthy prison sentence. The applicant and his lawyer submitted written statements providing details of the applicant's transfer to Tajikistan. No investigation was carried out into the applicant's alleged abduction.*
The ECtHR considers that, in breach of Art. 3, the Russian authorities exposed the applicant to a real risk of ill-treatment in Tajikistan by ordering his removal, that they were implicated in his forcible return there and they failed to carry out an effective investigation into his abduction. Furthermore, the Court holds that the authorities breached the interim measure indicated under Rule 39 of the Rules of the Court and that they therefore failed to comply with their obligations under Art. 34 of the Convention.

☞ ECtHR 3 Dec. 2019, 29343/18 ***N.M. v RU*** CE:ECHR:2019:1203JUD002934318

* violation of ECHR, 3

* *The applicant an Uzbekistan national living in Russia was charged with religious crimes by the authorities in Uzbekistan. Subsequently, he was detained in Russia pending his extradition. The Court has previously established that the individuals whose extradition was sought by the Uzbek authorities on charges of religiously or politically motivated crimes constituted vulnerable groups facing a real risk of treatment contrary to Art. 3 of the Convention in the event of their removal to Uzbekistan. It is apparent that the applicant has substantial grounds for believing that he faced a real risk of ill-treatment in Uzbekistan. Therefor the Courts holds that there would be a violation of Art. 3 of the Convention if the applicant were to be returned to Uzbekistan.*

☞ ECtHR 10 Oct. 2019, 34016/18 ***O.D. v BG*** CE:ECHR:2019:1010JUD003401618

* violation of ECHR, 3+13

* *The applicant was a Syrian national who had served in the Syrian army, deserted in 2012 and joined the Free Syrian Army for 9 monhs until he left for Turkey and Bulgaria in 2013. His application for asylum in Bulgaria was rejected twice, and his expulsion was ordered as the Bulgarian authorities considered him a threat to national security.*
The Court noted that the Bulgarian authorities had acknowledged that the overall situation in Syria warranted protection of the rights under arts. 2 and 3. The Court observed that the security and humanitarian situation in Syria had deteriorated dramatically at the time of the expulsion order and the decision refusing him protection, and that the situation appeared unchanged. Despite easing of hostilities there were still intense fighting and indiscriminate attacks against the civilian population and civilian infrastructure, and the conflicting parties were engaging in looting and persecution. Large-scale arbitrary arrests and detentions had been carried out as recently as the beginning of 2019 in the applicant's city of origin, Homs. As regards the applicant's individual risk, the Court noted the existence of practices of execution, arbitrary detention and ill-treatment of individuals who had deserted from the Syrian army or refused to carry out orders to shoot. In view of the applicant's alleged risk of ill-treatment on account of his desertion, he could not safely return to Homs or elsewhere in Syria. His removal to Syria would therefore amount to a violation of arts. 2 and 3.
Art. 13 had been violated as the Bulgarian authorities had not addressed the risk referred to by the applicant and not conducted an assessment of the situation in Syria. In refusing to grant asylum the Bulgarian Supreme Administrative Court had noted the existence of a serious and widespread situation in Syria, but applied domestic legislation under which national security considerations took precedence over risk in the destination country. The remedy had therefore not enabled the issue of risk to be determined.

☞ ECtHR 21 May 2019, 36321/16 ***O.O. v RU*** CE:ECHR:2019:0521JUD003632116

* violation of ECHR, 3

* *The applicant is an Uzbek national who arrived in Russia in 2012. He was convicted in 2014 of participating in an extremist organisation, forgery and attempting an illegal border crossing. He was transferred to a penal colony to serve his sentence. In 2016 the migration authorities ordered his deportation. He challenged this decision in court, arguing that he stood accused of religious extremism in Uzbekistan and therefore belonged to a vulnerable group at risk of ill-treatment if he were returned. The courts rejected his arguments, concluding that any risk was based on speculation. Right after his release out of criminal detention, he was immediately arrested with a view to his deportation. The migration authorities were informed that the European Court of Human Rights had granted an interim measure two days earlier to stay his removal for the duration of the proceedings before it. However, he was, however, flown to Moscow Domodedovo Airport and deported the next day to Uzbekistan. Mr O.O. was immediately arrested on arriving in Uzbekistan, and is currently serving a seven-year sentence in a penal colony. He alleges that he was mistreated during the investigation in Uzbekistan and that his detention conditions are inhuman, causing him to almost lose his eyesight and attempt suicide. The ECtHR holds that the deportation is a violation of Art. 3 and explicitly states that Russia has disregarded the interim measure indicated by the Court and therefore failed to comply with its obligations under Article 34 of the Convention.*

☞ ECtHR 17 Jan. 2012, 8139/09 ***Othman v UK*** CE:ECHR:2012:0117JUD000813909

* no violation of ECHR, 3
* referral to the Grand Chamber rejected 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 (GC) 13 Dec. 2016, 41738/10 ***Paposhvili v BE*** CE:ECHR:2016:1213JUD004173810

* violation of ECHR, 3
* *Referring to its previous case law on expulsion of seriously ill persons, based on the judgments D. v. UK (2 May 1997, 30240/96) and N. v. UK (GC 27 May 2008, 26565/05), the Court was of the view that the approach adopted hitherto should be clarified. The 'very exceptional cases' in which such health conditions may prevent expulsion should include, in addition to imminent risk of dying, a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in the state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court pointed out that this corresponds to a high threshold for the application of art. 3, and that the primary responsibility for implementing it is with the national authorities who are required to examine the applicants' fears and to assess the risks they would face if removed. Further criteria for this assessment were laid down in the judgment.*
  The detailed medical information provided by the applicant in this case had not been examined, due to the applicant's exclusion from the scope of the relevant provision in Belgian law because of his serious crimes. In the absence of any assessment by the domestic authorities of the risk facing the applicant in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, the information available to those authorities had been insufficient for them to conclude that the applicant would not have run a real and concrete risk of treatment contrary to art. 3, if returned to Georgia.
  Similarly, as the Belgian authorities had not examined the applicant's medical data and the impact of his removal on his state of health, they had also not examined the degree to which he was dependent on his family as a result of the deterioration of his state of health. In order to comply with art. 8, the authorities would have been required to examine whether, at the time of possible removal, the family could reasonably have been expected to follow the applicant to Georgia or, if not, whether observance of his right to respect for family life required that he be granted leave to remain in Belgium for the time he had left to live.

☞ ECtHR 14 Sep. 2022, 49857/20 ***R. v FR*** CE:ECHR:2022:0914JUD004985720

* violation of ECHR, 3
* joined cases: 49857/20 + 1348/21
* *Both cases concerned the deportation of a Russian national of Chechen origin whose refugee status had been revoked. The ECtHR observed that the French Administrative Court, the day before the applicant's actual deportation, had rejected the urgent application for suspensive relief lodged by the applicant, without indicating the specific reasoning for that decision. In two judgments of February 2021, subsequent to the deportation, the Administrative Court had dismissed the applicant's action for the setting-aside of the deportation order and the directions specifying the Russian Federation as the destination country. The Court was of the view that this solution had been based on an in-depth assessment of the applicant's situation, but found that, as it had taken place after the applicant's deportation, the Administrative Court's assessment in February 2021 could not have remedied the inadequacy of the earlier risk analysis.*

☞ ECtHR 7 June 2016, 7211/06 ***R.B.A.B. v NL*** CE:ECHR:2016:0607JUD000721106

* no violation of ECHR, 3
* *The applicants were a married couple and their three children, all Sudanese nationals. They had entered the Netherlands in 2001 and filed asylum applications in 2001 and again in 2003, both of which had been rejected due to lack of credibility. In their third asylum application, filed in 2005, they had claimed that their daughters would be subjected to FGM (female genital mutilation) on return, due to tribal and social pressure.*
  The Court noted that it was not in dispute that subjecting a child or an adult to FGM amounts to treatment proscribed by art. 3, and that a considerable majority of girls and women in Sudan have traditionally been subjected to FGM, although attitudes appear to be shifting and the prevalence of FGM is gradually declining. While there is no national law prohibiting FGM, some provinces of Sudan have passed laws prohibiting FGM as a harmful practice. It further held that there is no real risk of a girl or a woman being subjected to FGM at the instigation of non-family members. For an unmarried woman the risk of FGM will depend on the attitude of her family. The question was therefore considered mainly one of parental choice, and the Court found it established that when parents oppose FGM they are able to prevent their daughters from being subjected to this practice.
  As the daughter for whom the question was still relevant was a healthy adult woman whose parents and siblings were against FGM, and the applicants were likely to be removed together as a family to Sudan where their alleged home town was situated in a province where the laws are prohibiting FGM, the Court did not find it demonstrated that the daughter would be exposed to a real risk of being subjected to FGM. Her removal, and hence also that of the rest of the family, would therefore not give rise to a violation of art. 3.

☞ ECtHR 16 June 2016, 34648/14 ***R.D. v FR*** CE:ECHR:2016:0616JUD003464814

* violation of ECHR, 3

* *Violation of ECHR art. 3 in case of forcible return. No violation of art. 13.*
The applicant was a Guinean woman who had married a Christian man in spite of objections from her Muslim father and brothers who threatened to kill her and actually carried out violent reprisals from which she managed to escape. Upon arrival in France she was warned that her father had followed her, and she attempted to escape by leaving France with a fake passport. She was arrested, served with an order for immediate removal and detained, following which she lodged an asylum application that was processed under the fast-track procedure and rejected.
Referring to medical certificates on previous violence and a marriage certificate that contributed to the applicant's credibility, and considering the applicant to be at risk of further ill-treatment by her family if deported to Guinea, and the Guinean authorities to be incapable of ensuring protection for women in her situation, the Court held that deportation would be in violation of art. 3.
Although the fast-track procedure had been accelerated, the Court considered that the applicant had had sufficient time and knowledge of the asylum procedure as to make it conclude that there had been no violation of art. 13 in conjunction with art. 3.

☞ ECtHR 10 Sep. 2015, 4601/14 ***R.H. v SE*** CE:ECHR:2015:0910JUD000460114

* no violation of ECHR, 3

* *The applicant Somali woman, originating from Mogadishu, had applied for asylum in Sweden in 2011. She had previously requested asylum in Italy and the Netherlands, and stayed illegally in Sweden from 2007 until contacting the migration authorities in 2011.*
The ECtHR first considered the general situation in Mogadishu and concluded, referring to a variety of sources, that the assessment made in K.A.B. v. Sweden (5 September 2013, 886/11) is still valid. Thus, the Court found no indication that the situation is of such a nature as to place everyone who is present in the city at a real risk of treatment contrary to Article 3.
At the same time, the Court observed that the various reports attest to the difficult situation of women in Somalia, including Mogadishu, noting that there are several concordant reports about serious and widespread sexual and gender-based violence in the country. Thus, women are unable to get protection from the police and the crimes are often committed with impunity, as the authorities are unable or unwilling to investigate and prosecute reported perpetrators. In the Court's view, it may therefore be concluded that a single woman returning to Mogadishu without access to protection from a male network would face a real risk of living in conditions constituting inhuman or degrading treatment under art. 3.
Like the Swedish authorities, however, the Court had serious misgivings about the veracity of the applicant's statements concerning her individual circumstances. As she had family living in Mogadishu, including a brother and uncles, she was considered to have access to both family support and a male protection network, and it had not been shown that she would have to resort to living in a camp for refugees and IDPs. In her particular case, deportation to Mogadishu was therefore not considered to expose her to a real risk of treatment contrary to art. 3.
Two judges issued a dissenting opinion concerning the principles of the Court's assessment of evidence and risk in cases such as the present.

☞ ECtHR 19 Sep. 2013, 10466/11 ***R.J. v FR*** CE:ECHR:2013:0919JUD001046611

* violation of ECHR, 3

* *The applicant is a Tamil asylum seeker who claims to have been persecuted by the Sri Lankan authorities because of his ethnic origin and his political activities in support of the LTTE.*
The ECtHR reiterates that there is no generalised risk of treatment contrary to art. 3 for all Tamils returned to Sri Lanka, but only for those applicants representing such interest to the authorities that they may be exposed to detention and interrogation upon return. Therefore, the risk has to be assessed on an individual basis, taking into account the relevant factors (see: NA v. UK, 17 July 2008, 25904/07). Even while there were certain credibility issues concerning the applicant's story, the Court puts emphasis on the medical certificate precisely describing his wounds. As the nature, gravity and recent infliction of these wounds create a strong presumption of treatment contrary to art. 3, and as the French authorities have not effectively rebutted this presumption, the Court considers that the applicant had established the risk that he might be subjected to ill-treatment upon return. Art. 3 would therefore be violated in case of his expulsion.

☞ ECtHR 8 Oct. 2019, 30261/17 ***R.K. v RU*** CE:ECHR:2019:1008JUD003026117

* no violation of ECHR, 3

* *The applicant asylum seeker from the Democratic Republic of the Congo complained that his removal would put him at risk of ill-treatment or death as he was wanted by the DRC authorities for participation in protests by the political opposition. The Court noted that he had not argued, and the case material did not indicate, that the general situation in the DRC is such as to entail that any removal would necessarily be in breach of art. 3. As regards the applicant's personal situation, the domestic authorities had found that the applicant had not adduced evidence capable of demonstrating any substantial grounds for believing that he would be exposed to a real risk of ill-treatment, and the Court found no grounds to depart from this conclusion. In particular, it noted that it remained unexplained how the applicant could freely leave the DRC by plane on a valid visa while allegedly being on an international list of wanted persons, and why he had waited until March 2016 to lodge an application for asylum although he arrived in Russia in October 2015 and his visa expired in November 2015. His removal to the DRC would not be in violation of art. 3. Though, Art. 5(1) and (4) had been violated by the applicant's detention pending expulsion and by the lack of access to effective judicial review of the detention.*

☞ ECtHR 30 May 2013, 25393/10 ***Rafaa v FR*** CE:ECHR:2013:0530JUD002539310

* violation of ECHR, 3

* *The Moroccan authorities had requested the applicant's extradition from France under an international arrest warrant for acts of terrorism. The applicant initiated procedures contesting his extradition, and a parallel procedure requesting asylum in France.*
While the French asylum authorities apparently recognised the risk of ill-treatment in Morocco due to the applicant's alleged involvement in an Islamist terrorist network, the Court reconfirmed the absolute nature of the prohibition under art. 3 and the impossibility to balance the risk of ill-treatment against the reasons invoked in support of expulsion. Given the human rights situation in Morocco and the persisting ill-treatment of persons suspected of participation in terrorist activities, and the applicant's profile, the Court considered the risk of violation of art. 3 in case of his return to be real.

☞ ECtHR 6 Oct. 2022, 18207/21 ***S. v FR*** CE:ECHR:2022:1006JUD001820721

* violation of ECHR, 3

* *The applicant had previously been recognized as a refugee but his asylum status had been revoked on national security grounds. Violation of Art 3 ECHR if the applicant were to be removed to Russia without an ex nunc assessment of alleged risk.*

☞ ECtHR 2 June 2020, 49773/15 ***S.A. v NL*** CE:ECHR:2020:0602JUD004977315

* no violation of ECHR, 3

* *The applicant, allegedly from Sudan, filed several times an asylum application in The Netherlands. All his claims were rejected. In appeal the domestic court ruled that the applicant's statements, that if returned to Sudan he would be at risk of being perceived as an opponent to the regime as he belonged to the Tunjur, a non-Arab ethnic group associated with Darfuri rebel groups, lacked credibility in particular regarding his country of origin.*

☞ ECtHR 8 Oct. 2019, 65122/17 ***S.B. v RU*** CE:ECHR:2019:1008JUD006512217

* violation of ECHR, 3

* joined cases: 65122/17 + 13280/18

* *The applicants were a national of Tajikistan and a national of Uzbekistan whose extradition from Russia was requested on charges of religiously and politically motivated crimes.*
Referring to its previous case law, according to which such persons constituted vulnerable groups facing a real risk of ill-treatment in the event of their removal to the respective country of origin, the Court held that the Russian authorities had at their disposal sufficient indications pointing to such risk. However, the Russian authorities had not carried out a rigorous scrutiny of the real risk of ill-treatment in the extradition and expulsion proceedings. The Court therefore found itself compelled to examine such a risk independently, and concluded that there had been a violation of art. 3 on account of the actual deportation of S.B. to Tajikistan, and there would be a violation of art. 3 if S.Z. was to be removed to Uzbekistan.

☞ ECtHR 11 July 2023, 61365/16 ***S.E. v SR*** CE:ECHR:2023:0711JUD006136516

* violation of ECHR, Prot. 4 Art. 2

* *In 2015 the applicant was granted refugee status in Serbia on the grounds of his political activities in Syria. He applied to the (Serbian) Asylum Office to be issued with a travel document for refugees ("CTD") as his Syrian national passport had expired. He was notified that this could not be done as subsidiary regulations governing the form and content of travel documents for refugees had not yet been enacted by the Minister of the Interior as required by the relevant domestic law. The applicant's constitutional appeal of that notification was dismissed. In 2022 he obtained a Syrian national passport and used it to leave Serbia.*
The interference with the applicant's right to leave the country had not been "in accordance with law". The State authorities, by their refusal to issue the applicant with a travel document for refugees for seven years, had curtailed his right to leave Serbia freely to such an extent as to impair its very essence and deprive it of its effectiveness. Unanimous Decision.

☞ ECtHR 15 May 2012, 52077/10 ***S.F. v SE*** CE:ECHR:2012:0515JUD005207710

* violation of ECHR, 3

* *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.

☞ ECtHR 29 Jan. 2013, 60367/10 ***S.H.H. v UK*** CE:ECHR:2013:0129JUD006036710

* no violation of ECHR, 3
* *The applicant had been seriously injured during a rocket launch in Afghanistan in 2006 and left disabled, following several amputations, for the UK in 2010. His asylum application had been refused, and he was refused permission to appeal this decision. The Court reiterated that art. 3 does not imply an obligation on States to provide all illegal immigrants with free and unlimited health care. Referring to the applicant's assertion that disabled persons were at higher risk of violence in the armed conflict in Afghanistan, the Court held that expulsion would only be in violation of art. 3 in very exceptional cases of general violence where the humanitarian grounds against removal were compelling. It pointed out that the applicant had not complained that his removal to Afghanistan would put him at risk of deliberate ill-treatment from any party, nor that the levels of violence were such as to entail a breach of art. 3.*
The Court emphasised that the applicant had received both medical treatment and support throughout the four years he had spent in Afghanistan after his accident. It did not accept the applicant's claim that he would be left destitute due to total lack of support upon return to Afghanistan, as he had not given any reason why he would not be able to make contact with his family there.

☞ ECtHR 14 Feb. 2017, 52722/15 ***S.K. v RU*** CE:ECHR:2017:0214JUD005272215

* violation of ECHR, 3
* *The applicant was a Syrian national who had arrived in Russia in 2011 on a business visa. As he had stayed beyond the expiry of the visa, he was in 2015 found guilty of an administrative offence, ordered to pay a fine and to be subjected to the penalty of administrative removal. He then applied for temporary asylum, referring to the ongoing military actions in Syria, but his request was rejected first with reference to his conviction for administrative offences, later with the reasoning that he was at a risk of violence which was no more intensive than that faced by other people living in Syria.*
Referring to the general principles summarised in L.M. a.o. v. Russia (15 October 2015, 40081/14), the Court observed that the security and humanitarian situation and the type and extent of hostilities in Syria deteriorated dramatically between the applicant's arrival in Russia and the removal order issued in 2015. It pointed to the available information indicating that, despite the agreement on cessation of hostilities, various parties to the hostilities have been employing methods and tactics of warfare which have increased the risk of civilian casualties or directly targeting civilians, as well as to reports of indiscriminate use of force, indiscriminate attacks and attacks against civilians and civilian objects. The Court had not been provided with material confirming that the situation in Damascus was sufficiently safe for the applicant, who alleged that he would be drafted into active military service, or that he could travel from Damascus to a safe area in Syria. It therefore concluded that the applicant's removal to Syria would be in breach of arts. 2 and 3.
Restating the general requirements for a domestic remedy to be effective in cases concerning arts. 2 and 3, the Court examined the two sets of remedies available to the applicant in relation to the penalty of administrative removal. Neither review within the administrative-offence proceedings nor the temporary asylum procedure had provided the applicant with an effective remedy, given certain deficiencies in domestic law and practice as well as the fact that the asylum application had been dismissed with reference to factors unrelated to art. 3. Therefore, there had been a violation of art. 13 in conjunction with arts. 2 and 3.
Due to the lack of automatic review of the legality of detention on a regular basis, as well as the unlikeliness of the applicant's removal in view of the conflict in Syria, his detention was held to constitute a violation of art. 5(1) and (4).

☞ ECtHR 28 Mar. 2017, 20669/13 ***S.M. v FR*** CE:ECHR:2017:0328JUD002066913

* no violation of ECHR, 3
* *The applicant was a Sudanese national having applied for asylum in France on the basis of his alleged non-Arab ethnicity from Darfur and participation in anti-government activities. The Court held, in accordance with the French authorities which it considered better placed to assess the facts of the case, that the applicant had not provided sufficient elements of information to make the existence of a risk of ill-treatment in case of his return to Sudan credible. The application was therefore rejected as manifestly ill-founded.*

New ☞ ECtHR 18 Apr. 2024, 14997/19 ***S.N. v FR*** CE:ECHR:2024:0418JUD001499719

* no violation of ECHR, 3
* joined cases: 14997/19 + 46033/21
* *No violation of art. 3 ECHR in case of removal of the applicants to Senegal and Guinea, respectively. In the light of medical country of origin information, the ECtHR did not consider the medical treatment of which the applicants were in need, due to their psychiatric illness, unavailable in the two countries. It also did not find that a possible lack of treatment would lead to a serious, rapid and irreversible deterioration of their health condition implying intense suffering, or to a significant reduction of their life expectancy.*

☞ ECtHR 11 June 2019, 35332/17 ***S.S. v RU*** CE:ECHR:2019:0611JUD003533217

* violation of ECHR, 3+5(4)
* joined cases: 35332/17 + 79223/17
* *The applicants are nationals of Tajikistan and Uzbekistan. They were charged in their countries of origin with religious and politically motivated crimes. In order to prevent their removal from Russia their applications were lodged with the court. And although their case was granted priority, it still took two years to decide it. The Court considered that the Russian authorities had at their disposal sufficiently substantiated complaints pointing to a real risk of ill-treatment. The Court concludes that, although the applicants had sufficiently substantiated the claims that they would risk ill-treatment in their countries of origin, the Russian authorities failed to assess their claims adequately through reliance on sufficient relevant material.*

☞ ECtHR 5 July 2005, 2345/02 ***Said v NL*** CE:ECHR:2005:0705JUD000234502

* violation of ECHR, 3

* *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 ill-treatment as prohibited by Art. 3.*

☞ ECtHR 4 Sep. 2018, 17675/18 ***Saidami v DE*** CE:ECHR:2018:0904JUD001767518

* no violation of ECHR, 3

* *The applicant Tunisian national had been deported from Germany as he was considered a potential offender posing a threat to national security due to activities for 'Islamic State'. He complained that he would sentenced to the death penalty in Tunisia.*
The Court noted that charges against the applicant in Tunisia were carrying the death penalty and that there was a real risk that he would be given that penalty. However, it was not in dispute that there is a moratorium on carrying out executions in Tunisia which has been respected without exception since 1991, and that the Tunisian authorities provided diplomatic assurances to that end in the applicant's case. Against that background the Court agreed with the domestic courts' finding that there was no real risk that the applicant would be executed in Tunisia. The Court further agreed with the domestic courts that, if the applicant were given the death penalty in Tunisia, that penalty would de facto constitute a life sentence. Such a sentence would de jure and de facto be reducible by way of a pardon according to objective and pre-determined criteria. The Court therefore considered the application manifestly ill-founded.

☞ ECtHR 11 Jan. 2007, 1948/04 ***Salah Sheekh v NL*** CE:ECHR:2007:0111JUD000194804

* violation of ECHR, 3

* *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 1 Oct. 2019, 57467/15 ***Savran v DK*** CE:ECHR:2019:1001JUD005746715

* violation of ECHR, 3

* referral to Grand Chamber on 27 Jan 2020

* *The applicant Turkish national had been convicted of highly aggravated assault that had lead to a victim's death, and from 2008 he was placed in the secure unit of a residential institution for the severely mentally impaired for an indefinite period. In addition, he received an expulsion order with a permanent ban on re-entry. In 2014 the sentence was changed to treatment in a psychiatric department. Due to his medical condition and need for psychiatric treatment, the city court decided that the expulsion order should not be enforced, but the latter was reversed by the High Court.*
Referring to the judgment Paposhvili v. Belgium [13 December 2016, 41738/10] the ECtHR stated that the authorities of the removing state must verify on a case-by-case basis whether the care generally available in the receiving state is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him being exposed to treatment contrary to art. 3. In that connection the authorities must consider whether the individual in question will actually have access to such care and facilities, including the cost of medication and treatment, the existence of social and family network, and the distance to be travelled in order to have access to the required care. Where serious doubts persist regarding the impact of removal, the returning state must obtain individual and sufficient assurances from the receiving state that appropriate treatment will be available and accessible.
In this case, the Court noted the need for the applicant to receive follow-up and control in connection with medication on a daily basis as well as intensive outpatient treatment. The Danish High Court had not developed on that issue, and the ECtHR therefore concluded that there were serious doubts as to the impact of removal of the applicant. The expelling state would have to either dispel such doubts or obtain individual and sufficient assurances from the receiving state that appropriate treatment will be available and accessible to the concerned person. Removal of the applicant to Turkey without such assurances having been obtained would therefore be a violation of art. 3.

☞ ECtHR (GC) 7 Dec. 2021, 57467/15 ***Savran v DK*** CE:ECHR:2021:1207JUD005746715

* no violation of ECHR, 3

* violation of Art. 8

* *Initially, the Court ruled 4-3 (on 1 Oct. 2019) that the expulsion of Savran, a paranoid schizophrenic patient, violated Art. 3 based on not having a real possibility of receiving appropriate treatment in Turkey. Subsequently, the Court did not find it necessary to examine his complaint under Art. 8. Two years later, the Grand Chamber concludes the opposite. With 16 - 1 the Grand Chamber concludes there was no violation of Art. 3. However, it did hold with 11 - 6 that there had been a violation of Art. 8.*
In this judgment the Grand Chamber confirmed that its Paposhvili judgment (ECtHR 13 Dec. 2016, 41738/10, Paposhvili v. Begium) had offered a comprehensive standard taking account of all the considerations that were relevant for the purposes of Art. 3 and reaffirmed the standard and principles as established therein. The Court concluded that the circumstances of the present case had not reached the threshold set by Art. 3 and described in Paposhvili.
The second question was whether Art. 8 was violated. The Court examined this complaint in so far as it related to the authorities' refusal to revoke the expulsion order, and the implementation of that order, entailing as a consequence a permanent re-entry ban. Its task was therefore not to assess, from the standpoint of Art. 8, the original order and the criminal proceedings in the context of which it had been issued, but rather to review whether the revocation proceedings had complied with the relevant criteria established by the Court's case-law. Thus, notwithstanding the respondent State's margin of appreciation, the Court considered that, in the particular circumstances of the present case, the domestic authorities had failed to take into account and to properly balance the interests at stake.

☞ ECtHR 7 July 1989, 14038/88 ***Soering v UK*** CE:ECHR:1989:0707JUD001403888

* violation of ECHR, 3

* *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 Art. 3 recognising the extra-territorial effect of the ECHR.*

☞ ECtHR 19 Jan. 2016, 27081/13 ***Sow v BE*** CE:ECHR:2016:0119JUD002708113

* no violation of ECHR, 3

* *The applicant was a Guinean woman who had partially undergone FGM and claimed to be at risk of re-excision in case of return to her country of origin. In the first two asylum applications she had also claimed to have been exposed to forced marriage, but these asylum claims had been rejected due to inconsistencies, lack of credibility and failure to demonstrate the risk of being re-excised. In her third asylum application the applicant had concentrated on her fears of being subjected again to excision. The Belgian authorities refused to consider that application, arguing that no new elements had been submitted and that the evidence provided should have been submitted with one of the previous claims. The Court noted that the Belgian authorities had subjected the first asylum claim to a detailed and thorough examination, basing their conclusion that the applicant would not be at risk of re-excision on a report showing that certain categories of persons, to which she did not belong, were exposed to such risk. The Court found nothing arbitrary or manifestly unreasonable in this assessment and, consequently, no violation of art. 3.*
As regards art. 13, the court considered it legitimate for States to provide specific rules to reduce repetitive and abusive or manifestly unfounded asylum applications. It could not be required to make ex nunc examinations of each new asylum claim where the alleged risk had already been subject to careful and rigorous examination in a previous asylum claim, unless new facts were presented. In this case, the new documents submitted had been probative of an undisputed fact that had already been considered. There was therefore no violation of art. 13.

☞ ECtHR 19 Dec. 2013, 48866/10 ***T.A. v SE*** CE:ECHR:2013:1219JUD004886610

* violation of ECHR, 3

* *The applicant was an Iraqi citizen, a Sunni Muslim from Baghdad. From 2003 to 2007 he had been working for security companies with connections to the US military forces in Iraq. He alleged to have been subjected to attacks and threats from two militias due to that employment, and to be at risk of treatment prohibited by Arts. 2 and 3.*
While considering the general situation in Iraq in a similar manner as in B.K.A. v. Sweden (11161/11, 19 Dec. 2013), the ECtHR noted that targeted attacks against the former international forces in Iraq and their subcontractors as well as individuals seen to be collaborating with these forces have been widespread. Individuals who worked for a company connected to those forces must therefore, as a rule, be considered to be at greater risk in Iraq than the average population.
As regards the applicant's personal situation, the Court found reasons to generally question his credibility and thus considered that he had not been able to make it plausible that there is a connection between the alleged incidents and his previous work for security companies connected to the former US troops. As many years had passed since the alleged incidents and his work for the companies, there was consequently no sufficient evidence of a real risk of treatment contrary to Arts. 2 or 3. Two judges dissented on the basis of the cumulative weight of factors pertaining to both the general situation in Iraq and the applicant's personal account.

☞ ECtHR 19 Dec. 2013, 1231/11 ***T.H.K. v SE*** CE:ECHR:2013:1219JUD000123111

* no violation of ECHR, 3

* *The applicant was an Iraqi citizen, a Sunni Muslim from Mosul. He had served from 2003 to 2006 in the new Iraqi army which involved working with the US military forces. In 2006 he had been seriously injured in a suicide bomb explosion killing 30 soldiers, and in 2007 he had been hit by shots from a car passing in front of his house. He also alleged to have received a letter containing death threats.*
The ECtHR considered the general situation in Iraq in a similar manner as in B.K.A. v Sweden (11161/11, 19 Dec. 2013). As regards the applicant's personal situation, the ECtHR stated that there was no indication that members of his family in Iraq had been subjected to attacks or other forms of ill-treatment since 2007, and considered that the applicant had not substantiated that there was a remaining personal threat of treatment contrary to Arts. 2 or 3.

☞ ECtHR 19 Nov. 2019, 28492/15 ***T.K. v RU*** CE:ECHR:2019:1119JUD002849215

* no violation of ECHR, 3

* referred to Grand Chamber

* joined cases: 28492/15 + 49975/15

* *The applicants were Kyrgyz nationals whose extradition to Kyrgyzstan was requested on charges of aggravated misappropriation and aggravated robbery, destruction of property and murder, respectively. They claimed that their Uzbek ethnicity would expose them to risk of persecution and ill-treatment in Kyrgyzstan.*
Referring to its previous case law, according to which ethnic Uzbeks were considered to be at risk of ill-treatment if removed to Kyrgyzstan in the wake of the inter-ethnic clashes in 2010, the Court reconsidered its approach to the extradition of ethnic Uzbeks. An apparent consensus in international reports that the Kyrgyz authorities were taking specific steps to eradicate torture, and that the human rights situation there in general was improving, made the Court conclude that ethnic Uzbeks facing extradition no longer constituted a vulnerable group running a real risk of ill-treatment solely in connection with their ethnic origin. The charges against the two applicants were of common criminal nature and not prima facie related to their Uzbek origin or political persecution, and the Court was satisfied that the Russian courts' assessment of the claims of risk of ill-treatment was based not only on the general reporting on the human rights situation in Kyrgyzstan, but also on the applicants' individual circumstances.
The Court further examined the assurances provided by the Kyrgyz authorities to which the Russian courts had attached significant weight. Referring to its general criteria for assessing the quality and reliability of such assurances and to the monitoring mechanism created through cooperation between the Russian and Kyrgyz authorities, the Court found no reasonable grounds to conclude that the local authorities in Kyrgyzstan would fail to abide by them in practice. As the Russian courts had complied with their duty to adequately assess the claims of a risk of ill-treatment that had been given attentive consideration, the Court found no violation of art. 3 in the event of the applicants' extradition.

☞ ECtHR 22 Mar. 2022, 55978/20 ***T.K. a.o. v LT*** CE:ECHR:2022:0322JUD005597820

* violation of ECHR, 3

* *The applicants are Tajik nationals who were born between 1981 and 2013 and live in Vilnius. The case concerns the proceedings by which the applicants were denied asylum in Lithuania, and their potential removal to Tajikistan. They had arrived in Lithuania in 2019 and claimed asylum there, arguing that T.K. was a member of Islamic Renaissance Party of Tajikistan, which was a banned organisation in that country.*
Holds, by five votes to two, that in view of the domestic authorities' failure to sufficiently assess the existence in Tajikistan of a practice of ill-treatment of persons who were in a similar situation to the applicants, returning them to Tajikistan without a fresh assessment of that aspect would breach Art. 3. Dissenting opinions of Danish and Finnish judges.

☞ ECtHR 7 Nov. 2017, 31189/15 ***T.M. a.o. v RU*** CE:ECHR:2017:1107JUD003118915

* violation of ECHR, 3

* *The applicants were charged in Uzbekistan with religiously and politically motivated crimes and subject to an international search warrant, and the Russian authorities had taken final decisions to remove them to Uzbekistan, despite their consistent claims of a real risk of ill-treatment. The ECtHR held that in the extradition and expulsion proceedings the Russian authorities did not carry out a rigorous scrutiny of the applicants' claim of a risk of ill-treatment, given the domestic courts' simplistic rejections. Furthermore, their reliance on the assurances of the Uzbek authorities, despite their formulation in standard terms, appeared tenuous as similar assurances have consistently been considered unsatisfactory by the Court. Although the applicants had sufficiently substantiated the claims that they would risk ill-treatment, the Russian authorities had failed to assess their claims adequately through reliance on sufficient relevant material.*
Finding itself, therefore, compelled to examine independently the alleged real risk of ill-treatment in the event of removal to Uzbekistan, the Court found nothing to indicate any improvement in either the Uzbek criminal justice system in general or in the specific treatment of persons prosecuted for religiously and politically motivated crimes. It concluded that there would be violation of art. 3 if the applicants were to be removed to Uzbekistan. In view of this finding, the Court did not consider it necessary to examine the complaints under art. 13.

☞ ECtHR 1 Dec. 2015, 17724/14 ***Tadzhibayev v RU*** CE:ECHR:2015:1201JUD001772414

* violation of ECHR, 3

* *The case concerned a Kyrgyz national of Uzbek ethnic origin, subject to extradition proceedings due to alleged involvement in inter-ethnic clashes in Kyrgyzstan in 2010. He had been arrested in Russia and placed in detention, and the Russian Supreme Court upheld the extradition order based essentially on diplomatic assurances provided by the Kyrgyz authorities. The applicant's claim to refugee status was rejected by the Russian authorities.*
The Court noted that the situation in the south of Kyrgyzstan was characterised by torture and other ill-treatment of ethic Uzbeks by law enforcement officers. This had increased after the clashes in 2010 and remained widespread, aggravated by the impunity of law-enforcement officers. The overall human rights situation in Kyrgyzstan remained highly problematic. As to the applicant's individual circumstances, the Court reiterated that where an applicant alleges to be a member of a group systematically exposed to a practice of ill-treatment, the protection under art. 3 enters into play when he establishes that membership and that there are serious reasons to believe in the existence of such practice. In such circumstances it will not be required that the applicant show the existence of further special distinguishing features.
Considering that the applicant's arguments in respect of the risk of ill-treatment had not been addressed properly at the domestic level, the Court held that this issue had not been subjected to rigorous scrutiny in the asylum or extradition proceedings. The Court also did not consider the invoked assurances provided by the Kyrgyz authorities as sufficient to exclude the risk of the applicant's exposure to ill-treatment. His extradition would therefore be in violation of art. 3.

☞ ECtHR 4 Sep. 2014, 140/10 ***Trabelsi v BE*** CE:ECHR:2014:0904JUD000014010

* violation of ECHR, 3

* *The applicant Tunisian citizen had been sentenced to ten years' imprisonment in Belgium in 2003 for attempting to blow up a military base and for instigating a criminal conspiracy. He had in 2005 been sentenced to ten years' imprisonment in absentia by a Tunisian military court for belonging to a terrorist organisation. In 2008, the US authorities requested his extradition on charges for offences relating to Al Qaeda-inspired terrorism, among which two charges made him liable to life imprisonment. In spite of a Rule 39 indication by the ECtHR of interim measures in 2011, the Belgian authorities extradited the applicant to the US in 2013.*
While reiterating that the imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by the ECHR, provided that it is not disproportionate, the ECtHR pointed out that for it to be compatible with art. 3 such a sentence should not be irreducible de jure and de facto. In view of the gravity of the terrorist offences with which the applicant was charged, a discretionary life sentence was not considered to be grossly disproportionate.
Even though the US had, by a diplomatic note in 2010, repeated their guarantees towards Belgium in respect of the possibility of commutation of a life sentence, the ECtHR held that the US authorities had at no point provided any concrete assurance that the applicant would be spared an irreducible life sentence. The Court further noted that while US legislation provided various possibilities for reducing life sentences which gave the applicant some prospect of release, it did not lay down any procedure amounting to a mechanism for reviewing such sentences for the purposes of ECHR art. 3. The life imprisonment to which the applicant might be sentenced could therefore not be described as reducible. Consequently, his extradition to the US had amounted to a violation of Art. 3.
In addition, by the actual extradition of the applicant in spite of the Rule 39 indication, Belgium had deliberately and irreversibly lowered the level of protection of the rights in art. 3. ECHR art. 34 had therefore also been violated.

☞ ECtHR 15 Feb. 2024, 53254/20 ***U. v FR*** CE:ECHR:2024:0215JUD005325420

* no violation of ECHR, 3

* *No violation by the enforcement of a decision to remove a Russian national of Chechen origin to Russia after his refugee status had been revoked for security reasons. The ECtHR noted that the French authorities had carried out a thorough and in-depth examination of the applicant's situation, and the ECtHR also carried out its own up-to-date assessment to conclude that removal to Russia would not, in the circumstances of the present case, violate art. 3.*

☞ ECtHR 26 July 2016, 14348/15 ***U.N. v RU*** CE:ECHR:2016:0726JUD001434815

* violation of ECHR, 3

* *The applicant was a national of Kyrgyzstan and an ethnic Uzbek who had arrived in Russia after the mass disorders and inter-ethnic clashes in Kyrgyzstan in 2010. The Russian authorities accepted the request for his extradition to Kyrgyzstan on charges for violent crimes related to these clashes. In parallel proceedings the applicant's request for refugee status was rejected.*
The Court reiterated its previous finding that there were substantial grounds for believing that persons such as the applicant would face a real risk of exposure to treatment proscribed by art. 3 if returned to Kyrgyzstan, referring to the widespread and routine use of torture and other ill-treatment by law-enforcement agencies in the southern part of the country towards members of the Uzbek community. As such, the diplomatic assurances and the monitoring mechanism relied on by the Russian government were insufficient. The applicant's alleged criminal conduct did not overturn the absolute prohibition of ill-treatment under art. 3.
As the applicant had been unable to apply for judicial review of the lawfulness of his detention during a fixed period of detention, notwithstanding changes in the circumstances capable of affecting its lawfulness, art. 5(4) had also been violated.

New ☞ ECtHR 18 Apr. 2024, 48932/20 ***V. v FR*** CE:ECHR:2024:0418JUD004893220

* no violation of ECHR, 3+2

* *The complaint concerns a Russian citizen of Chechen origin against his removal to Russia. It is considered manifestly unfounded and therefore rejected as inadmissible.*

☞ ECtHR 17 Feb. 2004, 58510/00 ***Venkadajalasarma v NL*** CE:ECHR:2004:0217JUD005851000

* no violation of ECHR, 3

* *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 30 Oct. 1991, 13163/87 ***Vilvarajah v UK*** CE:ECHR:1991:1030JUD001316387

* no violation of ECHR, 3

* *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 (GC) 8 Apr. 2015, 49341/10 ***W.H. v SE*** CE:ECHR:2015:0408JUD004934110

* no violation of ECHR, 3

* *The applicant was an Iraqi citizen of Mandaean denomination, originating from Baghdad. She applied for asylum invoking that she, as a divorced woman belonging to a small and vulnerable minority and without a male network or remaining relatives in Iraq, would be at risk of persecution, assault, rape and forced conversion and forced marriage. After the referral of the case to the Grand Chamber (in October 2014) the Swedish Migration Board granted the applicant a permanent residence permit, considering her not to be a refugee yet in need of international protection, given the general security situation in Baghdad in combination with the fact that she is a woman lacking social network and belonging to a religious minority. Due to the vast number of Iraqis having fled to the Kurdistan Region, there was no internal relocation alternative for her in the KRI.*

☞ ECtHR 26 Jan. 2017, 16744/14 ***X. v CH*** CE:ECHR:2017:0126JUD001674414

* violation of ECHR, 3

* *Mr. X was a Sri Lankan national of Tamil origin who had applied for asylum in Switzerland in 2009, stating that he had been an active member of the LTTE movement. His asylum request was rejected, and he was deported with his family in 2013. Upon return to Sri Lanka, they had been detained and questioned, and Mr. X was incarcerated and exposed to ill-treatment. Following a visit to the prison by a representative of the Swiss embassy, his wife and children had been relocated to Switzerland, and upon release in 2015 Mr. X applied for a humanitarian visa to return to Switzerland where he again requested asylum which was granted.*
Although the Swiss government had apologised publicly and privately for the mistakes made in assessing Mr. X's first asylum application and was considered to have acknowledged in substance the violation of art. 3, this could not be regarded as sufficient redress in the absence of any compensation for the damage suffered. Mr. X could therefore still claim to be a victim of that violation.
The Court reiterated that in cases where an applicant alleges being a member of a group systematically exposed to a practice of ill-treatment, protection under art. 3 enters into play when the applicant establishes that there are serious reasons to believe in the existence of that practice and in his or her membership of the group concerned, without having to demonstrate the existence of further special distinguishing features. It held that at the time of his deportation, the Swiss authorities should have been well aware of the risk that Mr. X and his family might be subject to treatment contrary to art. 3, given that specific evidence had included not only Mr. X's own submissions but also a parallel case of another applicant who had been detained and subjected to ill-treatment resulting in hospitalisation upon deportation from Switzerland a month earlier than Mr. X. Further referring to the government's acceptance of the shortcomings, the Court concluded that the Swiss authorities had failed to comply with their obligations under art. 3 in dealing with Mr. X's first asylum application.

☞ ECtHR 7 Nov. 2017, 54646/17 ***X. v DE*** CE:ECHR:2017:1107JUD005464617

* no violation of ECHR, 3

* *The applicant was a Russian citizen born in the Northern Caucasus. His asylum requests had been refused by the German authorities in 2002 and 2011, yet he had been granted a residence permit in 2012. In 2014 he was suspected to be going to Syria to join IS, and a deportation order was issued in 2017 as he was considered to constitute a threat to national security. The ECtHR agreed with the conclusion of the German Federal Administrative Court, finding that – even if there was a risk of torture in the region of Dagestan – the applicant would not face the risk of torture or ill-treatment if deported to Moscow. The general reports on such risk in other regions of Russia concern in essence the situation of persons either directly connected to the conflicts in Northern Caucasus or being relatives of persons directly connected. The applicant had no connection with these conflicts as he left Dagestan at the age of three.*

☞ ECtHR 9 Jan. 2018, 36417/16 ***X. v SE*** CE:ECHR:2018:0109JUD003641716

* violation of ECHR, 3

* *The applicant Moroccan national had been expelled from Sweden and complained that he would face a real and personal risk of torture or other inhuman treatment in Morocco since he was considered a threat to national security in Sweden.*
Noting that the human rights situation in Morocco has improved over several years, the Court held that the general situation was not such as to show, on its own, that there would be a breach of the ECHR if the applicant were to return there. As regards his personal situation, the Court agreed with the findings of the Swedish authorities that the applicant had failed to show that he had previously been of interest to the Moroccan authorities.
Insofar as the risk of ill-treatment because of the applicant being considered a security risk in Sweden was concerned, the Court observed that the Swedish Government had acknowledged that the Security Service had been in contact with the Moroccan authorities and informed them about the applicant, and that the Moroccan authorities were thus aware of their assessment and had certain information about him. In view of the material from reliable international sources showing that arbitrary detention and torture continue to occur in cases related to persons suspected of terrorism, the applicant was therefore considered to have shown that there was a risk of being subjected to treatment contrary to art. 3. The Migration Agency and the Migration Court of Appeal had not been informed of the various roles of the Security Service and had thus not received all relevant and important information, which in the Court's view raised concern as to the rigour and reliability of the domestic proceedings. No assurances had therefore been obtained from the Moroccan authorities relating to their treatment of the applicant upon return.

☞ ECtHR 10 July 2018, 14319/17 ***X. v NL*** CE:ECHR:2018:0710JUD001431917

* no violation of ECHR, 3

* *The applicant was a Moroccan national who had been convicted of preparing terrorist offences and sentenced to 12 months' imprisonment in the Netherlands. He claimed asylum, arguing that he would be at risk of being detained and ill-treated if removed to Morocco as he would there be considered a terror suspect.*
The Court observed that the general human rights situation in Morocco has improved, but that despite the Moroccan government's efforts ill-treatment and torture still occur, particularly in the case of persons suspected of terrorism or of endangering state security. However, a general and systematic practice of torture and ill-treatment had not been established, thus the general situation was not of such nature as to show, on its own, that there would be a breach of the ECHR in case of return.

☞ ECtHR 27 Feb. 2014, 35/10 ***Zarmayev v BE*** CE:ECHR:2014:0227JUD000003510

* no violation of ECHR, 3

* *The applicant was a Russian citizen of Chechen origin who had been granted asylum in Belgium in 2005 under false identity. As a result, his refugee status had been withdrawn in 2009, and he was convicted for a number of criminal offences. As Belgium then accepted a request for his extradition to Russia, he lodged four unsuccessful asylum applications in Belgium from 2009 to 2013.*
The ECtHR noted that the situation in Chechnya is not so serious as to warrant the general prohibition of returns under ECHR art. 3. As regards the applicant's personal circumstances, the Court pointed to internal inconsistencies in his account of events, unexplained additions to this account, and the unreliability of letters of support that he had produced. The Court further referred to diplomatic assurances indicating that the applicant, if convicted in Russia, would be detained in an ECHR-compliant institution, and that the Belgian embassy would be permitted to visit him in prison and talk with him unsupervised.
His personal circumstances therefore did not justify the finding of a violation of art. 3 in case of his extradition.

1.3.4 CtAT Views on Non-Refoulement (Art. 3)

☞ CtAT 27 July 2022, CAT/C/74/D/905/2018 ***A. & B. v AZ***

* violation of CAT, 3

* *The complainants were facing extradition from Azerbaijan to Türkiye, and they feared risk of torture if deported, as the (Istek) schools (in Azerbaijan) where they worked were affiliated with the Gülen movement. The Committee concludes that the Azerbaijan's removal of the first complainant to Türkiye constituted a violation of Art. 3 CAT. Regarding the lack of compliance with the Committee's request of 24 December 2018 for interim measures for the complainants not to be returned to Türkiye, and its reiteration on 28 December 2018, the Committee regrets that, despite its repeated requests, Azerbaijan expelled the first complainant to Türkiye on 29 December 2018 and has not provided any explanation for its failure to respect the Committee's requests.*

☞ CtAT 24 Nov. 2021, CAT/C/72/D/918/2019 ***A.A. v SE***

* violation of CAT, 3

* *The complainant is a national of Afghanistan, born in Iran. He fled with his brother and parents to Sweden in 2015 and applied for asylum. During their asylum procedure, they were baptized as Christians. The brother was granted asylum, whereas his parents got a temporary residence permit on the basis of the father's terminal cancer diagnosis. The Swedish Migration Agency, held that he had not demonstrated that his faith was genuine and that he would not face any individual threat if returned to Afghanistan. One of the presiding judges and Chair of the Migration Court, however, issued a dissenting opinion.*
The CtAT considers that the State party has failed in its duty to undertake an individualized assessment of the personal and real risk that the complainant would face in Afghanistan. Given the failure to place his evidence in the context of his cultural and educational background, to obtain independent medical evidence for inclusion in its assessment, to consider evidence as a whole and to accurately represent the applicant's responses, especially as these responses were used to form the basis of the credibility assessment and consequent rejection of his claim, the Committee concludes that the State party did not undertake a sufficient, individualized assessment of the risk of a foreseeable, present, personal and real risk that the complainant would be subjected to torture if deported to Afghanistan.

☞ CtAT 27 July 2022, CAT/C/74/D/949/2019 ***A.S. v SE***

* no violation of CAT, 3

* *The complainant is an Iranian national. He was converted to Christianity and baptized in Armenia. In fear of being extradited to Iran, he fled to his sister in Sweden, where his asylum request was rejected because the complainant's conversion was not genuine and that he would not risk persecution because of his religious beliefs. The CtAT considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to Iran would expose him to a real, foreseeable, personal and present risk of being subjected to treatment contrary to Art. 3.*

☞ CtAT 22 July 2022, CAT/C/74/D/887/2018 ***A.Y. v CH***

* violation of CAT, 3

* *The complainant is an Eritrean national whose asylum request was rejected as her reasons for fleeing Eritrea were partly contradictory and thus found not credible by the Swiss authorities. The CtAT issued an interim measure requesting Switzerland not to deport the complainant.*
The CtAT does not find that Switzerland has made its case regarding its claims as to the impartiality of the information relied on by the complainant, particularly as this accords with the findings of several of the treaty bodies and special procedure mandate holders in relation to returnees and the treatment of women under national conscription in Eritrea.
It therefore concludes that in dismissing that information and failing to comprehensively examine the complainant's claims as a result of the negative credibility finding, Switzerland failed to meet its own share of the evidential burden of adducing impartial and objective background information on the country from a wide range of sources to ensure that, regardless of its finding on credibility, it addressed the individual circumstances and risk profile of the complainant on the basis of uncontested facts, namely that she is a woman of conscription age and a failed asylum seeker, in the context of the available up-to-date country information. Owing to that credibility finding, Switzerland dismissed the complainant's entire claim as a fabrication and concluded that she faced no risk, without providing any detailed justification.

☞ CtAT 24 May 2005, CAT/C/34/D/233/2003 ***Agiza v SE***

* violation of CAT, 3

* *The non-refoulement under CAT is absolute even in context of national security concerns; insufficient diplomatic assurances were obtained by sending country.*

☞ CtAT 19 Nov. 2010, CAT/C/45/D/373/2009 ***Aytulun v SE***

* violation of CAT, 3

* *Return of PKK member to Turkey where he is wanted under anti-terrorism laws would constitute a breach of art. 3.*

☞ CtAT 3 June 2011, CAT/C/46/D/379/2009 ***Bakatu-Bia v SE***

* violation of CAT, 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.*

☞ CtAT 6 May 2019, CAT/C/66/D/829/2017 ***C.F.T. v CH***

* no violation of CAT, 3+22

* *The complainant is a national from Benin, suffers form PTS. However, the Committee considers that the information submitted by the complainant is insufficient to substantiate his claim that he would be at a foreseeable, real and personal risk of torture if he were returned to Benin.*

☞ CtAT 22 Jan. 2007, CAT/C/37/D/279/2005 ***C.T. and K.M. v SE***

* violation of CAT, 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.*

☞ CtAT 2 Aug. 2019, CAT/C/68/D/857/2017 ***Cevdet Ayaz v SR***

* violation of CAT, 3+15

* *The complainant is a Turkish national of Kurdish origin. Although Serbia was requested to refrain from expelling the complainant, while the Committee considered the application, the complainant was extradited in December 2018. Serbian authorities stated that they received the request too late. The complainant has been a Kurdish political activist since the late 1980s. He claims to have never been involved in violent actions. In 2001 he was arrested and detained. In prison he was repeatedly being punched, slapped, kicked and beaten by police batons; being kept blindfolded most of the time during the detention; being subjected to "Palestinian hanging"; being subjected to electric shocks applied through genitals and nipples while he was held on the ground; being hosed with high pressure cold water. After 10 months in pretrial detention he was released.*
The ECtHR (22 June 2006, 11804/02, Ayaz a.o. v Turkey) had examined the complainant's case and found a violation of Art. 5 ECHR (unlawful detention). However, in 2012 the Turkish district court of Diyarbakir sentenced the complainant to 15 years imprisonment. His appeal to the supreme court of Turkey was rejected in 2016. Subsequently, he fled trying to reach Germany. In November 2016 on the border crossing between Bosnia Herzegovina and Serbia, he was arrested and held in detention on the basis of an international arrest warrant issued in Turkey. His appeal against this detention was rejected. Three times in a row the complainant appealed this decision to the Appellate Court which overruled the lower court. However, the lower Court decided again that there was no obstacle for the complainant's removal to Turkey.

☞ CtAT 19 Nov. 2021, CAT/C/72/D/824/2017 ***D.B. v***

* no violation of CAT, 3

* *The complainant is a national of Guinea. She travelled to The Netherlands where she applied for asylum on the basis of her fear of being forced into marriage in Guinea. Her application was rejected on the grounds that her fear was not found to be credible. Subsequently, she claimed to be a victim of trafficking in persons. In a second asylum application on the grounds that she would be forced to undergo female genital mutilation upon arrival in Guinea. That too was found incredible, mainly because she -now- was over 25 years of age. The appeals were declared unfounded. The CtAT concludes that, due to the contradictory and implausible statements on the very essence of her application, as assessed by national authorities, the complainant has not adduced sufficient grounds for it to believe that she would run a real, foreseeable and personal risk of being subjected to torture upon returning to Guinea.*

☞ CtAT 27 July 2021, CAT/C/71/D/790/2016 ***D.Z. v CH***

* violation of CAT, 3

* *In this case, the issue before the Committee is whether the forced return of the complainant to China would constitute a violation of the State party's obligations under Art. 3(1) CAT not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The complainant was introduced to the Church of the Almighty God and baptised in 2010.*
The Committee notes that Switzerland has not disputed the increasing incidence of persecution of Christians in China, as noted by the complainant. The Committee recalls its concern about the consistent reports that members of various groups, including religious minority groups, continue to be charged, or threatened to be charged, with broadly defined offences as a form of intimidation.
Given that the complainant has duly substantiated her account of the police search, visit to her family residence and threat made to her mother concerning the complainant's religious activity, the Committee finds that, in the light of particular circumstances of the present case, the facts as submitted and the complainant's personal and family situation, it is reasonable to assume that the complainant's removal to China would put her at risk of torture or other cruel, inhuman or degrading treatment or punishment.

☞ CtAT 17 Dec. 2013, CAT/C/51/D/387/2009 ***Dewage v AT***

* violation of CAT, 3

* *The Committee considered the State party's argument that the author's claim related to non-State actors and therefore falls outside the scope of article 3 of the Convention. However, the Committee recalls that it has, in its jurisprudence and in general comment No. 2, addressed risk of torture by non-State actors and failure on the part of a State party to exercise due diligence to intervene and stop the abuses that were impermissible under the Convention. In the present communication, the Committee took into account all the factors involved, well beyond a mere risk of torture at the hands of a non-government entity. The Committee assessed reports of continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment in Sri Lanka, as well as reports concerning mistreatment of failed asylum seekers who have profiles similar to the author's, and considered that, in addition to torture by the LTTE (signs of which were corroborated by medical reports), the complainant was subjected to constant harassment and threats, including death threats, by government authorities and that this mistreatment intensified as he made further complaints.*

☞ CtAT 4 May 2015, CAT/C/54/D/490/2012 ***E.K.W. v FI***

* violation of CAT, 3

* *The Committee notes the complainant's argument that violence against women in the Democratic Republic of the Congo is widespread. In this regard, the Committee recalls its previous jurisprudence and its views in the case of Njamba and Balikosa v. Sweden, in which the Committee was not able to identify any particular area in the Democratic Republic of the Congo that could be considered safe for the complainants. The Committee observes that in recent credible reports, namely the 2013 report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo (A/HRC/24/33) and the concluding observations of the Committee on the Elimination of Discrimination against Women on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo (CEDAW/C/COD/CO/6-7), it is stated that the widespread violence against women, including rape by national armed groups, security and defence forces, is mostly inherent in conflict-affected and rural areas of the country, especially in the east. The Committee is concerned, however, that according to these reports such violence is also taking place in other parts of the country. Accordingly, the Committee finds that, taking into account all the factors in this particular case, substantial grounds exist for believing that the complainant will be in danger of torture if returned to the Democratic Republic of the Congo.*

☞ CtAT 1 May 2007, CAT/C/38/D/281/2005 ***E.P. v AZ***

* violation of CAT, 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.*

☞ CtAT 20 Nov. 2015, CAT/C/56/D/613/2014 ***F.B. v NL***

* violation of CAT, 3

* *In the present case, the Committee recognises the efforts made by the State party's authorities to verify the complainant's accounts by carrying out an investigation in Guinea within the first asylum proceedings. Although the complainant has failed to provide elements that refute this investigation' s outcome, as reflected in the person specific report of 12 March 2004, that concluded that the information provided by her about her and her family 'circumstances in Guinea was incorrect, the Committee considers that such inconsistencies are not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that, due to the ineffectiveness of the relevant laws, including the impunity of the perpetrators, victims of FMG in Guinea do not have access to an effective remedy and to appropriate protection by the authorities. The complainants' removal to Guinea by the State party would constitute a breach of Article 3 of the Convention.*

☞ CtAT 21 July 2022, CAT/C/74/D/954/2019 ***F.K.M. v NL***

* no violation of CAT, 3

* *The Dutch authorities rejected the applicant's asylum request as incredible. The CtAT observes that even if it were to disregard the inconsistencies in the complainant's account of his past experiences in the Democratic Republic of the Congo and accept his statements as true, the complainant has not provided any information credibly indicating that he would be of interest at present to the authorities of the Democratic Republic of the Congo. The information made available to the Committee does not indicate that 12 years after the alleged events occurred, the complainant would be at risk of being subjected to torture if returned to his country of origin.*

☞ CtAT 21 Nov. 2011, CAT/C/47/D/381/2009 ***Faragollah a.o. v CH***

* violation of CAT, 3

* *The Committee is of the opinion that in the light of all the circumstances, including the general human rights situation in Iran, the personal situation of the claimant, who continues to engage in opposition activities for the Democratic Association for Refugees and whose son has been granted refugee status, and bearing in mind its preceding jurisprudence, the Committee is of the opinion that he could well have attracted the attention of the Iranian authorities. The Committee therefore considers that there are substantial ground for believing that he would risk being subjected to torture if returned to Iran. The Committee notes that Iran is not a State Party to the CAT and the complainant therefore would be deprived of the legal option of recourse.*

☞ CtAT 5 Dec. 2019, CAT/C/68/D/882/2018 ***Flor A.C. Paillalef v CH***

* violation of CAT, 3+22

* *The complainant was born in Chile in the traditional territory of the Mapuche indigenous people. In 1996, the complainant moved to Geneva (CH). She has since been active at the international level in the defence and promotion of the rights of the Mapuche people. In 2008, the complainant submitted an application for asylum for her niece and herself with the Federal Office for Migration in Switzerland. She attached a video, photos, court records, copies of laws and reports from international organizations to document the political persecution that their family has endured as a result of its claims to the ancestral lands of the Mapuche people. Her application was rejected and the authorities issued a deportation order in 2010. The Swiss authorities stated that the complainant has been living in Switzerland since 1996 and that she "could therefore have applied for asylum much earlier had she really needed the protection of our country". Also, the Federal Office for Migration stated "that there is no concrete evidence that the complainant might suffer the same fate as other tortured Mapuche persons and that there is therefore no well-founded fear of persecution justifying asylum". The Federal Administrative Court upheld that decision in 2013. In 2017 the State Secretariat for Migration rejected the complainant's request for reconsideration and set her departure within 4 weeks. The State Secretariat added that the violence against the Mapuche was of a regional character and therefor the complainant could settle in another part of Chile. In 2018, the Federal Administrative Court upheld that decision, stating that the Mapuche people were not victims of collective persecution and that the problems encountered by the complainant's family merely reflected measures taken by the Chilean authorities against individuals.*
the Committee notes that, according to the Special Rapporteur on the rights of indigenous peoples, the present situation of indigenous people in Chile is the outcome of a long history of marginalization, discrimination and exclusion, mostly linked to various oppressive forms of exploitation and plundering of their land and resources. In accordance with the categorization that emerged from the universal periodic review of Chile, the Committee against Torture concludes that Mapuche leaders are subjected to widespread torture.
The Committee is of the view that the complainant's ethnic background, the persecution of Mapuche leaders in Araucanía – a fact acknowledged by the State party itself –, the acts of persecution and torture suffered by several members of her family and her conspicuous protest activities at the international level are sufficient, taken together, to establish that she would personally run a foreseeable and real risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if she were deported to Chile.

☞ CtAT 23 Nov. 2012, CAT/C/49/D/432/2010 ***H.K. v CH***

* no violation of CAT, 3

* *In assessing the risk of torture in the present case, the Committee notes the complainant's claims that she had been imprisoned and severely ill-treated by the Ethiopian military in May 2006. It further notes the State party's argument that this allegation was not substantiated by the complainant before the Swiss asylum authorities during her first asylum procedure and that it was not invoked by her in the second asylum request. The Committee also notes that the State questions the authenticity of the document confirming her detention that was allegedly issued by the Addis Ababa City Administration Police Commission. The Committee also takes note of the information furnished by the complainant on these points. It observes in this regard that she has not submitted any evidence supporting her claims of having been severely ill-treated by the Ethiopian military prior to her arrival in Switzerland or suggesting that the police or other authorities in Ethiopia have been looking for her since. The complainant has also not claimed that any charges have been brought against her under the Anti-Terrorism law or any other domestic law.*
The Committee concludes accordingly that the information submitted by the complainant, including the unclear nature of her political activities in Ethiopia prior to her departure from that country and the low-level nature of her political activities Switzerland, is insufficient to show that she would personally be exposed to a risk of being subjected to torture if returned to Ethiopia. The Committee is concerned at the many reports of human rights violations, including the use of torture in Ethiopia,31 but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

☞ CtAT 26 May 2011, CAT/C/46/D/336/2008 ***Harminder Singh Khalsa v CH***

* violation of CAT, 3

* *The Committee notes that the complainants are well known to the Indian authorities because of their political activities in Switzerland and their leadership roles in the Sikh community abroad. The Committee accordingly considers that the complainants have provided sufficient evidence that their profile is sufficiently high to put them at risk of torture if arrested. The Committee notes the State party's submission that that numerous Sikh militants are back in India, that Sikhs live in great numbers in different states and therefore the complainants have the option to relocate to another Indian state from their state of origin. The Committee, however, observes that some Sikhs, alleged to have been involved in terrorist activities have been arrested by the authorities upon arrival at the airport and immediately taken to prisons and charged with various offences. The Committee also takes note of the evidence submitted that the Indian police continued to look for the complainants and to question their families about their whereabouts long after they had fled to Switzerland. In light of these considerations, the Committee does not consider that they would be able to lead a life free of torture in other parts of India.*

☞ CtAT 24 Apr. 2019, CAT/C/66/D/729/2016 ***I.A. v SE***

* violation of CAT, 3

* *The deportation of the complainant and his two minor children to the Russian Federation would constitute a breach of article 3 of the Convention*

☞ CtAT 28 Apr. 2022, CAT/C/73/D/881/2018 ***K.M. v CH***

* no violation of CAT, 3

* *The CtAT notes that the complainant, a national of the Democratic Republic of the Congo, claims to suffer from post-traumatic stress disorder but has not demonstrated that he has been tortured or subjected to ill-treatment in the recent past or produced any evidence that might cast doubt on the Swiss authorities' reasons for their rejection of his application for asylum.*

☞ CtAT 9 May 2023, CAT/C/76/D/1018/2020 ***K.R. v CH***

* violation of CAT, 3+14+16

* *The complainant is a national of Sri Lanka and of Tamil ethnicity. From 2005 until 2009, he worked as a driver for the Liberation Tigers of Tamil Eelam (LTTE), until he was heavily wounded during the last stage of the civil war. From the hospital, Sri Lankan security forces transferred him to a detention centre where he was tortured over a period of 6 months. The complainant applied for asylum in Switzerland in December 2016. He had a summary interview in December 2016. By a decision of 13 February 2017 he was expelled to Hungary on the basis of Dublin III. In June 2017 the Federal Administrative Court annulled this decision and referred the case back to the court of lower instance. In a letter in April 2018, the State Secretariat informed the complainant that the Dublin procedure would be terminated and that his asylum application would be examined in Switzerland. Subsequently, the asylum application was rejected. Although the national court found his story credible, and believed that he was seriously injured and tortured during a period of 6 months, the national court, nevertheless, came to the conclusion that the facts of the case did not indicate a real risk of the complainant being subjected to torture or inhumane treatment at present, upon his return to Sri Lanka.*
The CtAT considers that the serious sequels of torture experienced by the complainant and their grave impact on his mental health, as well as the risks of retraumatization and possible suicide have not been properly taken into account by the Swiss authorities. The CtAT concludes that the removal of the complainant to Sri Lanka by the State party would constitute a violation of art. 3, 14 and 16 of the Convention.

☞ CtAT 23 Nov. 2012, CAT/C/49/D/385/2009 ***M.A.F. a.o. v SE***

* no violation of CAT, 3+22

* *In assessing the risk of torture in the present case, the Committee notes that the complainants have submitted some documents in support of their initial claim that they would risk torture if returned to Libya under the Qaddafi Government. However, the complainants have submitted no evidence to support their claim that they would currently be in danger of being subjected to torture if returned to Libya, following the revolt and change in government. In his submission of 20 April 2012, M.A.F. referred to general instability in parts of Tripoli and the health situation in the country. He further stated that he and his family would risk kidnapping or torture if returned, in particular due to his wife's cousins having fought on the side of Qaddafi during the civil war, but provided no documentary evidence in support of these claims. The Committee is aware of the human rights situation in Libya but considers that, in particular given the shift in political authority and the present circumstances, the complainants have not substantiated their claim that they would personally be at risk of being subjected to torture if returned to Libya.*

☞ CtAT 23 May 2012, CAT/C/48/D/391/2009 ***M.A.M.A. a.o. v SE***

* violation of CAT, 3

* *As to the State party's position in relation to the assessment of the first complainant's risk of being subjected to torture, the Committee notes that the State party has accepted that it appeared not unlikely that he would still attract the interest of the Egyptian authorities due to his family relationship with the convicted murderer of President al-Sadat, even though the events took place a long time ago. Furthermore, his Internet activities in Sweden, questioning whether the real murderers of President al-Sadat were convicted and punished, should also be taken into account in this context. Finally, the State party has accepted that it could not be excluded that the rest of the family would also attract the interest of the Egyptian authorities. It specifically pointed out that the second complainant had allegedly been subjected to harsh treatment by the Egyptian security police and the third complainant had allegedly been repeatedly raped by police officers while in Egyptian custody. Consequently, it was not possible to fully exclude that he would be exposed to similar treatment if returned to Egypt. The Committee concludes that the enforcement of the order to expel complainants to Egypt would constitute a violation of Art 3 of the Convention.*

☞ CtAT 31 May 2013, CAT/C/50/D/439/2010 ***M.B. v CH***

* no violation of CAT, 3

* *The complainant holds no proof of persecution. The Iranian authorities never officially summoned him, nor did they issue a wanted notice or an arrest warrant for him, or any other document to show that his family was under surveillance. As for his brother's political activities, he pointed out that the regime's repression is so severe that opposition parties must act with the utmost caution; they remain underground and very few documents can attest to the fact they exist. For example, no party membership card is issued. The Swiss authorities have recognized that the political opposition in the country was built upon mistrust and secrecy (JAAC 1999 I No. 63.5, p. 45; JJCRA 1998/4).*
The Committee notes first of all that the overall human rights situation in the Islamic Republic of Iran can be considered to be problematic in many respects. Nonetheless, it notes that the complainant has never been tortured there, either because of his ethnicity or for any other reason. Even if he claims that his family has been persecuted by the authorities seeking his brother, who is supposedly politically active in the local underground Arab opposition, the complainant produces no evidence in support of this claim. As for his general complaint regarding the persecution of the Arab minority, in particular in the region of Khuzestan, the Committee considers that such a complaint in no case would justify concluding that there is a real, personal and serious danger for the complainant.

☞ CtAT 3 May 2019, CAT/C/66/D/757/2016 ***M.J.S. v NL***

* violation of CAT, 3+22

* *The Committee concludes that the complainant has not adduced sufficient grounds for it to believe that she would run a real, foreseeable, personal and present risk of being subjected to torture upon returning to Côte d'Ivoire.*

☞ CtAT 1 May 2017, CAT/C/60/D/623/2014 ***N.K. v NL***

* no violation of CAT, 3

* *The issue is whether the return of N.K. to Sri Lanka would constitute a violation under Article 3 (non-refoulement). Applicant claims to have been registered with the LTTE. The Committee recalls that according to its general comment No. 1, the burden of presenting an arguable case lies with the complainant of a communication. In the Committee's opinion, in the present case, the applicant has not discharged this burden of proof.*

☞ CtAT 21 Apr. 2023, CAT/C/76/D/1044/2020 ***N.U. v FI***

* violation of CAT, 3

* *The complainant is a national of the Russian Federation and born in Chechnya. He applied for asylum in Finland in 2017. In 2019 the Finnish Immigration Service rejected his application and his appeals were rejected in 2020. The CtAT concludes that the return of the complainant to the Russian Federation would constitute a violation by the State party of article 3 of the Convention.*

☞ CtAT 21 Apr. 2023, CAT/C/76/D/984/2020 ***Nijimbere v SE***

* violation of CAT, 3

* *The complainant is a national of Burundi of Hutu ethnicity. He was a member of the opposition party and detained and tortured twice for political reasons. In 2011 he left Burundi and applied for asylum in Denmark, which was rejected. Subsequently he travelled to Sweden where he applied also for asylum in 2015. His appeal to the negative decision by the Swedish authorities, was rejected by the Supreme Administrative Court.*
The CtAT, however, the considers that the complainant has submitted sufficient elements to suggest that he would be at risk of being subjected to treatment that violates the Convention if he were returned to Burundi.

☞ CtAT 27 July 2023, CAT/C/77/D/1016/2020 ***O.R. v SE***

* violation of CAT, 3

* *The complainant is a national of Afghanistan and Hazara ethnicity. The complainant applied for asylum in Sweden on the grounds of fears of the Taliban and, subsequently, his conversion to Christianity; however, his application was rejected. The Committee observes that the State party does not contest that individuals who return to Afghanistan after having renounced, or after having been perceived to renounce, their Muslim beliefs or converted during an asylum process face a real risk of persecution and punishment, warranting international protection. The Committee notes that the complainant falls within the risk categories. Thus, an expulsion would be a violation of Art. 3.*

☞ CtAT 12 Nov. 2021, CAT/C/72/D/1000/2020 ***P.S. v SE***

* no violation of CAT, 3

* *The complainant is a national of Uganda and applied at the age of 16, on the grounds of his sexual orientation for asylum in Sweden. The CtAT is mindful of the information brought before it regarding the alleged criminalization of homosexuality in Uganda. Nevertheless, the CtAT observes that the Sweden's authorities considered that the complainant's narrative was not credible because he provided inconsistent and vague statements concerning essential elements of his account.*
The CtAT is aware of reports concerning the appalling situation of lesbian, gay, bisexual, transgender and intersex persons in Uganda, where homophobic views are widespread and societal discrimination, hate crimes and anti-homosexual campaigns are regularly reported by human rights organizations. Nevertheless, the CtAT considers that the information in the file does not allow it to conclude that the complainant would run a real, foreseeable, personal, present and real risk of being subjected to torture upon his return to Uganda.

☞ CtAT 25 Jan. 2023, CAT/C/92/D/130/2020 ***S.E.M.A. v FR***

* violation of CAT, 3+8+12+20+37

* *The very issue in this case is the age determination procedure. The applicant stated that he was a minor and produced several identity documents in support of his statement. However, the interview took only one hour, was conducted using a phone with an Urdu interpreter, although his home language is Punjabi, and resulted in the conclusion: not a minor.*
The CtAT finds several violations of the Convention concerning the age determination procedure, the absence of a lawyer or representative, the change of his identity by (wrongfully) altering his age and a lack of accommodation even during de COVID pandemic.

☞ CtAT 30 Nov. 2010, CAT/C/45/D/339/2008 ***Said Amini v DK***

* violation of CAT, 3

* *In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable risk that he will be torture if returned to Iran based on his claims of past detention and torture, as a result of his political activities, and the recommencement of his political activities upon arrival in Denmark. It notes his claim that the State party did not take his allegations of torture into account, and that it never formed a view on the veracity of the contents of his medical reports, which allegedly prove that he had in fact been tortured.*

☞ CtAT 28 Apr. 2022, CAT/C/73/D/914/2019 ***T.A. v CH***

* violation of CAT, 3

* *The complainant is a national of Eritrea. She had to perform national service. But because of the poor conditions and the constant abuse that she endured, she decided to flee the country. In Switzerland her application for asylum was rejected because the situation in Eritrea had changed: removals to Eritrea could resume as failed asylum-seeekers did not face a generalized risk of being forcibly conscripted into national service upon return to the country.*
The CtAT refers to a report issued in 2021 by the Special Rapporteur on the situation of human rights in Eritrea. According to the report, asylum-seekers who are returned to Eritrea reportedly face severe punishment upon their return, including prolonged periods of incommunicado detention, torture and ill-treatment. The CtAT also notes that in a statement to the Human Rights Council presented on 4 March 2022, the Special Rapporteur noted that recent developments in Eritrea continued to evidence a lack of progress in the human rights situation in the country.

☞ CtAT 22 Apr. 2022, CAT/C/73/D/862/2018 ***T.B. v CH***

* no violation of CAT, 3

* *The complainant is a national of Ethiopia. His asylum claim was rejected. The CtAT observes that the Swiss authorities considered that the complainant's statements about his political activities in Ethiopia were brief, vague and superficial. The*
complainant has not demonstrated that the Swiss authorities failed to conduct a proper investigation into his allegation.

☞ CtAT 6 Dec. 2019, CAT/C/68/D/860/2018 ***T.M. v SE***

* no violation of CAT, 3

* *The complainant is a Russian national, who applied for asylum in Sweden in 2012. He stated being at risk as his father had been an advisor to the then president of the Chechen Republic and is still seen as an enemy of the regime. In 2013 the Swedish authorities rejected his asylum application. In appeal the Swedish Migration Court upheld this decision stating that it did not question the credibility of the account of the complainant's account on the assault of his father's home. However, the Committee notes that much time has passed since and that the Russian authorities had no problem in providing him and his family with Russian passports. The Committee concludes that the removal of the complainant to Russia would not constitute a breach of Art. 3.*

☞ CtAT 15 Nov. 1996, CAT/C/17/D/43/1996 ***Tala v SE***

* violation of CAT, 3

* *Contradictions and inconsistencies in testimony of asylum seeker attributed to post-traumatic stress disorder resulting from torture.*

☞ CtAT 11 May 2007, CAT/C/38/D/300/2006 ***Tebourski v FR***

* violation of CAT, 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.*

☞ CtAT 5 Dec. 2019, CAT/C/68/D/863/2018 ***X v NL***

* no violation of CAT, 3

* *The complainant is a national of Côte d'Ivoire. In 2005 she was arrested at home and detained for four years in a prison. She was regularly interrogated about her husbands political activities. During her stay in prison she was regularly kicked, beaten and raped approximately once a week. From that period she experienced frequent nightmares, panic attacks and epileptic fits. In 2009 she escaped with the help of a friend who bribed a guard. She fled to The Netherlands where she applied for asylum. All refugees from Côte d'Ivoire were given a temporary residence permit in The Netherlands in 2009. In 2013 her temporary residence permit was withdrawn as the general situation in Côte d'Ivoire had improved. Also, the immigration authorities stated that her story lacked credibility because it contained several inconsistencies on her travel route.*
In appeal she stated that she had been heavily medicated during her interviews with the immigration authorities in October 2009. This explained her inability to recall any details of her travel route, and to clearly recount her past experiences. However, the immigration authorities were not convinced. In 2014 a District Court ruled that her appeal to the withdrawal of her residence permit was well-founded. The Dutch immigration authorities, however, appealed against this decision before the highest administrative court, the Council of State. In 2016 the Council of State reversed the decision of the District Court, declaring that her story was inconsistent.
With respect to the complainant's allegations that she should not be returned to her country of origin because of the high incidence of sexual violence there, the Committee is seriously concerned by reports indicating that impunity for rape persists in Côte d'Ivoire. The Committee further recalls its jurisprudence in which it found that rape by State officials constituted torture. However, the Committee notes that although past events may be of relevance, the principal question before the Committee is whether the complainant currently runs a risk of torture if returned to Côte d'Ivoire. The Committee considers that the incidence of general sexual violence in Côte d'Ivoire does not demonstrate that the complainant would incur a personal risk of being subjected to sexual violence if returned there at present.

☞ CtAT 23 Apr. 2019, CAT/C/66/D/776/2016 ***X & Y v CH***

* violation of CAT, 3+22

* *The information submitted by the complainants is insufficient to establish substantial grounds for believing that if returned to Pakistan, they would face a foreseeable, personal, present and real risk of being tortured, either by State officials or by uncontrolled non-State agents*

☞ CtAT 5 Aug. 2019, CAT/C/67/D/775/2016 ***X. v CH***

* violation of CAT, 3

* *The complainant is an Ethiopian national. His father worked for the regime of Mengitsu Haile Mariam and was killed in 1979 by resistance fighters in Tigray. His mother also worked for the regime, but after the fall of the regime in 1991 she was tortured in prison where she died. The applicant became an active opponent of the regime in 2005 when the regime did not accept the outcome of the elections. Between 2006 and 2013 the applicant was imprisoned and subjected to ill-treatment several times leaving scares on his body. In 2013 he decided to leave Ethiopia and applied for asylum in Switzerland. In 2015 his application was denied and in 2016 his appeal was rejected. The main reason for this being that the complainant's account was vague and that the ban on the political party of the applicant was recently lifted (2018).*
Taking into account the recent changes in the specific situation of members of the Political Party Ginbot 7 in Ethiopia and the fact that the complainant was able to safely leave Ethiopia and return to it several times in 2011, the Committee considers that the information that the complainant provided does not suffice to establish substantial grounds for believing that, if returned to Ethiopia today, he would face a foreseeable, personal, present and real risk of being subjected to torture.

☞ CtAT 11 Nov. 2022, CAT/C/75/D/1081/2021 ***X. & Y. v CH***

* violation of CAT, 3

* *The complainants are nationals of Türkiye and affiliated with Gülen. The CtAT decides that the removal of the complainants by Switzerland to Kosovo, where they would face a real risk of being forcibly transferred to and subjected to torture in Türkiye, would constitute a violation of Art. 3 CAT.*

☞ CtAT 2 Aug. 2019, CAT/C/67/D/816/2017 ***X., Y. a.o. v SE***

* no violation of CAT, 3

* *X. and Y. are Egyptian nationals, a married couple, who resided and worked in the United Arab Emirates during the protests in 2013 in Egypt leading to the overthrow of president Morsi. X. had supported Mr Morsi during the presidential elections. As a result of the overthrow of president Morsi, X. and Y. were informed that their work and residence permit had been withdrawn due to his links with Morsi and the Muslim Brotherhood. Subsequently, the couple fled to Sweden and applied for asylum. In 2016 the Swedish Migration Agency rejected their application because the couple had travelled without any problems to Egypt in 2015. The decision of the Migration Agency was upheld by the Migration Court and the Migration Court of Appeal in 2017. The issue at stake is whether the Egyptian authorities would have a particular interest in him or his family.*
The Committee recalls its findings in the proceedings of its inquiry on Egypt, in which it concluded that torture was a systematic practice in Egypt. Also, the Committee notes that large numbers of members and supporters of the Brotherhood were arrested following the military coup. In 2017, an estimated 60,000 people had been detained for political reasons since July 2013, most of them Brotherhood members and supporters of Mohamed Morsi.
However, the Committee notes that the couple are not considered as supporters of the Muslim Brotherhood, have not been politically active, and have not lived in Egypt for the past 20 years. Their only link to the Muslim Brotherhood is the male complainant's previous business arrangements with a company owned by senior members of the Brotherhood. The complainants have failed to substantiate their claim.

☞ CtAT 21 May 2013, CAT/C/50/D/431/2010 ***Y. v CH***

* no violation of CAT, 3

* *In assessing the risk of torture in the present case, the Committee takes note of the complainant's arrest and ill-treatment in 1998 and of the allegation that she suffers from mental health problems because of ill-treatment in the past and the continuous harassment and persecution by the Turkish authorities. In this regard, the Committee observes that the complainant submits as documentary evidence a confirmation by the TOVAH Rehabilitation Centre that she has been under treatment from 2002 to 2006, as well as a medical report dated 23 August 2010 issued by a Swiss psychiatrist who, inter alia, refers to a suspected post-traumatic stress disorder. The Committee further notes the State party's arguments that the complainant has not invoked her mental health problems during the asylum proceedings, that the alleged origin of these problems is not proven, that a suspected post-traumatic stress disorder cannot be considered an important indication of her persecution in Turkey, and that treatment for her condition is available in Turkey. The Committee takes note of the information submitted by the parties on the general human rights situation in Turkey. It notes the information presented in recent reports that, overall, some progress was made on observance of international human rights law, that Turkey pursued its efforts to ensure compliance with legal safeguards to prevent torture and mistreatment through its ongoing campaign of "zero tolerance" for torture and that the downward trend in the incidence and severity of ill-treatment continued. Reports also indicate that disproportionate use of force by law enforcement officials continues to be a concern and cases of torture continue to be reported. However, the Committee notes that none of these reports mention that family members of PKK militants are specifically targeted and subjected to torture. As to the complainant's allegation that she would be arrested and interrogated upon return, the Committee recalls that the mere risk of being arrested and interrogated is not sufficient to conclude that there is also a risk of being subjected to torture.*

☞ CtAT 12 Nov. 2021, CAT/C/72/D/916/2019 ***Y. v CH***

* violation of CAT, 3

* *The complainant is a national of Eritrea whose application for asylum in Switzerland was rejected. The recent reports concerning the widespread conscription of young people, particularly boys, in Eritrea and the possibility that draft evaders and those who left the country illegally may be subjected to torture after their return; and the shortage of reliable information regarding the level of risk involved in such cases, the CtAT cannot conclude in the present case that the complainant does not face a foreseeable, real and personal risk of being subjected to torture if he is returned to Eritrea.*

☞ CtAT 31 May 2013, CAT/C/50/D/467/2011 ***Y.B.F. a.o. v CH***

* no violation of CAT, 3

* *The Committee concludes accordingly that the information submitted by the first complainant, including the unclear nature of his political activities in Yemen prior to his departure from that country and the low-level nature of his political activities in Switzerland, is insufficient to show that he would personally be exposed to a risk of being subjected to torture if returned to Yemen. The Committee is concerned at the many reports of human rights violations, including the use of torture, in Yemen, but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.*

☞ CtAT 28 Apr. 2022, CAT/C/73/D/872/2018 ***Yacob Berhane v CH***

* violation of CAT, 3

* *The complainant, an Eritrean citizen, applied for asylum in Switzerland, but his application was rejected. He took part in a protest against the regime asking for the release of political prisoners after he had served in the military. The CtAT concludes that his forced return to Eritrea would constitute a violation of Art. 3 of the CAT.*

1.3.5 HRC Views on Torture and Degrading Treatment (Art. 7)

☞ HRC 22 Mar. 2018, CCPR/C/122/D/2595/2015 ***A.A. v DK***

* violation of ICCPR, 7

* *The Committee recalls its jurisprudence in Ch.H.O v. Canada, in which it found that the deportation of the applicant to his country of origin, where it was foreseeable that he would face a sentence of imprisonment for refusal to perform military service, would not amount to a violation of the Covenant, unless it was substantiated that the prosecution and imprisonment would amount to irreparable harm.*

☞ HRC 13 Mar. 2020, CCPR/C/128/D/3300/2019 ***A.E. v SE***

* no violation of ICCPR, 7

* *The author of the communication is a national of Nigeria. He applied in Feb. 2015 for asylum alleging a risk of persecution by Boko Haram, without claiming any risk relating to his sexual orientation. His initial application for asylum was rejected. The appeal was also rejected. In his second asylum application, A.E. referred to his sexual orientation. The Swedish Migration Agency re-examined his case but rejected his application again, because the author's statements about his sexual orientation were not credible: vague, undetailed and implausible. That decision was upheld in Court and the Court of Appeal (2018). A.E. requested another re-examination of his case because he had participated in an interview in a Swedish newspaper, about his asylum case, which would mean that he would risk being identified as homosexual in Nigeria, as the article had contained a close-up photograph of his face and several other photographs in which he was identifiable. In addition he stated on 7 Jan. 2019, that a friend had seen his name and face in a newspaper article published in the Nigerian Observer, stating that he was wanted by the police for homosexual activity and could face 10 to 14 years of imprisonment if convicted. That newspaper article, however, was dated 15 August 2014.*
The HRC observes that the newspaper articles were duly assessed by the asylum authorities, which could not establish without a doubt that the photograph in the paper copy of the Nigerian Observer article was that of the author, thus posing a legitimate concern about the genuineness of the article. In addition, it was not established whether the article in the Swedish newspaper related to the author, and since its online access was limited to paying members, the asylum authorities did not consider that homosexual orientation would be ascribed to the author in his country of origin. Overall, the HRC concludes that the information before it does not demonstrate that the author would face a real and personal risk of treatment contrary to art. 7 of the ICCPR in the event of his removal to Nigeria.

☞ HRC 16 July 2015, CCPR/C/114/D/2370/2014 ***A.H. v DK***

* violation of ICCPR, 7

* *The Committee takes note of the author's assertions that, due to his former work in fighting drug-related crime, in close cooperation with several English-speaking agencies, he is at "great risk of being exposed to serious harm and abuse, even death" by the Taliban in Afghanistan, in particular due to his assistance in securing the arrest of two Taliban-affiliated drug lords. The Committee also notes the author's claim that, due to his past work, the author belongs to several risk groups under the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan of 6 August 2013, and that this fact was conceded by the State party. The Committee further notes the author's assertions that, in the context of his past work, he was the victim of an abduction attempt and received written threats, and his brother was kidnapped and killed. It notes that those serious allegations were not specifically refuted by the State party. The Committee also notes the author's assertions about his fears of the Afghan authorities, who reportedly believe that he is a supporter of Christianity because of a video recording in which he compares Christianity with Islam, although the State party pointed to the lack of evidence about the exact circumstances and time of production of the video in question. The Committee further notes the author's allegations that neither the Danish Immigration Service nor the Board initiated any investigation as to the veracity and validity of the evidence produced in support of his detailed allegations.*
The Committee is of the view that the facts as presented, read in their totality, including the information on the author's personal circumstances, such as his past experience in combating drug-related crimes which implicated Taliban-affiliated drug lords, the threats to the author and his family prior to his deportation to Afghanistan, the absence of comprehensive and objective verification by the State party's authorities of the evidence submitted by the author in support of his claims, and the unstable state of his mental health, which the Board identified in its decision of 17 March 2014 and which has likely rendered him particularly vulnerable, disclose a real risk for the author of treatment contrary to the requirements of article 7 of the Covenant as a consequence of his removal to Afghanistan, which was not given sufficient weight by the State party's authorities. Accordingly, the Committee is of the view that, by removing the author to Afghanistan, the State party has violated its obligations under article 7 of the Covenant.

☞ HRC 26 Mar. 2018, CCPR/C/122/D/2753/2016 ***C.L. & Z.L. v DK***

* violation of ICCPR, 7+6

* *The Danish authorities have not adequately explained how they arrived at their conclusions that there was no personal risk for the applicant and his minor son in the event of their return. In that context, the Committee observes the failure of the State party to take due account of the past persecution faced by the author, the author's father and sisters, and the inadequate consideration by the State party's authorities of whether the author and his son might face a risk of violations of their rights in the given circumstances and of the impacts that the removal would have on the author's autistic son. The Committee further notes the author's request for a medical examination for signs of previous torture, which was rejected by the Board since it only initiated an examination for signs of torture when the allegations to that effect appeared credible, and if it found that there was actual and real risk that the concerned asylum seeker would be subjected to torture again on return to his country of origin. The Committee considers that the reasons given for the rejection of the author's request for medical examination by the Board do not appear reasonable, in particular when the State party accepted that the author had suffered torture in the past. In the circumstances of the present case, the Committee considers that the facts as submitted disclose the existence of a real risk for the author and his son of treatment contrary to the requirements of article 7 of the Covenant as a consequence of their removal to China, which was not given sufficient weight by the State party's authorities. Accordingly, the Committee is of the view that, by removing the author and his minor son to China, the State party would violate its obligations under article 7 of the Covenant.*

☞ HRC 16 Mar. 2023, CCPR/C/137/D/2858/2016 ***Elezaj v DK***

* violation of ICCPR, 7+6

* *The applicant is a national of Albania. She had to marry - against her will - a Serbian national. She was abused by her husband and his father and grandfather and subjected to forced labour. She went back to Albania and filed for divorce. This was reason for the family of the husband to threaten to kill her for humiliating the family honour. She fled to Denmark where she applied for asylum in July 2015. The Danish Refugee Appeals Board stated that, like the Immigration Service, it accepted the applicant's explanation as to the facts of her case. The Board, however, did not consider that the situation was of such a nature or severity as to enable it to grant the applicant a residence permit. The applicant should seek protection from the Albanian authorities.*
The Committee considers that the State party, when assessing the risk faced by the applicant, failed to adequately take into account the totality of the available information and its cumulative effect, according to which the applicant would be at real risk of irreparable harm if removed to Albania. In such circumstances, it considers that the assessment of the applicant's claims by the State party was arbitrary and that the applicant's removal to Albania would violate art. 6 and 7.

☞ HRC 25 Mar. 2011, CCPR/C/101/D/1763/2008 ***Ernst Sigan Pillai a.o. v CA***

* violation of ICCPR, 7

* *The Committee notes the argument invoked by the State party regarding the harm being the necessary and foreseeable consequence of the deportation to Sri Lanka. In that respect the Committee recalls its General Comment No. 31 in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm. The Committee further notes that the diagnosis of Mr. Pillai's post-traumatic stress disorder led the Immigration and Refugee Board to refrain from questioning him about his earlier alleged torture in detention. The Committee is accordingly of the view that the material before it suggests that insufficient weight was given to the authors' allegations of torture and the real risk they might face if deported to their country of origin, in the light of the documented prevalence of torture in Sri Lanka. Notwithstanding the deference given to the immigration authorities to appreciate the evidence before them, the Committee considers that further analysis should have been carried out in this case. The Committee therefore considers that the removal order issued against the authors would constitute a violation of Art 7 of the Covenant if it were enforced.*

☞ HRC 18 Oct. 2018, CCPR/C/124/D/2734/2016 ***Fahmo M. Hussein v DK***

* no violation of ICCPR, 7

* *The Committee finds that, although the applicant disagrees with the decision of the State party's authorities to return her to Italy as her country of first asylum, she has failed to explain why that decision is manifestly unreasonable or arbitrary, nor has she pointed out any procedural irregularities in the procedures before the Danish Immigration Service or the Refugee Appeals Board. Accordingly, the Committee cannot conclude that the removal of the author to Italy by the State party would constitute a violation of Art. 7.*
With 3 dissenting opinions.

☞ HRC 9 July 2018, CCPR/C/123/D/2328/2014 ***H.A. v DK***

* no violation of ICCPR, 7+6

* *The author is an ethnic Hazara of the Shia Muslim faith in the Wardak Province, Afghanistan. In the present case, the information in the public domain has signalled a significant deterioration of the situation in Afghanistan in recent times. However, on the basis of the information in the case file, the Committee is not in a position to assess the extent to which the current situation in his country of origin may impact the author's personal risk.*
Without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported, and in the light of the available information regarding the author's personal circumstances, the Committee considers that the information before it does not show that the author would face a personal and real risk of treatment contrary to article 6 or article 7 of the Covenant if he were removed to Afghanistan.

☞ HRC 11 May 2010, CCPR/C/98/D/1544/2007 ***Hamida v CA***

* violation of ICCPR, 7

* *The CCPR observes that the State party refers mainly to the decisions of various authorities which have rejected the author's applications essentially on the grounds that he lacks credibility, having noted inconsistencies in his statements and the lack of evidence in support of his allegations. The Committee observes that the standard of proof required of the author is that he establishes that there is a real risk of treatment contrary to article 7 as a necessary and foreseeable consequence of his expulsion to Tunisia. The CCPR notes that the State party itself, referring to a variety of sources, says that torture is known to be practised in Tunisia, but that the author does not belong to one of the categories at risk of such treatment. The Committee considers that the author has provided substantial evidence of a real and personal risk of his being subjected to treatment contrary to article 7 of the Covenant, on account of his dissent in the Tunisian police, his six-month police detention, the strict administrative surveillance to which he was subjected and the wanted notice issued against him by the Mininstry of the Interior which mentions his "escape from administrative surveillance". These facts have not been disputed by the State party. The Committee gives due weight to the allegations regarding the pressure put on his family in Tunisia. The Committee considers that there is a real risk of the author being regarded as a political opponent and therefore subjected to torture.*

☞ HRC 13 Mar. 2020, CCPR/C/128/D/3032/2017 ***J.I. v SE***

* no violation of ICCPR, 7

* *The author of the communication is a national of Afghanistan (1996). He lived with his Christian parents and older brother in the Ghazni province. At the age of ten his parents disappeared after a raid by the Taliban. A smuggler brought the brothers via Pakistan to Iran where they lived for five years. After a car accident in which his brother lost a leg, J.I. fled to Sweden where he applied for asylum in August 2014. While awaiting the outcome of his asylum application, he lived with a Christian foster family and was baptised in 2015. In August 2015 the Swedish Migration Agency rejected his application as being not credible. In May 2016 his appeal was denied by the Migration Appeal Court and he was expected to leave voluntarily. However, J.I. moved to Germany and applied for asylum. In the context of Dublin III he was returned to Sweden.*
The HRC considers that, in any event, as concerns an asylum seeker's claim of conversion or religious conviction, the test is whether, regardless of the sincerity of the conversion or conviction, there are substantial grounds for believing that such conversion or conviction may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm, as contemplated by arts 6 and 7 of the ICCPR. Therefore, even when it is found that the reported conversion or conviction is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the asylum seeker's behaviour and activities in connection with his or her conversion or conviction, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.
The HRC notes the finding of the Migration Agency that, while claiming a risk of harm in Afghanistan because of his Christian faith, the author failed to present sufficient evidence to substantiate his claim that his faith had attracted the attention of the Afghan authorities. In the present case, the information in the public domain has signalled a significant deterioration of the situation in Afghanistan in recent times. However, on the basis of the information in the case file, the HRC is not in a position to assess the extent to which the current situation in his country of origin may impact the author's personal risk. In this context, the HRC recalls that it remains the responsibility of the State party to continuously assess the risk that any individual would face in case of return to another country before the State takes any final action regarding his or her deportation or removal.
In conclusion, HRC considers that the evidence and circumstances invoked by the author have not adduced sufficient grounds for demonstrating that he would face a real and personal risk of treatment contrary to arts 6 and 7 ICCPR if returned to Afghanistan.

☞ HRC 16 July 2018, CCPR/C/123/D/2423/2014 ***K.H. v DK***

* violation of ICCPR, 7+6

* *The applicant is an Iranian national who came irregularly to Denmark. After conversion to Christianity, he applied for asylum. That application was rejected as a majority of the Danish Refugee Board members concluded that his conversion was a means to obtain asylum rather than being genuinely motivated by a new faith. the Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported, and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face as a perceived Christian in the Islamic Republic of Iran, rather than relying mainly on a matter of conflicting dates. The State party is requested to refrain from expelling the applicant while his request for asylum is being reconsidered.*

☞ HRC 14 Mar. 2019, CCPR/C/125/D/2345/2014 ***M.M. v DK***

* no violation of ICCPR, 7+6+13+14

* *The applicant is an Afghan national whose asylum request was rejected in Denmark. Only after a request for reopening his case, the applicant referred to his conversion to Christianity. The Refugee Appeals Board rejected his conversion as genuine, despite the existence of a certificate of baptism and a memorandum prepared by a minister of the Kronborgvejens Church Centre.*
However, the test for the Committee remains whether, regardless of the sincerity of the conversion, there are substantial grounds for believing that such conversion may have serious adverse consequences in the country of origin so as to create a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion is not genuine, the authorities should proceed to assess whether, in the circumstances of the case, the asylum seeker's behaviour and activities in connection with, or to justify, his or her conversion, such as attending a church, being baptized or participating in proselytizing activities, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.
While not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, the Committee considers that the evidence and circumstances invoked by the applicant have not adduced sufficient grounds for demonstrating that his forcible return to Afghanistan was contrary to articles 7 and 18 of the Covenant.

☞ HRC 26 Mar. 2018, CCPR/C/122/D/2642/2015 ***S. v DK***

* violation of ICCPR, 7+9

* *The Committee cannot conclude that the information before it shows that the author would face a personal and real risk of treatment contrary to article 7 of the Covenant in case of his return to Bangladesh.*

☞ HRC 14 Mar. 2019, CCPR/C/125/D/2494/2014 ***S.F. v DK***

* no violation of ICCPR, 7+6

* *The applicant is an Iranian national whose asylum application was rejected. After he was baptized, the Refugee Appeals Board refused to reopen his case. The Committee considers that the information at its disposal demonstrates that the State party took into account all the elements available when evaluating the risk faced by the author and that the author has not identified any irregularity in the decision-making process. the Committee is not able to conclude that the information before it shows that the author's rights under articles 6 and 7 of the Covenant have been violated because of his removal to the Islamic Republic of Iran.*

☞ HRC 14 July 2022, CCPR/C/135/D/2926/2017 ***Wahaj Ali a.o. v***

* violation of ICCPR, 24

* *The applicants are nationals from Afghanistan and detained after the rejection of their asylum application. Along with the adopted view of the HRC six (partially) dissenting opinions are given. The family stayed for 76 days in the closed facility of Trandum. The HRC specifically takes note of the claims regarding the nature and conditions of the Trandum centre and its unsuitability for children, and considers that a reasonable assessment of all of the circumstances would have militated against the detention of the child for such an extended period as occurred here: a violation of his rights under Art. 24 of the Covenant.*

☞ HRC 22 July 2015, CCPR/C/114/D/2360/2014 ***Warda Osman Jasin v DK***

* violation of ICCPR, 7

* *The author of the communication is Warda Osman Jasin, born on 2 May 1990 in Somalia. She submits the communication on behalf of herself and her three minor children. The author is a Somali national seeking asylum in Denmark and subject to deportation to Italy (under Dublin) following the Danish authorities' rejection of her application for refugee status in Denmark. She submits that reception conditions in Italy and basic human standards for refugees with valid or expired residence permits do not comply with international obligations of protection.*
The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported and considers that it was incumbent upon the State party to undertake an individualised assessment of the risk that the author would face in Italy, rather than rely on general reports and on the assumption that, as she had benefited from subsidiary protection in the past, she would, in principle, be entitled to work and receive social benefits in Italy today. The Committee considers that the State party failed to devote sufficient analysis to the author's personal experience and to the foreseeable consequences of forcibly returning her to Italy. It has also failed to seek proper assurance from the Italian authorities that the author and her three minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant, by requesting that Italy undertake:
(a) to renew the author's and her children's residence permits and not to deport them from Italy; and
(b) to receive the author and her children in conditions adapted to the children's age and the family's vulnerable status, which would enable them to remain in Italy.
Consequently, the Committee considers that, under the circumstances, removal of the author and her three minor children to Italy would be in violation of article 7 of the Covenant.

☞ HRC 22 July 2011, CCPR/C/102/D/1564/2007 ***X.H.L. v NL***

* violation of ICCPR, 7+24

* *The author entered the NL as an unaccompanied minor when he was 12 years old. He states that he left China with his mother on 24 February 2004 by plane from Beijing to Kiev. They stayed in Kiev for three days. In the evening of 27 February they left Kiev by car and drove until the next evening. His mother then left with two unknown persons, and the author was taken by a man in a car to the Netherlands, where he arrived on 3 March 2004.*
Upon arrival in the Netherlands, the author applied for asylum. His request was rejected. On appeal, the District Court, by decision of 30 July 2004, quashed that decision. One year later, the Minister of Immigration rejected the author's application arguing that he had not provided any reasonable grounds for fear of persecution. In relation to the author's young age, the Minister considered that Chinese unaccompanied minors were not eligible for a special residence permit, as adequate care was provided in their country of origin. That decision was upheld in court and in appeal.
The HRC concludes that the State party (NL) did not take the best interest of the child into consideration when deciding on his return to China, the Committee notes that, from the deportation decision and from the State party's submissions, it transpires that the State party failed to duly consider the extent of the hardship that the author would encounter if returned, especially given his young age at the time of the asylum process.

1.3.6 CtRC Views on Best Interests of the Child (Art. 3)

☞ CtRC 4 Feb. 2021, CRC/C/86/D/51/2018 ***A.B. v FI***

* violation of CRC, 3+19+22

* *The author was born in 2010 and lived in Russia until 2015. His biological mother, V.B., is a lesbian who lived with her female partner and concealed the nature of their relationship in Russia out of fear of persecution and discrimination. At the age of 5 the family moved to Finland and requested asylum. Although the mother and her partner were interviewed by the Finnish authorities, the author was never heard. Their asylum request was rejected, which decision was upheld in Finnish administrative court and also by the Supreme Court. Subsequently, the family returned to Russia.*
The CtRC notes that the author's claims related to an alleged risk of being subjected to renewed maltreatment as a result of the decision by the Finnish authorities to return him to the Russian Federation do fall within the State party's non-refoulement obligations. The Committee observes that the formal and general reference to the best interests of the child by the Finnish Immigration Service, without having considered the author's views, reflects a failure to consider the specific circumstances surrounding the author's case and to assess the existence of a risk of a serious violation of the Convention against his specific circumstances. Thus, the Committee concludes that Finland failed to adequately take the best interests of the child as a primary consideration when assessing the author's asylum request based on his mothers' sexual orientation and to protect him against a real risk of irreparable harm in returning him to the Russian Federation.

☞ CtRC 16 May 2023, CRC/C/93/D/140/2021 ***F.M.A v DK***

* violation of CRC, 3

* *In this case the mother from Somalia applied for asylum in Denmark in 2014. She got a temporary residence permit and one year later her husband joined her with their four children in Denmark, who also got a temporary residence permit. In 2017 the Danish authorities did not renew their residence permits and their appeal was rejected in court. In 2019 the mother gave birth to a daughter. The asylum request on her behalf was also rejected. Even the reference to the risk of female genital mutilation in Somalia, was unconvincing: "the parents must be regarded as resourceful persons who would be able to withstand any pressure from the family and the surrounding community." The CtRC concludes, however, that if a child may be subjected to an irreversible harmful practice such as female genital mutilation in the country to which he or she is being deported, the evaluation of that risk should be carried out following the principle of precaution and, where reasonable*
doubt exists that the receiving State cannot protect a child against such practices, States parties should refrain from deporting the child concerned. The Committee observes that Denmark has not demonstrated that this standard was met.

☞ CtRC 31 May 2021, CRC/C/87/D/86/2019 ***G.R. a.o. v CH***

* no violation of CRC, 3+6+24+37

* *On the issue of deportation to Sri Lanka and the access to medical care. In 2014 the applicant applied for asylum in Switzerland, which was rejected in 2015. The appeal was dismissed and the subsequent application to the ECtHR was declared inadmissible.*
The CtAT, however, declares the complaint admissible and examines the merits, in particular where it was stated that removal to Sri Lanka would violate the principle of non-refoulement because of a rare disease, a situation that was allegedly not duly taken into account by the State Secretariat for Migration. However, a treatment for this illness is available in Sir Lanka and it would not be impossible for G.R. to obtain treatment there. The Committee concludes that the facts before it do not disclose a violation of the Convention.

☞ CtRC 10 Feb. 2022, CRC/C/89/D/74/2019 ***K.S. & M.S. v CH***

* violation of CRC, 3

* *Deportation to the Russian Federation of Russian nationals from Chechnya, and access to medical care for children. In 2012 the parents arrived with their child (6 years) in Switzerland and applied for asylum on the grounds that the Chechen authorities had threatened them following the father's refusal to spy on an acquaintance. Their application was rejected on the grounds of lack of credibility. During the proceeding a second child was born. In 2013 the family returned voluntarily to Russia. In 2015 the family returned to Switzerland and submitted a second asylum application. Without any hearing, this application was rejected. The youngest child was born almost completely deaf and required urgently an implant. This implant, however, was refused suggesting that such an implant was also be available in Russia. Subsequently, the family - awaiting medical treatment for the child - was arrested, detained and returned to Russia. As a result, all domestic procedures were closed but the family was never informed.*
The CtRC considers that the State party's authorities did not take every measure necessary to ensure that the child would have access to the urgent medical care and support required for her satisfactory development. Accordingly, the CtRC considers that the State party has violated M.S.'s rights under Art. 24, read in conjunction with Art. 3 and 6(2) CRC.

☞ CtRC 25 Jan. 2018, CRC/C/77/D/3/2016 ***K.Y.M. v DK***

* violation of CRC, 3

* *The Committee recalls that the best interests of the child should be a primary consideration in decisions concerning the return of a child, and that such decisions should ensure–within a procedure with proper safeguards- that the child, upon return, will be safe and provided with proper care and enjoyment of rights. In the present case, the Committee notes the arguments and information submitted to the Committee, including the assessment of the mother's ability to resist social pressure based on her past experience in the Puntland region, and on reports on the specific situation of female genital mutilation in Puntland. However, the Committee observes that: a. the Danish Refugee Appeals Board limited its assessment to a general reference; b: the rights of the child under article 19 of the Convention cannot be made dependent on the mother's ability to resist family and social pressure; c) evaluation of a risk for a child to be submitted to an irreversible harmful practice such as female genital mutilation in the country to which he or she is being returned should be adopted following the principle of precaution, and where reasonable doubts exist that the receiving State cannot protect the child against such practices, State parties should refrain from returning the child.*
The Committee therefore concludes that the State party failed to consider the best interests of the child when assessing the alleged risk of the author's daughter to be subjected to female genital mutilation if returned to the Puntland State of Somalia, and to take proper safeguards to ensure the child's well-being upon return, in violation of articles 3 and 19 of the Convention.

☞ CtRC 22 Sep. 2021, CRC/C/88/D/95/2019 ***M.K.A.H. v CH***

* violation of CRC, 3+6+12+16+22+27+28

* *M.K.A.H. was born in Damascus (as a stateless Palestinian in 2007), in the Yarmouk refugee camp, a camp run by the Palestinian authorities. He and his family later moved to Yalda, in Syria, where he endured the effects of the brutal civil war. For an extended period of time, M.K.A.H. lived under the siege laid by Da'esh and experienced first-hand the fighting between insurgent groups and the Syrian army for control of their village. For months, he could not leave the house during the day because of the security situation. Several of his family members, including his grandfather, were killed by the explosion of a rocket.*
The father, a Palestinian from Jordan, was arrested in his workplace by Syrian security forces and has been missing ever since. Mother and son left Syria and went via Turkey to Europe but were intercepted by Romanian border guards at the Bulgarian border. After some time they were registered as asylum seekers in Bulgaria and granted subsidiary protection. However, they stayed in an overcrowded camp with very little food. After some six months they returned to Turkey, from where they travelled in the back of a vehicle to Switzerland. In Switzerland they got into contact with the brother of the mother and his family. Subsequently they applied for asylum in Switzerland. Their application was rejected and their removal to Bulgaria was ordered but suspended during appeal. The Federal Adm. Court rejected the appeal on formal grounds; non-payment of advance court costs.
The Committee is of the opinion that the State party failed to make the best interests of the child a primary consideration when it assessed the risks he would face if he were returned to Bulgaria or to take the precautions it should have to ensure that he would not be subjected to inhuman or degrading treatment in the country of destination, failures that constitute a violation of Art. 3(1) and potential violations of art. 6 (2), 22, 27, 28, 37 and 39. The Committee also notes that the authorities did not take any proactive steps to ensure that the right to acquire a nationality could be exercised.
Further, the Committee orders Switzerland to reconsider it decision to deport, review the asylum application, ensuring the best interest of the child, and take all necessary measures to ensure that such violations do not recur, including by: (i) removing all legal, administrative and financial obstacles with a view to ensuring that all children have access to appropriate means of challenging decisions affecting them; (ii) ensuring that children are systematically heard in the context of asylum procedures; and (iii) ensuring that national protocols for the return and readmission of children to third countries are in compliance with the Convention.

☞ CtRC 27 Sep. 2018, CRC/C/79/D/11/2017 ***N.B.F. v ES***

* violation of CRC, 3+12

* *Determination of the age of an alleged unaccompanied minor from Ivory Coast intercepted in a small boat for the coast of Granada (Spain). The Committee is of the view that the author has sufficiently substantiated his claims under article 3 of the Convention, in connection with the failure to give consideration to the best interests of the child, and article 12, in connection with the failure to appoint a guardian or representative during the age-determination process. The Committee considers that the age-determination procedure undergone by the author, who claimed to be a child, was not accompanied by the safeguards needed to protect his rights under the Convention. In the circumstances of the present case, in particular the examination used to determine the author's age and the absence of a representative to assist him during this process, the Committee is of the view that the best interests of the child were not a prime consideration in the age-determination procedure to which the author was subjected, in breach of articles 3 and 12 of the Convention.*

☞ CtRC 4 Feb. 2021, CRC/C/86/D/76/2019 ***R.Y.S. v ES***

* violation of CRC, 3+8+12+16+20+22+27

* *The applicant is a national of Cameroon and born in 2001. She arrived in 2017 in Madrid where the Spanish police registered her as an asylum-seeking minor and - being a minor - not interviewed. A medical report drawn up on her admission recorded the after-effects of violent abuse she was subjected to by her father in Cameroon.*
Months later she was expelled from the reception centre as she was issued with a decree stating that she was an adult, based on a so-called bone test, but not taking into consideration the scientific margin of error of 20 to 24 months. Additionally her asylum application was rejected without any hearing. All subsequent appeals were found inadmissible.
The Committee notes that the applicant, since her arrival in Spain, consistently has claimed she was a minor and born in 2001, as confirmed by a vaccination booklet and school documents. Nevertheless, the State Party took several age examination tests of which no justification was provided nor consent by the applicant.
The Committee is of the view that tests that are conducted to determine the age of a child and that involve nudity or an examination of genitalia or other intimate parts of the body violate a child's dignity, privacy and bodily integrity and should be prohibited. In this case it constituted a violation of Art. 16. The Committee also concludes a violation of Art. 3 +12 by not appointing a guardian directly after she had claimed to be a minor at the airport.

☞ CtRC 1 June 2022, CRC/C/90/D/99/2019 ***S.K. v DK***

* violation of CRC, 3

* *The author of the communication is a national of India, submitting on behalf of her daughter, S.K. The father travelled to Denmark on a student visa, the mother was granted a residence permit as an accompanying family member. 2 years later (in 2017) S.K. was born. In Denmark the mother was admitted to hospital because she was subjected on a daily basis to violence by her spouse. As a result, the father was deported from Denmark, which lapsed the dependent residence permit of the mother. Subsequently, she applied for asylum in Denmark. However, the application was rejected because she would have access to state protection in India.*
However, in the light of the concerns expressed by the Special Rapporteur on violence against women, its causes and consequences, about the availability in practice of State protection in India, the CtRC finds that the State party's authorities failed to accord sufficient weight and to examine in detail the author's claim that State protection would in practice be unavailable to her and her daughter in India.

☞ CtRC 12 Sep. 2022, CRC/C/91/D/100/2019 ***S.N. a.o. v FI***

* violation of CRC, 6

* *Repatriation from refugee camps in the Syrian Arab Republic of children whose parents are linked to terrorist activities. The authors of the communication are acting on behalf of some 33 Finnish children held in the Hawl camp in Syria. Their parents are alleged to have collaborated with Da'esh. The question is whether the Finnish authorities have an obligation to repatriate these children to Finland.*
First, the CtRC concludes that the State party does exercise jurisdiction over the children. The CtRC also considers that there is sufficient information to establish that the conditions of detention pose an imminent and foreseeable threat to the lives of the child victims and that the State party's failure to protect them constitutes a violation of Art. 6(1) CRC. The State party has a positive obligation to protect the children from an imminent risk.

1.3.7 CtEDAW Views on Qualification for Protection

☞ CtEDAW 15 May 2023, CEDAW/C/85/D/173/2021 ***Bandboni v CH***

* violation of CEDAW, 2+3+5+16

* *The applicants are a woman, a Shiite Muslim and a national of Iran, and her husband, a Sunni Muslim and a national of both Iran and Iraq of Kurdish ethnic origin. The father strongly objected to the marriage of his daughter. When the father learned that his daughter was pregnant, the woman was beaten and pressured to undergo abortion. Fearing to be ill-treated again, they fled via Turkey to Switzerland where they applied for asylum in 2016. In December 2018 the asylum application was rejected; in April 2021 the Federal Administrative Court dismissed their appeal. Although the Swiss authorities did not find the events credible, the national court finds these events credible and true. However, the national court notes that these credible risks do not emanate from the Iranian authorities but from private persons. Subsequently, the national court examines whether the Iranian authorities would be able and willing to protect the applicant and concludes that there is no evidence that the Iranian authorities would not be willing to protect her.*
The CtEDAW notes that the national court did not sufficiently address the persistent institutionalised discrimination against women and girls in public and private life enshrined within civil and penal law and practice in Iran, the patriarchal values and misogynist behaviours that permeate many segments of Iranian family life, and the law enforcement agencies' reluctance to intervene in domestic violence and honour crime cases. In that connection, the Committee expresses concern about the persistence of deep-rooted gender-based violence and discriminatory patriarchal stereotypes in Iran concerning the roles and responsibilities of women and men in the family and in society, which overemphasise the traditional role of women, thereby undermining women's social status, safety and security, autonomy, educational opportunities and professional careers. It also notes with concern that gender-based violence and patriarchal attitudes are on the rise among State authorities, including within law enforcement agencies, and that gender equality was being openly and increasingly challenged by the Iranian authorities.
The Committee concludes that the State party failed to give sufficient consideration to the real, personal and foreseeable risk of serious forms of gender-based violence faced by the author should she be returned to Iran.

2 Asylum Procedure

2.1 Asylum Procedure: Adopted Measures

case law sorted in chronological order

Directive 2005/85 — **Asylum Procedure I**

On minimum standards on procedures in Member States for granting and withdrawing refugee status

* OJ 2005 L 326/13 — impl. date: 01-12-2007

* Replaced by Dir. 2013/32 Asylum Procedure II

CJEU Judgments

☞	CJEU	29 June	2023,	C-756/21	***X. / IPAT (IE)***	23(2)+39(4)
☞	CJEU	10 Dec.	2020,	C-616/19	***M.S. a.o. / Justice (IE)***	25(2)
☞	CJEU	20 Oct.	2016,	C-429/15	***Danqua***	3
☞	CJEU	17 Dec.	2015,	C-239/14	***Tall***	39
☞	CJEU	31 Jan.	2013,	C-175/11	***H.I.D.***	23(3)+(4)+39
☞	CJEU	28 July	2011,	C-69/10	***Samba Diouf***	39
☞	CJEU	6 May	2008,	C-133/06	***Eur. Parliament / Council EU (EP)***	29+36

See further: § 2.3.1 and 2.3.2

	Directive 2013/32					**Asylum Procedure II**	
	On common procedures for granting and withdrawing international protection						
	*	OJ 2013 L 180/60				impl. date: 20-07-2015	UK, IRL opt out
	*	Recast of Dir. 2005/85 Asylum Procedure I					
New	☞	CJEU	18 June	2024,	C-753/22	***Q.Y.***	33(2)(a)
New	☞	CJEU	11 June	2024,	C-563/22	***S.N. & L.N.***	40(1)
New	☞	CJEU	21 Feb.	2024,	C-694/23	***Edo***	all Art.
	☞	CJEU	8 Feb.	2024,	C-216/22	***A.A. / Bundesrepublik (DE)***	33(2)+46
	☞	CJEU	6 Sep.	2023,	T-600/21	***W.S. / Frontex***	2(f)+4+6+8+31
	☞	CJEU	22 June	2023,	C-823/21	***Com. / Hungary***	6
	☞	CJEU	25 May	2023,	C-364/22	***J.B. a.o.***	33(2)(d)
	☞	CJEU	1 Dec.	2022,	C-564/21	***B.U.***	23(1)+46(1-3)
	☞	CJEU	30 Nov.	2022,	C-153/21	***A. & B. / Ministre (LU)***	33
	☞	CJEU	22 Sep.	2022,	C-159/21	***G.M. / Aliens Police (HU)***	11+12+23+45
	☞	CJEU	22 Sep.	2022,	C-497/21	***S.I. & T.L.***	33(2)(d)+2(q)
	☞	CJEU	1 Aug.	2022,	C-720/20	***R.O.***	33(2)(a)
	☞	CJEU	30 June	2022,	C-72/22	***M.A.***	6+7(1)
	☞	CJEU	22 Feb.	2022,	C-483/20	***X.X.X.X.***	33(2)
	☞	CJEU	16 Nov.	2021,	C-821/19	***Com. / Hungary***	33(2)
	☞	CJEU	9 Sep.	2021,	C-18/20	***X.Y. / Bundesambt (AT)***	40(2)+40(3)
	☞	CJEU	10 June	2021,	C-921/19	***L.H. / Stscr (NL)***	40(2)
	☞	CJEU	20 May	2021,	C-8/20	***L.R.***	33(2)(d)+33(2)(q)
	☞	CJEU	11 Feb.	2021,	C-755/19	***T.H.C.***	46
	☞	CJEU	17 Dec.	2020,	C-808/18	***Com. / Hungary***	24(3)+43+46(5)
	☞	CJEU	9 Sep.	2020,	C-651/19	***J.P.***	46
	☞	CJEU	16 July	2020,	C-517/17	***Addis***	14(1)+34
	☞	CJEU	25 June	2020,	C-36/20	***V.L.***	6
	☞	CJEU	14 May	2020,	C-924/19	***F.M.S. a.o.***	all Art.
	☞	CJEU	19 Mar.	2020,	C-564/18	***L.H.***	33+46(3)
	☞	CJEU	19 Mar.	2020,	C-406/18	***P.G.***	46(3)
	☞	CJEU	13 Nov.	2019,	C-540/17	***Hamed***	33(2)(a)
	☞	CJEU	29 July	2019,	C-556/17	***Torubarov***	46(3)
	☞	CJEU	19 Mar.	2019,	C-297/17	***Bashar Ibrahim a.o.***	52+33(2)
	☞	CJEU	18 Oct.	2018,	C-662/17	***E.G.***	46(2)
	☞	CJEU	4 Oct.	2018,	C-56/17	***Fathi***	46(3)
	☞	CJEU	4 Oct.	2018,	C-652/16	***Ahmedbekova***	33(2)(e)+46(3)
	☞	CJEU	27 Sep.	2018,	C-422/18	***F.R.***	22+46
	☞	CJEU	26 Sep.	2018,	C-180/17	***X. & Y.***	46
	☞	CJEU	26 Sep.	2018,	C-175/17	***X.***	9
	☞	CJEU	25 July	2018,	C-585/16	***Alheto***	46(3)+35(b)
	☞	CJEU	25 July	2018,	C-404/17	***A.***	31(8)
	☞	CJEU	5 July	2018,	C-269/18	***C. a.o.***	46(8)
	☞	CJEU	19 June	2018,	C-181/16	***Gnandi***	46
	☞	CJEU	26 July	2017,	C-348/16	***Sacko***	12+14+31+46
	CJEU pending cases						
New	☞	CJEU AG	13 June	2024	C-134/23	***Elliniko Symvoulio***	38
	☞	CJEU AG	30 May	2024	C-406/22	***C.V.***	37(1)
New	☞	CJEU	(pending)		C-431/24	***Multan***	23(1)
New	☞	CJEU	(pending)		C-388/24	***Oguta***	31
New	☞	CJEU	(pending)		C-50/24	***Danane a.o.***	31+43
	☞	CJEU	(pending)		C-662/23	***Izmir***	31(3)(b)
	☞	CJEU	(pending)		C-656/23	***Karaman***	6
	☞	CJEU	(pending)		C-610/23	***Al Nasiria***	32
	See further: § 2.3.1 and 2.3.2						
	ICCPR					**Proper Assessment**	
	International Covenant on Civil and Political Rights						
	*	999 UNTS 14668				impl. date: 1976	
	*	art. 7: Prohibition of torture or cruel, inhuman or degrading treatment or punishment					
	HRC Views						
	☞	HRC	15 Mar.	2022	C/134/D/2632/2015	***O. a.o. v SE***	7+2
	☞	HRC	13 Oct.	2021	C/133/D/2796/2016	***Zabayo v NL***	7+24
	See further: § 2.3.5						

CAT — **non-refoulement**

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

* 1465 UNTS 85 — impl. date: 1987

* art. 3: Protection against Refoulement

CtAT Views

☞	CtAT	7 Nov.	2013	C/51/D/438/2010	***M.A.H. & F.H. v CH***	3
☞	CtAT	5 Nov.	2012	C/49/D/416/2010	***Ke Chun Rong v AT***	3
☞	CtAT	1 June	2012	C/48/D/343/2008	***Kalonzo v CA***	3
☞	CtAT	8 July	2011	C/46/D/379/2009	***Bakatu-Bia v SE***	3
☞	CtAT	30 May	2011	C/46/D/319/2007	***Nirmal Singh v CA***	3+22

See further: § 2.3.4

CRC — **Rights of the Child**

Convention on the Rights of the Child

* 1577 UNTS 27531 — impl. date: 02-09-1990

* art. 8: right to identity
art. 12: right to be heard
art. 37: torture or cruel treatment

Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014

CtRC Views

☞	CtRC	28 Sep.	2020	C/85/D/31/2017	***W.M.C. v DK***	8
☞	CtRC	28 Sep.	2020	C/85/D/28/2017	***M.B. v ES***	8+12+20(1)
☞	CtRC	4 Feb.	2020	C/83/D/21/2017	***A.D. v ES***	8+12+3+20(1)
☞	CtRC	18 Sep.	2019	C/82/D/17/2017	***M.T. v ES***	8+12+20(1)+22
☞	CtRC	18 Sep.	2019	C/82/D/27/2017	***R.K. v ES***	8+12+20(1)+22
☞	CtRC	1 Feb.	2019	C/80/D/4/2016	***D.D. v ES***	37+20
☞	CtRC	27 Sep.	2018	C/79/D/11/2017	***N.B.F. v ES***	12
☞	CtRC	15 June	2018	C/81/D/47/2018	***J.G. v CH***	37
☞	CtRC	4 Feb.	2022	C/89/D/73/2019	***A.M.K. & S.K. v BE***	37
☞	CtRC	3 Feb.	2022	C/89/D/55/2018	***E.H. a.o. v BE***	37

See further: § 2.3.6

ECHR					Non-Refoulement and Effective Remedy	
European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols						
	*	ETS 005			impl. date: 1953	
	*	art. 3: Protection against Refoulement art. 13: Right to Effective Remedy Prot. 4 Art. 4: Prohibition of Collective Expulsion				
		ECtHR Judgments				
New	☞	ECtHR	4 Apr.	2024	54029/17	***Sherov a.o. v PL*** 3+13+Prot. 4 Art. 4
	☞	ECtHR	28 Nov.	2023	40788/23	***I.A. v FR*** 3
	☞	ECtHR	7 Sep.	2023	37726/21	***Compaoré v FR*** 3
	☞	ECtHR	30 Mar.	2023	21329/18	***J.A. a.o. v IT*** 3+Prot. 4 Art. 4
	☞	ECtHR	2 Feb.	2023	59435/17	***Alhowais v HU*** 3+2
	☞	ECtHR	26 Jan.	2023	60990/14	***B.Y. v GR*** 3
	☞	ECtHR	20 Dec.	2022	37241/21	***S.H. v MT*** 3+13
	☞	ECtHR	15 Dec.	2022	64050/16	***W.A. a.o. v HU*** 3
	☞	ECtHR	15 Sep.	2022	18603/12	***O.M. & D.S. v UA*** 3
	☞	ECtHR	7 July	2022	5418/15	***Safi a.o. v GR*** 3+2
	☞	ECtHR	5 July	2022	20351/17	***M.B. & R.A. v ES*** 3
	☞	ECtHR	30 June	2022	42907/17	***A.B. a.o. v PL*** 3+13+Prot. 4 Art. 4
	☞	ECtHR	14 June	2022	28774/22	***K.N. v UK*** 3
	☞	ECtHR	29 Mar.	2022	25564/18	***M.A. a.o. v LV*** 3
	☞	ECtHR	20 July	2021	29447/17	***D. v BG*** 3+13
	☞	ECtHR	8 July	2021	51246/17	***D.A. v PL*** 3+Prot. 4 Art. 4
	☞	ECtHR	8 July	2021	12625/17	***Shahzad #1 v HU*** 13+Prot. 4 Art. 4
	☞	ECtHR	17 Nov.	2020	43987/16	***B. & C. v CH*** 3
	☞	ECtHR	27 Oct.	2020	19656/18	***M.A. v BE*** 3
	☞	ECtHR	25 June	2020	40503/17	***M.K. a.o. v PL*** 3+13
	☞	ECtHR	11 June	2020	17189/11	***M.S. v SK & UA*** 3
	☞	ECtHR	5 May	2020	3599/18	***M.N. a.o. v BE*** 3
	☞	ECtHR	13 Feb.	2020	8675/15	***N.D. & N.T v ES*** 13
	☞	ECtHR	21 Nov.	2019	47287/15	***Ilias & Ahmed v HU*** 3
	☞	ECtHR	11 Dec.	2018	59793/17	***M.A. a.o. v LT*** 3+13
	☞	ECtHR	10 July	2018	47232/17	***Basra v BE*** 3
	☞	ECtHR	5 July	2018	45196/15	***Medjaouri v FR*** 3
	☞	ECtHR	5 June	2018	16026/12	***Amerkhanov v TR*** 3
	☞	ECtHR	31 May	2018	46454/11	***Abu Zubaydah v LT*** 3
	☞	ECtHR	15 Mar.	2018	39034/12	***A.E.A. v GR*** 3+13
	☞	ECtHR	3 Oct.	2017	8675/15	***N.D. & N.T. v ES*** 13
	☞	ECtHR	14 Mar.	2017	47287/15	***Ilias & Ahmed v HU*** 3
	☞	ECtHR	12 Jan.	2017	12552/12	***Kebe a.o. v UA*** 3
	☞	ECtHR	13 Oct.	2016	11981/15	***B.A.C. v GR*** 3
	☞	ECtHR	5 July	2016	29094/09	***A.M. v NL*** 13
	☞	ECtHR	19 Mar.	2015	70055/10	***S.J. v BE*** 13
	☞	ECtHR	22 Apr.	2014	6528/11	***A.C. a.o. v ES*** 13
	☞	ECtHR	6 June	2013	2283/12	***Mohammed v AT*** 3
	☞	ECtHR	6 June	2013	50094/10	***M.E. v FR*** 13
	☞	ECtHR	25 Apr.	2013	71386/10	***Savriddin v RU*** 3+5(4)+34
	☞	ECtHR	2 Oct.	2012	33210/11	***Singh v BE*** 3+13
	☞	ECtHR	15 May	2012	33809/08	***Labsi v SK*** 3+13
	☞	ECtHR	23 Feb.	2012	27765/09	***Hirsi Jamaa v IT*** 3
	☞	ECtHR	2 Feb.	2012	9152/09	***I.M. v FR*** 13
	☞	ECtHR	17 Jan.	2012	12294/07	***Zontul v GR*** 3
	☞	ECtHR	21 Jan.	2011	30696/09	***M.S.S. v BE & GR*** 3
	☞	ECtHR	22 Sep.	2009	30471/08	***Abdolkhani v TR*** 13
	☞	ECtHR	24 Feb.	2009	246/07	***Ben Khemais v IT*** 3
	☞	ECtHR	20 Sep.	2007	45223/05	***Sultani v FR*** 3
	☞	ECtHR	26 Apr.	2007	25389/05	***Gebremedhin v FR*** 13
	☞	ECtHR	8 Nov.	2005	13284/04	***Bader v SE*** 3
	☞	ECtHR	26 July	2005	38885/02	***N. v FI*** 3
	☞	ECtHR	5 Feb.	2002	51564/99	***Conka v BE*** 13
	☞	ECtHR	11 July	2000	40035/98	***Jabari v TR*** 3
	☞	ECtHR	19 Feb.	1998	25894/94	***Bahaddar v NL*** 3
		See further: § 2.3.3				

2.2 Asylum Procedure: Proposed Measures

Regulation **Asylum Procedure III**

Establishing a common procedure for international protection in the Union.

* COM (2020) 611, 23 Sep 2020
* Original version: COM (2016) 467, 13 July 2016
  Agreement between EP and Council on 20 December 2023.

Regulation **Screening**

On screening of third country nationals at the external borders.

* COM (2020) 612, 23 Sep 2020
* amending Reg. 767/2008; 2017/2226; 2018/1240; 2019/817
  Agreement between EP and Council on 20 December 2023.

2.3 Asylum Procedure: Jurisprudence

case law sorted in alphabetical order

2.3.1 CJEU Judgments on Asylum Procedure

☞ CJEU 25 July 2018, C-404/17 ***A.*** EU:C:2018:588

* interpr. of Dir. 2013/32 Asylum Procedure II, 31(8)
* ref. from Förvaltningsrätten i Malmö (Sweden) 6 July 2017
* *Article 31(8)(b) must be interpreted as not allowing an application for international protection to be regarded as manifestly unfounded in a situation, in which, (1) it is apparent from the information on the applicant's country of origin that acceptable protection can be ensured for him in that country and, (2) the applicant has provided insufficient information to justify the grant of international protection, where the MS in which the application was lodged has not adopted rules implementing the concept of safe country of origin.*

☞ CJEU 30 Nov. 2022, C-153/21 ***A. & B. / Ministre (LU)***

* interpr. of Dir. 2013/32 Asylum Procedure II, 33
* withdrawn
* ref. from Tribunal Administratif (Luxembourg) 1 Mar. 2021
* *Order refers to CJEU 1 Aug. 2022, C-720/20, 2022:603.*

☞ CJEU 8 Feb. 2024, C-216/22 ***A.A. / Bundesrepublik (DE)*** EU:C:2024:122
AG 7 Sep. 2023 EU:C:2023:646

* interpr. of Dir. 2013/32 Asylum Procedure II, 33(2)+46
* ref. from Verwaltungsgericht Sigmaringen (Germany) 22 Feb. 2022
* *Art. 33(2)(d) APD II must be interpreted as meaning that any judgment of the CJEU, including a judgment which is limited to interpreting a provision of EU law already in force at the time that a decision on a previous application was adopted, constitutes a new element, within the meaning of those provisions, irrespective of the date on which it was delivered, if it significantly adds to the likelihood of the applicant qualifying as a beneficiary of international protection.*
  Article 46(1)(a)(ii) must be interpreted as allowing – but not requiring – MSs to authorise their courts or tribunals, where those courts or tribunals annul a decision rejecting a subsequent application as inadmissible, to rule themselves on that application, without having to refer the examination of that application back to the determining authority, provided that those courts comply with the safeguards provided for by the provisions of Chapter II of that directive.

☞ CJEU 16 July 2020, C-517/17 ***Addis*** EU:C:2020:579
AG 19 Mar. 2020 EU:C:2020:225

* interpr. of Dir. 2013/32 Asylum Procedure II, 14(1)+34
* ref. from Bundesverwaltungsgericht (Germany) 28 Aug. 2017
* *Art. 14 and 34 APD II must be interpreted as precluding national legislation under which failure to comply with the obligation to give an applicant for international protection the opportunity of a personal interview before the adoption of a decision on the basis of Art. 33(2)(a) of that directive declaring the application to be inadmissible does not lead to that decision being annulled and the case being remitted to the determining authority, unless that legislation allows the applicant, in the appeal procedure against that decision, to set out in person all of his or her arguments against the decision in a hearing which complies with the applicable conditions and fundamental guarantees set out in Art. 15 of that directive, and those arguments are not capable of altering that decision.*

☞ CJEU 4 Oct. 2018, C-652/16 ***Ahmedbekova*** EU:C:2018:801
AG 28 June 2018 EU:C:2018:514
* interpr. of Dir. 2013/32 Asylum Procedure II, 33(2)(e)+46(3)
* see also § 1.3.2
* ref. from Administrativen sad Sofia-grad (Bulgaria) 19 Dec. 2016
* *Article 33(2)(e) does not cover a situation, in which an adult lodges, in her own name and on behalf of her minor child, an application for international protection which is based, inter alia, on a family tie with another person who has lodged a separate application for international protection.*
Article 46(3) read in conjunction with Article 40(1) (appeal procedure), must be interpreted as meaning that a court before which an action has been brought against a decision refusing international protection is, in principle, required to examine, as 'further representations' and having asked the determining authority for an assessment of those representations, grounds for granting international protection or evidence which, whilst relating to events or threats which allegedly took place before the adoption of the decision of refusal, or even before the application for international protection was lodged, have been relied on for the first time during those proceedings. That court is not, however, required to do so if it finds that those grounds or evidence were relied on in a late stage of the appeal proceedings or are not presented in a sufficiently specific manner to be duly considered or, in respect of evidence, it finds that that evidence is not significant or insufficiently distinct from evidence which the determining authority was already able to take into account.

☞ CJEU (GC) 25 July 2018, C-585/16 ***Alheto*** EU:C:2018:584
AG 17 May 2018 EU:C:2018:327
* interpr. of Dir. 2013/32 Asylum Procedure II, 46(3)+35(b)
* see also § 1.3.1
* ref. from Administrativen sad Sofia-grad (Bulgaria) 18 Nov. 2016
* *Article 46(3) APD read in conjunction with Article 47 of the Charter, must be interpreted as meaning that a court or tribunal of a MS seised at first instance of an appeal against a decision relating to an application for international protection must examine both facts and points of law, such as the applicability of Article 12(1)(a) of the Qualification Directive to the applicant's circumstances, which the body that took that decision took into account or could have taken into account, and those which arose after the adoption of that decision.*
Article 46(3) APD read in conjunction with Article 47 of the Charter, must be interpreted as meaning that the requirement for a full and ex nunc examination of the facts and points of law may also concern the grounds of inadmissibility of the application for international protection referred to in Article 33(2), where permitted under national law, and that, in the event that the court or tribunal hearing the appeal plans to examine a ground of inadmissibility which has not been examined by the determining authority, it must conduct a hearing of the applicant in order to allow that individual to express his or her point of view in person concerning the applicability of that ground to his or her particular circumstances.
Article 46(3) APD read in conjunction with Article 47 of the Charter, must be interpreted as meaning that it does not establish common procedural standards in respect of the power to adopt a new decision concerning an application for international protection following the annulment, by the court hearing the appeal, of the initial decision taken on that application. However, the need to ensure that Article 46(3) has a practical effect and to ensure an effective remedy requires that, in the event that the file is referred back to the quasi-judicial or administrative body referred to in Article 2 (f), a new decision must be adopted within a short period of time and must comply with the assessment contained in the judgment annulling the initial decision.
Article 35, first paragraph, point (b) APD, must be interpreted as meaning that a person registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) must, if he or she is a beneficiary of effective protection or assistance from that agency in a third country that is not the territory in which he or she habitually resides but which forms part of the area of operations of that agency, be considered as enjoying sufficient protection in that third country, within the meaning of that provision, when it:
– agrees to readmit the person concerned after he or she has left its territory in order to apply for international protection in the European Union; and
– recognises that protection or assistance from UNRWA and supports the principle of non-refoulement, thus enabling the person concerned to stay in its territory in safety under dignified living conditions for as long as necessary in view of the risks in the territory of habitual residence.

☞ CJEU 1 Dec. 2022, C-564/21 ***B.U.*** EU:C:2022:951
* interpr. of Dir. 2013/32 Asylum Procedure II, 23(1)+46(1-3)
* ref. from Verwaltungsgericht Wiesbaden (Germany) 14 Sep. 2021
* *Art. 23(1) and 46(1)+(3) APD II, read in conjunction with Art. 47 Charter must be interpreted as meaning that they do not preclude a national administrative practice whereby the administrative authority which has decided on an application for international protection provides the applicant's representative with a copy of the electronic file relating to that application in the form of a series of separate files in PDF (Portable Document Format) format, without consecutive page numbering, and the structure of which can be viewed by means of free software readily accessible on the internet, provided, first, that that method of disclosure guarantees access to all the information in the file relevant to the applicant's defence, and on the basis of which the decision on that application was taken, and that, secondly, that that method of communication offers as faithful a representation as possible of the structure and chronology of that file, subject to cases where public interest objectives prevent the disclosure of certain information to the applicant's representative.*
Art. 11(1) APD II must be interpreted as meaning that a decision on an application for international protection does not need to be signed by the official of the competent authority who took that decision in order for it to be considered to be communicated in writing within the meaning of that provision.

☞ CJEU (GC) 19 Mar. 2019, C-297/17 ***Bashar Ibrahim a.o.*** EU:C:2019:219
AG 25 July 2018 EU:C:2018:617
* interpr. of Dir. 2013/32 Asylum Procedure II, 52+33(2)
* C-381/17 + C-319/17 + C-438/17
* ref. from Bundesverwaltungsgericht (Germany) 20 July 2017
* *Art. 52 of APD II must be interpreted as meaning that it permits a Member State to provide for the immediate application of the provision of national law transposing Art. 33(2)(a) of that directive to applications for asylum on which no final decision has yet been made, which were lodged before 20 July 2015 and before the entry into force of that provision of national law. However, Art. 52 of that directive, read in the light of, inter alia, Art. 33 thereof, precludes such an immediate application in a situation where both the application for asylum and the take back request were lodged before the entry into force of APD II, in accordance with Art. 49 of Dublin III, still fall fully within the scope of Dublin II.*
Art. 33 of APD II must be interpreted as meaning that it is not a condition for Member States to be able to reject an application for asylum as being inadmissible under Art. 33(2)(a) of the directive that they must, or must be able, to have recourse, as the first resort, to the take charge or take back procedures provided for by Dublin III.
Art. 33(2)(a) of APD II must be interpreted as not precluding a Member State from exercising the option granted by that provision to reject an application for the grant of refugee status as being inadmissible on the ground that the applicant has been previously granted subsidiary protection by another Member State, where the living conditions that that applicant could be expected to encounter as the beneficiary of subsidiary protection in that other Member State would not expose him to a substantial risk of suffering inhuman or degrading treatment, within the meaning of Art. 4 of the Charter. The fact that the beneficiaries of such subsidiary protection do not receive, in that Member State, any subsistence allowance, or that such allowance as they receive is markedly inferior to that in other Member States, though they are not treated differently from nationals of that Member State, can lead to the finding that that applicant would be exposed in that Member State to such a risk only if the consequence is that that applicant would, because of his or her particular vulnerability, irrespective of his or her wishes and personal choices, be in a situation of extreme material poverty.
Art. 33(2)(a) of APD II must be interpreted as not precluding a Member State from exercising that option, where the asylum procedure in the other Member State that has granted subsidiary protection to the applicant leads to a systematic refusal, without real examination, to grant refugee status to applicants for international protection who satisfy the conditions laid down in Chapters II and III of QD II.

☞ CJEU 5 July 2018, C-269/18 (PPU) ***C. a.o.*** EU:C:2018:544
* interpr. of Dir. 2013/32 Asylum Procedure II, 46(8)
* Order
* ref. from Raad van State (Netherlands) 19 Apr. 2018
* *The Returns Directive and the Procedures Directive must be interpreted as meaning that a third-country national, whose application for international protection has been rejected at first instance by the competent administrative authority as being manifestly unfounded, cannot be detained with a view to his removal, in the case where, in accordance with Article 46(6) and (8) of the Procedures Directive, he is lawfully authorised to remain on the national territory until a decision has been taken on his action relating to the right to remain on that territory pending the ruling on the appeal brought against the decision which rejected his application for international protection.*

☞ CJEU (GC) 17 Dec. 2020, C-808/18 ***Com. / Hungary*** EU:C:2020:1029
AG 25 June 2020 EU:C:2020:493
* Dir. 2013/32 Asylum Procedure II, 24(3)+43+46(5)
* *Hungary has failed to fulfil its obligations:*
** in providing that applications for international protection from third-country nationals or stateless persons who, arriving from Serbia, wish to access, in its territory, the international protection procedure, may be made only in the transit zones of Röszke (Hungary) and Tompa (Hungary), while adopting a consistent and generalised administrative practice drastically limiting the number of applicants authorised to enter those transit zones daily;*
** in establishing a system of systematic detention of applicants for international protection in the transit zones of Röszke and Tompa, without observing the guarantees provided for in Art 24(3) and 43 of APD II and Arts 8, 9 and 11 of Reception Conditions Dir. II;*
** in allowing the removal of all third-country nationals staying illegally in its territory, with the exception of those of them who are suspected of having committed a criminal offence, without observing the procedures and safeguards laid down in Art. 5, 6(1), 12(1) and 13(1) Return Directive;*
** in making the exercise by applicants for international protection who fall within the scope of Art. 46(5) APD II of their right to remain in its territory subject to conditions contrary to EU law.*

☞ CJEU (GC) 16 Nov. 2021, C-821/19 ***Com. / Hungary*** EU:C:2021:930
AG 25 Feb. 2021 EU:C:2021:143
* Dir. 2013/32 Asylum Procedure II, 33(2)
* on inadmissibility
* *The Grand Chamber of the CJEU ruled that Hungary has failed to fulfill its obligations under:*
** Art. 33(2) of APD II by allowing an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on its territory via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed;*
** Art. 8(2) and 22(1) APD II and Art. 10(4) of RCD II by criminalising in its national law the actions of any person who, in connection with an organising activity, provides assistance in respect of the making or lodging of an application for asylum in its territory, where it can be proved beyond all reasonable doubt that that person was aware that that application could not be accepted under that law;*
** Art. 8(2), 12(1)(c) and 22(1) APD II and Art. 10(4) RCD II by preventing any person who is suspected of having committed such an offence from the right to approach its external borders.*

☞ CJEU 22 June 2023, C-823/21 ***Com. / Hungary*** EU:C:2023:504

* Dir. 2013/32 Asylum Procedure II, 6

* *The Court declares that by making the possibility, for certain third-country nationals or stateless persons present in the territory of Hungary or at the borders of that Member State, of making an application for international protection subject to the prior lodging of a declaration of intent at a Hungarian embassy located in a third country and to the granting of a travel document enabling them to enter Hungarian territory, Hungary has failed to fulfil its obligations under Art. 6.*

☞ CJEU 20 Oct. 2016, C-429/15 ***Danqua*** EU:C:2016:789

AG 29 June 2016 EU:C:2016:485

* interpr. of Dir. 2005/85 Asylum Procedure I, 3

* ref. from Court of Appeal (Ireland) 5 Aug. 2015

* *The principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection.*

☞ CJEU 18 Oct. 2018, C-662/17 ***E.G.*** EU:C:2018:847

* interpr. of Dir. 2013/32 Asylum Procedure II, 46(2)

* ref. from Vrhovno sodišče (Slovenia) 27 Nov. 2017

* *The second subparagraph of Article 46(2) must be interpreted as meaning that subsidiary protection status, granted under legislation of a Member State, does not offer the 'same rights and benefits as those offered by the refugee status under Union and national law', within the meaning of that provision, so that a court of that Member State may not dismiss an appeal brought against a decision considering an application unfounded in relation to refugee status but granting subsidiary protection status as inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings where it is found that, under the applicable national legislation, those rights and benefits afforded by each international protection status are not genuinely identical.*
Such an appeal may not be dismissed as inadmissible, even if it is found that, having regard to the applicant's particular circumstances, granting refugee status could not confer on him more rights and benefits than granting subsidiary protection status, in so far as the applicant does not, or has not yet, relied on rights which are granted by virtue of refugee status, but which are not granted, or are granted only to a limited extent, by virtue of subsidiary protection status.

New ☞ CJEU 21 Feb. 2024, C-694/23 ***Edo*** EU:C:2024:196

* interpr. of Dir. 2013/32 Asylum Procedure II, all Art.

* withdrawn

* ref. from Verwaltungsgericht Sigmaringen (Germany) 17 Nov. 2023

* *Referred to CJEU 22 Feb 2022, C-483/20, 2022:103.*

☞ CJEU (GC) 6 May 2008, C-133/06 ***Eur. Parliament / Council EU (EP)*** EU:C:2008:257

AG 27 Sep. 2007 EU:C:2007:551

* interpr. of Dir. 2005/85 Asylum Procedure I, 29+36

* *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.

☞ CJEU (GC) 14 May 2020, C-924/19 (PPU) ***F.M.S. a.o.*** EU:C:2020:367
AG 23 Apr. 2020 EU:C:2020:294
* interpr. of Dir. 2013/32 Asylum Procedure II, all Art.
* joined cases: C-924/19 + C-925/19
* ref. from Szegedi Közigazgatási és Munkaügyi Bíróság (Hungary) 18 Dec. 2019
* *(...) 2. Art. 33 of Dir. 2013/32 must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the MS concerned via a State in which that person was not exposed to persecution or a risk of serious harm, within the meaning of the national provision transposing Art. 15 of Dir. 2011/95.*
3. Dir. 2013/32, read in conjunction with Art. 18 of the Charter and the principle of sincere cooperation arising under Art. (3) TEU must be interpreted as meaning that, when an application for asylum has been the subject of a rejection decision that was confirmed by a judicial decision that became final before the incompatibility of that rejection with EU law was found, the determining authority, within the meaning of Art. 2(f) of Dir. 2013/32, is not required to re-examine that application ex officio. Art. 33(2)(d) of Dir. 2013/32 must be interpreted as meaning that the existence of a judgment of the Court finding that national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the MS concerned via a State in which he or she was not exposed to persecution or to a risk of serious harm or in which a sufficient degree of protection is guaranteed is incompatible with EU law **constitutes a new element** *relating to the examination of an application for international protection, within the meaning of that provision. Furthermore, that provision is not applicable to a subsequent application, within the meaning of Art. 2(q) of that directive, where the determining authority finds that the definitive rejection of the earlier application is contrary to EU law. Such a finding must necessarily be made by that authority when that incompatibility arises from a judgment of the Court or was established, as an ancillary finding, by a national court.*
(...) 5. Art. 43 of Dir. 2013/32 must be interpreted as not authorising the detention of an applicant for international protection in a transit zone for a period of more than four weeks.
6. Art. 8 and 9 of Dir. 2013/33 must be interpreted as precluding, first, an applicant for international protection being detained on the sole ground that he or she is unable to provide for his or her needs; second, such detention taking place without a reasoned decision ordering the detention having first been adopted and without the necessity and proportionality of such a measure having been examined; and, third, there being no judicial review of the lawfulness of the administrative decision ordering the detention of that applicant. Conversely, Art. 9 of that directive must be interpreted as not requiring Member States to set a maximum period for continuing detention provided that their national law guarantees that the detention lasts only so long as the ground on which it was ordered continues to apply and that the administrative procedures linked with that ground are carried out diligently.
(...) 8. The principle of primacy of EU law and the right to effective judicial protection, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court, in the absence of a national provision providing for judicial review of the lawfulness of an administrative decision ordering the detention of applicants for international protection or of third-country nationals whose applications for asylum have been rejected, to declare that it has jurisdiction to rule on the lawfulness of such detention and permit that court to release the persons concerned immediately if it considers that such detention constitutes detention contrary to EU law.

☞ CJEU 27 Sep. 2018, C-422/18 (PPU) ***F.R.*** EU:C:2018:784
* interpr. of Dir. 2013/32 Asylum Procedure II, 22+46
* ref. from Tribunale di Milano (Italy) 28 June 2018
* *EU law, in particular the provisions of Directive 2013/32, read in the light of Article 47 of the Charter, must be interpreted as not precluding national legislation, which provides for an appeal procedure against a first-instance judgment confirming a decision of the competent administrative authority which rejects an application for international protection, without granting it automatic suspensory effect, but which allows the court which has handed down that judgment to order, upon application by the person concerned, the suspension of its enforcement, after having assessed whether or not the grounds raised in the appeal brought against that judgment are well founded but not whether or not there is a risk of serious and irreparable damage for that applicant as a result of the enforcement of that judgment.*

☞ CJEU 4 Oct. 2018, C-56/17 ***Fathi*** EU:C:2018:803
AG 25 July 2018 EU:C:2018:621
* interpr. of Dir. 2013/32 Asylum Procedure II, 46(3)
* see also § 1.3.1
* ref. from Administrativen sad Sofia-grad (Bulgaria) 3 Feb. 2017
* *Art 46(3) is to be interpreted as meaning that in the case of an appeal against the rejection of an application for international protection the court is not obliged to investigate ex-officio whether the Dublin criteria have been applied correctly.*

☞ CJEU 22 Sep. 2022, C-159/21 ***G.M. / Aliens Police (HU)*** EU:C:2022:708
AG 28 Apr. 2022 EU:C:2022:326
* interpr. of Dir. 2013/32 Asylum Procedure II, 11+12+23+45
* ref. from Fővárosi Törvényszélk (High Court) (Hungary)
* *(1) Art. 23(1) APD II must be interpreted as precluding national legislation which provides that, where a decision rejecting an application for international protection or withdrawing such protection is based on information the disclosure of which would jeopardise the national security of the MS in question, the person concerned or his or her legal adviser can access that information only after obtaining authorisation to that end, are not provided even with the substance of the grounds on which such decisions are based and cannot, in any event, use, for the purposes of administrative procedures or judicial proceedings, the information to which they may have had access.*
(2) Art. 4(1)+(2), Art. 10(2)+(3), Art. 11(2), and Art. 45(3) APD II must be interpreted as precluding national legislation under which the determining authority is systematically required, where bodies entrusted with specialist functions linked to national security have found, by way of a non-reasoned opinion, that a person constituted a danger to that security, to refuse to grant that person subsidiary protection, or to withdraw international protection previously granted to that person, on the basis of that opinion.
See also details under Qualification for Protection

☞ CJEU (GC) 19 June 2018, C-181/16 ***Gnandi*** EU:C:2018:465
AG 22 Feb. 2018 EU:C:2018:90
* interpr. of Dir. 2013/32 Asylum Procedure II, 46
* ref. from Conseil d'Etat (Belgium) 31 Mar. 2016
* *Member States are entitled to adopt a return decision as soon as an application for international protection is rejected, provided that the return procedure is suspended pending the outcome of an appeal against that rejection.*
Member States are required to provide an effective remedy against the decision rejecting the application for international protection, in accordance with the principle of equality of arms, which means, in particular, that all the effects of the return decision must be suspended during the period prescribed for lodging such an appeal and, if such an appeal is lodged, until resolution of the appeal.

☞ CJEU 31 Jan. 2013, C-175/11 ***H.I.D.*** EU:C:2013:45
AG 6 Sep. 2012 EU:C:2012:541
* interpr. of Dir. 2005/85 Asylum Procedure I, 23(3)+(4)+39
* ref. from High Court (Ireland) 13 Apr. 2011
* *1. Article 23(3) and (4) must be interpreted as not precluding a MS from examining by way of prioritised or accelerated procedure, in compliance with the basic principles and guarantees set out in Chapter II of the Directive, certain categories of asylum applications defined on the basis of the criterion of the nationality or country of origin of the applicant.*
2. Article 39 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows an applicant for asylum either to lodge an appeal against the decision of the determining authority before a court or tribunal such as the Refugee Appeals Tribunal (Ireland), and to bring an appeal against the decision of that tribunal before a higher court such as the High Court (Ireland), or to contest the validity of that determining authority's decision before the High Court, the judgments of which may be the subject of an appeal to the Supreme Court (Ireland).

☞ CJEU 13 Nov. 2019, C-540/17 ***Hamed***
* interpr. of Dir. 2013/32 Asylum Procedure II, 33(2)(a)
* joined cases: C-540/17 + C-541/17
* ref. from Bundesverwaltungsgericht (Germany) 15 Sep. 2017
* *Art. 33(2)(a) must be interpreted as precluding a MS from exercising the option under that provision to reject an application for international protection as being inadmissible on the ground that the applicant has already been granted refugee status by another MS where the living conditions which the applicant could be expected to encounter as a refugee in that other MS would expose him or her to a serious risk of suffering inhuman or degrading treatment within the meaning of Art. 4 of the Charter.*

☞ CJEU 25 May 2023, C-364/22 ***J.B. a.o.*** EU:C:2023:429
* interpr. of Dir. 2013/32 Asylum Procedure II, 33(2)(d)
* ref. from Verwaltungsgericht Minden (Germany) 7 June 2022
* *Art. 33(2)(d) must be interpreted as not precluding the rejection of a subsequent application for international protection as inadmissible irrespective of:*
(i) the fact that the applicant returned to his or her country of origin after his or her application for international protection was refused and before he or she made that subsequent application for international protection and
(ii) whether that return was voluntary or forced.
This Art. must also be interpreted as not precluding a MS from rejecting a subsequent application for international protection as inadmissible where the decision on the previous application did not concern the granting of subsidiary protection status, but was adopted following an examination of the existence of grounds prohibiting removal and that examination is comparable, in substance, to the examination carried out with a view to granting that status.

☞ CJEU 9 Sep. 2020, C-651/19 ***J.P.*** EU:C:2020:681

* interpr. of Dir. 2013/32 Asylum Procedure II, 46

* ref. from Conseil d'État (Belgium) 2 Sep. 2019

* *Art. 46 APD II read in the light of Art. 47 of the Charter, must be interpreted as not precluding legislation of a MS which provides that proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible are subject to a limitation period of 10 days, including public holidays, as from the date of service of such decision, even where, when the applicant concerned has not specified an address for service in that MS, that service is made at the head office of the national authority responsible for the examination of those applications, provided that:*
(i) those applicants are informed that, where they have not specified an address for service for the purposes of notification of the decision concerning their application, they will be deemed to have specified an address for service for those purposes at the head office of that national authority;
(ii) the conditions for access of those applicants to that head office do not render receipt by those applicants of the decisions concerning them excessively difficult,
(iii) genuine access to the procedural safeguards granted to applicants for international protection by EU law is ensured within such a period, and
(iv) the principle of equivalence is respected.
It is for the referring court to determine whether the national legislation at issue in the main proceedings meets those requirements.

☞ CJEU 19 Mar. 2020, C-564/18 ***L.H.*** EU:C:2020:218

AG 5 Dec. 2019 EU:C:2019:1056

* interpr. of Dir. 2013/32 Asylum Procedure II, 33+46(3)

* ref. from Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) 7 Sep. 2018

* *Art. 33 APD must be interpreted as precluding national legislation pursuant to which an application for international protection may be declared inadmissible when the applicant has entered the territory of the Member State concerned through a State where he is not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed.*
Art. 46(3) APD, in the light of Art. 47 Charter, must be interpreted as precluding national legislation which only allows for a period of eight days to rule on an appeal against a decision declaring an application for international protection inadmissible, since that court is not in a position to guarantee within such a period the effectiveness of the substantive and procedural guarantees which EU law grants to the applicant.

☞ CJEU 10 June 2021, C-921/19 ***L.H. / Staatssecretaris van Justitie en Veiligheid (NL)***

AG 11 Feb. 2021

* interpr. of Dir. 2013/32 Asylum Procedure II, 40(2)

* ref. from Rechtbank Den Haag (zp Den Bosch) (Netherlands) 16 Dec. 2019

* *Art. 40(2) APD II, read in conjunction with Art. 4(2) QD II, must be interpreted as precluding national legislation under which any document submitted by an applicant for international protection in support of a subsequent application is automatically considered not to constitute a 'new element or finding', within the meaning of that provision, when the authenticity of that document cannot be established or its source objectively verified.*
Art. 40 APD II, read in conjunction with Art. 4(1) and (2) of QD II, must be interpreted as meaning, first, that the assessment of the evidence submitted in support of an application for international protection cannot vary according to whether the application is a first application or a subsequent application and, second, that a Member State is required to cooperate with an applicant for the purpose of assessing the relevant elements of his or her subsequent application, when that applicant submits, in support of that application, documents the authenticity of which cannot be established.

☞ CJEU 20 May 2021, C-8/20 ***L.R.*** EU:C:2021:404

AG 18 Mar. 2021 EU:C:2021:221

* interpr. of Dir. 2013/32 Asylum Procedure II, 33(2)(d)+33(2)(q)

* ref. from Schleswig-Holsteinisches Verwaltungsgericht (Germany) 9 Jan. 2020

* *Art. 33(2)(d) APD II read in conjunction with Art. 2(q) thereof, must be interpreted as precluding legislation of a MS which provides for the possibility of rejecting as inadmissible an application for international protection, within the meaning of Art. 2(b) of that directive, made to that MS by a third-country national or a stateless person whose previous application seeking the grant of refugee status, made to a third State implementing Dublin III (in accordance with the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway), had been rejected by that third State.*

☞ CJEU 30 June 2022, C-72/22 (PPU) ***M.A.*** EU:C:2022:505

AG 2 June 2022 EU:C:2022:431

* interpr. of Dir. 2013/32 Asylum Procedure II, 6+7(1)

* ref. from Lietuvos vyriausiasis administracinis teismas (Lithuania) 2 Feb. 2022

* *Art. 6+7(1) must be interpreted as precluding the rules of a MS according to which, in the event of a declaration of a state of war or a state of emergency or in the event of the proclamation of an emergency situation due to a massive influx of foreigners, third-country nationals who are staying illegally are effectively deprived of the possibility of having access, in the territory of that Member State, to to the procedure for examining an application for international protection.*
Art. 8 must be interpreted as meaning that it precludes the legislation of a MS according to which, in the event of a declaration of a state of war or a state of emergency or in the event of proclamation of an emergency situation due to a massive influx of foreigners, an asylum seeker may be placed in detention on the sole ground that he is illegally residing in the territory of that Member State.

☞ CJEU 10 Dec. 2020, C-616/19 — ***M.S. a.o. / Justice (IE)*** — EU:C:2020:1010
AG 3 Sep. 2020 — EU:C:2020:648
* interpr. of Dir. 2005/85 — Asylum Procedure I, 25(2)
* ref. from High Court (Ireland) 16 Aug. 2019
* *Art. 25(2) of Dir. 2005/85 (AP I) must be interpreted as not precluding legislation of a MS which is subject to Reg. 604/2013 (Dublin III), but which is not bound by Dir. 2013/32 (AP II), in accordance with which an application for international protection is considered to be inadmissible where the applicant benefits from subsidiary protection status in another Member State.*

☞ CJEU 19 Mar. 2020, C-406/18 — ***P.G.*** — EU:C:2020:216
AG 5 Dec. 2019 — EU:C:2019:1055
* interpr. of Dir. 2013/32 — Asylum Procedure II, 46(3)
* ref. from Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) 20 June 2018
* *Art 46(3) APD in the light of Article 47 Charter must be interpreted as meaning that it does not preclude a national provision under which judges have exclusive jurisdiction to annul but not to amend decisions of the competent authorities in the field of international protection. However, if the case is referred back to the competent administrative authority, a new decision should be taken within a short period of time consistent with the assessment made in the judgment annulling the first decision. If, after a full and ex-nunc examination, a national court has decided that international protection must be granted to the applicant, but the administrative authority subsequently takes a different decision without establishing any new elements which would justify a re-evaluation of the need for international protection of the applicant, that court must, if according to national law he does not have any means by which he can ensure that his decision is complied with, annul that decision which does not correspond to his previous judgment and substitute it with his own judgment on the application for international protection in that regard, setting aside, if necessary, the national provision prohibiting him from doing so.*
Art. 46(3) APD must also be interpreted as not precluding national legislation granting a period of sixty days to the court to decide an appeal against a decision rejecting an application for international protection, provided that that court is able to ensure, within that period, the effectiveness of the substantive rules and of the procedural guarantees granted.

New ☞ CJEU (GC) 18 June 2024, C-753/22 — ***Q.Y.*** — EU:C:2024:524
AG 25 Jan. 2024 — EU:C:2024:82
* interpr. of Dir. 2013/32 — Asylum Procedure II, 33(2)(a)
* ref. from Bundesverwaltungsgericht (Germany) 12 Dec. 2022
* *Art. 3(1) APD II must be interpreted as meaning that where the competent authority of a MS cannot exercise the option available to it under the last of those provisions to reject as inadmissible an application for international protection made by an applicant, to which another MS has already granted such protection, on account of a serious risk that that applicant will be subjected, in that other MS, to inhuman or degrading treatment, within the meaning of art. 4 of the Charter, that authority must carry out a new, individual, full and up-to-date examination of that application in a new international protection procedure conducted in accordance with Directives 2011/95 and 2013/32. Within the framework of that examination, that authority must nevertheless take full account of the decision of that other MS to grant international protection to that applicant and of the elements on which that decision is based.*

☞ CJEU (GC) 1 Aug. 2022, C-720/20 — ***R.O.*** — EU:C:2022:603
AG 24 Mar. 2022 — EU:C:2022:199
* interpr. of Dir. 2013/32 — Asylum Procedure II, 33(2)(a)
* see also under § 3.3
* ref. from Verwaltungsgericht Cottbus (Germany) 14 Dec. 2020
* *Art. 33(2)(a) APD II must be interpreted as meaning that it does not apply by analogy to an application for international protection lodged by a minor in a MS where it is not that minor himself or herself, but his or her parents, who are beneficiaries of international protection in another MS.*

☞ CJEU 22 Sep. 2022, C-497/21 — ***S.I. & T.L.*** — EU:C:2022:721
* interpr. of Dir. 2013/32 — Asylum Procedure II, 33(2)(d)+2(q)
* ref. from Verwaltungsgericht Schleswig-Holstein (Germany) 13 Aug. 2021
* *Art. 33(2)(d) APD II, read in conjunction with Art. 2(q) thereof must be interpreted as precluding legislation of a MS other than the Kingdom of Denmark which provides for the possibility of rejecting as inadmissible, in whole or in part, an application for international protection within the meaning of Art. 2(b) of that directive, which has been made to that MS by a national of a third country or a stateless person whose previous application for international protection, made to the Kingdom of Denmark, has been rejected by the latter MS.*

New ☞ CJEU 11 June 2024, C-563/22 — ***S.N. & L.N.*** — EU:C:2024:494
AG 11 Jan. 2024 — EU:C:2024:33
* interpr. of Dir. 2013/32 — Asylum Procedure II, 40(1)
* ref. from Administrativen sad Sofia-grad (Bulgaria) 22 Aug. 2022
* *Art. 40 APD II must be interpreted as meaning that the authority ruling on the merits of a subsequent application for international protection is required to examine the factual elements submitted in support of that application, including when those facts have already been assessed by the authority which definitively rejected a first application for international protection.*
See also § 1 on Qualification.

☞ CJEU 26 July 2017, C-348/16 ***Sacko*** EU:C:2017:591
AG 6 Apr. 2017 EU:C:2017:288
* interpr. of Dir. 2013/32 Asylum Procedure II, 12+14+31+46
* ref. from Tribunale di Milano (Italy) 22 June 2016
* *The Asylum Procedures Directive must be interpreted as not precluding the national court or tribunal hearing an appeal against a decision rejecting a manifestly unfounded application for international protection from dismissing the appeal without hearing the applicant where the factual circumstances leave no doubt as to whether that decision was well founded, on condition that, first, during the proceedings at first instance, the applicant was given the opportunity of a personal interview on his or her application for international protection, in accordance with Article 14 of the directive, and the report or transcript of the interview, if an interview was conducted, was placed on the case-file, in accordance with Article 17(2) of the directive, and, second, the court hearing the appeal may order that a hearing be conducted if it considers it necessary for the purpose of ensuring that there is a full and ex nunc examination of both facts and points of law, as required under Article 46(3) of the directive.*

☞ CJEU 28 July 2011, C-69/10 ***Samba Diouf*** EU:C:2011:524
AG 1 Mar. 2011 EU:C:2011:102
* interpr. of Dir. 2005/85 Asylum Procedure I, 39
* ref. from Tribunal Administratif (Luxembourg) 5 Feb. 2010
* *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 11 Feb. 2021, C-755/19 ***T.H.C.*** EU:C:2021:143
* interpr. of Dir. 2013/32 Asylum Procedure II, 46
* ref. from Conseil d'État (Belgium) 15 Oct. 2019
* *Art. 46, read read in conjunction with Art. 47 of the Charter, must be interpreted as meaning that it does not preclude national regulations submitting an appeal against a decision of inadmissibility of a subsequent request. of international protection to a five-day foreclosure period, including public holidays, when the applicant concerned is placed in detention, provided, on the one hand, that the principle of equivalence is respected and, on the other hand, that the effective access of applicants placed in detention to the procedural guarantees granted to applicants for international protection by Union law be ensured within such a period.*

☞ CJEU 17 Dec. 2015, C-239/14 ***Tall*** EU:C:2015:824
AG 3 Sep. 2015 EU:C:2015t:531
* interpr. of Dir. 2005/85 Asylum Procedure I, 39
* ref. from Tribunal du Travail de Liège (Belgium) 14 May 2014
* *Art. 39 of Directive 2005/85/EC, read in the light of Art. 19(2) and 47 of the Charter of Fundamental Rights, must be interpreted as not precluding national legislation which does not confer suspensory effect on an appeal brought against a decision, such as the one at issue in the main proceedings, not to further examine a subsequent application for asylum.*

☞ CJEU (GC) 29 July 2019, C-556/17 ***Torubarov*** EU:C:2019:626
AG 30 Apr. 2019 EU:C:2019:339
* interpr. of Dir. 2013/32 Asylum Procedure II, 46(3)
* ref. from Pécsi Közigazgatási és Munkaügyi Bíróság (Hungary) 22 Sep. 2017
* *Art. 46(3) of APD II must be interpreted as meaning that, where a first-instance court or tribunal has found — after making a full and ex nunc examination of all the relevant elements of fact and law submitted by an applicant for international protection — that, under the criteria laid down by Qualification Directive II (2011/95), that applicant must be granted such protection on the ground that he or she relied on in support of his or her application, but after which the administrative or quasi-judicial body adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, that court or tribunal must vary that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, disapplying as necessary the national law that would prohibit it from proceeding in that way. In September 2019 Torubarov was granted refugee status by the Court of Pécs.*

☞ CJEU 25 June 2020, C-36/20 (PPU) ***V.L.*** EU:C:2020:495
AG 30 Apr. 2020 EU:C:2020:331
* interpr. of Dir. 2013/32 Asylum Procedure II, 6
* ref. from Court of Prelim. Inv. of San Bartolomé de Tirajana (Spain) 20 Jan. 2020
* *The second subparagraph of Art. 6(1) APD II must be interpreted as meaning that examining magistrates called upon to adjudicate on the detention of a TCN without a legal right of residence with a view to that person's refoulement are among the 'other authorities' referred to in that provision, which are likely to receive applications for international protection but are not competent, under national law, to register such applications.*
The second and third subparagraphs of Art. 6(1) APD II must be interpreted as meaning that examining magistrates, as 'other authorities' within the meaning of that provision, must, first, inform TCNs without a legal right of residence of the procedure for lodging an application for international protection and, second, where a TCN has expressed his or her wish to make such an application, send the file to the competent authority for the purposes of registering that application, in order that that TCN may benefit from the material reception conditions and health care provided for in Art. 17 APD II.
Art. 26 and 8 APD II must be interpreted as meaning that a TCN without a legal right of residence who has expressed his or her wish to apply for international protection before 'other authorities', within the meaning of the second subparagraph of APD II, cannot be detained on grounds other than those laid down in Art. 8(3) APD II.

☞ CJEU 6 Sep. 2023, T-600/21 ***W.S. / Frontex*** EU:C:2023:492
* interpr. of Dir. 2013/32 Asylum Procedure II, 2(f)+4+6+8+31
* *The case concerns a number of Syrians who wanted to apply for asylum on the island Milos (in Greece). However, after their registration by the Greek authorities, they were put on a plane to Turkey. Since the flight to Turkey was a so-called joint operation by Greece and Frontex, the applicants sued Frontex. The question for the General Court to answer was whether Frontex was liable for the damages caused by this expulsion of asylum seekers. In short, the General Court reasoned that the decision on the asylum claim is not a responsibility of Frontex but of the MS involved, i.e. Greece. As a result, Greece should be held accountable and not Frontex, which role was only to provide technical support. Thus, the case was dismissed by the General Court.*
The main error in the judgment of the General Court is that it confuses liability with causation. Frontex and Greece both caused the harm by the expulsion. Whether one of them, or both are liable for the damage is a different question. The General Court, however, assumed, wrongly (par. 66), that Frontex could not have caused the damage because it had no competence. Apart from the fact that Frontex can be held liable for all kinds of behaviour, as is mentioned in several articles in the Frontex Regulation (I and II), there is no general rule which excludes liability if there is another party involved. It is exactly the other way around: both parties (i.e. Greece and Frontex) can both be held wholly liable and there is no mandatory rule that prescribes which of these parties should be sued first. I would like to refer to the thorough analysis at <europeanlawblog.eu> by Gareth Davies, professor of European Law at Vrije Universiteit in Amsterdam. He concludes that the General Court's reasoning is wrong and that "The Court of Justice must now sort out this mess on appeal".

☞ CJEU 26 Sep. 2018, C-175/17 ***X.*** EU:C:2018:776
AG 24 Jan. 2018 EU:C:2018:34
* interpr. of Dir. 2013/32 Asylum Procedure II, 9
* ref. from Raad van State (Netherlands) 6 Apr. 2017
* *Appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.*

☞ CJEU 29 June 2023, C-756/21 ***X. / IPAT (IE)*** EU:C:2023:523
AG 16 Feb. 2023 EU:C:2023:121
* interpr. of Dir. 2005/85 Asylum Procedure I, 23(2)+39(4)
* ref. from High Court (Ireland) 9 Dec. 2021
* *Art. 23(2) and 39(4) must be interpreted as meaning that:*
(a) the periods which have elapsed between, on the one hand, the lodging of the application for asylum and, on the other, the adoption of the decisions of the determining authority and of the competent court or tribunal of first instance, cannot be justified by national legislative amendments made during those periods, and
(b) the unreasonableness of one of those periods cannot, by itself and in the absence of any evidence that the excessive duration of the administrative or judicial proceedings affected the outcome of the dispute, justify setting aside the decision of the competent court or tribunal of first instance.
See also § 1 on Qualification.

☞ CJEU 26 Sep. 2018, C-180/17 ***X. & Y.*** EU:C:2018:775
AG 24 Jan. 2018 EU:C:2018:34
* interpr. of Dir. 2013/32 Asylum Procedure II, 46
* ref. from Raad van State (Netherlands) 7 Apr. 2017
* *Appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.*

☞ CJEU (GC) 22 Feb. 2022, C-483/20 ***X.X.X.*** EU:C:2022:103
AG 30 Sep. 2021 EU:C:2021:780
* interpr. of Dir. 2013/32 Asylum Procedure II, 33(2)
* ref. from Conseil d'État (Belgium) 30 June 2020
* *Art. 33(2)(a) APD II, must be interpreted as not precluding a MS from exercising the option available to it under that provision to refuse to grant an application for international protection on the ground that it is inadmissible because the applicant has already been granted refugee status by another MS, where that applicant is the father of a child who is an unaccompanied minor who has been granted subsidiary protection in the first Member State, without prejudice, nevertheless, to the application of Art. 23(2) QD II on family unity..*

☞ CJEU 9 Sep. 2021, C-18/20 ***X.Y. / Bundesambt (AT)*** EU:C:2021:710
* interpr. of Dir. 2013/32 Asylum Procedure II, 40(2)+40(3)
* ref. from Verwaltungsgerichtshof (Austria) 18 Dec. 2019
* *(1) Art. 40(2) and (3) must be interpreted as meaning that the concept of 'new elements or findings which have arisen or have been submitted by the applicant', within the meaning of that provision, includes elements or findings which have arisen after the definitive termination of the procedure related to the previous application for international protection, as well as elements or findings that existed before the termination of the procedure but which the applicant has not invoked.*
(2) Art. 40(3) must be interpreted as meaning that the examination of the substance of a subsequent application for international protection may take place in the context of the reopening of the procedure relating to the first application, provided that the rules laid down for such reopening are in accordance with Chapter II of Directive 2013/32 and the submission of that request is not made subject to the observance of time limits.
(3) Art. 40(4) must be interpreted as meaning that a MS which has not adopted specific acts transposing that provision may not refuse to review the substance of a subsequent application under the generally applicable rules of national administrative law, where the new elements or findings relied on in support of that request already existed during the proceeding related to the previous request and were not submitted in that proceeding through the applicant's own fault.

2.3.2 CJEU pending cases on Asylum Procedure

☞ CJEU C-610/23 ***Al Nasiria***
* interpr. of Dir. 2013/32 Asylum Procedure II, 32
* ref. from Dioikitiko Protodikeio Thessalonikis (Greece) 30 June 2023
* *On the issue whether Greek procedural rules are compatible with Union law. Greek domestic law allows to reject an application for international protection as manifestly unfounded if the applicant does not appear in person at the hearing of the appeal. However, Art. 32 APD II prescribes that an application must be examined on its merits, which is not possible if the applicant does not appear in person.*

☞ CJEU C-406/22 ***C.V.***
AG 30 May 2024 EU:C:2024:442
* interpr. of Dir. 2013/32 Asylum Procedure II, 37(1)
* ref. from Krajský soud v Brně (Czechia)
* *The AG concludes that art. 37(1) must be interpreted as meaning that the fact that a third country, designated as a safe country of origin within the meaning of the provisions referred to above, has invoked art. 15 ECHR does not automatically prevent its continued designation as a safe country of origin. However, such an invocation must be taken into account by the competent authorities for the purposes of deciding whether the designation as a safe country of origin can be maintained, in the light of, in particular, the scope of the measures derogating from the obligations under the ECHR as defined in the notice submitted under art. 15 ECHR and its implementation in practice.*

New ☞ CJEU C-50/24 ***Danane a.o.***
* interpr. of Dir. 2013/32 Asylum Procedure II, 31+43
* joined cases: C-50/24 + C-51/24, C-52/24, C-53/24, C-54/24
* ref. from Conseil du contentieux () 26 Jan. 2024
* *On border procedure.*

New ☞ CJEU C-134/23 ***Elliniko Symvoulio***
AG 13 June 2024 EU:C:2024:494
* interpr. of Dir. 2013/32 Asylum Procedure II, 38
* *On the meaning of the concept of a safe third country. The AG concludes that it does not preclude national legislation designating a third country as generally safe for certain categories of applicants for international protection where, notwithstanding its legal obligation, that country has generally suspended the admission or readmission of those applicants and there is no foreseeable prospect of a change in that position.*
However, it precludes national legislation providing for the adoption of a decision that an application for international protection is inadmissible pursuant to the concept of 'safe third country' where, from the time when the application is examined, the Member State is certain that the third country concerned will not permit the applicant to enter its territory.

☞ CJEU C-662/23 — ***Izmir***
* interpr. of Dir. 2013/32 — Asylum Procedure II, 31(3)(b)
* ref. from Raad van State (Netherlands) 9 Nov. 2023
* *On the extension of the time limit of 6 months.*

☞ CJEU C-656/23 — ***Karaman***
* interpr. of Dir. 2013/32 — Asylum Procedure II, 6
* ref. from Rechtbank Den Haag (zp Haarlem) () 7 Nov. 2023
* *On the starting date of a residence permit.*

New ☞ CJEU C-431/24 — ***Multan***
* interpr. of Dir. 2013/32 — Asylum Procedure II, 23(1)
* ref. from Rechtbank Den Haag (zp Roermond) (Netherlands) 20 June 2024
* *On limited access by the judge of confidential information.*

New ☞ CJEU C-388/24 — ***Oguta***
* interpr. of Dir. 2013/32 — Asylum Procedure II, 31
* joined cases: C-388/24 + C-389/24
* *On border procedure*

2.3.3 ECtHR Judgments on Torture and Degrading Treatment (Art. 3)

☞ ECtHR 5 Apr. 2022, 55798/16 — ***A.A. v MK*** — CE:ECHR:2022:0405JUD005579816
* no violation of — ECHR, Prot. 4 Art. 4
* *The case concerns the applicants' allegation of a pushback to Greece by the police and army after they illegally crossed into the territory of North Macedonia, against the background of the migrant crisis in 2016. They were part of two large groups of refugees who had left a camp in the border town of Idomeni, Greece, on 14 March 2016 to join what became known as "the March of Hope", wading across a river to enter the territory of North Macedonia. Relying on Art. 4 of Protocol No. 4 (prohibition of collective expulsion) and Art. 13 (right to an effective remedy) of the ECHR, the applicants complain of their collective deportation (pushbacks), without an individual assessment of their cases or opportunity to oppose it.*
Important is the consideration of the ECtHR (123) that: "it was in fact the applicants who placed themselves in jeopardy by participating in the illegal entry onto Macedonian territory. (...) They did not make use of the existing legal procedures for gaining lawful entry to Macedonian territory in accordance with the provisions of the relevant domestic law concerning the crossing of borders (...). Consequently, in accordance with its settled case-law, the Court considers that the lack of individual removal decisions can be attributed to the fact that the applicants, if they indeed wished to assert rights under the Convention, did not make use of the official entry procedures existing for that purpose, and was thus a consequence of their own conduct.

☞ ECtHR 30 June 2022, 42907/17 — ***A.B. a.o. v PL*** — CE:ECHR:2022:0630JUD004290717
* violation of — ECHR, 3+13+Prot. 4 Art. 4
* joined cases: 42907/17 + 39028/17
* *These cases are about the push back of asylum seekers at the Belarus-Polish border. The ECtHR declares unanimously a violation of Art. 3 because of the refusal of border guards to receive asylum applications, exposes the applicants to a risk of chain-refoulement to theri country of origin and inhuman and degrading treatment and torture. The ECtHR has already found in similar circumstances that the decisions to refuse applicants entry into Poland issued at the border checkpoints constituted an "expulsion" within the meaning of Art. 4 Prot. 4. In addition, the ECtHR has already held that an appeal against a refusal of entry and a further appeal to the administrative courts were not effective remedies within the meaning of the Convention because they did not have automatic suspensive effect.*
Finally, the Court notes that, despite the indication of an interim measure, the applicants were turned away from the checkpoint not only on the day on which the measure was indicated but also on another occasion, on 19 June 2017. It should be noted that on that occasion the applicants were carrying with them a copy of a letter informing them of the indication of an interim measure in respect of their case.
Subsequently, Poland has failed to discharge its obligations under Article 34 of the Convention.

☞ ECtHR 22 Apr. 2014, 6528/11 ***A.C. a.o. v ES*** CE:ECHR:2014:0422JUD000652811

* violation of ECHR, 13

* *The applicants were 30 asylum seekers of Sahrawi origin, claiming that their return to Morocco would expose them to the risk of inhuman and degrading treatment in reprisal of their participation in the Gdeim Izik camp in Western Sahara which they had fled upon its dismantling by Moroccan police.*
The applicants had applied for judicial review of the rejection by the Spanish Ministry of the Interior of their applications for international protection. As they had applied for the stay of execution of the orders for their deportation, the court (Audiencia Nacional) had provisionally suspended the removal procedure for the first 13 applicants, and the following day rejected the applications for stay of execution. Likewise, the decisions to reject the applications for stay of execution of the other 17 applicants' deportation orders had been adopted very shortly after the provisional suspension. The appeals on the merits of the asylum applications were still pending before the Spanish courts.
The ECtHR reiterated its previous considerations of the necessity of automatic suspension of the removal in order for appeals to comply with the requirement of effectiveness of the remedy under art. 13 in cases pertaining to Arts. 2 or 3. Even while recognising that accelerated procedures may facilitate the processing of asylum applications in certain circumstances, the Court held that in this case rapidity should not be achieved at the expense of the effective procedural guarantees protecting the applicants against refoulement to Morocco. As the applicants had not had the opportunity to provide any further explanations on their cases, and their applications for asylum did not in themselves have suspensive effect, the Court found a violation of Art. 13 taken together with Arts. 2 and 3. According to Art. 46 ECHR the Court stated that Spain was to guarantee, legally and materially, that the applicants would remain within its territory pending a final decision on their asylum applications.

☞ ECtHR 15 Mar. 2018, 39034/12 ***A.E.A. v GR*** CE:ECHR:2018:0315JUD003903412

* violation of ECHR, 3+13

* *Violation of ECHR art. 13 in conjunction with art. 3, due to deficiencies in the Greek system for examining asylum applications. The applicant was a Sudanese national who had been issued with an automatic expulsion order on his arrival in Greece in 2009. He had been prevented from having access to the asylum procedure until 2012.*
No violation of art. 3 on account of the applicant's living conditions, primarily because he had not requested accommodation or material or financial assistance upon submission of his asylum application.

☞ ECtHR 5 July 2016, 29094/09 ***A.M. v NL*** CE:ECHR:2016:0705JUD002909409

* no violation of ECHR, 13

* *No violation of art. 13 in conjunction with art. 3 due to the absence of a second level of appeals with suspensive effect in asylum cases. No violation of ECHR art. 3 in case of deportation to Afghanistan.*
The Court reiterated that where a complaint concerns risk of treatment contrary to art. 3, the effectiveness of the remedy for the purposes of art. 13 requires imperatively that the complaint be subject to independent and rigorous scrutiny by a national authority and that this remedy has automatic suspensive effect. Therefore, the requirements of art. 13 must take the form of a guarantee and not of a mere statement of intent or a practical arrangement. Since appeal to the Regional Court in the Netherlands has automatic suspensive effect, and given the powers of this appeal court in asylum cases, a remedy complying with these requirements had been at the applicant's disposal.
The same requirements apply when considering the question of effectiveness in the context of exhaustion of domestic remedies under art. 35(1). A further appeal to the Administrative Jurisdiction Division could therefore not be regarded as an effective remedy that must be exhausted for the purposes of art. 35(1). At the same time, however, art. 13 does not compel States to set up a second level of appeal when the first level of appeal is in compliance with the above mentioned requirements. Thus, art. 13 had not been violated.

☞ ECtHR 22 Sep. 2009, 30471/08 ***Abdolkhani v TR*** CE:ECHR:2009:0922JUD003047108

* violation of ECHR, 13

* *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 31 May 2018, 46454/11 ***Abu Zubaydah v LT*** CE:ECHR:2018:0531JUD004645411

* violation of ECHR, 3

* joined cases: 46454/11 + 33234/12

* *Violation of arts. 2, 3, 5, 6, 8 and 13 as well as Protocol no. 6 in connection with the respondent states' involvement in CIA secret detainee programme. The applicants had been kept in secret detention in Lithuania and Romania, respectively, as 'high-value detainees' under the CIA 'war on terror', subsequent to periods of incommunicado detention in Poland and other countries hosting CIA detention facilities (see: Abu Zubaydah v. Poland, 24 July 2014, 7511/13, and Al Nashiri v. Poland, 24 July 2014, 28761/11). They are now being held in the US internment facility at Guantánamo Bay Naval Base.*

☞ ECtHR 2 Feb. 2023, 59435/17 ***Alhowais v HU*** CE:ECHR:2023:0202JUD005943517

* violation of ECHR, 3+2

* *Violation of Arts. 2 and 3 (procedural) due to the lack of an effective investigation into Hungarian border guards' alleged forcible return (push-back) of the applicant and other individuals to Serbia when they had crossed a border river in their attempt to enter Hungary. Violation of ECHR art. 2 (in its substantive aspect) due to the Hungarian authorities' failure to discharge their positive obligation to protect life, resulting in the applicant's brother drowning in the border river.*
No substantive violation of ECHR art. 3 due to insufficient evidence of alleged use of physical force by police officers against the applicant.

☞ ECtHR 16 Jan. 2024, 3566/16 ***Alkhatib a.o. v GR*** CE:ECHR:2024:0116JUD000356616

* violation of ECHR, 2

* *Violation of art. 2 under both the procedural and the substantive aspect due to the Greek coastguard's firing shots against a motorboat transporting persons irregularly towards Greece, thereby seriously injuring two Syrian nationals among whom one later died. The ECtHR found numerous shortcomings in the Greek authorities' investigation into the incident, and further found the coastguard to have used excessive force in the context of unclear regulations on the use of firearms.*

☞ ECtHR 5 June 2018, 16026/12 ***Amerkhanov v TR*** CE:ECHR:2018:0605JUD001602612

* violation of ECHR, 3

* joined cases: 16026/12 + 69929/12

* *Violation of arts. 3, 5 and 13. The applicants were Kazakhstani nationals who had been deported from Turkey upon rejection of their asylum applications. While the former had been considered a security risk in Turkey, the Kazakh authorities had requested the extradition of the latter on terrorism-related charges.*
The Court held that both deportations had been in violation of art. 3 due to the absence of an adequate examination by the Turkish authorities of the claims that the applicants would face a real risk of treatment contrary to art. 3 if deported to Kazakhstan. Against the background of the failure to fulfill the procedural obligations under art. 3, the Court deemed it unnecessary to examine the complaints under art. 13 concerning the deportation.
Art. 3 had also been violated on account of the conditions of the applicants' detention at the Kumkapi Foreigners' Removal Centre, and art. 13 was violated due to the absence of effective remedies in this regard.

☞ ECtHR 24 Mar. 2020, 24917/15 ***Asady a.o. v SK*** CE:ECHR:2020:0324JUD002491715

* no violation of ECHR, Prot. 4 Art. 4

* referral to Grand Chamber rejected on 12 Oct. 2020

* *The case concerned the expulsion of 19 applicants to Ukraine by the Slovakian police. The applicants were found hidden in a truck by the Slovak Border. The Court examined the complaints of only seven of the applicants, striking the case out of its list in respect of the others. It found in particular that despite short interviews at the police station, they had been given a genuine possibility to draw the authorities' attention to any issue which could have affected their status and entitled them to remain in Slovakia. Their removal had not been carried out without any examination of their individual circumstances.*

☞ ECtHR 17 Nov. 2020, 43987/16 ***B. & C. v CH*** CE:ECHR:2020:1117JUD004398716

* violation of ECHR, 3

* joined cases: 43987/16 + 889/19

* *The applicants are Gambian and Swiss nationals, respectively. They were in a registered same-sex partnership. The first applicant has been living in Switzerland since 2008. He was refused asylum and, subsequently, a residence permit on grounds of his registered partnership, and was ordered to leave the country. The applicants appealed unsuccessfully. The second applicant died in 2019. The Court concludes unanimously that deportation without a fresh assessment of risks would constitute a violation.*

☞ ECtHR 13 Oct. 2016, 11981/15 ***B.A.C. v GR*** CE:ECHR:2016:1013JUD001198115

* violation of ECHR, 3

* art. 8+13

* *The case concerned a Turkish Kurdish asylum-seeker waiting for a decision from the authorities since 2002. The Court found in particular that the failure by the authorities to determine the applicant's asylum application for a period of more than 14 years without any justification had breached the positive obligations inherent in his right to respect for his private life (Art. 8). Furthermore, while waiting for a decision on his asylum application, the applicant's legal status remained uncertain, thus putting him in danger of being returned to Turkey, where there was a substantial risk that he might be subjected to treatment breaching Art. 3 of the Convention.*

☞ ECtHR 21 Mar. 2024, 14820/19 ***B.S. v TR*** CE:ECHR:2024:0321JUD001482019

* violation of ECHR, 2+3

* *Violation if the applicant asylum seeker were to be returned to Iran without an ex nunc assessment by the Turkish authorities of her alleged religious conversion and the consequences arising therefrom. The Turkish authorities were considered not to have assessed whether the applicant had sufficiently demonstrated that removal to Iran in the context of her conversion merited assessment, nor had they carried out rigorous scrutiny of her argument that she would face risk of ill-treatment.*

☞ ECtHR 26 Jan. 2023, 60990/14 ***B.Y. v GR*** CE:ECHR:2023:0126JUD006099014

* violation of ECHR, 3

* *Ineffective investigation (violation Art. 3 procedural) into the applicant Turkish national's complaints over being ill-treated by the Greek authorities and over his inability to lodge an asylum application to the Greek authorities before being removed to Turkey. No violation of art. 3 (treatment) due to his alleged ill-treatment by the Greek authorities; and no violation of Art. 5(1).*

☞ ECtHR 8 Nov. 2005, 13284/04 ***Bader v SE*** CE:ECHR:2005:1108JUD001328404

* violation of ECHR, 3

* *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 Art 2 and 3.*

☞ ECtHR 19 Feb. 1998, 25894/94 ***Bahaddar v NL*** CE:ECHR:1998:0219JUD002589494

* no violation of ECHR, 3

* *Although prohibition of ill-treatment contained in Art 3 of Convention is also absolute in expulsion cases, applicants invoking this Art 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.

☞ ECtHR 10 July 2018, 47232/17 ***Basra v BE*** CE:ECHR:2018:0710JUD004723217

* deleted ECHR, 3

* *An asylum seeker's appeal had been dismissed by the Belgian Council for Alien Law Litigation due to inadmissibility of evidence he had provided relating to this affiliation with the Ahmadiyya community in Pakistan. The Belgian government made a unilateral declaration to the Court guaranteeing that the authorities would examine his new asylum application with a view to redress of the apparent lack of effective remedy. Although this declaration did not clearly recognise a violation of ECHR art. 13, the Court found no reason to doubt its serious and mandatory nature. As there was no longer any risk of expulsion of the applicant on the basis of the contested appeals decision, the Court did not find it justified to pursue the examination of the case. Subsequently, the application was struck out of the list of cases.*

☞ ECtHR 24 Feb. 2009, 246/07 ***Ben Khemais v IT*** CE:ECHR:2009:0224JUD000024607

* violation of ECHR, 3

* *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 7 Sep. 2023, 37726/21 ***Compaoré v FR*** CE:ECHR:2023:0907JUD003772621

* violation of ECHR, 3

* *The case concerned the extradition of the applicant to Burkina Faso, where he faced criminal prosecution for "incitement to murder" an investigative journalist and the three men accompanying him. The applicant is the brother of Mr Blaise Compaoré and was one of his close advisers when his brother held the office of President of the Republic of Burkina Faso between 1991 and 2014, when he was forced to resign as a result of a popular uprising. The ECtHR found that since, at the time of the present ruling, the domestic authorities had failed to take account of the new political and constitutional context in the State requesting extradition, and in particular to consider whether the assurances on which the decisions to grant extradition had been based remained binding on the Burkinabè State, it was not satisfied that the risk alleged by the applicant of being subjected to treatment contrary to Art. 3 had been ruled out in the extradition proceedings at present. This was true with regard both to the risk that the applicant might not be detained in the ward of Ouagadougou Prison reserved for public figures and to the risk that he might be sentenced to life imprisonment in Burkina Faso without any possibility of release.*

☞ ECtHR 5 Feb. 2002, 51564/99 ***Conka v BE*** CE:ECHR:2002:0205JUD005156499

* violation of ECHR, 13

* *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 20 July 2021, 29447/17 ***D. v BG*** CE:ECHR:2021:0720JUD002944717

* violation of ECHR, 3+13

* *Expulsion of a Turkish journalist who had expressed his fear of ill-treatment in the context of the coup d'état to the border police, without prior assessment of the risks incurred by him by the Bulgarian authorities.*

☞ ECtHR 8 July 2021, 51246/17 ***D.A. v PL*** CE:ECHR:2021:0708JUD005124617

* violation of ECHR, 3+Prot. 4 Art. 4

* *The case concerns pushbacks of Syrian nationals at the Polish-Belarusian border. The Polish authorities had repeatedly denied them the possibility of lodging applications for international protection, in breach of Art. 3 of the Convention. Their situation had not been reviewed individually in Poland. The applicants complained that they would suffer inhuman and degrading treatment when sent back to Belarus and, subsequently, to Syria; and secondly, they complained about the treatment of the applicants by the Polish authorities during the so-called "second-line" border-control procedure. The statements made at the border were bluntly disregarded and they were denied the procedure to which they were entitled by law.*
The Court holds unanimously that there has been a violation of Art. 3 on account of the applicants being denied access to the asylum procedure and exposed to a risk of inhuman and degrading treatment and torture in Syria.
The Court also points out that it has already established in ECtHR 23 July 2020, 40503/17, M.K. a.o. v. Poland, that the decisions of refusal of entry issued at the Polish-Belarusian border checkpoint in Terespol, and the return of foreigners from this border checkpoint to Belarus, constituted "expulsion" within the meaning of Art. 4 of Prot. 4. It has also determined that at the relevant time in Poland there was a wider state policy of refusing entry to foreigners coming from Belarus, regardless of whether they were clearly economic migrants or whether they expressed a fear of persecution in their countries of origin, supported by the statement of governmental officials and substantiated by a number of independent reports.
With regard to the present case, the Court notes the Government's argument that each time the applicants presented themselves at the Polish border they had been interviewed by the officers of the Border Guard and received individual decisions concerning the refusal to allow them entry into Poland. However, the Court has already established that during this procedure the officers of the Border Guard disregarded the applicants' statements concerning their wish to apply for international protection. Consequently, even though individual decisions were issued with respect to each applicant, they did not properly reflect the reasons given by the applicants to justify their fear of persecution. Hence, they were not based on a sufficiently individualised examination of the circumstances of the applicants' cases (see Hirsi Jamaa a.o.).
In M.K. a.o. v. Poland, the Court found that there was a wider state policy of not receiving applications for international protection from persons presenting themselves at the Polish-Belarusian border and of returning those persons to Belarus in violation of domestic and international law. The Court observes that the applicants' cases were part of the same wider policy, established in that judgment. Consequently, the decisions issued in the applicants' cases constituted a collective expulsion of aliens within the meaning of Art. 4 of Prot. 4.

☞ ECtHR 21 July 2022, 5797/17 ***Darboe and Camara v IT*** CE:ECHR:2022:0721JUD000579717

* violation of ECHR, 8+3+13+3+8

* see also under § 4.3

* *The applicant, a Guinean national, arrived in Italy and sought asylum claiming to be an unaccompanied minor. He submitted that he had declared his minor age and intention to apply for international protection shortly after arrival. However, no information on how to initiate the relevant procedure had been provided to him and no request for international protection had been lodged in his case.*
The applicant was initially placed in a centre for foreign unaccompanied minors but subsequently transferred to an adult reception centre, which he further alleged was overcrowded and lacking in facilities and healthcare. A month after his transfer, a medical examination (wrist X-ray examination) was carried out on the applicant to determine his age, which concluded that he was an adult of eighteen years old.
After eventually being assisted by lawyers, the applicant promptly filed an application to the domestic court to obtain the appointment of a guardian and recognition of his rights protected by domestic law as an unaccompanied minor asylum-seeker. However, there was no information on the outcome of the application. Subsequent to a Rule 39 request, the applicant was transferred to a centre for minors. His stay in the adult reception centre lasted more than four months. Overall, the Italian authorities had failed to apply the principle of presumption of minor age.
Also the ECtHR responded to the argument that the reception centre was overcrowded and that the number of unaccompanied minors arriving in Italy had dramatically increased. However, the difficulties deriving from the increased inflow of migrant and asylum seekers in particular States from external EU borders ***do not exonerate*** *member States of the Council of Europe from their obligations under Article 3, which is of an absolute character.*

☞ ECtHR 26 Apr. 2007, 25389/05 ***Gebremedhin v FR*** CE:ECHR:2007:0426JUD002538905

* violation of ECHR, 13

* *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 22 Sep. 2022, 18531/17 ***H.K. v HU*** CE:ECHR:2022:0922JUD001853117

* violation of ECHR, Prot. 4 Art. 4

* *The removal of the applicant asylum seeker had been of a collective nature constitutes a violation of Art. 4 Protocol 4. Also a violation of Art. 13 ECHR due to absence of domestic remedy (ruling is similar to the judgment ECtHR 8 July 2021, 12625/17, Shahzad v. Hungary).*

☞ ECtHR (GC) 23 Feb. 2012, 27765/09 ***Hirsi Jamaa v IT*** CE:ECHR:2012:0223JUD002776509

* interpr. of ECHR, 3

* *For the first time the Court applied Art 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 Art 3 ECHR, as it transferred them to Libya 'in full knowledge of the facts' and circumstances in Libya.*

☞ ECtHR 28 Nov. 2023, 40788/23 ***I.A. v FR*** CE:ECHR:2023:1128JUD004078823

* violation of ECHR, 3

* *Interim Measure. The case is about a Russian national of Chechen origin who arrived in France in 2007 and whose extradition was requested in 2023 by the Russian authorities. The ECtHR decided that an imminent risk of irreparable harm could not be ruled out at this stage of the proceedings in the event of the applicant's removal to Russia.*

☞ ECtHR 2 Feb. 2012, 9152/09 ***I.M. v FR*** CE:ECHR:2012:0202JUD000915209

* violation of ECHR, 13

* *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 (GC) 14 Mar. 2017, 47287/15 ***Ilias & Ahmed v HU*** CE:ECHR:2017:0314JUD004728715

* violation of ECHR, 3

* referral to Grand Chamber on 18 Sep 2017

* *The applicants were Bangladeshi nationals who transited through Greece, Macedonia and Serbia and arrived in Hungary where they immediately applied for asylum in 2015. Here they were held within the transit zone in Röszke until they were removed to the Serbian border following a decision to consider Serbia as a 'safe third country'.*
The Court referred to international sources describing the shortcomings of asylum proceedings in Serbia, and to the abrupt change in the Hungarian stance on Serbia in this regard that resulted from a Government Decree in 2015 listing Serbia as a 'safe third country'. No convincing explanation or reasons had been adduced by the Hungarian Government for this reversal, and the Court expressed concern about the shortcomings in the asylum systems in Serbia and Macedonia. It considered that the procedure applied by the Hungarian authorities under this presumption was not appropriate to provide the necessary protection against a real risk of inhuman and degrading treatment, in that they did not seek to rule out that the applicants driven back through Serbia might further be expelled to Greece. In addition, the Hungarian authorities had failed to provide the applicants with sufficient information on the procedure. Against this background, the applicants did not have the benefit of effective guarantees which would have protected them from exposure to a real risk of being subjected to inhuman or degrading treatment in breach of art. 3.

☞ ECtHR (GC) 21 Nov. 2019, 47287/15 ***Ilias & Ahmed v HU*** CE:ECHR:2019:1121JUD004728715

* violation of ECHR, 3

* *The applicant Bangladeshi nationals applied for asylum in Hungary upon transiting through Greece, Macedonia and Serbia. They were placed in the Röszke transit zone for 23 days until their asylum applications were rejected and they were removed to the Serbian border according to a Government Decree listing Serbia as a 'safe third country'.*
Pointing at the legal difference between the removal of asylum seekers to a third country and to their country of origin, the Court stated that in the former situation the main issue under art. 3 is whether or not the individual will have access to an adequate asylum procedure in the receiving third country and, if relevant, to conditions of detention and living conditions compatible with art. 3. The question to be examined in this case was therefore whether the Hungarian authorities had fulfilled their procedural duty to assess properly the conditions for asylum seekers in Serbia by conducting a thorough examination of the accessibility and reliability of that State's asylum system, based on all relevant generally available information on that system. In the Court's view, it did not appear that the Hungarian authorities had taken sufficient account of consistent information that asylum seekers returned to Serbia would run a real risk of summary removal to North Macedonia and Greece where they would be subjected to conditions incompatible with art. 3. In addition to the insufficient basis for the general presumption concerning Serbia as a 'safe third country', the Hungarian authorities had exacerbated the risks facing the applicants by inducing them to return to Serbia illegally. The Court therefore concluded that Hungary had failed to discharge its procedural obligation under art. 3.
Referring to the findings of the CPT and of the Special Representative of the Secretary General of the Council of Europe, and to the shortness of the period spent there by the applicants, the Court considered that the conditions in the Röszke transit zone had not reached the minimum level of severity required to constitute inhuman treatment under art. 3.
In contrast to the Chamber judgment (14 March 2017), the Grand Chamber considered the applicants not to have been deprived of their liberty within the meaning of art. 5. Their complaints under this provision were therefore rejected as inadmissible.

☞ ECtHR 6 Feb. 2024, 80206/17 ***J.A. & A.A. v TR*** CE:ECHR:2024:0206JUD008020617

* violation of ECHR, 2+3

* *The applicants are Iraqi asylum seekers. There was no fresh ex nunc assessment by the Turkish authorities of their claims to be at risk of death or ill-treatment. The assessment conducted by the Turkish authorities did not satisfy the requirements under arts. 2 and 3.*

☞ ECtHR 30 Mar. 2023, 21329/18 ***J.A. a.o. v IT*** CE:ECHR:2023:0330JUD002132918

* violation of ECHR, 3+Prot. 4 Art. 4

* *Violation of ECHR arts. 3 and 5 as well as of ECHR Protocol 4 art. 4 due to the conditions of detention at Lampedusa 'hotspot' and to the procedural treatment of the applicants from Tunesia which had effectively amounted to collective expulsion. Arbitrary detention without clear and accessible legal basis and in absence of reasoned decision. In particular the latter is relevant to asylum procedures although the applicants did not appear to be asylum seekers.*

☞ ECtHR 11 July 2000, 40035/98 ***Jabari v TR*** CE:ECHR:2000:0711JUD004003598

* violation of ECHR, 3
* *Given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment materialised and the importance which it attaches to Art 3, the notion of an effective remedy under Art 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Art 3.*

☞ ECtHR 14 June 2022, 28774/22 ***K.N. v UK*** CE:ECHR:2022:0614JUD002877422

* violation of ECHR, 3
* Interim Measure
* *On 13 April 2022 the UK Government entered into a Memorandum of Understanding with the Government of the Republic of Rwanda for an asylum partnership arrangement. Under that arrangement, asylum seekers whose claims were not being considered by the UK could be relocated to Rwanda.*
The applicant, an Iraqi national, left Iraq in April 2022, travelled to Turkey and then across Europe before crossing the English Channel by boat. Alleging that he was in danger in Iraq, he claimed asylum upon arrival in the UK on 17 May 2022. On 6 June 2022 K.N. was notified that his asylum claim had been deemed inadmissible. He was served with removal directions to Rwanda for 14 June 2022. The High Court refused to grant the applicant's request for interim relief, either by preventing the relocation of all asylum seekers to Rwanda under the asylum partnership agreement or by preventing the applicant's removal there. The Supreme Court refused permission to appeal on 14 June 2022.
The ECtHR decided:
"in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government of the United Kingdom, under Rule 39, that the applicant should not be removed until the expiry of a period of three weeks following the delivery of the final domestic decision in the ongoing judicial review proceedings. The parties are therefore required to notify the Court immediately of the delivery of that final domestic decision. The Court had regard to the concerns identified in the material before it, in particular by the United Nations High Commissioner for Refugees (UNHCR), that asylum-seekers transferred from the United Kingdom to Rwanda will not have access to fair and efficient procedures for the determination of refugee status as well as the finding by the High Court that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to "serious triable issues". In light of the resulting risk of treatment contrary to the applicant's Convention rights as well as the fact that Rwanda is outside the Convention legal space (and is therefore not bound by the European Convention on Human Rights) and the absence of any legally enforceable mechanism for the applicant's return to the United Kingdom in the event of a successful merits challenge before the domestic courts, the Court has decided to grant this interim measure to prevent the applicant's removal until the domestic courts have had the opportunity to first consider those issues."

☞ ECtHR 18 Jan. 2024, 82479/17 ***K.P. v HU*** CE:ECHR:2024:0118JUD008247917

* violation of ECHR, Prot. 4 Art. 4+13
* *In the present case the removal of the applicant was carried out by means of the same procedure as in the Shahzad case (ECtHR 8 July 2021, 12625/17), in particular without any decision or examination of his situation. The Government did not put forward any argument demonstrating that at the time of the applicant's removal the procedure for legal entry available to him had been effective. The Court therefore cannot but conclude that his removal was collective in nature.*

☞ ECtHR 12 Jan. 2017, 12552/12 ***Kebe a.o. v UA*** CE:ECHR:2017:0112JUD001255212

* violation of ECHR, 3
* *The applicant Eritrean national had arrived in Ukraine as a stowaway on board a commercial vessel flying the flag of Malta. While the respondent government disputed to have exercised jurisdiction when refusing him entry while he was on board the ship, the Court held that the border control carried out by the Ukrainian authorities had brought him within Ukraine's jurisdiction insofar as the matter concerned his possible entry to Ukraine and the exercise of related ECHR rights and freedoms.*
As the applicant's claim under art. 3 was arguable for the purposes of art. 13, the Ukrainian authorities had been under an obligation to furnish effective guarantees to protect him against arbitrary removal, directly or indirectly, back to his country of origin. In such cases, the effectiveness of a remedy imperatively requires close, independent and rigorous scrutiny, as well as a particularly prompt response. In addition, art. 13 requires access to a remedy with automatic suspensive effect. The Court considered the information provided sufficient to demonstrate that the authorities were or should have been aware that the applicant was an asylum seeker. He had, however, not had a realistic and practical opportunity to submit an asylum application, and any domestic appeal would not have had an automatic suspensive effect. As it was only after the Court's indication of interim measures under Rule 39 that the applicant was granted leave to enter Ukraine and lodge his asylum application, he had not been afforded an effective domestic remedy. Therefore, there had been a violation of art. 13 in conjunction with art. 3.

☞ ECtHR 15 May 2012, 33809/08 ***Labsi v SK*** CE:ECHR:2012:0515JUD003380908

* violation of ECHR, 3+13

* *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 27 Oct. 2020, 19656/18 ***M.A. v BE*** CE:ECHR:2020:1027JUD001965618

* violation of ECHR, 3

* *The case concerned the applicant's removal to Sudan by the Belgian authorities in spite of a court decision ordering the suspension of the measure. The Court found in particular that on account of procedural defects attributable to the Belgian authorities prior to the applicant's removal to Sudan, he had been prevented from pursuing the asylum application that he had lodged in Belgium and the Belgian authorities had not sufficiently assessed the real risks that he faced in Sudan. In addition, by deporting the applicant in spite of the court order to suspend the measure, the authorities had rendered ineffective the applicant's successful appeal.*

☞ ECtHR 11 Dec. 2018, 59793/17 ***M.A. a.o. v LT*** CE:ECHR:2018:1211JUD005979317

* violation of ECHR, 3+13

* *The applicant Russian family (with five children), originating from Chechnya, who on three occasions in April and May 2017 attempted to seek asylum at the Lithuanian border, but were each time refused by Lithuanian border guards and removed to Belarus. On the first occasion the applicants had written the word 'azul' in Cyrillic letters in the forms on which they were requested to sign the rejection decisions. On the third occasion they had submitted written applications for asylum to the border guards, but were again returned to Belarus.*
The Court was satisfied that the applicants had submitted asylum applications, either orally or in writing, at the border on the three occasions, and found that the border guards had not forwarded these applications to a competent authority for examination as required by domestic law. The border guards had also neither attempted to clarify the reason – if not seeking asylum – for the applicants' presence at the border without valid travel documents, nor made any assessment of whether it was safe to return the applicants to Belarus which cannot be considered a safe third country for Chechen asylum seekers. There had therefore not been any effective measures against the arbitrary removal of the applicants, and the failure to allow them to submit asylum applications and their removal in the absence of any examination of their claims amounted to a violation of art. 3. Given that appeals before the Lithuanian administrative courts had no automatic suspensive effect, it was not considered an effective remedy, hence art. 13 was violated as well.
Three judges expressed a dissenting opinion, partly suggesting a distinction between refusal of entry and expulsion, partly concerning the assessment of the facts of the case.

☞ ECtHR 29 Mar. 2022, 25564/18 ***M.A. a.o. v LV*** CE:ECHR:2022:0329JUD002556418

* inadmissible application ECHR, 3

* *The ECtHR declared this complaint manifestly ill-founded and hence inadmissible as the Court held the applicants not to have provided prima facie evidence of having applied for asylum at the border to Latvia before being returned to Belarus.*
The applicants previously lived in Chechnya. Their requests have previously been examined in ECtHR 11 Dec. 2018, 59793/17 and ECtHR 23 July 2020, 40503/17.

☞ ECtHR 5 July 2022, 20351/17 ***M.B. & R.A. v ES*** CE:ECHR:2022:0705JUD002035117

* no violation of ECHR, 3

* inadmissible

* *Application is rejected as inadmissible as it was considered manifestly unfounded (see similarities with: ECtHR 13 Feb. 2020, 8675/15, N.D. & N.T. v. Spain).*

☞ ECtHR 6 June 2013, 50094/10 ***M.E. v FR*** CE:ECHR:2013:0606JUD005009410

* no violation of ECHR, 13

* *The applicant was an Egyptian belonging to the Coptic Christian community in his country of origin where he had been exposed to a number of attacks due to his religious belief. His reports of these incidents to the police had been unsuccessful, and before leaving Egypt in 2007 he was accused of proselytizing for which he was sentenced in absentia to 3 years of imprisonment.*
The ECtHR referred to reports on numerous instances of violence and other persecution against Coptic Christians in Egypt in 2010-11, and on reluctance of Egyptian authorities to prosecute the perpetrators, and found no evidence that the situation had improved. The Court found strong evidence that the applicant would be a potential prime target for persecution and violence as a convicted proselytizer, whether free or imprisoned, and pointed to the serious doubt about on the applicant's ability to receive adequate protection from the Egyptian authorities. Given his background and the situation of Coptic Christians in Egypt, Art. 3 would be violated in case of enforcement of the decision to deport the applicant. Contrary to the judgment in I.M. v. France (2 February 2012, 9152/09), the ECtHR did not consider the examination of this case in the French 'fast-track' asylum procedure incompatible with Art. 13.

☞ ECtHR 25 June 2020, 40503/17 ***M.K. a.o. v PL*** CE:ECHR:2020:0625JUD004050317

* violation of ECHR, 3+13

* referral to Grand Chamber rejected on 14 Dec. 2020

* joined cases: 40503/17 + 40503/17 + 42902/17 + 43643/17

* *The applicants are Russian nationals of Chechen origin. In 2017 they presented themselves at border checkpoints (Terespol and Czeremca-Polowce) at the Polish-Belarussian border on several occasions. They allege that each time they wished to lodge asylum applications, but were denied that opportunity by the border guards, who refused them entry and removed them to Belarus, even though the applicants had alleged that they would not have access to an adequate asylum procedure in Belarus and that they would face torture or other forms of inhuman or degrading treatment if returned to the Russian Federation (Chechnya). According to the records of the border guards, the applicants had not expressed a wish to lodge asylum applications, whereas numerous reports by national human rights institutions, NGOs and the media stated that the border guards routinely refused to receive asylum applications. In respect of the applications, the Court indicated interim measures. Nevertheless, the applicants were returned to Belarus. Thereafter the applicants arrived at the border checkpoints on further occasions, but were again turned away. In respect of some of the applicants, their asylum applications were eventually received by the Polish authorities and they were placed in a reception centre.*
The Polish authorities, by failing to allow the applicants to remain on Polish territory pending the examination of their applications, had knowingly exposed them to a serious risk of chain-refoulement and treatment prohibited by Art. 3. The decisions refusing entry into Poland constituted also a collective expulsion of aliens, violating art. 4 Protocol 4. The Court also held, also unanimously, that there had been a violation of Art. 13 due to the absence of a remedy with automatic suspensive effect.

☞ ECtHR (GC) 5 May 2020, 3599/18 ***M.N. a.o. v BE*** CE:ECHR:2020:0505JUD000359918

* inadmissible application ECHR, 3

* See also CJEU 7 Mar 2017, C-638/16

* *The applicants, Syrian nationals who lived in Aleppo, travelled to Lebanon, from where they applied in August 2016 to the Belgian Embassy in Beirut for short-stay so-called "humanitarian" visas, indicating that they intended to claim asylum on arrival in Belgium. The application was transferred to the Belgian Aliens Office, which held that this intention placed their application outside the scope of the provision relied on (Visa Code). Thus, the case fell solely within the scope of national law. Subsequently, their visa were denied.*
The issue at stake before the ECtHR concerns the question whether the applicants would fall within the (extraterritorial) jurisdiction of Belgium within the meaning of Art. 1 ECHR. The ECtHR ruled that this was not the case, thus the complaint under Art. 3 is inadmissable.

☞ ECtHR 11 June 2020, 17189/11 ***M.S. v SK & UA*** CE:ECHR:2020:0611JUD001718911

* violation of ECHR, 3

* *The applicant, an Afghan national and allegedly a minor, was arrested by the Slovakian authorities after he had crossed illegally the border from Ukraine. He stated to the Slovakian authorities that he was not requesting asylum in Slovakia. Subsequently, he was returned to Ukraine, where he was detained pending expulsion to Afghanistan. After 5 months he was able to file an asylum application, which was rejected two weeks later by the Ukrainian authorities. As a result he was expelled to Kabul in Afghanistan.*
The ECtHR ruled that it is unable to establish to the required standard of proof that the applicant brought any of his personal concerns as to the risk of return to Ukraine or Afghanistan to the attention of the Slovakian authorities. Therefor no breach of Art. 3 by Slovakia. Subsequently, the ECtHR notes that, with respect to Ukraine, the central question to be answered is not whether the applicant faced a real risk of ill-treatment in Afghanistan, but whether before returning him there, the Ukrainian authorities carried out an adequate assessment of his claim that he would be at such a risk. The Ukrainian Regional Migration Service did not explicitly discuss the question whether the applicant would face a risk of treatment contrary to Articles 2 and 3 if returned to Afghanistan, which is the only pertinent question the authorities were expected to ask under the Convention. Thus, there has been a procedural violation of Art. 3 by Ukraine.

☞ ECtHR (GC) 21 Jan. 2011, 30696/09 ***M.S.S. v BE & GR*** CE:ECHR:2011:0121JUD003069609

* violation of ECHR, 3

* *A deporting State is responsible under Art. 3 ECHR for the foreseeable consequences of the deportation of an asylum seeker to another EU MS, 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 MS if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.*

☞ ECtHR 5 July 2018, 45196/15 ***Medjaouri v FR*** CE:ECHR:2018:0705JUD004519615

* no violation of ECHR, 3

* *The Algerian applicant had been expelled in 1997 and again in 2006. As a diabetic suffering from a heart condition, he complained that deportation would have serious consequences due to his inability to obtain the required medical supervision and treatment in Algeria. The Court noted, however, that the non-executed deportation order would have to be replaced by a new order based on a fresh examination of the applicant's situation, and that he had been issued with a temporary residence permit. It therefore considered that he ran no proximate or imminent risk of being removed from France and could not therefore claim to be a victim under arts. 3 and 8.*

☞ ECtHR 6 June 2013, 2283/12 ***Mohammed v AT*** CE:ECHR:2013:0606JUD000228312

* no violation of ECHR, 3

* *The applicant Sudanese asylum seeker arrived in Austria via Greece and Hungary. The Austrian authorities rejected the application and ordered his transfer to Hungary under the Dublin Regulation. When placed in detention with a view to his forced transfer almost a year later, he lodged a second asylum application which did not have suspensive effect in relation to the transfer order.*
The ECtHR considered the applicant's initial claim against the Dublin transfer arguable, due to the 'alarming nature' of reports published in 2011-12 in respect of Hungary as a country of asylum and in particular as regards Dublin transferees. His second application for asylum in Austria could therefore not prima facie be considered abusively repetitive or entirely manifestly unfounded. In the specific circumstances of the case, the applicant had been deprived of de facto protection against forced transfer and of a meaningful substantive examination of his arguable claim concerning the situation of asylum seekers in Hungary. Accordingly, Art. 13 in conjunction with Art. 3 had been violated. Despite the initially arguable claim against the Dublin transfer to Hungary, the Court noted the subsequent legislative amendments and the introduction of additional legal guarantees concerning detention of asylum seekers and their access to basic facilities. The applicant would therefore no longer be at a real and individual risk of being subjected to treatment in violation of Art. 3 upon transfer to Hungary under the Dublin Regulation.

☞ ECtHR 26 July 2005, 38885/02 ***N. v FI*** CE:ECHR:2005:0726JUD003888502

* violation of ECHR, 3

* *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 (GC) 13 Feb. 2020, 8675/15 ***N.D. & N.T v ES*** CE:ECHR:2020:0213JUD000867515

* no violation of ECHR, 13

* First Chamber decided on 3 Oct. 2017

* joined cases: 8675/15 + 8697/15

* *See for the facts, the Court's judgment of 3 Oct. 2017. Contrary to the judgment of the Court, the Grand Chamber holds no violation of Art. 4 of the 4th Protocol on collective expulsion. The Court considered that the applicants had placed themselves in an unlawful situation when they had deliberately attempted to enter Spain 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. They had thus chosen not to use the legal procedures (to apply for asylum) which existed in order to enter Spanish territory lawfully. Consequently, the Court considered that the lack of individual removal decisions could be attributed to the fact that the applicants – assuming that they had wished to assert rights under the Convention – had not made use of the official entry procedures existing for that purpose, and that it had thus been a consequence of their own conduct.*
In so far as it had found that the lack of an individualised procedure for their removal had been the consequence of the applicants' own conduct, the Court could not hold the respondent State responsible for the lack of a legal remedy in Melilla enabling them to challenge that removal.

☞ ECtHR 3 Oct. 2017, 8675/15 ***N.D. & N.T. v ES*** CE:ECHR:2017:1003JUD000867515

* violation of ECHR, 13

* referral to Grand Chamber on 29 Jan 2018: judgment (GC) on 13 Feb 2020

* *The applicants, a Malian and an Ivorian national, had attempted to enter the Spanish enclave Melilla from Morocco by climbing barriers making up the border crossing. Having climbed down on the Spanish side of the barriers, they were immediately arrested by members of the Guardia Civil, handcuffed and returned to Morocco without their identity having been checked and with no opportunity to explain their personal circumstances or to receive assistance from lawyers, interpreters or medical personnel.*
The ECtHR first established that the facts of the case fell within the jurisdiction of Spain since the applicants had been under the continuous and exclusive control of the Spanish authorities from the moment they climbed down the border barriers. It was therefore unnecessary to decide whether the barrier was located on Spanish territory. As the applicants had been removed and sent back to Morocco against their wishes, the Spanish authorities' action had clearly constituted an 'expulsion' for the purposes of art. 4 Protocol no. 4. The removals had taken place without any prior administrative or judicial decision and without any procedure, in the absence of any examination of the applicants' individual situation and with no identification procedure carried out. Therefore, the expulsions had undoubtedly been collective, in violation of art. 4 Protocol 4. Due to the well documented circumstances and the immediate nature of the expulsions, the Court considered that the applicants had been deprived of any remedy that would have enabled them to submit their complaint under art. 4 Protocol 4 and to obtain a thorough and rigorous assessment of their request. Art. 13 had therefore also been violated.

☞ ECtHR 15 Sep. 2022, 18603/12 ***O.M. & D.S. v UA*** CE:ECHR:2022:0915JUD001860312

* violation of ECHR, 3

* *The ECtHR finds it established that in the present case the border control authorities of Ukraine removed the first applicant from Ukraine without examining her claim that she needed international protection in connection with the alleged risk of ill-treatment in Kyrgyzstan.*
Since she was removed not to Kyrgyzstan, but to a third country – Georgia – it falls to be decided whether the Ukrainian authorities examined thoroughly whether Georgia's asylum procedure afforded sufficient guarantees to avoid her being removed, directly or indirectly, to Kyrgyzstan without a proper evaluation of any risks she might have faced from the standpoint of Art. 3 of the Convention. Such assessment had to be conducted by the Ukrainian authorities out of their own motion and on the basis of all relevant and up-to-date information (see also: ECtHR (GC) 21 Nov. 2019, 47287/15, Ilias and Ahmed). There is nothing in the present case to suggest that the Ukrainian authorities conducted any assessment to that effect when removing the first applicant to Georgia.

☞ ECtHR 20 Dec. 2022, 37241/21 ***S.H. v MT*** CE:ECHR:2022:1220JUD003724121

* violation of ECHR, 3+13

* *The Maltese authorities had not properly assessed the applicant's claim to be at risk, as a journalist having reported on electoral irregularities in Bangladeshi elections, in case he would be returned to Bangladesh. In addition, there would therefore be a violation of ECHR art. 3 should the applicant be returned to Bangladesh without a fresh assessment of his application for international protection.*

☞ ECtHR (GC) 19 Mar. 2015, 70055/10 ***S.J. v BE*** CE:ECHR:2015:0319JUD007005510

* no violation of ECHR, 13

* *The applicant was a Nigerian woman, diagnosed with HIV, who was to be returned with her three children upon refusal of her request for asylum in Belgium. The case was (on 27 Feb. 2014) referred to the Grand Chamber resulting in a friendly settlement of the case, implying that the residence status of the applicant and her children would be regularised immediately and unconditionally. Noting that they had been issued with residence permits granting them indefinite leave to remain in Belgium.*

☞ ECtHR 12 Oct. 2023, 56417/19 ***S.S. a.o. v HU*** CE:ECHR:2023:1012JUD005641719

* violation of ECHR, Prot. 4 Art. 4+3

* *The applicants are two families from Yemen and Afghanistan. They arrived on the international airport in Budapest where they were arrested as they had been using counterfeit diplomatic travel documents. Their subsequent asylum application, however, could only be submitted in the transit zone between Hungary and Serbia. In fact, they were forced to enter Serbia. Several months later, they could lodge a asylum request in Austria, where they were granted refugee status.*
The ECtHR has established in the context of Art. 4 of Prot. 4 that the Hungarian authorities removed the applicants to Serbia, instead of facilitating the applicants' access to the asylum procedure by forwarding their requests for asylum to the competent authorities and allowing them to stay in Hungary until such requests were decided.
The ECtHR emphasises that, from the perspective of Art. 3, a Contracting State cannot deny an asylum-seeker access to its territory or remove him or her, even on the assumption that that person might be able to return through some other means of entry, without a proper evaluation of the risks that such a denial or removal might have for his or her rights protected under that provision.

☞ ECtHR 7 July 2022, 5418/15 ***Safi a.o. v GR*** CE:ECHR:2022:0707JUD000541815

* violation of ECHR, 3+2

* *Ineffective investigation of the circumstances in which a boat carrying foreign nationals had sunk (Art. 2 procedural) and a failure by the Greek authorities to do all that could reasonably be expected of them to provide the applicants and their relatives with the required level of protection (Art. 2 obligation). Also the ECtHR concluded that there was a degrading treatment of 12 of the applicants who, after the boat had sunk, had been subjected to body searches (art. 3).*

☞ ECtHR 25 Apr. 2013, 71386/10 ***Savriddin v RU*** CE:ECHR:2013:0425JUD007138610

* violation of ECHR, 3+5(4)+34

* *The applicant, a national of Tajikistan having been granted temporary asylum in Russia, had been abducted in Moscow by a group of men, detained in a mini-van for one or two days and tortured, and then taken to the airport from where he was flown to Tajikistan without going through normal border formalities or security checks. In Tajikistan he had allegedly been detained, severely ill-treated by the police, and sentenced to 26 years' imprisonment for a number of offences.*
Based on consistent reports about the widespread and systematic use of torture in Tajikistan, and the applicant's involvement in an organisation regarded as terrorist by the Tajik authorities, the Court concluded that his forcible return to Tajikistan had exposed him to a real risk of treatment in breach of Art. 3. Due to the Russian authorities' failure to take preventive measures against the real and imminent risk of torture and ill-treatment caused by his forcible transfer, Russia had violated its positive obligations to protect him from treatment contrary to art. 3. Additional violations of art. 3 resulted from the lack of effective investigation into the incident, and the involvement of State officials in the operation.
Art. 34 had been violated by the fact that the applicant had been forcibly transferred to Tajikistan by way of an operation in which State officials had been involved, in spite of an interim measure indicated by the ECtHR under Rule 39 of the Court's Rules of Procedure.
Pursuant to ECHR Art. 46, the Court indicated various measures to be taken by Russia in order to end the violation found and make reparation for its consequences. In addition, the State was required under Art. 46 to take measures to resolve the recurrent problem of blatant circumvention of the domestic legal mechanisms in extradition matters, and ensure immediate and effective protection against unlawful kidnapping and irregular removal from the territory and from the jurisdiction of Russian courts. In this connection, the Court once again stated that such operations conducted outside the ordinary legal system are contrary to the rule of law and the values protected by the ECHR.

☞ ECtHR 8 July 2021, 12625/17 ***Shahzad #1 v HU*** CE:ECHR:2021:0708JUD001262517

* violation of ECHR, 13+Prot. 4 Art. 4

* *In August 2016 a group of twelve Pakistani nationals entered Hungary irregularly by cutting a hole in the border fence between Hungary and Serbia. They walked for several hours before resting in a cornfield where they were intercepted by Hungarian police officers and subjected to the "apprehension and escort" measure under section 5(1a) of the State Borders Act. They were transported in a van to the nearest border fence and then escorted by officers through the gate to the external side of the fence into Serbia. The applicant, who had been injured, went to a reception centre in Subotica, Serbia, and from there was taken to a nearby hospital.*
Having regard thus to the limited access to the transit zones and lack of any formal procedure accompanied by appropriate safeguards governing the admission of individual migrants in such circumstances, the respondent State had failed to secure the applicant effective means of legal entry. Consequently, the lack of an individual expulsion decision could not be attributed to the applicant's own conduct. In conclusion, in view of the fact that the authorities had removed the applicant without identifying him and examining his situation and, having regard to the lack of effective access to means of legal entry, his removal had been of a collective nature.

New ☞ ECtHR 4 Apr. 2024, 54029/17 ***Sherov a.o. v PL*** CE:ECHR:2024:0404JUD005402917

* violation of ECHR, 3+13+Prot. 4 Art. 4

* joined cases: 54029/17 + 4117/17, 54128/17, 54255/17

* *Violation of the ECHR by the refusal of entry at the applicants' repeated attempts to enter Poland. The ECtHR concluded that the decisions refusing the applicants' entry into Poland were not taken with proper regard to their individual situation and were part of a wider policy of not receiving applications for international protection from persons presenting themselves at the Polish Ukrainian border and of returning those persons to Ukraine, in violation of domestic and international law.*

☞ ECtHR 2 Oct. 2012, 33210/11 ***Singh v BE*** CE:ECHR:2012:1002JUD003321011

* violation of ECHR, 3+13

* *Having arrived on a flight from Moscow, the applicants applied for asylum but were refused entry into Belgium, and their applications for asylum were rejected as the Belgian authorities did not accept the applicants' claim to be Afghan nationals, members of the Sikh minority in Afghanistan, but rather Indian nationals. The Court considered the claim to the risk of chain refoulement to Afghanistan as 'arguable' so that the examination by the Belgian authorities would have to comply with the requirements of ECHR art. 13, including close and rigorous scrutiny and automatic suspensive effect.*
In the light of these requirements, the examination of the applicants' asylum case was held to be insufficient, since neither the first instance nor the appeals board had sought to verify the authenticity of the documents presented by the applicants with a view to assessing their possible risk of ill-treatment in case of deportation.
In that connection the Court noted that the Belgian authorities had dismissed copies of protection documents issued by UNHCR in New Delhi, pertinent to the protection request, although these documents could easily have been verified by contacting UNHCR. The examination therefore did not fulfil the requirement of close and rigorous scrutiny, constituting a violation of ECHR Art. 13 taken together with Art. 3.

☞ ECtHR 20 Sep. 2007, 45223/05 ***Sultani v FR*** CE:ECHR:2007:0920JUD004522305

* no violation of ECHR, 3

* *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 emphasised 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 22 Sep. 2022, 41764/17 ***T.Z. a.o. v PL*** CE:ECHR:2022:0922JUD004176417

* violation of ECHR, Prot. 4 Art. 4+3

* *Collective removal from Poland to Belarus that had exposed the applicants to serious risk of chain refoulement as well as treatment prohibited by art. 3. Also violation of ECHR art. 13 (ruling similar to the judgment ECtHR 23 July 2020, 40503/17, M.K. a.o. v. Poland).*

☞ ECtHR 15 Dec. 2022, 64050/16 ***W.A. a.o. v HU*** CE:ECHR:2022:1215JUD006405016

* violation of ECHR, 3

* *Violation of Art. 3 due to the applicant Syrian nationals' removal to Serbia following the rejection of their asylum requests as inadmissible as Serbia was considered by the Hungarian authorities as a 'safe third country'. Ruling similar to the judgment ECtHR 21 November 2019, 47287/15, Ilias & Ahmed v. Hungary. This case was decided by a Committee of 3 judges.*

☞ ECtHR 17 Jan. 2012, 12294/07 ***Zontul v GR*** CE:ECHR:2012:0117JUD001229407

* violation of ECHR, 3

* *The applicant was an irregular migrant complaining that he had been raped with a truncheon by one of the Greek coast guard officers supervising him in a detention centre upon interception of the boat on which he and 164 other migrants attempted to go from Turkey to Italy. Due to its cruelty and intentional nature, the Court considered such treatment as amounting to an act of torture under ECHR Art. 3. Given the seriousness of the treatment, the penalty imposed on the perpetrator – a suspended term of six months imprisonment that was commuted to a fine – was considered to be in clear lack of proportion. An additional violation of ECHR Art. 3 stemmed from the Greek authorities' procedural handling of the case that had prevented the applicant from exercising his rights to claim damages at the criminal proceedings.*

2.3.4 CtAT Views on Non-Refoulement (Art. 3)

☞ CtAT 8 July 2011, CAT/C/46/D/379/2009 ***Bakatu-Bia v SE***

* violation of CAT, 3

* *The Committee observes that, according to the Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo (2010) and the Report of the United Nations High Commissioner for Human Rights and the activities of her Office in the Democratic Republic of the Congo (2010) on the general human rights situation in the Democratic Republic of the Congo, serious human rights violations, including violence against women, rape and gang rape by armed forces, rebel groups and civilians, continued to take place throughout the country and not only in areas affected by armed conflict. Furthermore, in a recent report, the High Commissioner for Human Rights stressed that sexual violence in DRC remains a matter of serious concern, particularly in conflict-torn areas, and despite efforts by authorities to combat it, this phenomenon is still widespread and particularly affects thousands of women and children. The Committee also notes that the Secretary-General in his report of 17 January 2011, while acknowledging a number of positive developments in DRC, expressed his concern about the high levels of insecurity, violence and human rights abuses faced by the population.*

☞ CtAT 1 June 2012, CAT/C/48/D/343/2008 ***Kalonzo v CA***

* violation of CAT, 3

* *The Committee also takes note of the State party's reference to reports dating from 2007 and 2008 that mention few cases of the torture of UPDS members or Luba from Kasaï. In this regard, the Committee is of the view that, even if cases of torture are rare, the risk of being subjected to torture continues to exist for the complainant, as he is the son of a UDPS leader, is a Luba from Kasaï and has already been the victim of violence during his detention in Kinshasa in 2002. In addition, the Committee considers that the State party's argument that the complainant could resettle in Kinshasa, where the Luba do not seem to be threatened by violence (as they are in the Katanga region), does not entirely remove the personal danger for the complainant. In this regard, the Committee recalls that, in accordance with its jurisprudence, the notion of "local danger" does not provide for measurable criteria and is not sufficient to entirely dispel the personal danger of being tortured.*
The Committee against Torture concludes that the complainant has established that he would run a real, personal and foreseeable risk of being subjected to torture if he were to be returned to the Democratic Republic of the Congo.

☞ CtAT 5 Nov. 2012, CAT/C/49/D/416/2010 ***Ke Chun Rong v AT***

* violation of CAT, 3

* *The Committee notes that the claims and evidence have not been sufficiently verified by the Australian immigration authorities. The Committee observes that the review on the merits of the complainants' claims regarding the risk of torture that he faced, was conducted predominantly based on the content of his initial application for a Protection visa, which he filed shortly after arriving in the country, without knowledge or understanding of the system. The Committee further observes that the complainant was not interviewed in person neither by the Immigration Department, which rejected his initial application, nor by the Refugee Review Tribunal and therefore he did not have the opportunity to clarify any inconsistencies in his initial statement. The Committee is of the view that complete accuracy is seldom to be expected by victims of torture. The Committee also observes that the State party does not dispute that Falun Gong practitioners in China have been subjected to torture, but bases it decision to refuse protection to the complainant in the assessment of his credibility. Accordingly, the Committee concludes that the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.*

☞ CtAT 7 Nov. 2013, CAT/C/51/D/438/2010 ***M.A.H. & F.H. v CH***

* no violation of CAT, 3

* *The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22(4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.*

☞ CtAT 30 May 2011, CAT/C/46/D/319/2007 ***Nirmal Singh v CA***

* violation of CAT, 3+22

* *The complaint states that he did not have an effective remedy to challenge the decision on deportation and that the judicial review of the Immigration Board decision, denying him Convention refugee status, was not an appeal on the merits, but rather a very narrow review for gross errors of law. The Committee observes that none of the grounds above include a review on the merits of the complainant's claim that he would be tortured if returned to India. With regard to the procedure of risk analysis, the Committee notes that according to the State party's submission, PRRA submissions may only include new evidence that arose after the rejection of the refugee protection claim; further, the PRRA decisions are subject to a discretionary leave to appeal, which was denied in the case of the complainant. The Committee refers to its Concluding observations (CAT/C/CR/34/CAN, 7 July 2005, § 5(c)), that the State party should provide for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk of torture. The Committee accordingly concludes that in the instant case the complainant did not have access to an effective remedy against his deportation.*

2.3.5 HRC Views on Assessment of asylum request (Art. 24)

☞ HRC 21 July 2022, CCPR/C/135/D/3017/2017 ***A.B. a.o. v PL***

* violation of ICCPR, 7+13

* *The applicants are nationals of Russia (Chechen). Both were severely beaten and tortured in Russia. They travelled through Belarus and wanted to apply for asylum at the border with Poland. However, their request was not acknowledged. The guards simply stamped their passports with a denial-of-entry stamp. In total they made 20 requests, all of which were rejected. As there was no effective remedy with suspensive effect, the HRC finds that Poland failed to afford to the authors their right to access an effective remedy for the alleged violation of article 13 of the Covenant.*

☞ HRC 25 Oct. 2022, CCPR/C/136/D/2754/2016 ***J.S.K.N. v DK***

* violation of ICCPR, 2+26

* *The applicant, a Palestinian, was granted a residence permit and a refugee status in Denmark. His wife and children are Danish citizens. He applied for Danish citizenship through naturalization but his application was rejected as he failed to acquire a certain level of knowledge of Danish. This, however, was due to his chronic post-traumatic stress disorder. The HRC considers that, in failing to provide the author with any information about the reasoning in its decision on his application or the grounds for refusing his application for an exemption from the language proficiency requirement and the citizenship test based on his medical health status, Denmark has failed to demonstrate that the refusal to grant the exemption was based on reasonable and objective grounds.*

☞ HRC 15 Mar. 2022, CCPR/C/134/D/2632/2015 ***O. a.o. v SE***

* violation of ICCPR, 7+2

* *The applicants are nationals of Albania. They fled to Sweden because they were threatened by an Albanian criminal and one of the applicants had written a book about a network of high-level corruption in Albania involving a former prime minister. The HRC observes that, during the two sets of asylum proceedings, the authors submitted several documents and other evidence in order to demonstrate the risk they would face if deported to Albania, including supporting documentation demonstrating that they were the object of threats and attacks, and that their house had been blown up. The Committee also notes that the State party's authorities relied on inconsistencies in the authors' accounts and did not take any action to verify the authors' claims, limiting themselves to indicating that the evidence presented was not sufficient and that the authors did not seek the protection of Albanian authorities. The Committee considers that the assessment of the authors' claims by the State party was clearly arbitrary and that the authors' removal to Albania would amount to a violation of article 7 of the Covenant.*

☞ HRC 13 Oct. 2021, CCPR/C/133/D/2796/2016 ***Zabayo v NL***

* violation of ICCPR, 7+24

* *In this case a Nigerian woman applies for asylum in The Netherlands after her daughter is born in Amsterdam in 2014. The main reason for her request is that she fears that she and her daughter will be exposed to female genital mutilation in Nigeria. Her application is rejected finding that: (1) her identity could not be clearly established, (2) the information on her marriage and the related fear for circumcision by her husband's family were not credible, and (4) she had the possibility of an internal flight alternative in Nigeria.*
Although the District Court found that the immigration authorities had incorrectly determined the lack of credibility of the author's marriage, the Court acknowledged that there were internal flight alternatives. The Dutch administrative Court of Appeal (Council of State) confirmed that decision in an unmotivated judgment.
The HRC concludes in a lengthy adopted view that the absence of a proper assessment of the real and personal risk that they might face if deported, is a violation of Art. 7 and 24 (par. 10). It is interesting to note that the HRC, after listing all the arguments in detail, focuses on the procedural aspect of credibility assessment. Meaning that a clear defect in this procedure is paramount. Three of the 16 Committee members dissented. They argue that the HRC did not establish that the assessment of the State Party (NL) was clearly arbitrary. However, in concluding that the procedure itself did not include a proper assessment of the asylum request, the HRC has formulated an important benchmark.

2.3.6 CtRC Views on Best Interests of the Child (Art. 3)

☞ CtRC 4 Feb. 2020, CRC/C/83/D/21/2017 ***A.D. v ES***

* violation of CRC, 8+12+3+20(1)

* *The Committee considers that the age assessment procedure undergone by the author, who claimed to be a child, lacked the safeguards necessary to protect his rights under the Convention. In the circumstances of the present case, this is a result of the failure to take into consideration the original copy of the author's official birth certificate issued by a sovereign country, his being declared an adult when he refused to undergo age assessment tests and the failure to appoint a guardian to assist him during the age assessment procedure. Therefore, the Committee considers that the best interests of the child were not a primary consideration in the age assessment procedure undergone by the author, which constitutes a violation of articles 3, 8, 12, and 20(1) of the Convention.*

☞ CtRC 1 Feb. 2019, CRC/C/80/D/4/2016 ***D.D. v ES***

* violation of CRC, 37+20

* *This case is about a Malian child that climbs over the fences that separate the Spanish exclave Melilla from Morocco. When he climbed down he was arrested by the Spanish Civil Guard and deported to Morocco. The Committee, subsequently, is of the view that the Spanish authorities:*
(a) failed to provide the child with the special protection and assistance to which he was entitled as an unaccompanied minor (art. 20);
(b) failed to respect the principle of non-refoulement and exposed the child to the risk of violence and cruel, inhuman and degrading treatment in Morocco (art. 37); and
(c) failed to consider the best interests of the child (art. 3).

☞ CtRC 15 June 2018, CRC/C/81/D/47/2018 ***J.G. v CH***

* violation of CRC, 37

* *The applicant is a national of Angola, born in 2004. He has been diagnosed with a pervasive developmental disorder requiring specialized treatment and schooling. At the time of his arrival in the State party, the Geneva Adult and Child Protection Court requested that the author be assigned a guardian and be admitted to a psychiatric centre. The author's asylum application was denied in April 2018 by the State Secretariat for Migration, without consideration of the merits. The Federal Administrative Court upheld this decision on appeal.*
After a request in June 2018 from the Committee to refrain from deporting, Switzerland informed the Committee that the case was reopened and that the applicant was granted a residence permit in Switzerland. As he was no longer at risk, the application for the CRC was discontinued.

☞ CtRC 28 Sep. 2020, CRC/C/85/D/28/2017 ***M.B. v ES***

* violation of CRC, 8+12+20(1)

* *The complainant is a Guinean national who arrived by boat in Almeria, Spain in 2017 and applied for asylum, which was denied. After submission of new documents proving that the complainant was a minor, he was released, without receiving treatment to which minors are entitled. The main argument by the Spanish authorities was that he looked like an adult and was therefor treated as an adult.*
The Committee recalls that the determination of the age of a young person who claims to be a minor is of fundamental importance, as the outcome determines whether that person will be entitled to or excluded from national protection as a child. Similarly, and this point is of vital importance to the Committee, the enjoyment of the rights set out in the Convention flows from that determination. It is therefore imperative that there be due process to determine a person's age, as well as the opportunity to challenge the outcome through an appeals process.
The Committee recalls its General Comment No. 6, which states that age assessment should take into account not only the physical appearance of the individual, but also his or her psychological maturity, that the assessment must be conducted in a scientific, safe, child- and gender-sensitive and fair manner and that, in the event of uncertainty, the individual should be accorded the benefit of the doubt such that if there is a possibility that the individual is a child, he or she should be treated as such.
In the light of the above, the Committee considers that the lack of a process to assess the age of the author, who claimed to be a minor, the failure to take proper account of the official documents submitted by the author and issued by his country of origin, and the failure to appoint a guardian, constitute a violation of the author's Convention rights

☞ CtRC 18 Sep. 2019, CRC/C/82/D/17/2017 ***M.T. v ES***

* violation of CRC, 8+12+20(1)+22

* *The author was not accompanied by a representative during the age determination procedure and the documents provided, including his passport, were rejected by the authorities without clearing up any doubts with the consular authorities of Côte d'Ivoire. Thus, the best interests of the child were not a primary consideration in the age determination procedure undergone by the author, contrary to art. 3 and 12 of the Convention.*
The Committee considers that the State party failed to respect the author's identity by rejecting as evidence the birth certificate and passport submitted by the author, without verifying the information they contained with the authorities of his country of origin. Violation of art. 8 of the Convention.
The Committee considers that the fact that the author was not assigned a guardian to enable him to apply for asylum as a minor, even though he had official documents proving that he was a minor, deprived him of the special protection that should be afforded to unaccompanied minor asylum seekers and put him at risk of irreparable harm in the event of return to his country of origin, in violation of art. 20 (1) and 22 of the Convention.

☞ CtRC 27 Sep. 2018, CRC/C/79/D/11/2017 ***N.B.F. v ES***

* violation of CRC, 12

* *The Committee considers that the age-determination procedure undergone by the author, who claimed to be a child, was not accompanied by the safeguards needed to protect his rights under the Convention. In the circumstances of the present case, in particular the examination used to determine the author's age and the absence of a representative to assist him during this process, the Committee is of the view that the best interests of the child were not a prime consideration in the age-determination procedure to which the author was subjected, in breach of art. 3 and 12 of the Convention.*
The view includes a joint concurring opinion and two separate dissenting opinions.

☞ CtRC 18 Sep. 2019, CRC/C/82/D/27/2017 ***R.K. v ES***

* violation of CRC, 8+12+20(1)+22

* *The Committee considers the failure to assign the author a guardian so that he could apply for asylum in his capacity as a minor, even though he possessed documentation confirming that to be the case, led to him being deprived of the special protection that is to be afforded to unaccompanied asylum-seeking minors and exposed him to a risk of irreparable harm in the event of his deportation to his country of origin, which constitutes a violation of articles 20 (1) and 22 of the Convention. Also, the age determination procedure lacked the safeguards necessary to protect his rights under the Convention (art. 3). The State party violated his rights (art. 8) insofar as it altered elements of his identity by attributing to him an age and a date of birth that did not match the information on his birth certificate, even after he had presented documentation issued by the Embassy of Guinea confirming his status as a minor to the Spanish authorities.*

☞ CtRC 28 Sep. 2020, CRC/C/85/D/31/2017 ***W.M.C. v DK***

* violation of CRC, 8

* *The issue at stake is whether an unmarried Chinese mother with children born outside China, can go back to China without problems. Returning Chinese nationals face a fine for leaving China illegally. This mother also faces a substantial fine and prison sentence because she gave birth as an unmarried woman to children outside China.*
However, the biggest problem is that it is almost impossible to register children in China in the local family household register (hukou) who are born outside China. The consequence of this is that these children do not have access to basic services such as medical aid, social services and education.
Remarkable is that, while the Danish Refugee Council explicitly mentioned this in the appeal procedure, the Danish Refugee Appeals Board stated that the sanctions might seem unfair from a Danish context, but the majority did not find that it would be of such character and of such proportions that it could be considered as persecution.
The CtRC (again) refers to a 2019 report of the United States Department of State, according to which, although under both civil law and marriage law the children of single women are entitled to the same rights as those born to married parents, in practice children born to single mothers or unmarried couples are considered outside of the policy and are subject to the social compensation fee and the denial of legal documents, such as birth documents and the hukou. It also takes note of a 2018 report of the United Kingdom Home Office, in which it is stated that many children born to single or unmarried parents had been denied a household registration document, preventing them from accessing public services, medical treatment and education. Although the Government has stated it is making it easier for illegitimate children to be registered, the implementation of this is inconsistent and there can still be obstacles.

3 Responsibility Sharing

3.1 Responsibility Sharing: Adopted Measures

case law sorted in chronological order

Regulation 343/2003 — **Dublin II**

Establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

* OJ 2003 L 50/1 — impl. date: 01-09-2003 — UK, IRL opt in

* Repealed and replaced by Reg. 604/2013 Dublin III

CJEU Judgments

☞	CJEU	10 Dec.	2013,	C-394/12	***Abdullahi***	10(1)+18+19
☞	CJEU	14 Nov.	2013,	C-4/11	***Puid***	3(2)
☞	CJEU	6 June	2013,	C-648/11	***M.A.***	6
☞	CJEU	30 May	2013,	C-528/11	***Halaf***	3(2)
☞	CJEU	6 Nov.	2012,	C-245/11	***K.***	15+3(2)
☞	CJEU	3 May	2012,	C-620/10	***Kastrati***	2(c)
☞	CJEU	21 Dec.	2011,	C-411/10	***N.S. & M.E.***	3(2)
☞	CJEU	29 Jan.	2009,	C-19/08	***Petrosian***	20(1)(d)+20(2)

See further: § 3.3.1 and 3.3.2

Regulation 1560/2003 — **Dublin II Application**

Laying down detailed rules for the application of Dublin II

* OJ 2003 L 222/1 — impl. date: 02-09-2003 — UK, IRL opt in

Regulation 604/2013 — **Dublin III**

Establishing the criteria and mechanisms for determining the MS responsible for examining an application for international protection lodged in one of the MS by a TCN or a stateless person (revised)

* OJ 2013 L 180/31 — impl. date: 01-01-2014 — UK, IRL opt in

* Recast of Reg. 343/2003

New	☞	CJEU	7 May	2024,	C-217/22	***O.V. / Min. dell'Interno (IT)***	4+5
New	☞	CJEU	7 May	2024,	C-80/22	***B.U. / Min. dell'Interno (IT)***	4+5
New	☞	CJEU	18 Apr.	2024,	C-359/22	***A.H.Y.***	27
	☞	CJEU	29 Feb.	2024,	C-392/22	***X / Stscr. (NL)***	3
	☞	CJEU	30 Nov.	2023,	C-228/21	***C.Z.A. / Min. Int. (IT)***	4+27
	☞	CJEU	21 Sep.	2023,	C-568/21	***E. & S.***	2
	☞	CJEU	30 Mar.	2023,	C-556/21	***E.N. a.o.***	27(3)+29(1)+29(2)
	☞	CJEU	30 Mar.	2023,	C-338/21	***S., N. & S.***	29(1)+29(2)+27(3)
	☞	CJEU	12 Jan.	2023,	C-323/21	***B.***	27+29
	☞	CJEU	12 Jan.	2023,	C-745/21	***L.G.***	16(1)+17(1)
	☞	CJEU	8 Nov.	2022,	C-39/21	***C. & B.***	28
	☞	CJEU	20 Oct.	2022,	C-66/21	***O.T.E. / Stscr (NL)***	17(1)
	☞	CJEU	22 Sep.	2022,	C-245/21	***M.A. & P.B. / Germany***	27(4)
	☞	CJEU	1 Aug.	2022,	C-19/21	***I. & S.***	8(2)+27(1)+2(j)
	☞	CJEU	1 Aug.	2022,	C-720/20	***R.O.***	20(3)+9+10
	☞	CJEU	31 Mar.	2022,	C-231/21	***I.A.***	29(2)
	☞	CJEU	2 Aug.	2021,	C-262/21	***A.***	6(1)+12(3)
	☞	CJEU	15 Apr.	2021,	C-194/19	***H.A.***	27
	☞	CJEU	2 Apr.	2020,	C-897/19	***I.N.***	all Art.
	☞	CJEU	2 Apr.	2019,	C-582/17	***H. & R.***	27
	☞	CJEU	19 Mar.	2019,	C-163/17	***Jawo***	29(2)
	☞	CJEU	23 Jan.	2019,	C-661/17	***M.A. a.o.***	6+17+20+27
	☞	CJEU	13 Nov.	2018,	C-47/17	***X.***	21+22+23+25
	☞	CJEU	4 Oct.	2018,	C-56/17	***Fathi***	3(1)
	☞	CJEU	5 July	2018,	C-213/17	***X.***	17+18+23+24
	☞	CJEU	31 May	2018,	C-647/16	***Adil Hassan***	26
	☞	CJEU	25 Jan.	2018,	C-360/16	***Aziz Hasan***	23+24
	☞	CJEU	25 Oct.	2017,	C-201/16	***Majid Shiri***	27+29
	☞	CJEU	13 Sep.	2017,	C-60/16	***Khir Amayry***	28
	☞	CJEU	26 July	2017,	C-670/16	***Mengesteab***	20+21+27
	☞	CJEU	26 July	2017,	C-646/16	***Jafari***	12+13
	☞	CJEU	26 July	2017,	C-490/16	***A.S.***	13(1)
	☞	CJEU	5 Apr.	2017,	C-36/17	***Ahmed***	
	☞	CJEU	15 Mar.	2017,	C-528/15	***Al Chodor***	28
	☞	CJEU	16 Feb.	2017,	C-578/16	***C.K.***	17
	☞	CJEU	7 June	2016,	C-155/15	***Karim***	19(2)+27(1)
	☞	CJEU	7 June	2016,	C-63/15	***Ghezelbash***	27
	☞	CJEU	17 Mar.	2016,	C-695/15	***Mirza***	3(3)
		CJEU pending cases					
New	☞	CJEU	(pending)		C-185/24	***Tudmur a.o.***	3(2)
	☞	CJEU	(pending)		C-790/23	***Qassioun***	18(1)(d)
	☞	CJEU	(pending)		C-560/23	***Tang***	29(1)+29(2)

See further: § 3.3.1 and 3.3.2

Regulation 2725/2000 — **Eurodac I**

Concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

* OJ 2000 L 316/1 — impl. date: 15-01-2003

* implemented by Regulation 407/2002 (OJ 2002 L 62/1)

Regulation 603/2013 — **Eurodac II**

Concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (recast)

* OJ 2013 L 180/1 — impl. date: 20-07-2015 — UK, IRL opt in

* Recast of Reg. 2725/2000

Council Decision 2015/1523 — **Relocation I**

1st Relocation scheme Italy and Greece of 14 Sept. 2015

* OJ 2015 L 239/146

* This proposal contains the second elaboration of provisional measures to assist Italy and Greece in their effort to deal with the increasing numbers of asylum seekers: relocation of in total 40.000 asylum seekers

Council Decision 2015/1601 — **Relocation II**

2nd Relocation scheme Italy and Greece of 22 Sept. 2015

* OJ 2015 L 248/80

* This proposal contains the second elaboration of provisional measures to assist Italy and Greece in their effort to deal with the increasing numbers of asylum seekers. It is the very first council decision on migration and asylum that was not accepted unanimously. Relocation of 120.000 asylum seekers.

Decision — **Agenda on Migration**

European Agenda on Migration

* OJ 2016 C 71/46

The ECAS is lacking a kind of fair distribution system of asylum seekers. This agenda consists of several measures including a relocation system (for a limited number of asylum seekers) and a resettlement proposal for refugees.

Council Regulation — **Emergency support**

On the provision of emergency support within the Union

* OJ 2016 L 070/1

ECHR — **Conditions (Dublin)**

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

* ETS 005 — impl. date: 1953

* art. 3+13: Degrading treatment in the context of Dublin transfer

ECtHR Judgments

☞	ECtHR	5 May	2022	48062/19	***V.A. a.o. v IT & NL***	3
☞	ECtHR	23 Mar.	2021	46595/19	***M.T. v NL***	3
☞	ECtHR	15 May	2018	67981/16	***H. a.o. v. SWI v***	3
☞	ECtHR	30 May	2017	79480/13	***E.T. and N.T. v. CH v***	3
☞	ECtHR	14 Mar.	2017	5888/10	***Mucalim v NL & MT***	3
☞	ECtHR	28 June	2016	15636/16	***N.A. a.o. v DK***	3
☞	ECtHR	17 Nov.	2015	54000/11	***A.T.H. v NL***	3
☞	ECtHR	3 Nov.	2015	21459/14	***J.A. a.o. v NL***	3
☞	ECtHR	30 June	2015	39350/13	***A.S. v CH***	3
☞	ECtHR	2 June	2015	7149/12	***K.O.J. v NL***	3
☞	ECtHR	15 Feb.	2015	51428/10	***A.M.E. v NL***	3
☞	ECtHR	4 Nov.	2014	29217/12	***Tarakhel v CH***	3+13
☞	ECtHR	6 June	2013	2283/12	***Mohammed v AT***	3+13
☞	ECtHR	2 Apr.	2013	27725/10	***Mohammed Hussein v NL & IT***	3+13
☞	ECtHR	13 Dec.	2011	15297/09	***Kanagaratnam v. BEL v***	3+5
☞	ECtHR	21 Jan.	2011	30696/09	***M.S.S. v BE & GR***	3+13
☞	ECtHR	2 Dec.	2008	32733/08	***K.R.S. v UK***	3+13
☞	ECtHR	7 Mar.	2000	43844/98	***T.I. v UK***	3+13

See further: § 3.3.3

CAT — **Conditions (Dublin)**

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

* 1465 UNTS 85 — impl. date: 1987

* art. 3+14: degrading treatment in the context of Dublin transfer

CtAT Views

☞	CtAT	7 Dec.	2018	C/65/D/811/2017	***M.G. v CH***	3+16
☞	CtAT	6 Dec.	2018	C/65/D/758/2016	***Harun v CH***	3+14+16
☞	CtAT	3 Aug.	2018	C/64/D/742/2016	***A.N. v CH***	3

See further: § 3.3.4

ICCPR — **Conditions (Dublin)**

International Covenant on Civil and Political Rights

* 999 UNTS 14668 — impl. date: 1976

* art. 7: Prohibition of torture or cruel, inhuman or degrading treatment or punishment in the context of deportation under the Dublin Regulation

HRC Views

☞	HRC	13 July	2018	C/123/D/2575/2015	***Bayush A. Araya v DK***	7
☞	HRC	7 Nov.	2017	C/121/D/2770/2016	***O.A. v DK***	7+24
☞	HRC	15 Dec.	2016	C/118/D/2608/2015	***R.A.A. & M. v DK***	7
☞	HRC	22 July	2015	C/114/D/2360/2014	***Warda Osman Jasin v DK***	7

See further: § 3.3.5

CRC — **Rights of the Child (Detention)**

Convention on the Rights of the Child

* 1577 UNTS 27531 — impl. date: 02-09-1990

* art. 3: best interest of the child (in the context of Dublin transfer)
Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014

CtRC Views

☞	CtRC	4 Feb.	2021	C/86/D/83/2019	***R.H.M. v DK***	3+19
☞	CtRC	28 Sep.	2020	C/85/D/56/2018	***V.A. v CH***	3+12

See further: § 3.3.6

3.2 Responsibility Sharing: Proposed Measures

Regulation **Eurodac III**

Recast of Eurodac: for the comparison of fingerprints

* COM (2020) 614, 23 Sep 2020
* Original: COM (2016) 272, 4 May 2016

Agreement between EP and Council on 20 December 2023.

Regulation **Dublin IV**

Replacing Dublin III

* COM (2016) 270, 4 May 2016

Withdrawn April 2021. See alternative proposal COM(2020) 610 on Asylum and Migration Management

Regulation **Resettlement**

On a Union resettlement framework

* COM (2016) 468, 13 July 2016
* Approval in committee of the text agreed at 1st reading interinstitutional negotiations

Regulation **AMM**

Asylum and migration management

* COM (2020) 610, 23 Sep 2020
* Replacing Dublin III Regulation

Agreement between EP and Council on 20 December 2023.

Regulation **Crisis and Force Majeure**

On situations of crisis and force majeure in the field of migration and asylum

* COM (2020) 613, 23 Sep 2020

Agreement between EP and Council on 20 December 2023.

Regulation **Instrumentalisation**

Addressing situations of instrumentalisation in the field of migration and asylum

* COM (2021) 890, 14 Dec. 2021
* Council and Parliament both still under internal negotiations

3.3 Responsibility Sharing: Jurisprudence

case law sorted in alphabetical order

3.3.1 CJEU Judgments on Responsibility Sharing

☞ CJEU 2 Aug. 2021, C-262/21 (PPU) ***A.*** EU:C:2021:640

* interpr. of Reg. 604/2013 Dublin III, 6(1)+12(3)
* ref. from Supreme Court (Finland) 23 Apr. 2021
* *Art. 2 of Reg. 2201/2003 on the recognition of judgments in matrimonial matters and in proceedings relating to parental responsibility is to be interpreted as meaning that there can be no unlawful removal or unlawful withholding within the meaning of this provision if one parent, without the consent of the other parent, in compliance with a policy issued by a MS on the basis of Dublin III, transfers his child from this state, where this child ordinarily lives, to another MS and to remain in the latter MS after the (Dublin) transfer decision was annulled, without the authorities of the former MS having decided to take back the transferred persons or to allow them to stay.*

New

☞ CJEU 18 Apr. 2024, C-359/22 — ***A.H.Y.*** — EU:C:2024:334
AG 14 Sep. 2023 — EU:C:2023:678
* interpr. of Reg. 604/2013 — Dublin III, 27
* ref. from High Court (Ireland) 3 June 2022
* *Art. 27(1) Dublin III must be interpreted as not requiring MSs to make available an effective remedy against a decision adopted under the discretionary clause contained in Art. 17(1) of that regulation.*
Art. 47 Charter must be interpreted as not applying to a situation in which an applicant for international protection who is the subject of a transfer decision has requested the MS which adopted that decision to exercise its discretion under Article 17(1) Dublin III or has sought a judicial remedy against the outcome of that request, with the result that that provision of the Charter a fortiori does not preclude a MS from implementing, in those circumstances, a transfer decision before that request or any action challenging the outcome of that request has been determined.
The first subparagraph of Art. 29(1) Dublin III must be interpreted as meaning that the six-month time limit to proceed to the transfer of an applicant for international protection which is laid down in that provision starts to run from acceptance of the request by another MS to take charge or to take back the person concerned or from the final decision on an appeal against or review of a transfer decision where there is a suspensive effect in accordance with art. 27(3) of that regulation, and not from the date of the final decision on an action challenging the decision of the requesting MS, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Art. 17(1) of that regulation to examine the application for international protection.

☞ CJEU (GC) 26 July 2017, C-490/16 — ***A.S.*** — EU:C:2017:585
AG 8 June 2017 — EU:C:2017:443
* interpr. of Reg. 604/2013 — Dublin III, 13(1)
* ref. from Vrhovno sodišče (Slovenia) 16 Sep. 2016
* *On a proper construction of Article 13(1) of Dublin III, a third-country national whose entry has been tolerated by the authorities of a first MS faced with the arrival of an exceptionally large number of third-country nationals wishing to transit through that MS in order to lodge an application for international protection in another MS, without satisfying the entry conditions in principle required in that first Member State, must be regarded as having 'irregularly crossed' the border of that first MS, within the meaning of that provision.*

☞ CJEU (GC) 10 Dec. 2013, C-394/12 — ***Abdullahi*** — EU:C:2013:813
AG 11 July 2013 — EU:C:2013:473
* interpr. of Reg. 343/2003 — Dublin II, 10(1)+18+19
* ref. from Asylgerichtshof (Austria) 27 Aug. 2012
* *Art. 19(2) Dublin II must be interpreted as meaning that, in circumstances where a MS has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Art. 10(1) of that regulation – namely, as the MS of the first entry of the applicant for asylum into the EU – the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that MS, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Art. 4 of the Charter.*

☞ CJEU 31 May 2018, C-647/16 — ***Adil Hassan*** — EU:C:2018:368
AG 20 Dec. 2017 — EU:C:2017:1018
* interpr. of Reg. 604/2013 — Dublin III, 26
* ref. from Tribunal administratif de Lille (France) 15 Dec. 2016
* *Art. 26(1) Dublin III must be interpreted as precluding a MS that has submitted, to another MS which it considers to be responsible for the examination of an application for international protection pursuant to the criteria laid down by that regulation, a request to take charge of or take back a person referred to in Art. 18(1) of that regulation from adopting a transfer decision and notifying it to that person before the requested MS has given its explicit or implicit agreement to that request.*

☞ CJEU 5 Apr. 2017, C-36/17 — ***Ahmed*** — EU:C:2017:273
* interpr. of Reg. 604/2013 — Dublin III
* order
* ref. from Verwaltungsgericht Minden (Germany) 25 Jan. 2017
* *Order of the Court (Article 99). The provisions and principles of Dublin III which govern, directly or indirectly, the time limits for lodging an application for a take-back are not applicable in a situation, such as that at issue in the main proceedings, in which a third-country national has lodged an application for international protection in one MS after being granted the benefit of subsidiary protection by another MS.*

☞ CJEU 15 Mar. 2017, C-528/15 — ***Al Chodor*** — EU:C:2017:213
AG 10 Nov. 2016 — EU:C:2016:865
* interpr. of Reg. 604/2013 — Dublin III, 28
* ref. from Nejvyšší správní (Czechia) 7 Oct. 2015
* *Art. 2(n) and 28(2), read in conjunction, must be interpreted as requiring MS to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of Article 28(2) Dublin III.*

☞ CJEU 25 Jan. 2018, C-360/16 — ***Aziz Hasan*** — EU:C:2018:368
AG 7 Sep. 2017 — EU:C:2017:653
* interpr. of Reg. 604/2013 — Dublin III, 23+24
* ref. from Bundesverwaltungsgericht (Germany) 29 June 2016
* *Article 27(1) must be interpreted as not precluding a provision of national law, which provides that the factual situation that is relevant for the review by a court or tribunal of a transfer decision is that obtaining at the time of the last hearing before the court or tribunal determining the matter or, where there is no hearing, at the time when that court or tribunal gives a decision on the matter.*
Article 24 must be interpreted as meaning that, in which a third-country national who, after having made an application for international protection in a first MS (MS'A'), was transferred to MS 'A' as a result of the rejection of a fresh application lodged in a second MS (MS 'B') and has then returned, without a residence document, to MS 'B', a take back procedure may be undertaken in respect of that third-country national and it is not possible to transfer that person anew to MS 'A' without such a procedure being followed.
Article 24(2) must be interpreted as meaning that, in which a third-country national has returned, without a residence document, to the territory of a MS that has previously transferred him to another MS, a take back request must be submitted within the periods prescribed in that provision and those periods may not begin to run until the requesting MS has become aware that the person concerned has returned to its territory.
Article 24(3) must be interpreted as meaning that, where a take back request is not made within the periods laid down in Article 24(2), the MS on whose territory the person concerned is staying without a residence document is responsible for examining the new application for international protection which that person must be permitted to lodge.
Article 24(3) must be interpreted as meaning that the fact that an appeal procedure brought against a decision that rejected a first application for international protection made in a MS is still pending is not to be regarded as equivalent to the lodging of a new application for international protection in that MS, as referred to in that provision.
Article 24(3) must be interpreted as meaning that, where the take back request is not made within the periods laid down in Article 24(2) of that regulation and the person concerned has not made use of the opportunity that he must be given to lodge a new application for international protection:
(a) the MS on whose territory that person is staying without a residence document can still make a take back request, and
(b) that provision does not allow the person to be transferred to another MS without such a request being made.

☞ CJEU 12 Jan. 2023, C-323/21 — ***B.*** — EU:C:2023:4
AG 8 Sep. 2022 — EU:C:2022:651
* interpr. of Reg. 604/2013 — Dublin III, 27+29
* joined cases: C-323/21 + C-324/21 + C-325/21
* ref. from Raad van State (Netherlands) 19 May 2021
* *On the Chain rule of Dublin III. Art. 23 and 29 of Dublin III must be interpreted as meaning that, where a time limit for the transfer of a third-country national between a requested MS and a first requesting MS has started to run, responsibility for examining the application for international protection lodged by that person is transferred to that requesting MS by reason of the expiry of that time limit, even though that person, in the meantime, lodged a new application for international protection in a third MS, which led to the acceptance by the requested MS of a take back request made by that third MS, provided that that responsibility has not been transferred to that third MS by reason of the expiry of one of the time limits provided for in Article 23.*
Following such a transfer of responsibility, the MS in which that person is present cannot transfer him or her to a MS other than the newly responsible MS, but it may, however, within the time limits laid down in Art. 23(2), submit a take back request to the latter MS.
Art. 27(1) read in the light of recital 19, and Art. 47 of the Charter must be interpreted as meaning that a third-country national who has lodged an application for international protection successively in three MSs must be able, in the third of those MSs, to have available an effective and rapid remedy which enables him or her to rely on the fact that responsibility for examining his or her application was transferred, by reason of the expiry of the time limit for transfer provided for in Art. 29(1) and (2) of that regulation, to the second of those MSs.

New ☞ CJEU 7 May 2024, C-80/22 — ***B.U. / Min. dell'Interno (IT)*** — EU:C:2024:428
* interpr. of Reg. 604/2013 — Dublin III, 4+5
* withdrawn
* ref. from Tribunale ordinario di Bologna (Italy) 7 Feb. 2022
* *Referred to CJEU 30 Nov 2023, C-228/21, C.Z.A.*

☞ CJEU 8 Nov. 2022, C-39/21 — ***C. & B.*** — EU:C:2022:858
* interpr. of Reg. 604/2013 — Dublin III, 28
* joined cases: C-39/21 + C-704/20
* *Art. 15(2)+(3) Return Directive, and Art. 28(4) Dublin III, read in conjunction with Art. 6+47 Charter, must be interpreted as meaning that a judicial authority's review of compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law must lead that authority to raise of its own motion, on the basis of the material in the file brought to its attention, as supplemented or clarified during the adversarial proceedings before it, any failure to comply with a condition governing lawfulness which has not been invoked by the person concerned.*

☞ CJEU 16 Feb. 2017, C-578/16 (PPU) **C.K.** EU:C:2017:127
AG 9 Feb. 2017 EU:C:2017:108
* interpr. of Reg. 604/2013 Dublin III, 17
* ref. from Vrhovno sodišče (Slovenia) 21 Nov. 2016
* *Article 17(1) must be interpreted as meaning that the question of the application, by a MS of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that MS, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.*
Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:
(a) even where there are no substantial grounds for believing that there are systemic flaws in the MS responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Dublin III can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;
in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;
it is for the authorities of the MS having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the MS concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer; and
(b) where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting MS may choose to conduct its own examination of that person's application by making use of the 'discretionary clause'.
Article 17(1) of Dublin III, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that MS to apply that clause.

☞ CJEU 30 Nov. 2023, C-228/21 **C.Z.A. / Min. Int. (IT)** EU:C:2023:934
AG 20 Apr. 2023 EU:C:2023:316
* interpr. of Reg. 604/2013 Dublin III, 4+27
* joined cases: C-228/21 + C-254/21+C-297/21+C-315/21+C-358/21
* ref. from Corte suprema di cassazione (Italy) 29 Mar. 2021
* *The question is whether Art. 4 Dublin III must be interpreted as meaning that an action may be brought under Art. 27 against a transfer decision adopted by a MS, using the mechanism provided for in Art. 26 and on the basis of the obligation to take back laid down in Art. 18(1)(b) thereof, solely because of a failure to deliver the information leaflet required under Art. 4(2) by the MS which adopted the transfer decision?*
The CJEU ruled that Art. 4 Dublin III must be interpreted as meaning that the obligation to provide the information referred to therein, applies both in the context of a first application for international protection and a take charge procedure, under Art. 20(1) and 21(1), as well as in the context of a subsequent application for international protection and a situation, as that covered by Art. 17(1) of Eurodac Reg. (603/2013), capable of giving rise to take back procedures under Art. 23(1) and Art. 24(1) of Dublin III. The same goes for the personal interview referred to in Art. 5.
Art. 3 read in conjunction with Art. 27 and with Art. 4, 19 and 47 of the Charter must be interpreted as meaning that the court or tribunal of the requesting MS, hearing an action challenging a transfer decision, cannot examine whether there is, in the requested Member State, a risk of infringement of the principle of non-refoulement to which the applicant for international protection would be exposed during his or her transfer to that MS or thereafter, where that court or tribunal does not find that there are, in the requested MS, systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection. Differences of opinion between the authorities and courts in the requesting MS, on the one hand, and those of the requested MS, on the other hand, as regards the interpretation of the material conditions for international protection do not establish the existence of systemic deficiencies.

☞ CJEU 2 Apr. 2020, C-715/17 **Com. / Poland** EU:C:2020:257
AG 31 Oct. 2019 EU:C:2019:917
* legality of C.Dec. 2015/1601 2nd Relocation scheme
* joined cases: C-715/17 + C-718/17 + C-719/17
* *Council decision on relocation of asylum seekers is lawful.*

☞ CJEU 21 Sep. 2023, C-568/21 **E. & S.** EU:C:2023:683
AG 9 Mar. 2023 EU:C:2023:189
* interpr. of Reg. 604/2013 Dublin III, 2
* ref. from Raad van State (Netherlands) 25 Aug. 2021, 202001990
* *On the issue whether a Diplomatic Card a type of residence permit is or not. The CJEU ruled, in conformity with the conclusion of the AG, that Art. 2(l) Dublin III must be interpreted as meaning that a diplomatic card issued under the Vienna Convention on Diplomatic Relations, concluded in Vienna on 18 April 1961, and entered into force on 24 April 1964, is a 'residence document' within the meaning of that provision.*

☞ CJEU 30 Mar. 2023, C-556/21 ***E.N. a.o.*** EU:C:2023:272
AG 17 Nov. 2022 EU:C:2022:901
* interpr. of Reg. 604/2013 Dublin III, 27(3)+29(1)+29(2)
* ref. from Raad van State (Netherlands) 1 Sep. 2021, 202001503
* *On the suspension of the transfer period. Art. 29(1) and (2) read in conjunction with Art. 27(3) must be interpreted as not precluding national legislation which allows a national court or tribunal hearing an appeal at second instance against a judgment annulling a transfer decision to adopt, on the application of the competent authorities, an interim measure enabling those authorities to refrain from taking a fresh decision pending the outcome of that appeal and having the object or effect of suspending the running of the transfer time limit until that outcome, provided that such a measure may be adopted only where the implementation of the transfer decision has been suspended pursuant to Art. 27(3) or (4) of that regulation during the examination of the appeal at first instance.*

☞ CJEU 4 Oct. 2018, C-56/17 ***Fathi*** EU:C:2018:803
AG 25 July 2018 EU:C:2018:621
* interpr. of Reg. 604/2013 Dublin III, 3(1)
* see also § 2.3.1
* ref. from Administrativen sad Sofia-grad (Bulgaria) 3 Feb. 2017
* *Art. 3(1) must be interpreted as not precluding the authorities of a MS from conducting an examination on the merits of an application for international protection, within the meaning of Article 2(d) of that regulation, where there is no express decision by those authorities determining, on the basis of the criteria laid down by the regulation, that the responsibility for conducting such an examination lies with that Member State.*

☞ CJEU 7 June 2016, C-63/15 ***Ghezelbash*** EU:C:2016:409
AG 17 Mar. 2016 EU:C:2016:186
* interpr. of Reg. 604/2013 Dublin III, 27
* ref. from Rechtbank Den Haag (zp Den Bosch) (Netherlands) 12 Feb. 2015
* *Art. 27(1), read in the light of recital 19 of Dublin III, must be interpreted as meaning that, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of Dublin III, in particular the criterion relating to the grant of a visa set out in Art. 12 of the regulation*

☞ CJEU (GC) 2 Apr. 2019, C-582/17 ***H. & R.*** EU:C:2019:280
AG 29 Nov. 2018 EU:C:2018:975
* interpr. of Reg. 604/2013 Dublin III, 27
* joined cases: C-582/17 + C-583/17
* ref. from Raad van State (Netherlands) 4 Oct. 2017
* *Dublin III must be interpreted as meaning that a third-country national who lodged an application for international protection in a first Member State, then left that Member State and subsequently lodged a new application for international protection in a second Member State:*
(a) is not, in principle, entitled to rely, in an action brought under Art. 27(1) in that second Member State against a decision to transfer him or her, on the criterion for determining responsibility set out in Art. 9 thereof;
(b) may, by way of exception, invoke, in such an action, that criterion for determining responsibility, in a situation covered by Art. 20(5), in so far as that third-country national has provided the competent authority of the requesting Member State with information clearly establishing that it should be regarded as the Member State responsible for examining the application pursuant to that criterion for determining responsibility.

☞ CJEU (GC) 15 Apr. 2021, C-194/19 ***H.A.*** EU:C:2021:270
AG 2 Feb. 2021 EU:C:2021:85
* interpr. of Reg. 604/2013 Dublin III, 27
* ref. from Conseil d'État (Belgium) 28 Feb. 2019
* *Art. 27(1) Dublin III read in the light of recital 19 thereof, and Art. 47 Charter must be interpreted as precluding national legislation which provides that the court or tribunal seised of an action for annulment of a transfer decision may not, in the context of the examination of that action, take account of circumstances subsequent to the adoption of that decision which are decisive for the correct application of that regulation, unless that legislation provides for a specific remedy entailing an ex nunc examination of the situation of the person concerned, the results of which are binding on the competent authorities, a remedy which may be exercised after such circumstances have arisen and which, in particular, is not made conditional on the deprivation of that person's liberty or on the fact that implementation of that decision is imminent.*

☞ CJEU 30 May 2013, C-528/11 ***Halaf*** EU:C:2013:342
* interpr. of Reg. 343/2003 Dublin II, 3(2)
* ref. from Administrativen sad Sofia-grad (Bulgaria) 12 Oct. 2011
* *Art. 3(2) must be interpreted as permitting a MS, which is not indicated as "responsible", to examine an application for asylum even though no circumstances exist which establish the applicability of the humanitarian clause in Art. 15. That possibility is not conditional on the MS responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned. The MS in which the asylum seeker is present is not obliged, during the process of determining the MS responsible, to request the UNHCR to present its views where it is apparent from the documents of the UNHCR that the MS indicated as "responsible" is in breach of the rules of European Union law on asylum.*

☞ CJEU 6 Sep. 2017, C-647/15 ***Hungary / Council (HU)*** EU:C:2017:631
AG 26 July 2017 EU:C:2017:618
* legality of C.Dec. 2015/1601 2nd Relocation scheme
* *Council decision on relocation of asylum seekers is lawful.*

☞ CJEU (GC) 1 Aug. 2022, C-19/21 ***I. & S.*** EU:C:2022:605
AG 7 Apr. 2022 EU:C:2022:279
* interpr. of Reg. 604/2013 Dublin III, 8(2)+27(1)+2(j)
* also Art. 47 Charter
* ref. from Rechtbank Den Haag (zp Haarlem) (Netherlands) 12 Jan. 2021
* *Art. 27(1) Dublin III read in conjunction with Art. 7+24+47 Charter must be interpreted as meaning that it requires a MS to which a take charge request has been made, based on Art. 8(2), to grant a right to a judicial remedy against its refusal decision to the unaccompanied minor, within the meaning of Ar. 2(j) of that regulation, who applies for international protection, but not to the relative of that minor, within the meaning of Art. 2(h) of that regulation.*

☞ CJEU 31 Mar. 2022, C-231/21 ***I.A.*** EU:C:2022:237
* interpr. of Reg. 604/2013 Dublin III, 29(2)
* ref. from Verwaltungsgerichtshof (Austria) 25 Mar. 2021
* *The term "detention" used in Art. 29(2) is to be interpreted as meaning that it does not apply if an asylum seeker is forcibly placed in a psychiatric ward of a hospital with court approval because he is a serious danger to himself or society as a result of a mental illness*

☞ CJEU (GC) 2 Apr. 2020, C-897/19 (PPU) ***I.N.*** EU:C:2020:262
AG 27 Feb. 2020 EU:C:2020:128
* interpr. of Reg. 604/2013 Dublin III, all Art.
* ref. from Vrhovni sud (Croatia) 28 Nov. 2019
* *EU law, in particular Art. 36 of the Agreement on the European Economic Area and Art. 19(2) of the Charter, must be interpreted as meaning that, when a MS, to which a national of a MS of the European Free Trade Association (EFTA)has moved, receives an extradition request from a third State pursuant to the European Convention on Extradition, (1957), and when that national was granted asylum by that EFTA State — before he or she acquired the nationality of that State — precisely on account of the criminal proceedings brought against him or her in the State which issued the request for extradition, it is for the competent authority of the requested MS to verify that the extradition would not infringe the rights covered by Art. 19(2) of the Charter, the grant of asylum being a particularly substantial piece of evidence in the context of that verification. Before considering executing the request for extradition, the requested MS is obliged, in any event, to inform that same EFTA State and, should that State so request, surrender that national to it, in accordance with the provisions of the surrender agreement, provided that that EFTA State has jurisdiction, pursuant to its national law, to prosecute that national for offences committed outside its national territory.*

☞ CJEU (GC) 26 July 2017, C-646/16 (PPU) ***Jafari*** EU:C:2017:586
AG 8 June 2017 EU:C:2017:443
* interpr. of Reg. 604/2013 Dublin III, 12+13
* ref. from Verwaltungsgerichtshof (Austria) 15 Dec. 2016
* *The fact that the authorities of one MS, faced with the arrival of an unusually large number of third-country nationals seeking transit through that MS in order to lodge an application for international protection in another Member State, tolerate the entry into its territory of such nationals who do not fulfil the entry conditions generally imposed in the first MS, is not tantamount to the issuing of a 'visa' within the meaning of Article 12.*
Article 13(1) Dublin III must be interpreted as meaning that a third-country national whose entry was tolerated by the authorities of one MS faced with the arrival of an unusually large number of third-country nationals seeking transit through that MS in order to lodge an application for international protection in another MS, without fulfilling the entry conditions generally imposed in the first MS, must be regarded as having 'irregularly crossed' the border of the first MS within the meaning of that provision.

☞ CJEU (GC) 19 Mar. 2019, C-163/17 ***Jawo*** EU:C:2019:218
AG 25 July 2018 EU:C:2018:613
* interpr. of Reg. 604/2013 Dublin III, 29(2)
* ref. from Verwaltungsgerichtshof Baden-Württemberg (Germany) 3 Apr. 2017
* *Art. 29(2) of Dublin III must be interpreted as meaning that an applicant 'absconds' where he deliberately evades the reach of the national authorities responsible for carrying out his transfer, in order to prevent the transfer. It may be assumed that that is the case where the transfer cannot be carried out due to the fact that the applicant has left the accommodation allocated to him without informing the competent national authorities of his absence, provided that he has been informed of his obligations in that regard, which it is for the referring court to determine. The applicant retains the possibility of demonstrating that the fact that he has not informed the authorities of his absence is due to valid reasons and not the intention to evade the reach of those authorities.*
Art. 27(1) of Dublin III must be interpreted as meaning that, in proceedings brought against a transfer decision, the person concerned may rely on Art. 29(2), by claiming that, since he had not absconded, the six-month transfer time limit had expired.
The second sentence of Art. 29(2) of Dublin III must be interpreted as meaning that, in order to extend the transfer time limit by a maximum of 18 months, it suffices that the requesting Member State informs the Member State responsible, before the expiry of the six-month transfer time limit, that the person concerned has absconded and specifies, at the same time, a new transfer time limit.
EU law must be interpreted as meaning that the question whether Art. 4 of the Charter precludes the transfer, pursuant to Art. 29 of Dublin III, of an applicant for international protection to the Member State which, in accordance with that regulation, is normally responsible for examining his application for international protection, where, in the event of such protection being granted in that Member State, the applicant would be exposed to a substantial risk of suffering inhuman or degrading treatment within the meaning of Art. 4 of the Charter, on account of the living conditions that he could be expected to encounter as a beneficiary of international protection in that Member State, falls within its scope.
Art. 4 of the Charter must be interpreted as not precluding such a transfer of an applicant for international protection, unless the court hearing an action challenging the transfer decision finds, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, that that risk is real for that applicant, on account of the fact that, should he be transferred, he would find himself, irrespective of his wishes and personal choices, in a situation of extreme material poverty.

☞ CJEU (GC) 6 Nov. 2012, C-245/11 ***K.*** EU:C:2012:685
AG 27 June 2012 EU:C:2012:389
* interpr. of Reg. 343/2003 Dublin II, 15+3(2)
* ref. from Asylgerichtshof (Austria) 23 May 2011
* *Art. 15(2) must be interpreted as meaning that a MS which is not responsible for examining an application for asylum pursuant to the criteria laid down in Chapter III of Dublin II becomes so responsible. It is for the MS which has become the responsible MS within the meaning of that regulation to assume the obligations which go along with that responsibility. It must inform in that respect the MS previously responsible.*
This interpretation of Art. 15(2) also applies where the MS which was responsible pursuant to the criteria laid down in Chapter III of Dublin II did not make a request in that regard in accordance with the second sentence of Art. 15(1).

☞ CJEU (GC) 7 June 2016, C-155/15 ***Karim*** EU:C:2016:410
AG 17 Mar. 2016 EU:C:2016:189
* interpr. of Reg. 604/2013 Dublin III, 19(2)+27(1)
* ref. from Migrationsöverdomstolen (Sweden) 1 Apr. 2015
* *Art. 19(2) must be interpreted to the effect that that provision, in particular its second subparagraph, is applicable to a third-country national who, after having made a first asylum application in a MS, provides evidence that he left the territory of the MS for a period of at least three months before making a new asylum application in another MS.*
Art. 27(1) must be interpreted to the effect that, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke an infringement of the rule set out in the second subparagraph of Art. 19(2).

☞ CJEU 3 May 2012, C-620/10 ***Kastrati*** EU:C:2012:265
AG 12 Jan. 2012 EU:C:2012:10
* interpr. of Reg. 343/2003 Dublin II, 2(c)
* ref. from Kammarrätten i Stockholm, Migrationsöverdomstolen (Sweden) 27 Dec. 2010
* *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 13 Sep. 2017, C-60/16 ***Khir Amayry*** EU:C:2017:675
AG 1 Mar. 2017 EU:C:2017:147
* interpr. of Reg. 604/2013 Dublin III, 28
* ref. from Migrationsöverdomstolen (Sweden) 3 Feb. 2016
* *Dublin III does not preclude national legislation, which provides that, where the detention of an applicant for international protection begins after the requested MS has accepted the take charge request, that detention may be maintained for no longer than two months, provided:*
(1) that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, (2) that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect.
Dublin III does preclude national legislation, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out.

☞ CJEU 12 Jan. 2023, C-745/21 ***L.G.*** EU:C:2023:113
* interpr. of Reg. 604/2013 Dublin III, 16(1)+17(1)
* ref. from Rechtbank Den Haag (zp Zwolle) (Netherlands) 2 Dec. 2021
* *Assessment of the best interests of the child in the context of a transfer decision in the situation where an applicant for international protection is pregnant at the moment of the application.*
Art. 16(1) must be interpreted as not applying where there is a dependency link either between an applicant for international protection and that applicant's spouse who is legally resident in the MS in which the application for such protection was lodged, or between the unborn child of that applicant and that spouse who is also the father of that child.
Art. 17(1) must be interpreted as not precluding the legislation of a MS from requiring the competent national authorities, on the sole ground of the best interests of the child, to examine an application for international protection lodged by a third-country national where she was pregnant at the time her application was lodged, even though the criteria set out in Art. 7 to 15 of that regulation indicate that another MS is responsible for that application.

☞ CJEU 6 June 2013, C-648/11 ***M.A.*** EU:C:2013:367
AG 21 Feb. 2013 EU:C:2013:93
* interpr. of Reg. 343/2003 Dublin II, 6
* ref. from Court of Appeal (England & Wales) (UK) 19 Dec. 2011
* *Fundamental rights include, in particular, that set out in Art. 24(2) of the Charter, whereby in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests are to be a primary consideration. The second paragraph of Art. 6 Dublin II cannot be interpreted in such a way that it disregards that fundamental right (see, by analogy, C-403/09 PPU, Detiček, para 54 and 55, and Case C-400/10 PPU McB, para 60). Consequently, although express mention of the best interest of the minor is made only in the first paragraph of Art. 6, the effect of Art. 24(2) of the Charter, in conjunction with Art. 51(1) thereof, is that the child's best interests must also be a primary consideration in all decisions adopted by the Member States on the basis of the second paragraph of Art. 6.*
Thus, Art. 6 must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an unaccompanied minor with no member of his family legally present in the territory of a MS has lodged asylum applications in more than one MS, the MS in which that minor is present after having lodged an asylum application there is to be designated the 'MS responsible'.

☞ CJEU 22 Sep. 2022, C-245/21 ***M.A. & P.B. / Germany*** EU:C:2022:709
AG 2 June 2022 EU:C:2022:433
* interpr. of Reg. 604/2013 Dublin III, 27(4)
* joined cases: C-245/21 + C-248/21
* ref. from Bundesverwaltungsgericht (Germany) 19 Apr. 2021
* *Art. 27(4) and 29(1) Dublin III must be interpreted as meaning that the time limit for transfer provided for in the latter provision is not interrupted where the competent authorities of a MS adopt, on the basis of Art. 27(4), a revocable decision to suspend the implementation of a transfer decision on the grounds that such implementation is materially impossible due to the COVID-19 pandemic.*

☞ CJEU 23 Jan. 2019, C-661/17 ***M.A. a.o.*** EU:C:2019:53

* interpr. of Reg. 604/2013 Dublin III, 6+17+20+27

* ref. from High Court (Ireland) 8 Nov. 2017

* *Art. 17(1) of Dublin III Regulation must be interpreted as meaning that the fact that a Member State, designated as 'responsible' within the meaning of that regulation, has notified its intention to withdraw from the European Union in accordance with Article 50 TEU does not oblige the determining Member State to itself examine, under the discretionary clause set out in Art. 17(1), the application for protection at issue.*
Dublin III must be interpreted as meaning that it does not require the determination of the Member State responsible under the criteria defined by that regulation and the exercise of the discretionary clause set out in Art. 17(1) of that regulation to be undertaken by the same national authority.
Art. 6(1) of Dublin III must be interpreted as meaning that it does not require a Member State which is not responsible, under the criteria set out by that regulation, for examining an application for international protection to take into account the best interests of the child and to itself examine that application, under Art. 17(1) of that regulation.
Art. 27(1) of Dublin III must be interpreted as meaning that it does not require a remedy to be made available against the decision not to use the option set out in Art. 17(1) of that regulation, without prejudice to the fact that that decision may be challenged at the time of an appeal against a transfer decision.
Art. 20(3) of Dublin III must be interpreted as meaning that, in the absence of evidence to the contrary, that provision establishes a presumption that it is in the best interests of the child to treat that child's situation as indissociable from that of its parents.

☞ CJEU (GC) 25 Oct. 2017, C-201/16 ***Majid Shiri*** EU:C:2017:805

AG 20 July 2017 EU:C:2017:579

* interpr. of Reg. 604/2013 Dublin III, 27+29

* ref. from Verwaltungsgerichtshof (Austria) 12 Apr. 2016

* *Article 29(2) must be interpreted as meaning that, where the transfer does not take place within the six-month time limit (as defined in Article 29(1) and (2)), responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.*
Article 27(1) must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period that occurred after the transfer decision was adopted. The right which national legislation accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy.

☞ CJEU 26 July 2017, C-670/16 (PPU) ***Mengesteab*** EU:C:2017:587

AG 20 June 2017 EU:C:2017:480

* interpr. of Reg. 604/2013 Dublin III, 20+21+27

* ref. from Verwaltungsgericht Minden (Germany) 29 Dec. 2016

* *Article 27(1) must be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.*
Article 21(1) must be interpreted as meaning that a take charge request cannot validly be made more than three months after the application for international protection has been lodged, even if that request is made within two months of receipt of a Eurodac hit within the meaning of that article.
Article 20(2) must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.

☞ CJEU 17 Mar. 2016, C-695/15 (PPU) ***Mirza*** EU:C:2016:188

AG 8 Mar. 2016 EU:C:2016:146

* interpr. of Reg. 604/2013 Dublin III, 3(3)

* ref. from Debreceni Közigazgatási (Hungary) 23 Dec. 2015

* *Art. 3(3) must be interpreted as meaning that the right to send an applicant for international protection to a safe third country may also be exercised by a MS after that MS has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that MS before a decision on the substance of his first application for international protection had been taken.*
Art. 3(3) must also be interpreted as not precluding the sending of an applicant for international protection to a safe third country when the MS carrying out the transfer of that applicant to the MS responsible has not been informed, during the take-back procedure, either of the rules of the latter MS relating to the sending of applicants to safe third countries or of the relevant practice of its competent authorities.
Art. 18(2) must be interpreted as not requiring that, in the event that an applicant for international protection is taken back, the procedure for examining that applicant's application be resumed at the stage at which it was discontinued.

☞ CJEU (GC) 21 Dec. 2011, C-411/10 — ***N.S. & M.E.*** — EU:C:2011:865
AG 22 Sep. 2011 — EU:C:2011:611
* interpr. of Reg. 343/2003 — Dublin II, 3(2)
* joined cases: C-411/10 + C-493/10
* ref. from High Court (Ireland) 15 Oct. 2010
* *Joined cases. The decision adopted by a MS on the basis of Article 3(2) whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of Dublin II, implements EU law for the purposes of Article 6 TEU and Article 51 of the Charter of Fundamental Rights of the EU.*
EU law precludes the application of a conclusive presumption that the MS which Article 3(1) Dublin II indicates as responsible observes the fundamental rights of the EU. Article 4 of the Charter must be interpreted as meaning that the MSs, including the national courts, may not transfer an asylum seeker to the 'MS responsible' within the meaning of Dublin II where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that MS amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision. Subject to the right itself to examine the application referred to in Article 3(2) Dublin II, the finding that it is impossible to transfer an applicant to another MS, where that State is identified as the MS responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the MS which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another MS to be identified as responsible for the examination of the asylum application. The MS in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the MS responsible which takes an unreasonable length of time. If necessary, the first mentioned MS must itself examine the application. Articles 1, 18 and 47 of the Charter do not lead to a different answer.
In so far as the preceding questions arise in respect of the obligations of the United Kingdom of Great Britain and Northern Ireland, the answers to the second to sixth questions referred in Case C-411/10 do not require to be qualified in any respect so as to take account of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the UK.

☞ CJEU 20 Oct. 2022, C-66/21 — ***O.T.E. / Stscr (NL)*** — EU:C:2022:809
AG 2 June 2022 — EU:C:2022:434
* interpr. of Reg. 604/2013 — Dublin III, 17(1)
* ref. from Rechtbank Den Haag (zp Zwolle) (Netherlands) 29 Jan. 2021
* *The applicant applied for asylum in the Netherlands, having previously lodged asylum applications in Italy and Belgium. He informed the Netherlands asylum authority that he had become the victim of human smugglers in Italy. The asylum authority decided not to examine his application on the ground that this was Italy's responsibility because of the earlier applications.*
The CJEU ruled that Art. 2 of Trafficking Directive 2004/81 must be interpreted as meaning that the measure by which a third-country national is transferred from the territory of one MS to that of another MS, pursuant to Dublin III, falls within the scope of the concept of 'expulsion order'.
Art. 6(2) Dir. 2004/81 must be interpreted as precluding the enforcement of a decision to transfer a third-country national, taken pursuant to Dublin III, during the reflection period guaranteed in Art. 6 (1) of that directive, but as not precluding the adoption of such a decision, or of measures preparatory to the enforcement of that decision, provided that those preparatory measures do not deprive such a reflection period of its effectiveness, which is a matter for the referring court to determine.

New ☞ CJEU 7 May 2024, C-217/22 — ***O.V. / Min. dell'Interno (IT)*** — EU:C:2024:480
* interpr. of Reg. 604/2013 — Dublin III, 4+5
* withdrawn
* ref. from Tribunale ordinario di Bologna (Italy) 24 Mar. 2022
* *Referred to CJEU 30 Nov 2023, C-228/21, C.Z.A.*

☞ CJEU 29 Jan. 2009, C-19/08 — ***Petrosian*** — EU:C:2009:41
* interpr. of Reg. 343/2003 — Dublin II, 20(1)(d)+20(2)
* ref. from Kammarrätten i Stockholm, Migrationsöverdomstolen (Sweden) 21 Jan. 2008
* *Articles 20(1)(d) and 20(2) of Dublin II are to be interpreted as meaning that, where the legislation of the requesting MS provides for suspensive effect of an appeal, the period for implementation of the transfer begins to run, not as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation.*

☞ CJEU (GC) 14 Nov. 2013, C-4/11 ***Puid*** EU:C:2013:740
AG 18 Apr. 2013 EU:C:201:244
* interpr. of Reg. 343/2003 Dublin II, 3(2)
* ref. from Hessischer Verwaltungsgerichtshof (Germany) 5 Jan. 2011
* *Where the MS cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible in accordance with the criteria (set out in Chapter III) of Dublin II provide substantial grounds for believing that the asylum seeker concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Art. 4 of the Charter, which is a matter for the referring court to verify, the MS which is determining the MS responsible is required not to transfer the asylum seeker to the MS initially identified as responsible and, subject to the exercise of the right itself to examine the application, to continue to examine the criteria set out in that chapter, in order to establish whether another MS can be identified as responsible in accordance with one of those criteria or, if it cannot, under Art. 13 of the Reg.*
Conversely, in such a situation, a finding that it is impossible to transfer an asylum seeker to the MS initially identified as responsible does not in itself mean that the MS which is determining the MS responsible is required itself, under Art. 3(2) of Dublin II, to examine the application for asylum.

☞ CJEU (GC) 1 Aug. 2022, C-720/20 ***R.O.*** EU:C:2022:603
AG 24 Mar. 2022 EU:C:2022:199
* interpr. of Reg. 604/2013 Dublin III, 20(3)+9+10
* see also under § 2.3
* ref. from Verwaltungsgericht Cottbus (Germany) 14 Dec. 2020
* *Art. 20(3) Dublin III must be interpreted as meaning that it is not applicable by analogy to a situation in which a minor and his or her parents lodge applications for international protection in the MS in which that minor was born, in circumstances where his or her parents are already the beneficiaries of international protection in another MS.*

☞ CJEU 30 Mar. 2023, C-338/21 ***S., N. & S.*** EU:C:2023:269
AG 17 Nov. 2022 EU:C:2022:900
* interpr. of Reg. 604/2013 Dublin III, 29(1)+29(2)+27(3)
* ref. from Raad van State (Netherlands) 26 May 2021
* *On the duration of the transfer time limit in Dublin III. Art. 29(1) and (2) must be interpreted as:*
** not precluding national legislation which provides that the submission of a request for review of a decision refusing to grant a third-country national a residence permit as a victim of trafficking in human beings entails the suspension of the implementation of a previously adopted transfer decision concerning that third-country national,*
but as
** precluding national legislation which provides that such a suspension entails the suspension or interruption of the period for the transfer of that third-country national.*

☞ CJEU 6 Sep. 2017, C-643/15 ***Slovakia / Council (SK)*** EU:C:2017:631
AG 26 July 2017 EU:C:2017:618
* legality of C.Dec. 2015/1601 2nd Relocation scheme
* joined cases: C-643/15 + C-647/15
* *Council decision on relocation of asylum seekers is lawful.*

☞ CJEU 29 Feb. 2024, C-392/22 ***X / Stscr. (NL)*** EU:C:2024:195
AG 13 July 2023 EU:C:2023:593
* interpr. of Reg. 604/2013 Dublin III, 3
* ref. from Rechtbank Den Haag (zp Den Bosch) (Netherlands) 15 June 2022
* *The CJEU rules that Art. 3(2) must be interpreted as meaning that the fact that the MS responsible for examining an application for international protection has carried out pushbacks with respect to TCNs seeking to make such applications at its border and has detained them at its border control posts does not in itself preclude the transfer of that TCN to that MS. The transfer of that TCN to that MS must, however, be ruled out if there are substantial grounds for believing that he or she would, during his or her transfer or thereafter, face a real risk of being subjected to such practices, and that those practices are, depending on the circumstances, which it is for the competent authorities and any court or tribunal which may be seised of an action against the transfer decision to assess, capable of placing that TCN in so grave a situation of extreme material poverty that it may be equated with the inhuman or degrading treatment prohibited by Art. 4 of the Charter.*
The Dublin Regulation must be interpreted in the light of Art. 4 of the Charter as meaning that:
- the MS which has sought to have an applicant for international protection taken back by the MS responsible and wishes to transfer that applicant to the latter MS must, before it can carry out that transfer, take into consideration all of the information provided to it by that applicant, in particular as regards the possible existence of a real risk of inhuman or degrading treatment, within the meaning of Art. 4 of the Charter, at the time of that transfer or thereafter;
- the MS wishing to carry out the transfer must cooperate in establishing the facts and/or verify the truth of those facts;
- that MS refrain from carrying out that transfer if there are substantial grounds for believing that there is a real risk of such treatment in the event of transfer;
- that MS may nevertheless seek to obtain individual guarantees from the MS responsible and, if such guarantees are provided and appear to be both credible and sufficient to rule out any real risk of inhuman or degrading treatment, may carry out that transfer.

☞ CJEU 5 July 2018, C-213/17 — ***X.*** — EU:C:2018:538
AG 13 June 2018 — EU:C:2018:434
* interpr. of Reg. 604/2013 — Dublin III, 17+18+23+24
* ref. from Rechtbank Den Haag (zp Amsterdam) (Netherlands) 25 Apr. 2017
* *Art. 23(3) Dublin III must be interpreted as meaning that the MS in which a new application for international protection has been lodged is responsible for examining that application when no take back request has been made by that MS within the periods laid down in Article 23(2) of that regulation, even though another MS was responsible for examining applications for international protection lodged previously and the appeal brought against the rejection of one of those applications was pending before a court of that other MS when those periods expired.*
Article 18(2) Dublin III must be interpreted as meaning that the making by a MS of a take back request in respect of a third-country national who is staying on its territory without a residence document does not require that MS to suspend its examination of an appeal brought against the rejection of an application for international protection lodged previously, and subsequently to terminate that examination in the event that the requested MS agrees to that request.
Article 24(5) Dublin III must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a MS making a take back request on the basis of Article 24 of that regulation, following the expiry, in the requested MS, of the periods laid down in Article 23(2) thereof, is not required to inform the authorities of that requested MS that an appeal brought against the rejection of an application for international protection lodged previously is pending before a court of the requesting MS.
Article 17(1) and Article 24 Dublin III must be interpreted as meaning that, in a situation such as that at issue in the main proceedings at the time the transfer decision was made, in which an applicant for international protection has been surrendered by one MS to another MS under a European arrest warrant and is staying on the territory of that second MS without having lodged a new application for international protection there, that second MS may request that first MS to take back that applicant and is not required to decide to examine the application lodged by that applicant.

☞ CJEU (GC) 13 Nov. 2018, C-47/17 — ***X.*** — EU:C:2018:900
AG 22 Mar. 2018 — EU:C:2018:212
* interpr. of Reg. 604/2013 — Dublin III, 21+22+23+25
* joined cases: C-47/17 + C-48/17
* ref. from Rechtbank Den Haag (zp Haarlem) (Netherlands) 1 Feb. 2017
* *Article 5(2) must be interpreted as meaning that, in the course of the procedure for determining the MS that is responsible for processing an application for international protection, the MS which receives a take charge or take back request under Articles 21 and 23 lodged in one of the MSs by a third-country national or a stateless person, which, after making the necessary checks, has replied in the negative to that request within the time limits laid down in Articles 22 and 25 and which, thereafter, receives a re-examination request under Article 5(2) of Regulation (EC) No 1560/2003 (Application of Dublin Rules), must endeavour, in the spirit of sincere cooperation, to reply to the re-examination request within a period of two weeks.*
Where the requested MS does not reply within that period of two weeks to the re-examination request, the additional re-examination procedure shall be definitively terminated, with the result that the requesting Member State must, as from the expiry of that period, be considered to be responsible for the examination of the application for international protection, unless it still has available to it the time needed to lodge, within the mandatory time limits laid down for that purpose in Article 21(1) and Article 23(2), a further take charge or take back request.

3.3.2 CJEU pending cases on Responsibility Sharing

☞ CJEU C-790/23 — ***Qassioun***
* interpr. of Reg. 604/2013 — Dublin III, 18(1)(d)
* ref. from Korkein hallinto-oikeus (Finland) 21 Dec. 2023
* *Must Art. 18(1)(d) be interpreted as meaning that the rejection of an application, covers a situation in which a temporary residence document based on the need for protection previously granted to the person concerned in Denmark on his or her application was not renewed, where the decision not to renew was not taken on the application of that person but by the authority concerned of its own motion?*

☞ CJEU C-560/23 — ***Tang***
* interpr. of Reg. 604/2013 — Dublin III, 29(1)+29(2)
* ref. from Flygtningenævnet (Denmark) 8 Sep. 2023
* *Are the time limit provisions in Art. 29(1) and (2) to be interpreted as meaning that the time limit of six months is to run from the final, substantive decision in the case, in a situation where an appellate body in the requesting MS has remitted the transfer case back to the competent authority at first instance, which subsequently made a fresh transfer decision more than six months after receipt of the acceptance by the MS responsible, including where the remittal is based on the fact that the MS responsible, which had initially accepted the transfer, subsequently decided to suspend all transfers under the Dublin III Regulation, and where suspensive effect has been granted as regards the removal of the person concerned?*

New ☞ CJEU C-185/24 — ***Tudmur a.o.***
* interpr. of Reg. 604/2013 — Dublin III, 3(2)
* joined cases: C-185/24 + C-189/24
* *On the principle of interstate trust.*

3.3.3 ECtHR Judgments on Torture and Degrading Treatment (Art. 3)

☞ ECtHR 15 Feb. 2015, 51428/10 ***A.M.E. v NL*** CE:ECHR:2015:0215JUD005142810

* no violation of ECHR, 3

* *No violation of ECHR art. 3 in case of transfer of the applicant to Italy under the Dublin Regulation.*
The applicant was a Somali asylum seeker who arrived in Italy in April 2009 and was granted a residence permit for subsidiary protection, valid until August 2012. In May 2009 he left the Italian CARA reception centre to which he had been transferred, and in October 2009 he applied for asylum in the Netherlands which requested Italy to take the applicant back according to the Dublin Regulation. When notified of the intention to transfer him to Italy, he applied to the ECtHR which issued a Rule 39 indication of his non-removal to Italy.
Referring to its previous judgment (4 November 2014, 29217/12, Tarakhel v. SWI), the Court pointed to the situation of asylum seekers as a particularly underprivileged and vulnerable population group in need of special protection. At the same time, the Court reiterated that the current situation in Italy for asylum seekers could in no way be compared to the situation in Greece at the time of the judgment in M.S.S. v. Belgium and Greece (21 January 2011, 30696/09), and the structure and overall situation of reception arrangements in Italy could not in themselves act as a bar to all transfers of asylum seekers to Italy.
As regards the applicant's individual circumstances, the Court noted that he had deliberately sought to mislead the Italian authorities by telling that he was an adult in order to prevent his separation from those with whom he had arrived in Italy. Whereas the authorities were entitled to rely on such information given by claimants themselves unless there was a flagrant disparity, the applicant was in any event to be considered an adult asylum seeker upon transfer to Italy, as the validity of this residence permit had expired and he would have to submit a fresh asylum request there. Unlike the applicants in the Tarakhel case, the applicant was an able young man with no dependents. Bearing in mind how he had been treated by the Italian authorities, the applicant had not established that his future prospects, whether material, physical or psychological, disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3. The complaint was therefore rejected as manifestly ill-founded.

☞ ECtHR 30 June 2015, 39350/13 ***A.S. v CH*** CE:ECHR:2015:0630JUD003935013

* no violation of ECHR, 3

* *The applicant Syrian asylum seeker had entered Switzerland from Italy, and the Italian authorities had accepted a request that he be taken back under the Dublin Regulation. However, the applicant appealed against transfer to Italy, arguing that he had been diagnosed with severe post-traumatic stress disorder as a result of persecution and torture in Syria.*
The ECtHR distinguished the present case from the judgment in Tarakhel v. Switzerland (GC of 4 November 2014, 29217/12), noting that the applicant was not at present critically ill. The Court considered that there was no indication that he, if returned to Italy, would not receive appropriate psychological treatment and would not have access to anti-depressants of the kind he was currently receiving. Therefore, the case did not disclose such very exceptional circumstances as would be required for considering the removal to be in violation of art. 3. The Court further rejected the applicant's claim that his transfer to Italy would violate art. 8 by severing his relationship with his sisters living in Switzerland.

☞ ECtHR 17 Nov. 2015, 54000/11 ***A.T.H. v NL*** CE:ECHR:2015:1117JUD005400011

* no violation of ECHR, 3

* *The applicant was an Eritrean asylum seeker complaining that her transfer to Italy under the Dublin Regulation would violate arts. 2 and 3. She had a minor daughter and had previously been granted subsidiary protection in Italy, but due to destitution and lack of material assistance she had left for the Netherlands where she had been diagnosed with HIV. Given that the validity of her Italian residence permit had expired, the Court observed that the applicant was to be considered as an asylum seeker upon return to Italy. Reiterating its findings in Tarakhel v. Switzerland (GC of 4 November 2014, 29217/12), and again referring to the Italian circular letter of 8 June 2015, the Court also quoted a previous letter from the Italian Ministry of Interior assuring that this family group would be accommodated in a manner adapted to the child's age and detailing a reception project regarding the transfer of the applicant and her child.*
Further noting that the applicant had not provided any detailed information about her current state of health, treatment or whether transfer to Italy would have consequences for her health, and that the Italian authorities had duly been informed about her individual circumstances, the Court did not find it established that she would have no access to the treatment required. In the light of these facts, the Court did not find it demonstrated that her future prospects, if returned to Italy with her child, were disclosing a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3. The Court also found no basis on which it could be assumed that the applicant would not have access to the available resources in Italy for an asylum seeking single mother with a minor child.

☞ ECtHR 30 May 2017, 79480/13 ***E.T. and N.T. v. CH v*** CE:ECHR:2017:0530JUD007948013

* no violation of ECHR, 3

* Also v. Italy

* *The applicants were an Eritrean woman and her son. The woman had been recognised as a refugee in Italy in 2007, but due to unemployment and lack of housing moved on to Switzerland in 2009. Here she gave birth to her son, and they were both removed to Italy. Having applied for asylum in Norway, they were returned to Italy in 2011, and later that year she again traveled to Switzerland where her asylum request was dismissed in 2013.*
The applicant complained that she would be subjected to inhuman and degrading treatment if returned to Italy. The Court, however, referred to a note from the Italian Ministry of the Interior, confirming that the applicants would be accommodated as a single-parent family in a reception facility belonging to the SPRAR network, and to the entitlements for recognised refugees under Italian domestic law. It found that the applicants had not demonstrated that their prospects on return to Italy, whether from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3. The complaint was therefore rejected as manifestly ill-founded.

☞ ECtHR 15 May 2018, 67981/16 ***H. a.o. v. SWI v*** CE:ECHR:2018:0515JUD006798116

* no violation of ECHR, 3

* *Application under ECHR art. 3 concerning Dublin transfer to Italy rejected. The applicants were an asylum seeking family from the Central African Republic whom the Swiss authorities had decided to transfer to Italy under the Dublin III Regulation. The mother had been diagnosed with HIV for which she received medication, and her new-born child was provided with HIV prophylactics. While the Italian authorities had confirmed the transfer and the plan to accommodate the applicants in a family unit in a SPRAR centre in accordance with the circular letter of 8 June 2015, the applicants requested individual and specific assurances from the Italian authorities concerning their reception in a manner appropriate to the children's age and consonant with the specific health conditions.*
Referring to its case-law subsequent to the judgment in Tarakhel v. Switzerland (GC of 4 November 2014, 29217/12) the Court held that although such assurances were not always complied with in practice, there was no indication that the Italian authorities would fail to honour their assurance to accommodate the applicants in a SPRAR reception centre designed for families with minor children. The Court further observed that the mother's health was stable, and that the Swiss authorities would give her a sufficient quantity of medication and that the Italian authorities had been informed about her state of health and medication needs and confirmed the availability of the necessary treatment and examinations of her and the child. Thus, the application under art. 3 was considered manifestly ill-founded.

☞ ECtHR 3 Nov. 2015, 21459/14 ***J.A. a.o. v NL*** CE:ECHR:2015:1103JUD002145914

* no violation of ECHR, 3

* *The application concerned transfer of an Iranian woman and her two daughters, born in 1996 and 1998, to Italy under the Dublin Regulation. They complained that the transfer would be contrary to art. 3, due to bad living conditions in Italy as well as the mental health condition of the mother and the interests of her children.*
The ECtHR reiterated its findings in Tarakhel v. Switzerland (GC of 4 November 2014, 29217/12) and considered the applicants' situation as a single mother with two daughters of 16 and 18 years of age as one of the relevant factors to be taken into account under art. 3.
The Court noted that the Italian authorities had been duly informed about the applicants' family situation as well as the fact that the mother would be escorted in order to avert the risk of suicide. It further noted a circular letter of 8 June 2015 from the Dublin Unit of the Italian Ministry of Interior according to which families with small children upon transfer would be placed in 161 earmarked places in 29 specific SPRAR projects. The Court did not find it demonstrated that the applicants would be unable to benefit from such a place upon arrival in Italy. The applicants were further held not to have demonstrated that their future prospects, if returned to Italy as a family, were disclosing a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3.

☞ ECtHR 2 June 2015, 7149/12 ***K.O.J. v NL*** CE:ECHR:2015:0602JUD000714912

* no violation of ECHR, 3

* *The application concerned transfer of an asylum seeker to Italy under the Dublin Regulation. As she had been granted an asylum-based residence permit, the Court decided to strike the application out of the list of cases.*

☞ ECtHR 2 Dec. 2008, 32733/08 ***K.R.S. v UK*** CE:ECHR:2008:1202JUD003273308

* no violation of ECHR, 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 13 Dec. 2011, 15297/09 ***Kanagaratnam v. BEL v*** CE:ECHR:2011:1213JUD001529709

* violation of ECHR, 3+5

* *The applicants – a mother and her three children – are Sri Lankan nationals of Tamil origin. In January 2009 the mother, accompanied by her children, arrived at the Belgian border and applied for asylum and subsidiary protection. The Belgian authorities decided to refuse them entry and return them, on the ground that the mother was in possession of a false passport. The same day, the Aliens Office decided to place the family in a closed transit centre for illegal aliens, pending processing of their asylum application. The family subsequently applied to the courts to be released, but without success. In February 2009 the authorities refused the applicants asylum and subsidiary protection on the ground that some of the mother's statements concerning the risk in Sri Lanka lacked credibility. After having been informed of the decision to return them to Congo, the first applicant sought a temporary measure, fearing that she would be subjected to inhuman treatment were she to be returned to Congo and, subsequently, to Sri Lanka.*
On 20 March 2009 the ECtHR decided to suspend the family's return until 20 April 2009, which, after the family's refusal to board the plane, was extended by one month. The family remained in detention pending their return, in accordance with national legislation. The Aliens Office again decided to refuse the family entry into Belgium and to return them to Congo and the family's detention in the closed centre was extended. After having again applied for release, the family was finally released following a decision of the Aliens Office taken on 4 May 2009, after a second asylum application had been made on 23 March 2009 and was under consideration. Having regard to the fact that the applicants had been released and that they could not be removed pending the outcome of their asylum application, the temporary measure suspending their removal was lifted on 18 May 2009. In September 2009 the mother and her children were granted refugee status.

☞ ECtHR 21 Jan. 2011, 30696/09 ***M.S.S. v BE & GR*** CE:ECHR:2011:0121JUD003069609

* violation of ECHR, 3+13

* *A deporting State is responsible under art. 3 ECHR for the foreseeable consequences of the deportation of an asylum seeker to another EU MS, 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 MS if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.*

☞ ECtHR 23 Mar. 2021, 46595/19 ***M.T. v NL*** CE:ECHR:2021:0323JUD004659519

AG 23 Mar. 2021

* interpr. of ECHR, 3

* *The application concerns an Eritrean family consisting of a single, widowed, mother (the applicant) and two children aged 6 and (almost) 4. The applicant's asylum application was not taken up for consideration by the Dutch authorities as it was found that the Italian authorities were responsible for the processing of that application pursuant to the Dublin Regulation. It was held that the entry into force of the new Italian Law (No. 132/2018, the so-called "Salvini Decree") did not lead to the conclusion that the asylum proceedings and reception conditions in Italy were affected by such systemic shortcomings that reliance could no longer be placed on the principle of mutual interstate trust.*

☞ ECtHR 6 June 2013, 2283/12 ***Mohammed v AT*** CE:ECHR:2013:0606JUD000228312

* violation of ECHR, 3+13

* *The applicant Sudanese asylum seeker arrived in Austria via Greece and Hungary. The Austrian authorities rejected the application and ordered his transfer to Hungary under the Dublin Regulation. When placed in detention with a view to his forced transfer almost a year later, he lodged a second asylum application which did not have suspensive effect in relation to the transfer order. The ECtHR considered the applicant's initial claim against the Dublin transfer arguable, due to the 'alarming nature' of reports published in 2011-12 in respect of Hungary as a country of asylum and in particular as regards Dublin transferees. His second application for asylum in Austria could therefore not prima facie be considered abusively repetitive or entirely manifestly unfounded. In the specific circumstances of the case, the applicant had been deprived of de facto protection against forced transfer and of a meaningful substantive examination of his arguable claim concerning the situation of asylum seekers in Hungary. Accordingly, Art. 13 in conjunction with Art. 3 had been violated. Despite the initially arguable claim against the Dublin transfer to Hungary, the Court noted the subsequent legislative amendments and the introduction of additional legal guarantees concerning detention of asylum seekers and their access to basic facilities. The applicant would therefore no longer be at a real and individual risk of being subjected to treatment in violation of Art. 3 upon transfer to Hungary.*

☞ ECtHR 2 Apr. 2013, 27725/10 ***Mohammed Hussein v NL & IT*** CE:ECHR:2013:0402JUD002772510

* no violation of ECHR, 3+13

* *The case concerns the pending return of a Somali asylum seeker and her two children from the Netherlands to Italy under the Dublin Regulation. It is marked by discrepancies in issues of central importance between the applicant's initial complaint that she had not been enabled to apply for asylum in Italy, had not been provided with reception facilities for asylum seekers, and had been forced to live on the streets in Italy, and her subsequent information to the ECtHR. Thus, in her response to the facts submitted by the Italian Government to the ECtHR she admitted that she had been granted a residence permit for subsidiary protection in Italy, and that she had been provided with reception facilities, including medical care, during her stay in Italy.*
Upholding its general principles of interpretation of ECHR art. 3, the Court reiterated that the mere fact of return to a country where one's economic position will be worse than in the expelling State is not sufficient to meet the threshold of ill-treatment proscribed by art. 3. Aliens subject to expulsion cannot in principle claim any right to remain in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State, absent exceptionally compelling humanitarian grounds against removal.
While the general situation and living conditions in Italy of asylum seekers, accepted refugees and other persons granted residence for international protection may disclose some shortcomings, the Court held that it had not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group as was the case in M.S.S. v. Belgium and Greece (21 January 2011, 30696/09). The Court further noted that the applicant's request for protection in Italy had been processed within five months, that accommodation had been made available to her along with access to health care and other facilities, and that she had been granted a residence permit entitling her to a travel document, to work, and to benefit from the general schemes for social assistance, health care, social housing and education under Italian law. As the applicant had failed to show that she and her children would not benefit from the same support again if returned to Italy, her complaints under ECHR art. 3 against Italy and the Netherlands were considered manifestly ill-founded, and therefore inadmissible.

☞ ECtHR 14 Mar. 2017, 5888/10 ***Mucalim v NL & MT*** CE:ECHR:2017:0314JUD000588810

* no violation of ECHR, 3

* *The applicant Somali asylum seeker had complained that he would be subjected to inhuman detention conditions if returned to Malta under the Dublin Regulation, and to the perils of war if sent on from Malta to Somalia. As it appeared that the applicant had been granted subsidiary protection in Malta, the risk of refoulement to Somalia was found to have been removed. For the same reason, the Court considered any dispute about the conditions of detention in immigration context to be moot.*

☞ ECtHR 28 June 2016, 15636/16 ***N.A. a.o. v DK*** CE:ECHR:2016:0628JUD001563616

* no violation of ECHR, 3

* *The Danish asylum authorities had decided to transfer an asylum seeking Somali woman and her two children, born in 2014 and 2015, to Italy. The decision had been taken without having obtained in advance an individual guarantee in accordance with the criteria set out in Tarakhel v. Switzerland (GC of 4 November 2014, 29217/12), and with reference to the circular letter of 8 June 2015 from the Dublin Unit of the Italian Ministry of Interior setting out the new policy on transfers to Italy of families with small children, earmarking a total of 161 places in centres under the SPRAR system for such families.*
The Court accepted that for efficiency reasons the Italian authorities cannot be expected to keep open and unoccupied for an extended period of time places in specific reception and accommodation centres reserved for asylum seekers awaiting transfer to Italy and that, for this reason, once a guarantee of placement in a reception centre has been received by the Member State requesting transfer, the transfer should take place as quickly as practically possible. The Court noted that the transfer decision was based on the circular letter of 8 June 2015 and Italy's subsequent assurances on the appropriate standard of its reception capacity at a meeting of the EU Dublin Contact Committee. It was thus a prerequisite for the applicants' removal to Italy that they would be accommodated in one of the said reception facilities earmarked for families with minor children, that those facilities satisfied the requirements of suitable accommodation that could be inferred from Tarakhel and that the Italian government would be notified of the applicants' particular needs before the removal.
Against this background, the Court did not find that the applicant had demonstrated that her future prospects, if returned to Italy with her children, whether from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3.

☞ ECtHR 7 July 2015, 50165/14 ***T.A. a.o. v CH*** CE:ECHR:2015:0707JUD005016514

* no violation of Switzerland, 3

* *The application concerned transfer of asylum seekers to Italy under the Dublin Regulation. As the Swiss authorities had decided to examine the applications themselves, the Court decided to strike the application out of the list of cases.*

☞ ECtHR 7 Mar. 2000, 43844/98 ***T.I. v UK*** CE:ECHR:2000:0307JUD004384498

* no violation of ECHR, 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 Art 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 Art 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.*

☞ ECtHR (GC) 4 Nov. 2014, 29217/12 ***Tarakhel v CH*** CE:ECHR:2014:1104JUD002921712

* violation of ECHR, 3+13

* *The applicants were an Afghan family with six minor children who had entered Italy and applied for asylum. Here they had been transferred to a reception centre where they considered the conditions poor, particularly due to lack of appropriate sanitation facilities, lack of privacy and a climate of violence. Having travelled on to Switzerland, their transfer under the Dublin Regulation was tacitly accepted by Italy, and they complained to the Court that such transfer to Italy in the absence of individual guarantees would be in violation of the ECHR.*
While the overall situation of the Italian reception system could not act as a bar to all transfers of asylum seekers to Italy, the ECtHR noted the insufficient capacity of the reception system for asylum seekers in Italy, causing the risk of being left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions. In this connection the court did not apply the 'systemic failure' test introduced in some decisions in 2013. The Court reiterated that asylum seekers as a particularly underprivileged and vulnerable group require special protection under art. 3, and emphasised that this requirement is particularly important when the persons concerned are children, in view of the specific needs and extreme vulnerability of children seeking asylum. This applies even when the children seeking asylum are accompanied by their parents. Reception conditions for children must therefore be adapted to their age in order to ensure that those conditions do not create a situation of stress and anxiety with particularly traumatic consequences, as the conditions would otherwise attain the threshold of severity required to come within the scope of art. 3. Although certain indications had been given from the Italian authorities about the prospective accommodation of the applicants upon transfer to Italy under the Dublin Regulation, the Court held that, in the absence of detailed and reliable information concerning the specific facility, the physical reception conditions and the preservation of the family unit, the Swiss authorities did not possess sufficient assurances that the applicants would be taken charge of in a manner adapted to the age of the children.

☞ ECtHR 5 May 2022, 48062/19 ***V.A. a.o. v IT & NL*** CE:ECHR:2022:0505JUD004806219

* no violation of ECHR, 3

* inadmissible

* *The applicants complained that their transfer from the Netherlands to Italy under the Dublin Regulation would be in breach of Art. 3 of the Convention because of a lack of access to rights as beneficiaries of international protection. The Dutch Government informed the Court that the deadline for the transfer of the applicants to Italy had expired, that therefore the applicants' request for international protection would be considered in the Dutch asylum procedure.*

3.3.4 CtAT Views on Non-Refoulement (Art. 3)

☞ CtAT 3 Aug. 2018, CAT/C/64/D/742/2016 ***A.N. v CH***

* violation of CAT, 3

* *It is the first time the Committee rules on the specific content of a torture victim's right to rehabilitation in the context of Dublin expulsion proceedings, finding violations of Articles 3, 14 and 16. The expulsion of an Eritrean national by Switzerland to Italy under the Dublin Regulation would violate the CAT by depriving him of the necessary conditions for his rehabilitation as a torture survivor. In its decision, the Committee found that the Swiss authorities had "failed to sufficiently and individually assess the complainant's personal experience as a victim of torture and the foreseeable consequences of forcibly returning him to Italy (par. 8.8)." The Committee also recalls (par. 8.9) that according to General Comment 2, the obligation to prevent ill-treatment overlaps with and is largely congruent with the obligation to prevent torture and that, in practice, the definitional threshold between ill-treatment and torture is often not clear.*

☞ CtAT 6 Dec. 2018, CAT/C/65/D/758/2016 ***Harun v CH***

* violation of CAT, 3+14+16

* *The transfer by Switzerland of an Ethiopian national under the Dublin Regulation to Italy, would violate art. 3 CAT. Mr. Harun lived in Italy for three years and then went to Norway, where he received intensive medical care immediately after his arrival due to his poor health. Switzerland recognizes the seriousness of the health problems, documented by various medical reports. The complainant states that because of the lack of shelter and medical and psychiatric specialist help in Italy, it will be impossible for him to be rehabilitated as a torture victim (cf. CAT 3 August 2018, CAT/C/64/D/742/2016, A. N. v. Swi). Switzerland did not at any time take into account that Italy had already given guarantees to Norway and that no measure was taken to ensure that mr. Harun, as a torture victim, would have access to rehabilitation facilities. In light of this, Switzerland did not examine in an individual and sufficiently profound way the personal experience of the complainant as a victim of torture and the foreseeable consequences of his forced return to Italy.*

☞ CtAT 7 Dec. 2018, CAT/C/65/D/811/2017 ***M.G. v CH***

* violation of CAT, 3+16

* *Effective remedy. Expulsion to Eritrea would constitute a breach of Art. 3 CAT. There are inconsistencies and contradictions in the statements of the applicant, but he has not received legal assistance. He has also not been heard in his mother tongue despite his explicit request. The Swiss authorities based their reasoning also on the absence of the authenticity of the documents submitted without taking measures to verify authenticity. Moreover, the condition of the (high) legal costs, while the applicant was in a precarious financial situation, has deprived him of the opportunity to go to court to have his appeal examined. In this case (also with a view to the report of 25 June 2018 by the Special Rapporteur on the human rights situation in Eritrea), the absence of an effective, independent and unbiased investigation of the decision to expel the applicant constitutes a violation of the obligation under art. 3 CAT.*

New ☞ CtAT 9 May 2024, CAT/C/79/D/1096/2021 ***N.A. v CH***

* no violation of CAT, 3

* *An Afghan national flees via Iran and Turkye, to Romania, where he applies for asylum. He had to stay in a metal container without a bed, furniture or toilet, and he is severely beaten. Subsequently he was taken to a reception centre where he was threatened with expulsion to Serbia. A.N. traveled to Italy and to Switzerland where he applied for asylum. Switzerland requests Romania to take A.N. back under the Dublin III regulation, which Romania accepts. The argument that the expulsion to Romania would violate art 3 CAT because Romania has systemic deficiencies in its asylum and reception system is not accepted by Swiss courts.*
The CtAT refers a.o. to the adopted view of the Human Rights Committee of the ICCPR in Jasin v Denmark (2360/2014) in a similar case regarding a Dublin transfer, and to ECtHR 21 Jan 2011, in M.S.S. v Belgium and Greece. In its view in this case, the CtAT states that there is not sufficient evidence provided by the complainant in support of his allegations of torture and ill-treatment by the Romanian police.

3.3.5 HRC Views on Torture and Degrading Treatment (Art. 7)

☞ HRC 13 July 2018, CCPR/C/123/D/2575/2015 ***Bayush A. Araya v DK***

* violation of ICCPR, 7

* *The Eritrean applicant was granted subsidiary protection in Italy. After receiving her residence permit, she had to live in extremely precarious and insecure conditions for several years. The residence permit expired after three years. Subsequently, she moved to Denmark where her baby was born, and applied again for asylum. This experience is unfortunately comparable to that of other cases that the Committee has had to consider. The author would be particularly vulnerable if she were to return to Italy as a single mother of a small child born in Denmark, with real and foreseeable risks to their health and lives and without being able to rely on the protection of the Italian authorities. The Committee considers that the removal of the author and her son to Italy in her particular circumstances and without the aforementioned assurances would amount to a violation of article 7 of the Covenant by the State party.*

☞ HRC 7 Nov. 2017, CCPR/C/121/D/2770/2016 ***O.A. v DK***

* violation of ICCPR, 7+24

* *The case concerned a Syrian national who applied for asylum in Greece in 2015 and who became homeless and lived on the streets for about two months after seeking support from the Greek authorities without success. The Human Rights Committee noted that several reports indicate that people granted refugee status in Greece are not provided with accommodation by the local authorities. In particular, it took into account reports such as the UNHCR Recommendations for Greece in 2017 according to which the treatment of certain categories of vulnerable persons, such as unaccompanied minors, is inadequate. Finally, the Committee considered that the applicant's inconsistencies with regard to his age did not exempt Denmark from taking other reasonable measures to remove doubts concerning his age and his right to obtain the special measures of protection that would have been available for a minor, including taking into account information regarding the conditions of reception of migrant minors in Greece. Therefore, it found that the applicant's deportation to Greece, without taking such special measures and reviewing the applicant's claim, would violate his rights under Articles 7 and 24 ICCPR.*

☞ HRC 15 Dec. 2016, CCPR/C/118/D/2608/2015 ***R.A.A. & M. v DK***

* violation of ICCPR, 7

* *Authors of the complaint are a Syrian couple. The authors allege that their deportation (under Dublin) from Denmark to Bulgaria will put them at risk of inhuman and degrading treatment, as they would face homelessness, destitution, lack of access to health care and to personal safety.*
The Committee considers, however, that the State party's conclusion did not adequately take into account the information provided by the authors, based on their own personal experience that, despite being granted a residence permit in Bulgaria, they faced intolerable living conditions there. In that connection, the Committee notes that the State party does not explain how, in case of a return to Bulgaria, the residence permits would protect them, in particular as regards the access to the medical treatments that the male author needs, and from the hardship and destitution which they have already experienced in Bulgaria, and would now also affect their baby. The Human Rights Committee considers that, in these particular circumstances, the removal from Denmark of the authors and their child to Bulgaria, without proper assurances, would amount to a violation of article 7 ICCPR.

☞ HRC 22 July 2015, CCPR/C/114/D/2360/2014 ***Warda Osman Jasin v DK***

* violation of ICCPR, 7

* *Author of the complaint is a single Somali mother with three small children. The author alleges that their deportation (under Dublin) from Denmark to Italy will put them at risk of inhuman and degrading treatment. The Committee recalls that States parties need to give sufficient weight to the real and personal risk a person might face if deported. The State party has failed to devote sufficient analysis to the personal experience and to the foreseeable consequences of her forcible return to Italy, and has failed to consider seeking from Italy a proper assurance that the author and her three minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the requirements of article 7 of the Covenant, by requesting from Italy to undertake that: (i) the author and her children's residence permits would be renewed and that they would not be deported from Italy; and (ii) that they would be received in Italy in conditions adapted to their age and vulnerable status, which would enable them to remain in Italy.*
The Human Rights Committee is of the view that the deportation from Denmark of the Somali woman and her children to Italy would violate their rights under article 7 ICCPR.

3.3.6 CtRC Views on Best Interests of the Child (Art. 3)

☞ CtRC 4 Feb. 2021, CRC/C/86/D/83/2019 ***R.H.M. v DK***

* violation of CRC, 3+19

* *The author is a Somali mother who submits a complaint on behalf of her daughter who was born in Denmark in March 2016. The mother had entered Denmark in 2013, applied for asylum, and was granted a residence permit. She gave birth to 2 children in Denmark who were both granted a residence permit. In 2018, the Danish authorities decided to revoke her and her children's residence permit. She filed on behalf of her daughter a new asylum application stating that she feared for genital mutilation of her daughter if returned to Somalia.*
The CtRC recalls that the Committee on the Elimination of Discrimination against Women and the CtRC both concluded in General Comment 18 that female genital mutilation may have various immediate or long-term health consequences. The Committees recommend that the legislation and policies relating to immigration and asylum should recognize the risk of being subjected to harmful practices or being persecuted as a result of such practices as a ground for granting asylum.
Although the practice of female genital mutilation appears to have declined in Somalia, the practice is still deeply engrained in Somali society.
The Committee therefore concludes that Denmark failed to consider the best interests of the child when assessing the alleged risk of the author's daughter being subjected to female genital mutilation if deported to Somalia and to take proper safeguards to ensure the child's well-being upon return.

☞ CtRC 28 Sep. 2020, CRC/C/85/D/56/2018 ***V.A. v CH***

* violation of CRC, 3+12

* *The complainant is an an Azerbaijani national born in 1986. She submits the communication on behalf of her two sons both Azerbaijani nationals. She and her husband are journalists and owners of a newspaper. In March 2017 they fled Azerbaijan with their sons as the situation facing opposition journalists in Azerbaijan was becoming increasingly critical and the life of the author's husband was seriously in danger. The family applied for asylum in Kreuzlingen, Switzerland. They were transferred to a guesthouse in Bellinzona. In the absence of interpreters, their communication with officials was almost non-existent. However, the family received the support of three local NGOs. The accommodation conditions and the linguistic isolation had repercussions on the mental and physical well-being of the family members: depressions and domestic violence. In November 2017, following a seven-month wait for the second asylum hearing, the family reluctantly agreed to withdraw its asylum claim and to be voluntarily repatriated. Since the author's father-in-law had bribed the Azerbaijani police to ensure that his son would not be incarcerated on return. Thus the family left Switzerland.*
However, the husband was arrested in 2018 and imprisoned. She was advised to leave - again - the country with her two children. The smuggler had obtained Italian visa for Switzerland. So, the mother travelled on these visa to Switzerland and immediately applied for asylum. Based on the Italian origin of the visa the Swiss authorities claimed (under the Dublin Regulation) that the family had to be transferred to Italy. This caused panic attacks as a result of which the removal from Switzerland to Italy could not be carried out. The police abandoned the author and her children at Zurich airport, with no money, and told them to "make their own way back".
As the authorities did not take into consideration the trauma experienced by the children, including twice fleeing their country of origin, once by passing through a third country, once returning to their country of birth, and another attempt under very traumatic conditions, the Committee is of the view that the national authorities have not shown due diligence in assessing the best interests of the children.

4 Reception Conditions

4.1 Reception Conditions: Adopted Measures

case law sorted in chronological order

Directive 2003/9 — **Reception Conditions I**

Laying down minimum standards for the reception of asylum seekers

* OJ 2003 L 31/18 — impl. date: 06-02-2005 — IRL opt out

* Repealed and replaced by Dir. 2013/33 Reception Conditions II

CJEU Judgments

☞	CJEU	27 Feb.	2014,	C-79/13	***Saciri***	13+14
☞	CJEU	30 May	2013,	C-534/11	***Arslan***	7+21
☞	CJEU	27 Sep.	2012,	C-179/11	***CIMADE & GISTI***	

See further: § 4.3.1 and 4.3.2

Directive 2013/33 — **Reception Conditions II**

Laying down standards for the reception of applicants for international protection

* OJ 2013 L 180/96 — impl. date: 20-07-0015 — UK, IRL opt out

* Replacing Dir. 2003/9 Reception Conditions I

☞	CJEU	8 Nov.	2022,	C-39/21	***C. & B.***	19
☞	CJEU	1 Aug.	2022,	C-422/21	***T.O. / Min. Int. (IT)***	20(4)+(5)
☞	CJEU	16 Nov.	2021,	C-821/19	***Com. / Hungary***	10(4)
☞	CJEU	14 Jan.	2021,	C-322/19	***K.S. & M.H.K.***	15
☞	CJEU	25 June	2020,	C-36/20	***V.L.***	6+8+26
☞	CJEU	12 Nov.	2019,	C-233/18	***Haqbin***	20(4)+(5)
☞	CJEU	14 Sep.	2017,	C-18/16	***K.***	8(3)
☞	CJEU	15 Feb.	2016,	C-601/15	***J.N.***	8

CJEU pending cases

New	☞	CJEU	(pending)	C-184/24	***Sidi Bouzidi***	20
	☞	CJEU	(pending)	C-104/24	***D.A. & M.A.***	8+9
New	☞	CJEU	(pending)	C-97/24	***S.A. & R.J.***	18

See further: § 4.3.1 and 4.3.2

Decision 281/2012 — **Refugee Fund**

Establishment of a European Refugee Fund (2008-2013)

* OJ 2012 L 92/1

* amendment of Dec. 573/2007 European Refugee Fund (2008-2013) OJ 2007 L 1441/1
and preceded by
Coun. Dec. 2004/904 European Refugee Fund (2005-2007) OJ 2004 L 381/52
Coun. Dec. 2000/596 European Refugee Fund (2000-2004) OJ 2000 L 252/12

Regulation 514/2014 — **Asylum and Migration Fund - general rules**

General provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management

* OJ 2014 L 150/112

Regulation 516/2014 — **Asylum and Migration Fund**

Establishing the Asylum, Migration and Integration Fund

* OJ 2014 L 150/168

ECHR — **Reception Conditions and unlawful detention of asylum seeekers**

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

* ETS 005 — impl. date: 1953

* art. 3: prohibition of degrading treatment by means of detention conditions
art. 5: unlawful detention of asylum seekers

ECtHR Judgments

New	☞	ECtHR	23 May	2024	65275/19	***W.S. v GR***	3
New	☞	ECtHR	18 Apr.	2024	59841/19	***A.R. a.o. v GR***	3+5
New	☞	ECtHR	28 Mar.	2024	59758/16	***A.Q. a.o. v GR***	3
	☞	ECtHR	21 Mar.	2024	6182/20	***L. v HU***	5
	☞	ECtHR	22 Feb.	2024	10940/17	***M.H. & S.B. v HU***	5
	☞	ECtHR	23 Jan.	2024	24650/19	***O.R. v GR***	3
	☞	ECtHR	18 Jan.	2024	16112/20	***T.K. v GR***	3+8+13
	☞	ECtHR	18 Jan.	2024	13958/16	***A.I. a.o. v GR***	3
	☞	ECtHR	30 Nov.	2023	2080/19	***D.S. v GR***	3+13
	☞	ECtHR	16 Nov.	2023	18911/17	***A.E. & T.B. v IT***	3+5(1)
	☞	ECtHR	16 Nov.	2023	3571/17	***Sadio v IT***	3
	☞	ECtHR	17 Oct.	2023	12427/22	***A.D. v MT***	3+5+13
	☞	ECtHR	5 Oct.	2023	16127/20	***E.F. v GR***	3+13
	☞	ECtHR	5 Oct.	2023	53528/19	***O.Q. v HU***	3+5(1)+5(4)
	☞	ECtHR	5 Oct.	2023	58680/18	***M.A. a.o. v HU***	3+5
	☞	ECtHR	5 Oct.	2023	37967/18	***Shahzad #2 v HU***	3
	☞	ECtHR	5 Oct.	2023	53272/17	***P.S. & A.M. v HU***	3+5(1)+5(4)
	☞	ECtHR	14 Sep.	2023	7077/15	***A.A. v HU***	5
	☞	ECtHR	31 Aug.	2023	70583/17	***M.A. v IT***	3
	☞	ECtHR	18 July	2023	49255/22	***Camara v BE***	3
	☞	ECtHR	13 June	2023	4892/18	***H.A. a.o. v GR***	3+13
	☞	ECtHR	4 May	2023	4289/21	***A.C. & M.C. v FR***	3+5
	☞	ECtHR	4 May	2023	7534/20	***A.M. a.o. v FR***	3+5
	☞	ECtHR	4 May	2023	26250/15	***H.N. v HU***	5
	☞	ECtHR	18 Apr.	2023	43966/19	***N.M. v BE***	5
	☞	ECtHR	4 Apr.	2023	55363/19	***A.D. v GR***	3
	☞	ECtHR	30 Mar.	2023	21329/18	***J.A. a.o. v IT***	5+Prot. 4 Art. 4
	☞	ECtHR	16 Dec.	2022	52208/22	***Al Shujaa a.o. v BE***	3+6
	☞	ECtHR	15 Nov.	2022	48987/22	***Msallem a.o. v BE***	3
	☞	ECtHR	25 Aug.	2022	36896/18	***W.O. a.o. v HU***	3+5
	☞	ECtHR	21 July	2022	5797/17	***Darboe and Camara v IT***	3
	☞	ECtHR	7 July	2022	29440/16	***Haouari v HU***	5
	☞	ECtHR	9 June	2022	37327/17	***A.A.A. v HU***	3+5+4
	☞	ECtHR	2 June	2022	38967/17	***H.M. a.o. v HU***	3+5+4
	☞	ECtHR	17 May	2022	35422/16	***Ali Reza v BG***	5+8+13
	☞	ECtHR	26 Apr.	2022	34298/18	***A.J. v GR***	3+8+13
	☞	ECtHR	31 Mar.	2022	49775/20	***N.B. a.o. v FR***	3+34
	☞	ECtHR	10 Mar.	2022	41326/17	***Shenturk a.o. v AZ***	3+5
	☞	ECtHR	24 Feb.	2022	73860/17	***M.B.K. a.o. v HU***	3+5
	☞	ECtHR	22 July	2021	57035/18	***M.D. & A.D. v FR***	3+5
	☞	ECtHR	29 June	2021	37139/13	***Monir Lotfy v CY***	3
	☞	ECtHR	18 Mar.	2021	72510/12	***Turdikhojaev v UA***	5+3
	☞	ECtHR	2 Mar.	2021	36037/17	***R.R. v HU***	3+5
	☞	ECtHR	14 Jan.	2021	73700/13	***E.K. v GR***	5+3
	☞	ECtHR	10 Sep.	2020	63141/13	***B.G. a.o. v FR***	3
	☞	ECtHR	16 July	2020	77647/11	***Nur a.o. v UA***	5
	☞	ECtHR	2 July	2020	28820/13	***N.H. a.o v FR***	3
	☞	ECtHR	25 Mar.	2020	23685/14	***Bilalova v PL***	5
	☞	ECtHR	9 Jan.	2020	48104/14	***B.L. a.o. v FR***	3
	☞	ECtHR	21 Nov.	2019	61411/15	***Z.A. a.o. v RU***	3
	☞	ECtHR	17 Oct.	2019	4633/15	***G.B. a.o. v TR***	3+13
	☞	ECtHR	3 Oct.	2019	34215/16	***Kaak a.o. v GR***	5
	☞	ECtHR	13 June	2019	14165/16	***Sh.D. a.o. v GR***	3+5
	☞	ECtHR	11 June	2019	42305/18	***Ozdil a.o. v MD***	5+8
	☞	ECtHR	26 Mar.	2019	47920/12	***Haghilo v CY***	3+5
	☞	ECtHR	21 Mar.	2019	39065/16	***O.S.A. a.o. v GR***	3
	☞	ECtHR	28 Feb.	2019	19951/16	***H.A. a.o. v GR***	3
	☞	ECtHR	28 Feb.	2019	12267/16	***Khan v FR***	3
	☞	ECtHR	21 June	2018	66702/13	***S.Z. v GR***	3+5
	☞	ECtHR	24 May	2018	68862/13	***N.T.P. v FR***	3
	☞	ECtHR	25 Jan.	2018	22696/16	***J.R. a.o. v GR***	5
	☞	ECtHR	12 Dec.	2017	29957/14	***M.S.A. v RU***	3
	☞	ECtHR	7 Dec.	2017	8138/16	***S.F. a.o. v BG***	3
	☞	ECtHR	28 Nov.	2017	1009/16	***Boudraa v TR***	3
	☞	ECtHR	5 Sep.	2017	23619/11	***Khaldarov v TR***	3
	☞	ECtHR	18 May	2017	46558/12	***S.G. v GR***	3
	☞	ECtHR	4 Apr.	2017	3869/07	***Thuo v CY***	3
	☞	ECtHR	21 Mar.	2017	61411/15	***Z.A. v RU***	3

☞	ECtHR	15 Dec.	2016	16483/12	***Khlaifia a.o. v IT***	3
☞	ECtHR	7 Nov.	2016	60125/11	***V.M. a.o. v BE***	3
☞	ECtHR	6 Sep.	2016	14344/13	***Alimov v TR***	3
☞	ECtHR	12 July	2016	11593/12	***A.B. a.o. v FR***	3
☞	ECtHR	3 May	2016	56796/13	***Abdi Mahamud v MT***	3
☞	ECtHR	21 Apr.	2016	58387/11	***H.A. v GR***	3
☞	ECtHR	4 Feb.	2016	37991/11	***Amadou v GR***	3
☞	ECtHR	21 Jan.	2016	58424/11	***H.A. v GR***	3
☞	ECtHR	12 Jan.	2016	52160/13	***Moxamed I. v MT***	3
☞	ECtHR	26 Nov.	2015	10290/13	***Mahamed Jama v MT***	3+5
☞	ECtHR	5 Nov.	2015	58399/11	***A.Y. v GR***	3+13
☞	ECtHR	13 Oct.	2015	24239/09	***Nasseri v UK***	3
☞	ECtHR	30 July	2015	74308/10	***E.A. v GR***	3
☞	ECtHR	2 Apr.	2015	39766/09	***Aarabi v GR***	3
☞	ECtHR	15 Jan.	2015	48352/12	***Mahammad a.o. v GR***	3
☞	ECtHR	11 Dec.	2014	70586/11	***Mohamad v GR***	3
☞	ECtHR	11 Dec.	2014	63542/11	***Al.K. v GR***	3
☞	ECtHR	19 Dec.	2013	53608/11	***B.M. v GR***	3
☞	ECtHR	19 Dec.	2013	33441/10	***C.D. a.o. v GR***	3
☞	ECtHR	1 Aug.	2013	70427/11	***Horshill v GR***	3
☞	ECtHR	23 July	2013	55352/12	***Aden Ahmed v MT***	3
☞	ECtHR	13 June	2013	53709/11	***A.F. v GR***	3
☞	ECtHR	23 Oct.	2012	13457/11	***Ali Said v HU***	5
☞	ECtHR	19 Jan.	2012	39472/07	***Popov v FR***	3
☞	ECtHR	20 Sep.	2011	10816/10	***Lokpo & Touré v HU***	5
☞	ECtHR	21 Jan.	2011	30696/09	***M.S.S. v BE & GR***	3
☞	ECtHR	29 Jan.	2008	13229/03	***Saadi v UK***	5

See further: § 4.3.3

CRC — **Rights of the Child (Detention)**

Convention on the Rights of the Child

* 1577 UNTS 27531 — impl. date: 02-09-1990

* art. 37: best interest of the child (no detention unless as a measure of last resort and for the shortest appropriate period of time)

Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014

CtRC Views

☞	CtRC	1 Feb.	2019	C/80/D/4/2016	***D.D. v ES***	37+20
☞	CtRC	15 June	2018	C/81/D/47/2018	***J.G. v CH***	37
☞	CtRC	4 Feb.	2022	C/89/D/73/2019	***A.M.K. & S.K. v BE***	37
☞	CtRC	3 Feb.	2022	C/89/D/55/2018	***E.H. a.o. v BE***	37

See further: § 4.3.6

4.2 Reception Conditions: Proposed Measures

Directive — **Reception Conditions III**

Recasting Reception Directive

* COM (2016) 465, 13 July 2016

* Discussions within Council; on hold

4.3 Reception Conditions: Jurisprudence

case law sorted in alphabetical order

4.3.1 CJEU Judgments on Reception Conditions

☞ CJEU 30 May 2013, C-534/11 ***Arslan*** EU:C:2013:343
AG 31 Jan. 2013 EU:C:2013:52
* interpr. of Dir. 2003/9 Reception Conditions I, 7+21
* ref. from Nejvyšší správní soud (Czechia) 22 Sep. 2011
* *Although this judgment is primarily about the interpretation of the Return Directive, the CJEU elaborates also on the meaning of the Reception Conditions Directive.*
*The CJEU rules that the Dir. does not preclude a TCN who has applied for international protection (after having been detained under Art. 15 Return Directive) from being kept in detention on the basis of a provision of national law, where it appears, after an assessment on a case-by-case basis of all the relevant circumstances, that the application was made **solely** to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.*

☞ CJEU (GC) 8 Nov. 2022, C-39/21 ***C. & B.***
* interpr. of Dir. 2013/33 Reception Conditions II, 19
* joined cases: C-39/21 + C-704/20
* *Article 9(3) and (5) RCD II, must be interpreted as meaning that a judicial authority's review of compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law must lead that authority to raise of its own motion, on the basis of the material in the file brought to its attention, as supplemented or clarified during the adversarial proceedings before it, any failure to comply with a condition governing lawfulness which has not been invoked by the person concerned.*

☞ CJEU 27 Sep. 2012, C-179/11 ***CIMADE & GISTI*** EU:C:2012:594
AG 15 May 2012 EU:C:2012:298
* interpr. of Dir. 2003/9 Reception Conditions I
* ref. from Conseil d'État (France) 18 Apr. 2011
* *A MS in receipt of an application for asylum is obliged to grant the minimum conditions for reception of asylum seekers laid down in Reception Conditions Directive I even to an asylum seeker in respect of whom it decides, under Dublin II, to call upon another MS, as the MS responsible for examining his application for asylum, to take charge of or take back that applicant.*
The obligation on a MS in receipt of an application for asylum to grant the minimum reception conditions to an asylum seeker in respect of whom it decides, under Dublin II, to call upon another MS, as the MS responsible for examining his application for asylum, to take charge of or take back that applicant, ceases when that same applicant is actually transferred by the requesting MS, and the financial burden of granting those minimum conditions is to be assumed by that requesting MS, which is subject to that obligation.

☞ CJEU (GC) 16 Nov. 2021, C-821/19 ***Com. / Hungary*** EU:C:2021:930
AG 25 Feb. 2021 EU:C:2021:143
* Dir. 2013/33 Reception Conditions II, 10(4)
* on inadmissibility
* *The Grand Chamber of the CJEU ruled that Hungary has failed to fulfill its obligations under:*
** Art. 33(2) of APD II by allowing an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on its territory via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed;*
** Art. 8(2) and 22(1) APD II and Art. 10(4) of RCD II by criminalising in its national law the actions of any person who, in connection with an organising activity, provides assistance in respect of the making or lodging of an application for asylum in its territory, where it can be proved beyond all reasonable doubt that that person was aware that that application could not be accepted under that law;*
** Art. 8(2), 12(1)(c) and 22(1) APD II and Art. 10(4) RCD II by preventing any person who is suspected of having committed such an offence from the right to approach its external borders.*

☞ CJEU 12 Nov. 2019, C-233/18 ***Haqbin*** EU:C:2019:956
AG 6 June 2019 EU:C:2019:468
* interpr. of Dir. 2013/33 Reception Conditions II, 20(4)+(5)
* ref. from Arbeidshof Brussel (Belgium) 29 Mar. 2019
* *Art. 20(4) and (5) of RCD II must be interpreted as meaning that a MS cannot, among the sanctions that may be imposed on an applicant for serious breaches of the rules of the accommodation centres as well as seriously violent behaviour, provide for a sanction consisting in the withdrawal, even temporary, of material reception conditions, within the meaning of Art. 2(f) and (g) of the directive, relating to housing, food or clothing, in so far as it would have the effect of depriving the applicant of the possibility of meeting his or her most basic needs. The imposition of other sanctions under Art. 20(4) of the directive must, under all circumstances, comply with the conditions laid down in Article 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity. In the case of an unaccompanied minor, those sanctions must, in the light, inter alia, of Art. 24 of the Charter of Fundamental Rights, be determined by taking particular account of the best interests of the child.*

☞ CJEU 15 Feb. 2016, C-601/15 (PPU) ***J.N.*** EU:C:2016:84
* interpr. of Dir. 2013/33 Reception Conditions II, 8
* ref. from Raad van State (Netherlands) 17 Nov. 2015
* *Art. 8(3) is in line with art. 6 and 52 of the Charter.*

☞ CJEU 14 Sep. 2017, C-18/16 ***K.*** EU:C:2017:680
AG 4 May 2017 EU:C:2017:349
* interpr. of Dir. 2013/33 Reception Conditions II, 8(3)
* ref. from Rechtbank Den Haag (zp Haarlem) (Netherlands) 13 Jan. 2016
* *The examination of Article 8(3)(a) and (b) has disclosed nothing capable of affecting the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter.*

☞ CJEU 14 Jan. 2021, C-322/19 ***K.S. & M.H.K.*** EU:C:2021:11
AG 3 Sep. 2020 EU:C:2020:642
* interpr. of Dir. 2013/33 Reception Conditions II, 15
* joined cases: C-322/19 + C-385/19
* ref. from High Court (Ireland) 23 Apr. 2019
* *A national court must take account of APD II, which, pursuant to Arts. 1 and 2 and 4a(1) of Protocol (No 21) on the position of the UK and Ireland in respect of the area of freedom, security and justice, does not apply in the MS of that court, in order to interpret the provisions of Reception Conditions Dir. II, which is, by contrast, applicable in that MS in accordance with Art. 4 of that protocol.*
Art. 15 RCD II must be interpreted as precluding national legislation which excludes an applicant for international protection from access to the labour market on the sole ground that a transfer decision has been taken in his or her regard under Dublin III.
Art. 15(1) RCD II must be interpreted as meaning that:
** a delay in the adoption of a decision at first instance concerning an application for international protection which results from a lack of cooperation by the applicant for international protection with the competent authorities may be attributed to that applicant;*
** a MS may not attribute to the applicant for international protection the delay in adopting a decision at first instance concerning an application for international protection on account of the fact that the applicant did not lodge his or her application with the first Member State of entry, within the meaning of Art. 13 Dublin III;*
** a MS may not attribute to the applicant for international protection the delay in processing his or her application which results from the bringing, by that applicant, of legal proceedings with suspensory effect against the transfer decision taken in his or her regard under Dublin III..*

☞ CJEU 27 Feb. 2014, C-79/13 ***Saciri*** EU:C:2014:103
* interpr. of Dir. 2003/9 Reception Conditions I, 13+14
* ref. from Arbeidshof Brussel (Belgium) 7 Feb. 2013
* *Where a MS has opted to grant the material reception conditions in the form of financial allowances or vouchers, those allowances must be provided from the time the application for asylum is made, in accordance with Article 13(1) and 13(2). That MS must ensure that the total amount of the financial allowances covering the material reception conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17. The material reception conditions laid down in Article 14(1), (3), (5) and (8) do not apply to the MSs where they have opted to grant those conditions in the form of financial allowances only. Nevertheless, the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.*
Further, the Directive does not preclude, where the accommodation facilities specifically for asylum seekers are overloaded, the MSs from referring the asylum seekers to bodies within the general public assistance system, provided that that system ensures that the minimum standards as regards the asylum seekers are met.

☞ CJEU 1 Aug. 2022, C-422/21 ***T.O. / Min. Int. (IT)*** EU:C:2022:616
* interpr. of Dir. 2013/33 Reception Conditions II, 20(4)+(5)
* ref. from Consigliio di Stato (Italy) 9 July 2021
* *Art. 20(4) must be interpreted as applying to seriously violent behaviour engaged in outside an accommodation centre.*
Art. 20(4)+(5) must be interpreted as precluding the imposition, on an applicant for international protection who has engaged in seriously violent behaviour against public officials, of a sanction consisting in the withdrawal of material reception conditions, within the meaning of Art. 2(f)+(g) of that directive, relating to housing, food or clothing, in so far as it would have the effect of depriving the applicant of the possibility of meeting his or her most basic needs The imposition of other sanctions under Art. 20(4) of the directive must, in all circumstances, comply with the conditions laid down in Art. 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity.

☞ CJEU 25 June 2020, C-36/20 (PPU) ***V.L.*** EU:C:2020:495
AG 30 Apr. 2020 EU:C:2020:331
* interpr. of Dir. 2013/33 Reception Conditions II, 6+8+26
* ref. from Court of Prelim. Inv. of San Bartolomé de Tirajana (Spain) 20 Jan. 2020
* *(Unofficial translation) Art. 6(1)(2) of AP II must be interpreted as meaning that an investigating judge who has been brought before a judgment detention of an illegally staying TCN for refoulement is one of the 'other authorities' referred to in this provision which may receive applications for international protection but are not competent under national law to register.*
Art. 6(1)(2) and (3) of AP II must be interpreted as meaning that an investigating judge, in his capacity as 'other authority' within the meaning of that provision, must inform illegally staying TCN laying down the rules for lodging an application for international protection and, where such a national has indicated that he wishes to make such an application, forward his file to the competent authority for registration of that application so that he can make use of material reception conditions and healthcare as referred to in Art. 17 of Reception Conditions II Directive.
Art. 26 of AP II and Art. 8 of Rec. Cond. II must be interpreted as meaning that an illegally staying TCN who has reported to an 'other authority' within the meaning of Art. 6(1)(2) of AP II that he wishes to apply for international protection can only be detained on the grounds set out in Art. 8(3) of Rec. Cond. 2013/33.

4.3.2 CJEU pending cases on Reception Conditions

☞ CJEU C-104/24 (PPU) ***D.A. & M.A.***
* interpr. of Dir. 2013/33 Reception Conditions II, 8+9
* joined cases: C-104/24 + C-105/24
* ref. from Corte suprema di cassazione (Italy) 8 Feb. 2024
* *The question is whether art. 8 + 9 RCD II, preclude national legislation which provides, as an alternative measure to the detention of the applicant (who has not handed over his or her passport or other equivalent document), for the provision of a financial guarantee, the amount of which is established as a fixed rate (a single amount set at EUR 4 938.00 for 2023) rather than as a variable amount, without allowing for any adjustment of the amount on the basis of the individual situation of the applicant or for the possibility of providing that guarantee through the intervention of third parties, even in the context of family solidarity, thus imposing rules capable of obstructing the use of the alternative measure by those who do not have adequate resources, and precluding the adoption of a reasoned decision which examines and assesses on a case-by-case basis the reasonableness and proportionality of such a measure in relation to the situation of the applicant?*

New ☞ CJEU C-97/24 ***S.A. & R.J.***
* interpr. of Dir. 2013/33 Reception Conditions II, 18
* *Where "force majeure" is not found as a defence in a Directive or implementing Regulations, is such a defence nonetheless available as a defence to a Francovich damages claim for a breach of an EU law obligation that confers rights on individuals which derive from the fundamental right to human dignity contained in Art. 1 Charter.*

New ☞ CJEU C-184/24 ***Sidi Bouzidi***
* interpr. of Dir. 2013/33 Reception Conditions II, 20
* ref. from Tribunale Lombardia (Italy) 7 Mar. 2024
* *Does art. 20 RCD II and the principles set out by the CJEU in its judgments of 12 Nov. 2019, C-233/2018 and 1 Aug. 2022, C-422/2021, in so far as they preclude the administrative authority of the MS from ordering, as a sanction, the withdrawal of reception measures where that decision would be detrimental to the basic vital needs of the foreign national applying for international protection and of his family, preclude national legislation which permits, following a reasoned individual assessment, relating also to the necessity and proportionality of the measure, withdrawal of reception, not for sanctioning reasons, but because the conditions for being granted it are no longer met, in particular, on account of the foreign national's refusal, on grounds which do not relate to covering basic vital needs and protecting human dignity, to agree to the transfer to another accommodation centre, designated by the administrative authority on account of objective organisational needs and guaranteeing, under the responsibility of the administrative authority itself, that the material reception conditions equivalent to those enjoyed at the centre of origin will be maintained, where the refusal to transfer and subsequent decision ordering the withdrawal place the foreign national in the position of being unable to meet basic needs of personal and family life?*

4.3.3 ECtHR Judgments on Torture and Degrading Treatment (Art. 3)

☞ ECtHR 14 Sep. 2023, 7077/15 ***A.A. v HU*** CE:ECHR:2023:0914JUD000707715
* violation of ECHR, 5
* joined cases: 7077/15 + 48139/16 (M.N.)
* *Detention of asylum seekers. The ECtHR noted that there was no indication that the applicant failed to cooperate with the Hungarian authorities, and that the decisions ordering and prolonging the applicant's detention, which ultimately lasted almost five months, referred repeatedly to the set of grounds, such as the need to clarify the applicant's identity and prevent his absconding, but were not sufficiently individualised, as required by national law. Unanimous decision.*

☞ ECtHR 9 June 2022, 37327/17 ***A.A.A. v HU*** CE:ECHR:2022:0609JUD003732717

* violation of ECHR, 3+5+4
* *The case concerns the confinement of the applicant family, with four minor children, in the Hungarian transit zone between March 2017 and August 2017. Their asylum applications and the review were rejected. After an appeal they were transferred to an open reception facility in Hungary from which they moved to Germany.*
The general principles concerning the confinement and living conditions of asylum-seekers have been summarised in ECtHR 15 Dec. 20216, 16483/12, Khlaifia a.o. v Italy, ECtHR 2 Mar. 2021, 36037/17, R.R. a.o. v Hungary. Noting that general conditions in the Tompa transit zone appear to have been very similar to those in Röszke transit zone. the ECtHR concludes a violation of Art. 3 and 5 with respect to the children.

☞ ECtHR 12 July 2016, 11593/12 ***A.B. a.o. v FR*** CE:ECHR:2016:0712JUD001159312

* violation of ECHR, 3
* See also almost identical cases: 24587/12; 76491/14; 68264/14; 33201/11.
* *The cases concerned administrative detention of children accompanying their parents in the context of deportation procedures, similar to the case of Popov v. France (19 January 2012, 39472/07).*
The Court referred to its repeated findings of a violation of art. 3 regarding the administrative detention of foreign national children, and reiterated that the child's extreme vulnerability is the decisive factor taking precedence over considerations relating to status of irregular immigrant. In addition, asylum seeking children have specific needs relating in particular to their age, lack of independence and status. Although the material conditions in certain detention centres were appropriate, the conditions inherent in establishments of this type are a source of anxiety for young children. Only a short placement in an adapted administrative detention centre can be compatible with the Convention. Given the children's young age, the duration and conditions of detention, the French authorities had therefore subjected them to treatment in breach of art. 3. The Court acknowledged that the deprivation of liberty resulting from the parents' legitimate decision not to entrust their children to another person was not, in principle, contrary to domestic law. Nonetheless, insofar as children are concerned, the authorities must ensure that the placement in administrative detention is a measure of last resort and that no alternative measure is available. In three of the cases the French authorities had not verified that the placement of the family in administrative detention was a measure of last resort, and art. 5(1) and (4) had therefore been violated in respect of these children.
In two of the cases, the Court found a violation of art. 8 because the interference with the right to respect for family life had been disproportionate, in that the French authorities had not taken all the necessary steps to enforce the removal measure as quickly as possible.

☞ ECtHR 4 May 2023, 4289/21 ***A.C. & M.C. v FR*** CE:ECHR:2023:0504JUD000428921

* violation of ECHR, 3+5
* *Violation of both art. 3 and 5 due to the placement in administrative detention during nine days, and the conditions of detention, of a woman and her son aged 7½ months with a view to their transfer to Spain under the Dublin Regulation.*

☞ ECtHR 4 Apr. 2023, 55363/19 ***A.D. v GR*** CE:ECHR:2023:0404JUD005536319

* violation of ECHR, 3
* *Violation of art. 3 due to the living conditions of a pregnant woman staying at the Samos Reception and Identification Centre from August to November 2019 as the situation had exceeded the minimum level of severity required under art. 3.*

☞ ECtHR 17 Oct. 2023, 12427/22 ***A.D. v MT*** CE:ECHR:2023:1017JUD001242722

* violation of ECHR, 3+5+13
* *Violation of ECHR due to the detention as well as the conditions of detention of the applicant asylum seeker, presumed to be minor, during 225 days, including 120 days in isolation. Violation of art. 13 in conjunction with art. 3, due to lack of effective domestic remedy. According to art. 46, the respondent state was required to take general measures to ensure a legal basis in domestic law for detention and that relevant domestic law be effectively applied in practice, vulnerable individuals not detained, and necessary detention periods limited so that they remain connected to the detention ground applicable.*

☞ ECtHR 16 Nov. 2023, 18911/17 ***A.E. & T.B. v IT*** CE:ECHR:2023:1116JUD001891117

* violation of ECHR, 3+5(1)
* joined cases: 18911/17 + 18941/17 + 18959/17
* *Violation of art. 3 as there was no sufficiently compelling reason justifying some of the applicants being left naked together with other migrants, and due to absence of investigation into allegations that one of the applicants had been beaten by police. Violation of art. 5 as three of four applicants in the first case had been exposed to arbitrary arrest, transportation and detention.*

☞ ECtHR 13 June 2013, 53709/11 ***A.F. v GR*** CE:ECHR:2013:0613JUD005370911

* violation of ECHR, 3

* *An Iranian entering Greece from Turkey had initially not been registered as an asylum seeker by the Greek authorities, which ordered his return to Turkey. However, the Turkish authorities refused to readmit him into Turkey, and he was then detained by the Greek police. Against the background of reports from Greek and international organisations, having visited the relevant police detention facilities either during the applicant's detention or shortly after his release – including the European Committee for the Prevention of Torture, the UN Special Rapporteur on Torture, the German NGO ProAsyl and the Greek National Human Rights Commission – the ECtHR found a violation of art. 3 due to the serious lack of space available to the applicant, also taking the duration of his detention into account. It was thus unnecessary for the Court to examine the applicant's other allegations concerning the detention conditions which the Government disputed. Yet, the Court noted that the Government's statements in this regard were not in accordance with the findings of the above mentioned organisations.*

☞ ECtHR 18 Jan. 2024, 13958/16 ***A.I. a.o. v GR*** CE:ECHR:2024:0118JUD001395816

* violation of ECHR, 3

* *Violation of art. 3 because of the living conditions of three vulnerable applicants in the Idomeni camp which were held to have been deplorable, leading to deterioration of the applicants' state of health.*

☞ ECtHR 26 Apr. 2022, 34298/18 ***A.J. v GR*** CE:ECHR:2022:0426JUD003429818

* inadmissible application ECHR, 3+8+13

* *The applicant (2005) is a stateless Palestinian and unaccompanied minor who was granted asylum in Greece in 2016. The application concerns the revocation of his refugee status and the decision to return him to the Occupied Palestinian Territory, as well as the reception conditions he faced in Greece, initially as a child of a single-parent family and later as an unaccompanied minor, namely a lack of psycho-social support and separation from his siblings, who were hosted at different accommodation facilities. The applicant also complained that the procedure which had led to the revocation of his refugee status, combined with the failure to appoint a guardian for him, had been deficient.*
Following the revocation of the applicant's refugee status and the subsequent cancellation of his return trip to the Occupied Palestinian Territory, the Greek Asylum Service issued a decision by which the applicant was regranted refugee status. Consequently, he is no longer at risk of being returned to the Occupied Palestinian Territory.

☞ ECtHR 4 May 2023, 7534/20 ***A.M. a.o. v FR*** CE:ECHR:2023:0504JUD000753420

* violation of ECHR, 3+5

* *Violation of arts. 3 and 5 due to the placement in administrative detention for 10 days, as well as the conditions of detention, of a mother and her three children of 8 months, 6 years and 13 years with a view to transfer to Portugal under the Dublin Regulation.*

New ☞ ECtHR 28 Mar. 2024, 59758/16 ***A.Q. a.o. v GR*** CE:ECHR:2024:0328JUD005975816

* inadmissible application ECHR, 3

* *Complaint about a lack of appropriate medical assistance for Syrian asylum seekers is rejected as inadmissible.*

New ☞ ECtHR 18 Apr. 2024, 59841/19 ***A.R. a.o. v GR*** CE:ECHR:2024:0418JUD005984119

* violation of ECHR, 3+5

* joined cases: 59841/19 + 15782/20, 21997/20

* *Violation of art. 3 ECHR due to the living conditions in Greece's Reception and Identification Centres as well as the lack of adequate medical assistance.*

☞ ECtHR 5 Nov. 2015, 58399/11 ***A.Y. v GR*** CE:ECHR:2015:1105JUD005839911

* violation of ECHR, 3+13

* *The applicant was an Iraqi national Iranian having attempted to claim asylum in Greece. However, the Greek authorities had not registered his application, and he was held in detention pending deportation to Turkey.*
Due to overcrowding, and taking the duration of detention into account, the ECtHR found the detention conditions to be in violation of art. 3. Due to failures in processing the asylum claim, and the consequent risk of the applicant's deportation to Turkey and onward to Iraq, there had been a violation of art. 13 in conjunction with art. 3.
Art. 5(1)(f) and (4) had not been violated as the detention period had not been excessively long, and the applicant had been able to challenge the legality and material conditions of detention.

☞ ECtHR 2 Apr. 2015, 39766/09 ***Aarabi v GR*** CE:ECHR:2015:0402JUD003976609

* no violation of ECHR, 3

* *The applicant was a stateless Palestinian child, having grown up in an UNRWA camp in Lebanon from where he fled to Greece where he had been arrested and detained with a view to expulsion for irregular entry. He had been placed in a detention centre with adults and claimed to have been transferred unaccompanied to the north of Greece, and that no attention had been paid to his asylum application.*
The Court noted that the Greek authorities had been acting in good faith when considering the applicant an adult, and they had promptly released him upon notification of his minor age. Referring to the short periods of time in detention, the fact that the applicant had not presented specific allegations of inhuman detention conditions and that such finding was also not supported by any international reports on the relevant detention locations and periods, the Court did not consider the detention conditions to have been in violation of art. 3.

☞ ECtHR 3 May 2016, 56796/13 ***Abdi Mahamud v MT*** CE:ECHR:2016:0503JUD005679613

* violation of ECHR, 3

* *Violation of ECHR arts. 3 and 5. The application concerned the detention of a Somali asylum seeker in Lyster Barracks detention centre from May 2012 to September 2013. Due to the applicant's vulnerability as a result of her health, the cumulative effect of her detention conditions, such as lacking access to and poor environment for outdoor exercise, lack of specific measures to counteract the cold, lack of female staff, little privacy, and the fact that these conditions persisted for over 16 months, the Court considered that the detention conditions amounted to degrading treatment within the meaning of art. 3.*
Art. 5(1) and (4) was also found to have been violated, the latter because it had not been shown that the applicant had had at her disposal an effective and speedy remedy under domestic law by which to challenge the lawfulness of her detention.

☞ ECtHR 23 July 2013, 55352/12 ***Aden Ahmed v MT*** CE:ECHR:2013:0723JUD005535212

* violation of ECHR, 3

* *The case concerns an asylum applicant who had entered Malta in an irregular manner by boat. The ECtHR found a violation of art. 5(1), mainly due to the failure of the Maltese authorities to pursue deportation or to do so with due diligence, and of art. 5(4) due to absence of an effective and speedy domestic remedy to challenge the lawfulness of their detention.*
A similar case (23 July 2013, 42337/12, Suso Musa v. Malta) was ruled also on 23 July 2013. Therefore, according to ECHR art. 46, the ECtHR requested the Maltese authorities to establish a mechanism allowing a determination of the lawfulness of immigration detention within a reasonable time-limit. In this case the Court for the first time found Malta in violation of art. 3 because of the immigration detention conditions. Those conditions in which the applicant had been living for 14½ months were, taken as a whole, amounted to degrading treatment.

☞ ECtHR 16 Dec. 2022, 52208/22 ***Al Shujaa a.o. v BE*** CE:ECHR:2022:1216JUD005220822

* violation of ECHR, 3+6

* *Interim Measure.*
The Court of Human Rights, sitting as a Chamber of seven judges, decided to indicate an interim measure to the Belgian State in respect of 160 adult male applicants who had obtained a final domestic decision, as yet uncomplied with, from the Brussels Labour Court.

☞ ECtHR 11 Dec. 2014, 63542/11 ***Al.K. v GR*** CE:ECHR:2014:1211JUD006354211

* violation of ECHR, 3

* *Violation of ECHR art. 3 due to conditions of detention of an Iranian asylum seeker at border posts. Violation of art. 3 due to the applicant's living conditions after his release, pending examination of his asylum case. Referring to previous caselaw concerning particular vulnerability of asylum seekers, the Court held the lack of provision for essential reception conditions to have been degrading and humiliating.*

☞ ECtHR 17 May 2022, 35422/16 ***Ali Reza v BG*** CE:ECHR:2022:0517JUD003542216

* violation of ECHR, 5+8+13

* *The applicant is an Iraqi national born in 1973. He arrived in Bulgaria in 2000 and was granted subsidiary protection ("humanitarian status") on account of the war situation in Iraq. He was issued with a residence permit in 2003. The case concerns an expulsion order issued against Mr Ali Reza in 2015 on the grounds of national security, and whether the remedies available to him under domestic law were effective. It also concerns the applicant's administrative detention with a view to his expulsion (between June 2015 and January 2016) and the time taken to examine his appeal against that detention. Mr Ali Reza, who currently lives in Sofia, married his Bulgarian partner in December 2017. Since January 2016, he has been subject to administrative supervision and must report to a police station once a week.*
The ECtHR concludes that his detention was no longer justified due to a lack of sufficient diligence.

☞ ECtHR 23 Oct. 2012, 13457/11 ***Ali Said v HU*** CE:ECHR:2012:1023JUD001345711

* violation of ECHR, 5

* *This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicants were Iraqi nationals who illegally entered Hungary, applied for asylum and then travelled illegally to the Netherlands from where they were transferred back to Hungary under the Dublin Regulation.*

☞ ECtHR 6 Sep. 2016, 14344/13 ***Alimov v TR*** CE:ECHR:2016:0906JUD001434413

* violation of ECHR, 3

* *The applicant was a national of Uzbekistan, seeking asylum in Turkey, who complained about his detention pending removal for 104 days. The Court found a violation of art. 3 on account of the conditions of detention, such as insufficient living space and no access to outdoor exercise, in which the applicant had been detained in the airport detention facility as well as in the removal centre.*
Due to the absence of clear legal provisions in Turkish law on the procedure for ordering detention with a view to deportation, the applicant's detention had not been lawful for the purposes of art. 5(1). Notification of the reasons for detention had not been made sufficiently promptly to satisfy art. 5(2).
Art. 5(4) and (5) had also been violated due to the absence under Turkish law of a remedy by which to obtain judicial review of the lawfulness of detention in the applicant's situation, and to receive compensation for unlawful detention. Art. 13 in conjunction with art. 3 had been violated on account of the absence of effective remedies to complain about the material conditions of detention at the airport detention facility and the removal centre.

☞ ECtHR 4 Feb. 2016, 37991/11 ***Amadou v GR*** CE:ECHR:2016:0204JUD003799111

* violation of ECHR, 3

* *The applicant was a Gambian national who had been held in detention pending adoption of an expulsion decision. Referring to its previous case law concerning Fylakio and Aspropyrgos detention centres as well as reports by international institutions, the ECtHR considered the detention conditions during the period in question to have been contrary to art. 3.*
Given the obligations incumbent on Greece under the Reception Conditions Directive, and since only a diligent examination of the applicant's claim for asylum could bring his situation of extreme poverty to an end, yet the claim was still pending after three years, he had been in a degrading situation contrary to art. 3. Art. 5(4) had been violated due to shortcomings in Greek law with regard to the effectiveness of judicial review of detention pending deportation.

☞ ECtHR 10 Sep. 2020, 63141/13 ***B.G. a.o. v FR*** CE:ECHR:2020:0910JUD006314113

* no violation of ECHR, 3

* *The case concerned the accommodation of asylum-seekers for three months in a tent camp set up on a carpark in Metz and the question whether they had received the material and financial support provided for by domestic law. After these three months the applicants were housed in an appartment. The ECtHR held unanimously, that there had been no violation of Art. 3.*

☞ ECtHR 9 Jan. 2020, 48104/14 ***B.L. a.o. v FR*** CE:ECHR:2020:0109JUD004810414

* inadmissible application ECHR, 3

* *The case concerned asylum-seekers housed in a tent camp in Metz, who complained about the poor conditions in which they were accommodated. Noting, firstly, that certain applicants had not maintained contact with their lawyer and had failed to keep him informed of their place of residence or to provide him with any other means of contacting them, the Court considered that they had lost interest in the proceedings and no longer intended to pursue their application. Applicant E.G., who had been accommodated in the tent camp on Avenue de Blida, had not provided the Court with any specific information concerning the actual living conditions during that period. She had also failed to show that she had been unable to meet her basic needs. Lastly, she had been allocated housing from 18 July 2014, and had not lacked any prospect of her situation improving. Her allegation of ill-treatment was therefore dismissed.*

☞ ECtHR 19 Dec. 2013, 53608/11 ***B.M. v GR*** CE:ECHR:2013:1219JUD005360811

* violation of ECHR, 3

* *The applicant was an Iranian journalist who alleged to have been arrested and tortured due to his involvement in protests against the government. After his arrival in Greece a decision had been taken to return him to Turkey, and he had been held in custody in a police station and in various detention centres. His application for asylum was first not registered by the Greek authorities, and later they dismissed the application.*
The application mainly concerned the conditions of detention, in particular overcrowding, unhygienic conditions, lack of external contact, and lack of access to telephone, translators and any kind of information. Referring to its previous case law, the ECtHR held these conditions to be in violation of art. 3. As there had been no effective domestic remedy against that situation, art. 13 in combination with art. 3 had also been violated.

☞ ECtHR 25 Mar. 2020, 23685/14 ***Bilalova v PL*** CE:ECHR:2020:0325JUD002368514

* violation of ECHR, 5

* *The case concerned a family, parents with 5 children aged three to nine years old, from the Chechen republic in Russia. The family travelled first to Poland and applied for asylum. The family then left for Germany, without awaiting the outcome of their asylum request in Poland. In accordance with the provisions of the Dublin II Regulation the applicants were handed over by the German authorities back to the Polish authorities. Subsequently, the family was detained in a closed centre for aliens. After 3 months, the family was expelled to Russia. The ECtHR found the detention of the young children in violation of Art. 5(1)(f).*

☞ ECtHR 10 Apr. 2018, 75157/14 ***Bistieva a.o. v PL*** CE:ECHR:2018:0410JUD007515714

* violation of ECHR, 8

* *The applicant woman and her husband had applied for asylum in Poland. Upon rejection they moved on to Germany from where the woman and three children were returned to Poland according to the Dublin Regulation. Here they were held in administrative detention and later on joined by her husband. Although the woman had not been separated from her children, the Court found that the fact of confining the applicants to a detention centre for almost six months, thereby subjecting them to living conditions typical of a custodial institution, could be regarded as an interference with the effective exercise of their family life. The interference had a legal basis and pursued a legitimate aim.*
Referring to the Convention on the Rights of the Child, and to Popov v. France (19 January 2012, 39472/07), and A.B. a.o. v. France (12 July 2016, 11953/12), the Court held the view that the child's best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families with children. It was not convinced that the Polish authorities had in fact viewed the detention as a measure of last resort, nor had they given due consideration to possible alternative measures. Even in the light of the risk that the family might abscond, the authorities had failed to provide sufficient reasons to justify detention for 5 months and 20 days. The interference had therefore been disproportionate.

☞ ECtHR 28 Nov. 2017, 1009/16 ***Boudraa v TR*** CE:ECHR:2017:1128JUD000100916

* violation of ECHR, 3

* *While the detention facility at Yalova police headquarters was designed to accommodate people for very short periods, the applicant had been held for 66 days. He had not been afforded adequate sleeping facilities, and he was not allowed access to the open air and daily outdoor exercise at any time during his detention. Despite uncertainty concerning the personal space that had been available to the applicant, the Court held that these findings – coupled with the length of the detention and the likely anxiety caused by uncertainty as to when it would end – were sufficient to conclude that the detention conditions had attained the threshold of degrading treatment.*

☞ ECtHR 19 Dec. 2013, 33441/10 ***C.D. a.o. v GR*** CE:ECHR:2013:1219JUD003344110

* violation of ECHR, 3

* *The 12 applicants were asylum seekers who had been detained for several months awaiting deportation. While the detention conditions were found to have constituted degrading treatment in violation of art. 3, the detention as such had not been unlawful under art. 5(1). However, there had been a violation of art. 5(4) on speedy review of the lawfulness of detention.*

☞ ECtHR 18 July 2023, 49255/22 ***Camara v BE*** CE:ECHR:2023:0718JUD004925522

* violation of ECHR, 3

* *The case concerns a Guinean national who applied to the Belgian authorities for international protection in July 2022. Since then he has lived on the street, not having been assigned a place in a reception facility by the Federal Agency for the Reception of Asylum-Seekers (Fedasil) on account of the alleged saturation of the network for receiving asylum-seekers in Belgium. The ECtHR decided to apply an interim measure and to enforce the order - made by a domestic Belgian court - to provide the applicant with accommodation and material assistance. However, according to the Government, since the summer of 2021 the reception capacity of the network managed by Fedasil had proven insufficient to cope with the increase in the number of applicants for international protection, making it materially impossible for the State to enforce court orders. Nevertheless, the right protected by Art. 6 of the Convention had to be interpreted in the light of the Preamble to the Convention. That Preamble referred to the rule of law, one of the fundamental aspects of which was the principle of legal certainty, which required, in particular, that where the courts had finally determined an issue, their ruling should not be called into question.*
In that regard, the circumstances of the present case were not unusual and revealed a systemic failure on the part of the Belgian authorities to enforce final judicial decisions concerning the reception of applicants for international protection. While the ECtHR was aware of the difficult situation the Belgian State was facing, it could not accept that the time taken by the Belgian authorities in the present case to enforce a court order aimed at protecting human dignity had been reasonable. Furthermore, that systemic failure had heavily over-burdened the operation of a national court and that of the ECtHR itself.
Thus, there had not been a "mere" delay on the part of the Belgian authorities, but rather a clear refusal to comply with the orders issued by the domestic court, which had impaired the very essence of the right protected by Art. 6(1). Unanimous decision of the ECtHR.

☞ ECtHR 30 Nov. 2023, 2080/19 ***D.S. v GR*** CE:ECHR:2023:1130JUD000208019

* violation of ECHR, 3+13

* *Violation due to a single young woman's living conditions as an asylum seeker in a camp in Samos and the absence of effective remedies against these conditions. The complaints under art. 5, as well as under art. 3 regarding shorter periods in police detention, were rejected as manifestly ill-founded.*

☞ ECtHR 21 July 2022, 5797/17 ***Darboe and Camara v IT*** CE:ECHR:2022:0721JUD000579717

* violation of ECHR, 3

* see also under § 2.3

* *The applicant, a Guinean national, arrived in Italy and sought asylum claiming to be an unaccompanied minor. He submitted that he had declared his minor age and intention to apply for international protection shortly after arrival. However, no information on how to initiate the relevant procedure had been provided to him and no request for international protection had been lodged in his case.*
*The ECtHR reiterates its well-established case-law to the effect that, having regard to the absolute character of Art. 3, the difficulties deriving from the increased inflow of migrants and asylum-seekers, in particular for States which form the external borders of the European Union, **does not exonerate member States** of the Council of Europe from their obligations under this provision.*
Therefore, having regard to the length and conditions of the applicant's stay in the adult reception centre in Cona, the Court concludes that he was subjected to inhuman and degrading treatment and that there has been a breach of Art. 3 of the Convention.

☞ ECtHR 30 July 2015, 74308/10 ***E.A. v GR*** CE:ECHR:2015:0730JUD007430810

* violation of ECHR, 3

* *The applicant was an Iranian claiming to have applied for asylum in Greece. However, the Greek authorities had not registered his application, and he was held in detention for two months pending deportation. Due to overcrowding, poor hygiene and lack of access to natural light, the ECtHR found the detention conditions to be in violation of art. 3*
The applicant had not had an effective remedy against the treatment suffered due to detention conditions, and there had been procedural deficiencies in processing his asylum claim. Thus, art. 13 had been violated. Art. 5(4) had been violated due to shortcomings in domestic law in terms of the limited grounds to review detention pending deportation.

☞ ECtHR 5 Oct. 2023, 16127/20 ***E.F. v GR*** CE:ECHR:2023:1005JUD001612720

* violation of ECHR, 3+13

* *Violation of ECHR due to the failure of the Greek authorities to provide proper medical treatment to the applicant during her placement in the Moria and Polykastro camps, despite her serious illness as HIV-positive, and her vulnerability as an asylum seeker.*

☞ ECtHR 14 Jan. 2021, 73700/13 ***E.K. v GR*** CE:ECHR:2021:0114JUD007370013

* no violation of ECHR, 5+3

* *The applicant, is a Turkish national born in 1985. On 19 June 2013 Mr E.K., who had entered the country illegally, was arrested by officers from the Soufli border post and brought before the prosecutor at the Alexandroupolis Criminal Court, which imposed a two-year suspended prison sentence. On 21 June 2013 he was placed in pre-trial detention, for an initial duration of three days, with a view to his deportation from the country. While in detention he submitted an asylum claim, which was transferred to the Attica regional asylum services on 22 June 2013. On the same day the head of the Alexandroupolis police force decided to extend E.K.'s detention pending the decision on his asylum claim, for an initial maximum period of 90 days after submission of that claim. On 26 June 2013 E.K.'s detention was extended on the grounds that he was likely to abscond, for a maximum period of six months. E.K. was then transferred, first to the premises of the Feres border post, then to the premises of the Attica sub-directorate for aliens, where it was decided on 23 July 2013 to extend his detention for a period of 90 days; he was notified of that decision "in Syrian", a language that he did not understand. On the same date, this decision was amended in order to reflect the new duration of his detention of six months. His asylum interview took place in July and he was transferred to the Amygdaleza detention centre. He challenged the decisions on detention but these were rejected. In December 2013 he was granted refugee status. The ECtHR noted that the applicant had been detained for five months and twenty-four days. The ECtHR held that that period could not be considered excessive for completing all the administrative formalities for his expulsion.*
As regards the asylum application, the ECtHR noted that under domestic law, although the lodging of such an application stayed the execution of the expulsion order, it did not suspend the execution of detention; domestic law only required the asylum procedure to be concluded rapidly, which had been the situation in the instant case. The ECtHR also noted that the Ombudsman had not mentioned any particulier overcrowding and that neither the CPT report nor that of the Ombudsman had been critical of the situation in the Centre. Thus, no violation of Art. 3 or 5(1).
The ECtHR only concludes that the applicant had not benefited from a sufficiently thorough assessment of the lawfulness of his detention to highlight the remedies and other channels provided under domestic law and case-law. The ECtHR therefore finds a violation of Art. 5(4).

☞ ECtHR 17 Oct. 2019, 4633/15 ***G.B. a.o. v TR*** CE:ECHR:2019:1017JUD000463315

* violation of ECHR, 3+13

* *The applicants Russian nationals were a mother and her three children born in 2008, 2012, and 2013. In 2014 they were arrested attempting to illegally cross the border from Turkey into Syria, and a deportation and detention order was issued against all four applicants. They complained about the lawfulness as well as the conditions of their detention, in particular overcrowding, poor hygiene, constant exposure to cigarette smoke, food unsuitable for children and lack of outdoor exercise.*
As regards the detention conditions, the Court observed that reports from the CPT as well as the National Human Rights Institution of Turkey had corroborated the applicants' allegations about conditions in the Kumkapi Removal Centre. The respondent State had failed to give evidence to refute these allegations. The Court considered that these conditions of detention, for three months without knowing when they would be released, had reached the threshold of severity under art. 3. It stressed that such conditions were manifestly adverse for adults and had been particularly unsuitable for the extremely vulnerable applicant children, being totally at odds with the widely recognised international principles for on the protection of children. The conditions at Kumkapi as well as Gaziantep Removal Centre were held to be in violation of art. 3.
Art. 13 in conjunction with art. 3 had been violated due to the lack of effective remedies for the applicants as regards the conditions at the Kumkapi Removal Centre.
Art. 5(1) had been violated because the applicants had not been detained in accordance with the procedure prescribed by law for part of the period of detention, and for another part the detention had been arbitrary. The Court also found a violation of Art. 5(4) due to the failure of both a Magistrates Court and the Constitutional Court to conduct speedy and effective review of the lawfulness of the applicants' detention.

☞ ECtHR 21 Jan. 2016, 58424/11 ***H.A. v GR*** CE:ECHR:2016:0121JUD005842411

* violation of ECHR, 3

* *The applicant was an Iranian national who had been held in detention for five months pending deportation to Turkey. Referring to its previous case law, the ECtHR considered the conditions at Soufli detention centre to be contrary to art. 3 due to overcrowding and poor hygiene.*
While the initial period of detention had been justified under art. 5(1)(f), this provision had been violated in that the Greek authorities had failed to act with due diligence, not taking steps to carry out the expulsion following Turkey's refusal to admit the applicant. Art. 5(4) had been violated as the applicant had no effective judicial remedy to challenge his detention because the administrative court did not review the legality of the removal decision forming the grounds for detention, nor the conditions of detention.

☞ ECtHR 21 Apr. 2016, 58387/11 ***H.A. v GR*** CE:ECHR:2016:0421JUD005838711

* violation of ECHR, 3

* *The applicant Iraqi national was arrested for unlawfully entering Greece in August 2010 and was held in the Tychero detention centre. He filed an unsuccessful asylum application. His objections against the detention were overruled by the administrative court, while a subsequent case was allowed in January 2011.*
The Court found a violation of art. 3 as a result of lack of space in the detention centre. Due to this finding, the Court did not consider it necessary to examine the other complaints concerning the detention conditions at the Tychero border post. While the detention could not be considered arbitrary and thus not in violation of Art. 5(1), the Court found art. 5(4) to have been violated due to the insufficient judicial control of detention with a view to deportation under Greek legislation at the time of the applicant's case. As art. 5(4) was the lex specialis in this regard, the Court did not examine this complaint under art. 13.

☞ ECtHR 28 Feb. 2019, 19951/16 ***H.A. a.o. v GR*** CE:ECHR:2019:0228JUD001995116

* violation of ECHR, 3

* *The applicants were asylum seeking unaccompanied minors of Syrian, Iraqi and Moroccan nationality who had entered Greece in March 2016. They had been placed under 'protective custody' in various police stations for periods between 21 and 33 days. The Court referred to its previous caselaw concerning detention in Greek police stations, finding that these were not suited to lengthy periods of detention. Further reference was made to the CPT report, based on visits to Greece in April and July 2016, that had considered the practice of detaining unaccompanied minors for 'protective purposes' for several days or even weeks, without any psychological or social assistance, unacceptable. The Court concluded that the applicants had been subjected to detention conditions constituting degrading treatment in violation of art. 3.*
The remedies available to the applicants regarding their complaints concerning the detention conditions and their transfer to the Diavata reception centre had not been effective, thus violating art. 13 taken together with art. 3. The living conditions in Diavata, an open reception centre to which the applicants had been referred and which had a 'safe zone' for unaccompanied minors, were considered not to exceed the threshold of seriousness required to engage art. 3. Two of the applicants' complaint of ill-treatment in one of the police stations was considered manifestly ill-founded, due to lack of substantiation. The applicants' detention in 'protective custody' had not been lawful within the meaning of art. 5(1). As they had been unable to bring their case before the administrative court in order to challenge the detention, there was also a violation of art. 5(4).

☞ ECtHR 13 June 2023, 4892/18 ***H.A. a.o. v GR*** CE:ECHR:2023:0613JUD000489218

* violation of ECHR, 3+13

* joined cases: 4892/18 + 4920/18

* *Violation of arts. 3 and 13 due to the living conditions in the Moria 'hotspot' in Lesbos, and the lack of effective remedies in that regard; no violation of art. 8 by the delay in examination of family reunification in Germany allegedly resulting from delayed asylum proceedings in Greece.*

☞ ECtHR 2 June 2022, 38967/17 ***H.M. a.o. v HU*** CE:ECHR:2022:0602JUD003896717

* violation of ECHR, 3+5+4

* *The applicants are an Iraqi couple, and four of their children who were born between 2001 and 2013. The applicant family left Iraq after the father had allegedly been tortured by the national security services. After traveling through several countries, they arrived at the Tompa transit zone at the border between Hungary and Serbia on 3 April 2017, and submitted asylum requests. At the transit zone, they were housed in a container in the family section which they were only allowed to leave in order to attend medical or other appointments, and always under police escort. The mother was pregnant and, as there were some complications, her pregnancy was considered to be high risk. She had to be taken into hospital a number of times. On one such occasion, ten days after their arrival in the transit zone, her husband went with her and was handcuffed and attached to a leash in full view of their children. He was made to remain in handcuffs throughout the hospital visit while acting as interpreter for his wife. On 24 August 2017, their fifth child was born, and the family was transferred from the Tompa transit zone to an open reception facility.*
The ECtHR considered that, while the mother appeared to have received the necessary medical attention, the constraints she had suffered throughout her advanced stage of pregnancy had to have caused anxiety and mental health issues which, given her vulnerability, were serious enough to engage Art. 3 of the Convention. As regards the children, in keeping with previous case-law, the Court found a violation of Art. 3 on account of the conditions they had faced during their more than four-month-long stay in the transit zone.

☞ ECtHR 4 May 2023, 26250/15 ***H.N. v HU*** CE:ECHR:2023:0504JUD002625015

* violation of ECHR, 5

* joined cases: 26250/15 + 26919/15

* *Violation of art. 5 due to the detention of asylum seekers.*

☞ ECtHR 26 Mar. 2019, 47920/12 ***Haghilo v CY*** CE:ECHR:2019:0326JUD004792012

* violation of ECHR, 3+5

* *The applicant, an Iranian national, entered Cyprus unlawfully. Shortly after, he was arrested at Larnaca airport when trying to take a flight to London on a forged passport and was placed in detention awaiting deportation. Subsequently, he applied for asylum but that application was dismissed. After 7 months he challenged the validity of his detention. The Supreme Court of Cyprus ruled that his detention had been too long and therefor unlawful. Following this judgment in his favour, he was only minutes after leaving the courtroom arrested again and put in detention on the same grounds as the previous deportation orders against him. After a total duration of 18 months he was finally released. The applicant subsequently left Cyprus without informing his lawyer, which made the Supreme Court of Malta rule that, as this had been of his own free will, without any coercion, pressure or reservations, the applicant no longer had any legitimate interest in challenging the lawfulness of the deportation and detention orders; such a legitimate interest had to continue to exist up to the conclusion of the appeal.*
The ECtHR ruled that the overall conditions and the duration of the applicant's detention in the police facilities subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and that they thus amounted to degrading treatment prohibited by Art. 3 of the Convention. Also, as was admitted by Malta, the applicant's detention longer than 6 month had been unlawful, which was a violation of art. 5.

☞ ECtHR 7 July 2022, 29440/16 ***Haouari v HU*** CE:ECHR:2022:0707JUD002944016

* violation of ECHR, 5

* *This application concerns the legal basis of the applicant's detention with a view to deportation. The applicant (an Algerian national) was convicted of the crime of people smuggling. His petition for review was rejected. After he was released on parole, he was informed that he was to be deported. Subsequently, he applied for asylum and was placed in asylum detention. Two months later he was released by the Buda Central District Court rejecting the immigration authorities' renewed request for prolongation of the detention. Finally, he was deported to Algeria, after the Algerian Embassy had issued a passport.*

☞ ECtHR 1 Aug. 2013, 70427/11 ***Horshill v GR*** CE:ECHR:2013:0801JUD007042711

* violation of ECHR, 3

* *The applicant had entered Greece irregularly and later applied for asylum, following which he was arrested and placed in detention for 15 days. The Court found that he had been subjected to degrading treatment in violation of art. 3, due to the detention conditions in the police stations. Referring to the Greek decree transposing Asylum Procedures I Dir., the decision from the administrative court from which it was clear that the applicant's detention had not been automatic, as well as the short period of detention and the fact that he had been immediately released when assuring that he would be accommodated in a hostel run by an NGO, the Court considered the detention lawful within the meaning of art. 5(1).*

☞ ECtHR 30 Mar. 2023, 21329/18 ***J.A. a.o. v IT*** CE:ECHR:2023:0330JUD002132918

* violation of ECHR, 5+Prot. 4 Art. 4

* *Violation of ECHR arts. 3 and 5 as well as of ECHR Protocol 4 art. 4 due to the conditions of detention at Lampedusa 'hotspot' and to the procedural treatment of the applicants from Tunesia which had effectively amounted to collective expulsion. Arbitrary detention without clear and accessible legal basis and in absence of reasoned decision. In particular the latter is relevant to asylum procedures although the applicants did not appear to be asylum seekers.*

☞ ECtHR 25 Jan. 2018, 22696/16 ***J.R. a.o. v GR*** CE:ECHR:2018:0125JUD002269616

* violation of ECHR, 5

* see also: ECtHR 21 Mar. 2019, 39065/16, O.S.A. a.o. v. GRE

* *The applicant Afghan nationals had been held in the VIAL 'hotspot' reception centre in Chios following the adoption of the EU-Turkey Statement of 18 March 2016, and complained about the conditions and length of their detention.*
The applicants' detention from their arrival on 21 March until VIAL was converted into a semi-open centre on 21 April was considered to amount to deprivation of liberty. Since they had been detained with a view to identification, registration and deportation to Turkey, the detention period of one month was not considered excessive or arbitrary, and it was therefore not unlawful within the meaning of art. 5(1)(f). Due to insufficient information about the reasons for their arrest and the remedies available, the Court found art. 5(2) to have been violated.
As regards the conditions of detention, the Court noted the organisational, logistical and structural difficulties caused by the exceptional increase in migratory flows into Greece at the time. While reiterating that such factors cannot absolve States of their obligations to ensure detention conditions respecting human dignity, due to the absolute nature of art. 3, the Court held that the applicants' concrete conditions had not reached the threshold of severity required to characterise their detention as inhuman or degrading. In this connection the Court referred to the short detention period of 30 days and to the fact that the CPT had not been particularly critical of the conditions prevailing in the VIAL centre.

☞ ECtHR 3 Oct. 2019, 34215/16 ***Kaak a.o. v GR*** CE:ECHR:2019:1003JUD003421516

* violation of ECHR, 5

* *The applicants were 49 adults, teenagers and children of Syrian, Afghan and Palestinian origin who, upon arrival in the island of Chios in March and April 2016, had been placed in the Vial reception, identification and registration centre, while some of the had subsequently been transferred to the Souda camp. They complained about the conditions of detention in these camps, including the quantity and quality of meals, the inadequacy of medical provision as well as overcrowding that had rendered the material conditions of accommodation dangerous.*
The Court noted that the unaccompanied minor applicants had been placed in the 'safe zone' within the Vial camp. As soon as they had been registered, the Vial director had requested the National Service of Social Solidarity to provide care and to find appropriate reception facilities. He had requested the transfer of certain applicants under escort to the reception facilities, and he contacted the asylum services concerning requests to lodge asylum applications. The Court was therefore not convinced that the authorities had not done everything that could reasonably be expected of them to meet the obligation to provide care and protection for these applicants in view of their age and vulnerability. Therefore, the Court held that there had been no violation of art. 3 as regards these applicants.
Some adult applicants had been transferred within 10 days to the Souda camp, while the other adults had spent a total of 24-30 days in the Vial centre. The Souda camp was an open structure, and the Court stated that the applicants had not specified how they had been affected by the conditions complained of. Against this background, the Court found no violation of art. 3.
As a period of one month's detention in the Vial centre was not to be considered excessive, and the centre had become a semi-open structure in April 2016, the applicants' detention had not been arbitrary and could therefore not be considered unlawful for the purposes of art. 5(1)(f).
However, there had been a violation of art. 5(4) because the expulsion orders, indicating the possibility of lodging an appeal, had been written in Greek. As the applicants had no legal assistance in the two camps, the Court considered it uncertain that the applicants had understood the information relating to the various remedies available. Even assuming that the remedies were effective the Court, having regard also to the findings of other international bodies, held that these remedies had not been accessible to the applicants.

☞ ECtHR 5 Sep. 2017, 23619/11 ***Khaldarov v TR*** CE:ECHR:2017:0905JUD002361911

* violation of ECHR, 3

* *Violation of art. 3 due to the material conditions of detention of an asylum seeker in the Kumkapi Removal Centre, in particular because of the clear evidence of overcrowding and lack of access to outdoor exercise.*
Art. 5 had also been violated due to absence of clear legal provisions in Turkish law on procedures for ordering the detention of foreigners and providing remedies, as well as the failure to inform the applicant of the grounds for his continued detention, with the effect of depriving the applicant's right of appeal against detention of all substance.

☞ ECtHR 28 Feb. 2019, 12267/16 ***Khan v FR*** CE:ECHR:2019:0228JUD001226716

* violation of ECHR, 3

* *The applicant Afghan national, born in 2004, had arrived in France in 2015 and was staying in the 'lande de Calais' until he left for the UK in March 2016. The case concerned the French authorities' failure to provide unaccompanied minors with care before and after the dismantling of the makeshift camps in the 'lande de Calais', despite the judicial instruction to the Prefect to ascertain the number of unaccompanied minors in distress and cooperate with local authorities in placing them in care, and despite the Children's Judge order for the provisional placement of the applicant.*
The Court found that, owing to the failure of the authorities to protect the applicant and despite support from various NGOs, he had spent six months living in an environment manifestly unsuitable for children, characterised by insalubrity, precariousness and insecurity. The failure to provide care had become even worse after the dismantling of the southern sector of the site, due to the demolition of the hut in which the applicant had been living and the general deterioration of the living conditions on the site. The Court was therefore not convinced that the authorities had done all that could reasonably be expected of them to fulfil the obligation of protection and care of an unaccompanied minor who was unlawfully present in the territory, an individual belonging to the most vulnerable category of persons in society. The particularly serious circumstances of the case and the failure to enforce the Children's Judge order, taken in conjunction, had been in breach of the State's obligations, and the applicant's situation had amounted to degrading treatment in violation of art. 3.

☞ ECtHR (GC) 15 Dec. 2016, 16483/12 ***Khlaifia a.o. v IT*** CE:ECHR:2016:1215JUD001648312

* no violation of ECHR, 3

* violation of art. 5+13

* *In contrast to the Chamber (judgment of 1 September 2015) the GC found no violation of ECHR art. 3 and Protocol no. 4 art. 4. The GC still found violation of arts. 5 and 13.*
The applicants were Tunisian migrants who landed clandestinely on the Italian coast in 2011 during the 'Arab Spring' events. They had been detained in a reception centre on Lampedusa and later, following a riot that resulted in fires at the centre, on board ships in Palermo harbour. The conditions in the reception centre had not exceeded the level of severity required to fall within art. 3. As regards the conditions on the ships, the applicants' allegations had not been based on any objective elements, and the Court did not find it established that the conditions had constituted inhuman or degrading treatment in violation of art. 3. Due to the absence of remedies relating to the conditions of detention, there had been a violation of art. 13 taken together with art. 3. The Court restated that the fact that a number of aliens were subject to similar decisions did not in itself lead to the conclusion that there had been a collective expulsion. Also, Protocol no. 4 art. 4 did not guarantee the right to an individual interview in all circumstances. The requirements of art. 4 were satisfied where each alien had the possibility of raising arguments against his expulsion and where those arguments had been examined by the authorities. Given that the applicants had undergone identification on two occasions and their nationality had been established, they had been afforded a genuine and effective possibility of submitting arguments against their expulsion, and they had not alleged that they feared ill-treatment or that there were any other legal impediments to their expulsion. There had therefore been no violation of Protocol no. 4 art. 4.
The lack of suspensive effect of the remedy against the Italian authorities' removal decision did not in itself constitute a violation of art. 13 where the applicants did not allege a risk of violation of arts. 2 or 3 in the destination country, and the removal would thus not expose them to harm of a potentially irreversible nature. There had therefore not been a violation of art. 13 taken together with Protocol no. 4 art. 4
As the applicants had been deprived of their liberty, and there had been no clear and accessible legal basis for that deprivation, they had not been informed about the legal and factual reasons for their detention, and they had not been provided with a remedy to obtain a court decision on the lawfulness of their detention, art. 5(1), (2) and (4) had been violated.

☞ ECtHR 21 Mar. 2024, 6182/20 ***L. v HU*** CE:ECHR:2024:0321JUD000618220

* violation of ECHR, 5

* *Violation of ECHR art. 5 due to the detention of a Syrian asylum seeker.*

☞ ECtHR 20 Sep. 2011, 10816/10 ***Lokpo & Touré v HU*** CE:ECHR:2011:0920JUD001081610

* violation of ECHR, 5

* *The applicants entered Hungary illegally. After their arrest and during subsequent detention they applied for asylum. They were kept however in detention.*
The Court ruled that Article 5 § 1 (right to liberty and security) was violated, stating that the absence of elaborate reasoning for an applicant's deprivation of liberty renders that measure incompatible with the requirement of lawfulness.

☞ ECtHR 31 Aug. 2023, 70583/17 ***M.A. v IT*** CE:ECHR:2023:0831JUD007058317

* violation of ECHR, 3

* *Unanimous decision. Violation by the placement for almost eight months of an unaccompanied minor asylum seeker, allegedly a victim of sexual abuse, in an adult reception centre that was not equipped to provide the applicant with appropriate psychological assistance, taken together with the national authorities' prolonged inaction regarding her situation and needs as a particularly vulnerable minor.*

☞ ECtHR 5 Oct. 2023, 58680/18 ***M.A. a.o. v HU*** CE:ECHR:2023:1005JUD005868018

* violation of ECHR, 3+5

* *The applicants stayed at the Röszke transit zone at the Serbian-Hungarian border between 20 February and 31 May 2018. The first applicant had already been registered in the Eurodac system and was subject to a Dublin procedure. However, the responsibility of Hungary for examining the asylum request was established. They were recognised as refugees at the end of May. The ECtHR notes that this case is similar to that of **R.R. a.o. v Hungary** (36037/17). In that case the Court, emphasising the primary significance of the passage of time for the application of Art. 3 in situations such as the present one, found a violation of this provision on account of the conditions to which the applicants children were subjected during their almost four-months-long stay in the Röszke transit zone.*

☞ ECtHR 24 Feb. 2022, 73860/17 ***M.B.K. a.o. v HU*** CE:ECHR:2022:0224JUD007386017

* violation of ECHR, 3+5

* *A family with 4 children stayed at the Röszke transit zone at the border of Hungary and Serbia between 30 March 2017 and 24 October 2017. Initially, their asylum requests were rejected. In October they were granted refugee status. The ECtHR has already considered that the living conditions in the Röszke transit zone in terms of accommodation, hygiene and access to food and medical care were generally acceptable for holding **adult** asylum-seekers for a limited period of time. However, as regards children, The general principles concerning the confinement and living conditions are summarized in ECtHR 2 March 2021, R.R. a.o. v Hungary (3603/17). This case resembles R.R. a.o. v Hungary. The ECtHR emphasises the primary significance of the passage of time for the application of Article 3 in situations such as the present one, found a violation of this provision on account of the conditions to which the applicants children were subjected during their almost four-months-long stay in the Röszke transit zone (R.R. and Others, cited above, §§ 58-60 and 63-65). Having regard to the evidence before it, the ECtHR sees no reasons to find otherwise in the present case in which the applicant children stayed in the transit zone for almost seven months.*

☞ ECtHR 22 July 2021, 57035/18 ***M.D. & A.D. v FR*** CE:ECHR:2021:0722JUD005703518

* violation of ECHR, 3+5
* *The case concerned the administrative detention of a mother and her four-month-old daughter in a detention centre pending their Dublin transfer to Italy. Having regard to the very young age of the child, the reception conditions and the length of the detention (11 days), the Court found that the competent authorities had subjected the child and her mother to treatment exceeding the level of severity required for Article 3 of the Convention to apply.*

☞ ECtHR 22 Feb. 2024, 10940/17 ***M.H. & S.B. v HU*** CE:ECHR:2024:0222JUD001094017

* violation of ECHR, 5
* *Violation of art. 5 due to the detention of two minor asylum seekers.*

☞ ECtHR 18 Nov. 2021, 15670/18 ***M.H. a.o. v HR*** CE:ECHR:2021:1118JUD001567018

* violation of ECHR, 2+3+5
* joined cases: 15670/18 + 43115/18
* *The applicants are an Afghan family of fourteen. They left their home country in 2016, travelling, inter alia, through Serbia before coming to Croatia. Among other things, they allege that on 21 November 2017, the first applicant and her six children entered Croatia from Serbia, but were taken back to the border by police officers and ordered to go back to Serbia by following the train tracks. One of the children, was hit by a passing train and killed.*
  The Court holds unanimously a violation of Art. 2, by 6 - 1 a violation of Art. 3 with regard to the children of the Afghan family, and unanimously a violation of Art. 5(1).

☞ ECtHR 15 Nov. 2022, 34349/18 ***M.K. a.o. v FR*** CE:ECHR:2022:1115JUD003434918

* violation of ECHR, 6(1)
* joined cases: 34349/18 + 34638/18, 35047/18
* *The cases concerned asylum-seekers who were without accommodation at the time of the events because they had not been given access to the specialist reception facilities or to emergency accommodation. The urgent-applications judge of the Administrative Court, to whom they applied, ordered the State to find emergency accommodation for them. The applicants complained that, despite the orders granting their requests and the proceedings brought by them at domestic level to that end, the State had failed to enforce the judicial decisions in their favour.*

☞ ECtHR 12 Dec. 2017, 29957/14 ***M.S.A. v RU*** CE:ECHR:2017:1212JUD002995714

* violation of ECHR, 3
* *The applicants were all Syrian nationals who had sought refugee status or temporary asylum in Russia. One among them who had been granted temporary asylum was not considered a victim in relation to ECHR arts. 2 and 3. Another case was rejected due to non-exhaustion of domestic remedies. Six of the applicants had left Russia for third countries where they had been allowed to settle, and their cases were struck out the Court's list along with one case in which the applicant's order for removal from Russia had been quashed.*
  Two of the applicants had been detained in a detention centre for foreign nationals where the conditions had been cramped and inadequate, in breach of ECHR art. 3. Six of the applicants had been detained for 11-15 months which was held to be in violation of art. 5(1)(f) and art. 5(4). No violation of art. 5 was found for the remaining applicants whose length of detention had been 3 and 7 months.

☞ ECtHR 21 Jan. 2011, 30696/09 ***M.S.S. v BE & GR*** CE:ECHR:2011:0121JUD003069609

* violation of ECHR, 3
* *A deporting State is responsible under ECHR Art. 3 for the foreseeable consequences of the deportation of an asylum seeker to another EU MS, 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 26 Nov. 2015, 10290/13 ***Mahamed Jama v MT*** CE:ECHR:2015:1126JUD001029013

* violation of ECHR, 3+5
* *The applicant Somali asylum seeker had been detained in Lyster Barracks. Considering that the size of her living space did not go below the acceptable minimum standard, and observing that the detention had undergone various improvements, that there were no concerns about hygiene facilities and that the applicant's basic needs regarding food and clothing were met, the Court held that the cumulative effects of the conditions did not meet the threshold of degrading treatment under art. 3. Art. 5(4) had been violated due to the lack of a remedy to challenge the lawfulness of the applicant's detention. Art. 5(1) was violated by upholding detention of the applicant for 5 days after she had been granted subsidiary protection. Request for referral to Grand Chamber was rejected on 6 June 2016.*

☞ ECtHR 15 Jan. 2015, 48352/12 ***Mahammad a.o. v GR*** CE:ECHR:2015:0115JUD004835212

* violation of ECHR, 3
* *Violation of ECHR art. 3 due to conditions of overpopulation and deplorable hygiene during the detention of 14 foreign nationals, pending removal.*
  Violation of ECHR art. 5(4) as the applicants had not received an examination of the legality of their detention meeting the standard required by this provision.

☞ ECtHR 11 Dec. 2014, 70586/11 ***Mohamad v GR*** CE:ECHR:2014:1211JUD007058611

* violation of ECHR, 3

* *Violation of ECHR art. 3 due to conditions of detention of an unaccompanied Iraqi minor at border post. The applicant had been detained for over 5 months with adults, and he had been exposed to unsanitary and overcrowded conditions leading to psychological distress and physical harm.*
Violation of ECHR art. 13 in conjunction with art. 3 due to lack of thorough and effective judicial review of the legality and conditions of detention. Violation of ECHR art. 5(1) due to placement of minor in detention with adults, and continued detention despite no efforts had been taken to deport the applicant.

☞ ECtHR 29 June 2021, 37139/13 ***Monir Lotfy v CY*** CE:ECHR:2021:0629JUD003713913

* violation of ECHR, 3

* *The applicant was born in Egypt and came in 1991 for the first time to Cyprus. Between 1991 and 2012 he was granted Cypriot citizenship, which was subsequently revoked, and he was deported twice. After his arrest in 2013 he was detained for some 12 months. Although the Supreme Court ordered the applicant's immediate release, the applicant was not in reality able to regain his liberty as he was re-arrested by the authorities while still on the premisses of the Supreme Court on the basis of new deportation and detention orders issued against him on the same grounds as those cited in respect of the first orders.*
In view of all the foregoing considerations, even assuming that the applicant's continued detention from July 2013 until his deportation in July 2014 could be considered in compliance with domestic law, the ECtHR finds that it was arbitrary, within the meaning of Art. 5(1).

☞ ECtHR 12 Jan. 2016, 52160/13 ***Moxamed I. v MT*** CE:ECHR:2016:0112JUD005216013

* no violation of ECHR, 3

* joined cases: 52160/13 + 52165/13

* *The applicants were Somali nationals having entered Malta irregularly and applied for asylum. They had been held in detention in Lyster Barracks for almost 12 months.*
The Court accepted that applicants in cases concerning conditions of detention may have certain difficulties in procuring evidence to substantiate their complaint. However, based on a detailed examination of the physical conditions at the detention centre, including the extent of personal space, access to outdoor exercise, alleged suffering from cold and heat, as well as staffing and medical assistance, the Court held that the cumulative effects of the conditions complained of did not reach the threshold of degrading treatment under art. 3. Notably, in various respects the Court expressed its concerns and noted improvements that had been put in place or were still called for.
As it had not been shown that the applicants had at their disposal an effective and speedy remedy to challenge the lawfulness of their detention, art. 5(4) had been violated.
Detention during the relevant period was held to be in compliance with art. 5(1)(f). The Court referred to the absence of inappropriate conditions of detention, but expressed reservations about the duration of detention and the general nature of the detention policy.

☞ ECtHR 15 Nov. 2022, 48987/22 ***Msallem a.o. v BE*** CE:ECHR:2022:1115JUD004898722

* violation of ECHR, 3

* *Interim Measure. The case concerns 148 applicants (adult males), who have applied to the Belgian authorities for international protection and have not been assigned accommodation on account of the alleged saturation of the network for receiving asylum-seekers in Belgium. The applicants have all obtained a final domestic decision from the Brussels Labour Court ordering the Federal Agency for the Reception of Asylum-Seekers (Fedasil) to provide them with accommodation and material assistance.*

☞ ECtHR 31 Mar. 2022, 49775/20 ***N.B. a.o. v FR*** CE:ECHR:2022:0331JUD004977520

* violation of ECHR, 3+34

* *The case concerned the placement in administrative detention for fourteen days of a Georgian couple and their then eight-year-old child, who had entered France unlawfully and whose asylum requests had been rejected.*
The ECtHR considered that the administrative detention of an eight-year-old child under the conditions prevailing at the material time in the administrative detention centre where they had been placed, which had continued for fourteen days, had been excessive in the light of the requirements of Art. 3 of the Convention. Given the child's young age, the conditions of detention in the Metz-Queuleu centre and the length of the period of detention, the competent authorities had subjected him to treatment exceeding the severity threshold of Art. 3.
As regards the parents, on the other hand, the ECtHR stated that it had been unable to conclude, on the basis of the evidence on file, that they had been in a situation that reached the severity threshold to fall foul of Art. 3.

☞ ECtHR 2 July 2020, 28820/13 ***N.H. a.o v FR*** CE:ECHR:2020:0702JUD002882013

* violation of ECHR, 3

* joined cases: 28820/13 + 75547/13 + 13114/15

* *The applicants lodged an asylum request but did not benefited from material or financial reception conditions. Thus, they had to sleep in the streets for several months. Also the protests with administrative French courts were dismissed.*
The Court considers that the applicants were victims of degrading treatment demonstrating a lack of respect for their dignity and that this situation undoubtedly aroused in them feelings of fear, anguish or inferiority proper to them. to lead to despair. It considers that such conditions of existence, combined with the lack of an adequate response from the French authorities, which they have repeatedly alerted to their inability to exercise their rights in practice and therefore to provide for their essential needs, and the fact that the domestic courts have systematically opposed them the lack of means available to the competent authorities with regard to their conditions of isolated young adults, in good health and without dependants, have reached the threshold of severity required by Art. 3.

☞ ECtHR 18 Apr. 2023, 43966/19 ***N.M. v BE*** CE:ECHR:2023:0418JUD004396619

* no violation of ECHR, 5

* *No violation of Arts. 5 and 3 by the detention and the conditions of detention of an Algerian with a view to his removal while his application for asylum was being examined.*

☞ ECtHR 24 May 2018, 68862/13 ***N.T.P. v FR*** CE:ECHR:2018:0524JUD006886213

* no violation of ECHR, 3

* *The applicants (a woman and her three children born in 2009, 2010 and 2011 from DR Congo) arrived in France and attempted to apply for asylum in August 2013. They were summoned to appear at the Préfecture in November 2013 in order to obtain a ruling on whether they would be granted leave to remain and lodge their application for asylum. As they did not have formal status of asylum seekers, they were ineligible for any material or financial assistance from the State. Judicial applications in order to be admitted to a reception centre for asylum seekers were dismissed.*
The ECtHR pointed out that the applicants had been accommodated overnight from August to November 2013 in a hostel run by an association and financed entirely by State funds, which included breakfast and evening meals. The two oldest children had attended nursery school, eaten at the canteen and participated in after-school activities organised by the municipality. The applicants had also received assistance from other non-governmental organisations and received publicly-funded medical care. In view of that, the Court held that the French authorities could not be accused of having remained indifferent to the applicants' situation, and that they had been able to attend to their most basic needs: food, hygiene and a place to live. The Court also held that the applicants had had the likelihood that their situation would improve, due to the appointment with the Préfecture in order to obtain access to lodge her application for asylum. Therefore, the Court concluded that the applicants had not been in a situation of material poverty that was likely to reach the level of severity required to fall within art. 3.

☞ ECtHR 13 Oct. 2015, 24239/09 ***Nasseri v UK*** CE:ECHR:2015:1013JUD002423909

* deleted ECHR, 3

* *The application concerned transfer of an asylum seeker to Greece under the Dublin Regulation. The UK authorities had subsequently granted the applicant asylum. As the alleged procedural violations of arts. 3 and 13 were inextricably linked to his proposed expulsion and this was no longer faced by the applicant, the Court decided to strike the application out of the list of cases.*

☞ ECtHR 16 July 2020, 77647/11 ***Nur a.o. v UA*** CE:ECHR:2020:0716JUD007764711

* violation of ECHR, 5

* *The applicants, from Somalia and Guinea, had the intention to apply for asylum in Hungary of Slovakia when they were arrested by Ukrainian border guards at Ukrain's border and held in detention. Subsequently, they applied for asylum in Ukraine in 2012. After some eight months, both applicants were granted subsidiary protection. Meanwhile, the appeals to their detention were only scheduled until after their release. Therefor the Court finds that there has been a violation of Art. 5(4) in respect of a speedy examination of their appeals against the detention orders.*

☞ ECtHR 5 Oct. 2023, 53528/19 ***O.Q. v HU*** CE:ECHR:2023:1005JUD005352819

* violation of ECHR, 3+5(1)+5(4)

* *Violation of Art. 3 ECHR due to the reception conditions in the Tompa transit zone where the applicant was confined for 8 months, including deprivation of food. Also violation of art. 5(1) and 5(4).*

☞ ECtHR 23 Jan. 2024, 24650/19 ***O.R. v GR*** CE:ECHR:2024:0123JUD002465019

* violation of ECHR, 3

* *Violation of art. 3 due to the applicant's inhuman and degrading living conditions as an unaccompanied minor asylum seeker left without accommodation for six months, in an environment considered entirely unsuitable for minors and in unacceptably precarious circumstances.*

☞ ECtHR 21 Mar. 2019, 39065/16 ***O.S.A. a.o. v GR*** CE:ECHR:2019:0321JUD003906516

* no violation of ECHR, 3

* no violation of art. 5

* see also: ECtHR 25 Jan. 2018, 22696/16, J.R. a.o. v. GRE

* *The case concerned the applicants' conditions of detention in the Vial centre on the island of Chios, and the issues of the lawfulness of their detention, the courts' review of their case, and the information provided to them. The Court considered that, in view of the circumstances, the applicants had not had access to remedies by which to challenge the decisions ordering their expulsion and the extension of their detention. The applicants were Afghan nationals who understood only Farsi and they had had no lawyers to assist them. The documents issued to them by the authorities had been written in Greek and had not specified which administrative court had jurisdiction. As in the case of J.R. and Others v. Greece (no. 22696/16), the Court held that the applicants' detention had nevertheless been lawful and that the threshold of seriousness for it to be characterised as inhuman or degrading treatment had not been attained.*

☞ ECtHR 11 June 2019, 42305/18 ***Ozdil a.o. v MD*** CE:ECHR:2019:0611JUD004230518

* violation of ECHR, 5+8

* *The applicants, Turkish nationals, were teachers in a private chain of schools in Moldova. Following public statements by the Turkish authorities describing the schools as related to the Fetullah Gülen movement, allegedly responsible for the attempted coup in Turkey in 2016, and the teachers as terrorists, the applicants applied for asylum. Before they received decisions, they were arrested and transferred, the same morning, by a chartered plane to Turkey. Their families received the rejections of their asylum claims on grounds of national security days later and only subsequently learned that the applicants were in Turkey.*
The ECtHR recalls that the authors of the Convention had reinforced the individual's protection against arbitrary deprivation of liberty by guaranteeing a corpus of substantive rights which were intended to minimise the risks of arbitrariness, by allowing the act of deprivation of liberty to be amenable to independent judicial scrutiny and by securing the accountability of the authorities for that act. Although the investigation of terrorist offences undoubtedly presented the authorities with special problems, that did not mean that they had carte blanche under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they considered that there had been a terrorist offence. Unanimously, the ECtHR holds that there has been a violation of both Art. 5 and 8.

☞ ECtHR 5 Oct. 2023, 53272/17 ***P.S. & A.M. v HU*** CE:ECHR:2023:1005JUD005327217

* violation of ECHR, 3+5(1)+5(4)

* *Similar case as ECtHR 2/3/21, 36037/17, R.R. a.o. v Hungary. Inhuman and degrading conditions in which the applicants were held in the transit zone. Their stay for almost four months in the transit zone amounted to a de facto deprivation of liberty.*

☞ ECtHR 19 Jan. 2012, 39472/07 ***Popov v FR*** CE:ECHR:2012:0119JUD003947207

* violation of ECHR, 3

* *Although the applicants – a Kazakhstani couple and their two children aged 5 months and 3 years – had been detained in an administrative detention centre authorised to accommodate families, the conditions during their two weeks detention were held to have caused the children distress and to have serious psychological repercussions. Thus, the children had been exposed to conditions exceeding the minimum level of severity required to fall within the scope of ECHR Art. 3, and this provision had been violated in respect of the children. Since that minimum level of severity was not attained as regards the parents, there was no violation of Art. 3 in respect of these applicants.*
ECHR Art. 5 was violated in respect of the children, both because the French authorities had not sought to establish any possible alternative to administrative detention (Art. 5(1)(f)), and because children accompanying their parents were unable to have the lawfulness of their detention examined by the courts (Art. 5(4)).
ECHR Art. 8 was violated due to the detention of the whole family. As there had been no particular risk of the applicants absconding, the interference with the applicants' family life, resulting from their placement in a detention centre for two weeks, had been disproportionate. In this regard the Court referred to its recent case law concerning 'the child's best interest' as well as to Art. 3 Convention on the Rights of the Child and to Reception Conditions Directive.

☞ ECtHR 2 Mar. 2021, 36037/17 ***R.R. v HU*** CE:ECHR:2021:0302JUD003603717

* violation of ECHR, 3+5

* *The applicants, an Iranian-Afghan family including three minor children, were confined in the Röszke transit zone at the border of Hungary and Serbia for almost four months while awaiting the outcome of their requests for asylum. The mother was pregnant at the time. The ECtHR restates the conclusions on living conditions as stated in ECtHR 21 Nov. 2019, 47287/15, Ilias and Ahmed v. Hungary. The first applicant had allegedly spent almost four months living in a state of the most extreme poverty, unable to obtain sufficient food. The authorities had refused to provide him with free meals throughout his stay in the zone. Also, there was a lack of any legal agreements or safeguards between the Government and the organisations allegedly supplying food assistance in the zone, which would have ensured legal certainty of the current arrangements. The applicant could only have left the transit zone in the direction of Serbia, and would have thereby forfeited the examination of his asylum claim in Hungary had he done so. He had been fully dependent on the Hungarian authorities for his most basic needs and had been under their control. The authorities had in principle been obliged, under the EU Reception Conditions Directive, to take into account the specific situation of minors and pregnant women and to assess and monitor any special reception needs linked to their vulnerable status throughout the duration of their asylum procedures. They had also been obliged under domestic law to provide an individualised assessment of their special needs, which had not been carried out. The ECtHR unanimously concludes a violation of Art. 3.*
On the issue whether the applicants were deprived of their liberty (Art. 5) the ECtHR compares their situation with Ilias and Ahmed. In Ilias and Ahmed, the Court had held that the applicants' stay of twenty-three days in the Röszke transit zone had not constituted a de facto deprivation of liberty. However, in this case, R.R., the applicants had spent almost four months there and that amounted to a de facto deprivation of liberty. This also meant that the authorities had not issued any formal decision of legal relevance complete with reasons for the detention, including an individual assessment and consideration of alternatives that would have been less coercive. The procedure had fallen short of the requirements could not be considered "lawful". Thus, a violation of Art. 5(4).

☞ ECtHR 7 Dec. 2017, 8138/16 ***S.F. a.o. v BG*** CE:ECHR:2017:1207JUD000813816

* violation of ECHR, 3

* *The applicants were an Iraqi family who in 2015 tried to pass covertly through Bulgaria in order to seek protection in Western Europe. They were granted asylum in Switzerland in 2017. Due to irregular entry into Bulgaria, they had been arrested and kept in immigration detention in a short-term facility pending transfer to a bigger detention facility. They complained in particular about the conditions in which the three minors, aged 16, 11 and 1½ years, had been kept. The Court restated its general principles as to the assessment of people held in immigration detention, focusing on the particular issues concerning the detention of minors since children, whether accompanied or not, are extremely vulnerable and have specific needs. Referring to its previous case law (such as Popov v. France, 19 January 2012, 39472/07, and A. B. a.o. v. France, 12 July 2016, 11953/12), the Court pointed out that this extreme vulnerability takes precedence over considerations relating to the status of illegal immigrant. Although the amount of time spent by the applicants in the Vidin facility (32-41 hours) was considerably shorter than in previous cases, the detention conditions had been considerably worse. Thus, the cell was extremely run down with dirty beds, mattresses and linen and limited access to the toilet, and the authorities had failed to provide the applicants with food and drink for more than 24 hours after their arrest. The Court concluded that by keeping the three children in such conditions, even for a brief period of time, the Bulgarian authorities had subjected them to inhuman and degrading treatment.*

☞ ECtHR 18 May 2017, 46558/12 ***S.G. v GR*** CE:ECHR:2017:0518JUD004655812

* violation of ECHR, 3

* *Failure of the Greek authorities to provide the applicant Iranian asylum seeker with adequate living conditions after his release from detention.*

☞ ECtHR 21 June 2018, 66702/13 ***S.Z. v GR*** CE:ECHR:2018:0621JUD006670213

* violation of ECHR, 3+5

* *The applicant Syrian national was arrested in Athens in September 2013. Following his imprisonment sentence for the possession of a fake French passport the authorities ordered his expulsion and kept him in detention until it could be carried out. Referring to the civil war in Syria he applied for asylum and was granted refugee status, and he was released in November 2013. The Court found a violation of art. 3 due to the conditions of detention in a police station.*
Art. 5(1) had also been violated from the date at which the applicant had proven his Syrian nationality in support of his asylum request. Art. 5(4) had been violated due to insufficient judicial review of the lawfulness of his detention.

☞ ECtHR (GC) 29 Jan. 2008, 13229/03 ***Saadi v UK*** CE:ECHR:2008:0129JUD001322903

* violation of ECHR, 5

* *The initial Chamber ruled on 11 July 2006 (by four to three votes). Subsequently, the case was referred to the Grand Chamber. The Grand Chamber agreed with the reasoning of the (initial) Chamber although a substantial minority of six out of seventeen judges dissented. In this case the ECtHR is called upon for the first time to interpret the meaning of "unauthorised entry" in the first limb of Art. 5(1)(f) ECHR (on the right to liberty):*
"No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (...) (f): the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country".
Secondly, this judgment is also about the meaning of lawful in terms of not arbitrarily. This judgment should be read within the context that the European Union had not yet implemented the Return Directive (Dir. 2008/115) nor the (first) Asylum Procedures Directive (Dir. 2005/85). The only supranational regulation on the detention of migrants - at the time of this judgment - was Art. 5(1)(f) ECHR, which is one of the few exceptions to the right to liberty enshrined in Article 5 ECHR. Although the ECtHR found no violation of Art. 5(1), it did find a violation of Art. 5(2): the applicant was not "informed promptly" of the reasons for his arrest, i.e. after 72 hours.

☞ ECtHR 16 Nov. 2023, 3571/17 ***Sadio v IT*** CE:ECHR:2023:1116JUD000357117

* violation of ECHR, 3

* *Violation of ECHR art. 3 due to the reception conditions to which the applicant had been exposed for almost 8 months.*

☞ ECtHR 13 June 2019, 14165/16 ***Sh.D. a.o. v GR*** CE:ECHR:2019:0613JUD001416516

* violation of ECHR, 3+5

* *The applicants are five Afghan nationals who entered Greece as unaccompanied migrant minors in 2016. They had fled Afghanistan because they feared for their lives as members of the Ismaili religious minority. In February 2016 they were apprehended by the police. Orders were made for their deportation and they were given one month to leave Greek territory. Some of them attempted to cross the border between Greece and North Macedonia but were stopped by the border guards. Subsequently, they were arrested by the Greek police and placed in "protective custody". In March 2016, they were escorted to Athens to apply for asylum. Some of them were taken into the Faros shelter for unaccompanied minors. Others were transferred to the Mellon special facility for unaccompanied minors. Early 2017, two of the five applicants were granted refugee status.*
The ECtHR found the conditions of detention to which three of the applicants had been subjected in various police stations amounted to degrading treatment: a violation of Art. 3. Also, "protective custody" had not been designed with unaccompanied migrant minors in mind, Thus, a deprivation of liberty, violating Art. 5.
Finally, the Court was not persuaded that the Greek authorities had done everything that could reasonably be expected of them to fulfil the obligation to provide for and protect the applicants in question, an obligation that was incumbent on the respondent State with regard to persons who were particularly vulnerable because of their age.

☞ ECtHR 5 Oct. 2023, 37967/18 ***Shahzad #2 v HU*** CE:ECHR:2023:1005JUD003796718

* violation of ECHR, 3

* *Violation of Art. 3ECHR in both substantive and procedural aspect, due to the ill-treatment by Hungarian border guards, resulting in documented injuries, of the applicant asylum seeker, as well as inadequate investigation of his criminal complaint over the ill-treatment.*

☞ ECtHR 10 Mar. 2022, 41326/17 ***Shenturk a.o. v AZ*** CE:ECHR:2022:0310JUD004132617

* violation of ECHR, 3+5

* *The four applicants came to Azerbaijan between 1992-95, and all four regularised their residence statuses there, ultimately going to work in Gülenist schools or other companies associated with the Gülen movement. In 2017 the Turkish authorities informed their Azerbaijani counterparts that Mr Shenturk's passport had been cancelled, requesting his arrest and deportation. All four were separately arrested and taken into custody. Initially, the UNHCR issued protection letters. However, none of the four successfully received asylum in Azerbaijan. The Government denied Mr Shenturk had ever applied for asylum in Azerbaijan. All four are now in custody in Turkey.*
The Court held that their removal to Turkey had been in circumvention of formal extradition proceedings and of the relevant international safeguards (violation of Art. 5). Referring to its findings that the applicants had been transferred extra-legally to Turkey and that the risk of ill-treatment was not examined, the Court adjudged that they had been denied protections against arbitrary refoulement (violation of Art. 3).

☞ ECtHR 18 Jan. 2024, 16112/20 ***T.K. v GR*** CE:ECHR:2024:0118JUD001611220

* violation of ECHR, 3+8+13

* *Violation of art. 3 because of the living conditions of an unaccompanied minor asylum seeker in the vicinity of the Samos camp. Violation of art. 8 because of the inadequate guarantees for age determination and appointment of a guardian. Violation of art. 13 in conjunction with arts. 3 and 8 due to absence of effective remedies.*

☞ ECtHR 4 Apr. 2017, 3869/07 ***Thuo v CY*** CE:ECHR:2017:0404JUD000386907

* violation of ECHR, 3

* *The applicant claimed to have been ill-treated during his deportation from Cyprus to Kenya upon rejection of his application for asylum. The Court could not establish that there had been a substantive violation of art. 3 as it was unable to find beyond all reasonable doubt that the applicant had been subjected to ill-treatment during the deportation process.*
Violation of art. 3 under its procedural limb because of the failure to carry out an effective investigation into the applicant's complaint. Based on a number of deficiencies in the investigation, the Court found that the authorities did not make a serious attempt to find out what had happened. Violation of art. 3 due to the degrading conditions of immigration detention for a period of nearly 16 months, pending deportation.

☞ ECtHR 18 Mar. 2021, 72510/12 ***Turdikhojaev v UA*** CE:ECHR:2021:0318JUD007251012

* violation of ECHR, 5+3

* *The applicant, a national of Uzbekistan, was arrested (2012) by Ukrainian authorities on arrival at the Kyiv Boryspil International Airport, as he had been placed on an international "wanted" list at the request of the authorities of Uzbekistan. Subsequently, he was placed in detention pending the extradition request. A district court and the City Court of Appeal upheld this decision. During the hearing at the Court of Appeal the applicant was held in a metal cage. Meanwhile, Sweden granted the applicant refugee status and authorised him to resettle in Sweden. After one year in detention, the applicant was released and moved to Sweden in 2013, two months after the applicant was recognised as a refugee and one month after the Ukrainian authorities were informed about the refugee status of the applicant.*

☞ ECtHR (GC) 7 Nov. 2016, 60125/11 ***V.M. a.o. v BE*** CE:ECHR:2016:1107JUD006012511

* violation of ECHR, 3

* case is struck

* *The applicants, Serbian Roma, applied for asylum in France in 2010 and in Belgium in 2011. The Belgian authorities requested France to take back the applicants, and France accepted under the Dublin Regulation. In the meantime, the applicants requested the Aliens Appeals Board to suspend and set aside the decision ordering them to leave Belgium. On expiry of the time-limit for enforcement of the order to leave the country, the applicants were expelled from the reception centre as they were no longer eligible for material support. Following that, they spent nine days on a public square in Brussels, two nights in a transit centre, and a further three weeks in a Brussels train station until their return to Serbia was arranged by a charity.*
The ECtHR, by a majority, held Belgium to have violated art. 3 as this situation could have been avoided or made shorter if the proceedings to suspend and set aside the decision ordering the applicants to leave the country had been conducted more speedily. However overstretched the reception network for asylum seekers may have been, the Court considered that the Belgian authorities had not given due consideration to the applicants' vulnerability and had failed in their obligation not to expose the applicants to conditions of extreme poverty for four weeks with no access to sanitary facilities, no means of meeting their basic needs, and lacking any prospect of improvement of their situation.
The lack of suspensive effect of their request to set aside the decision ordering them to leave the country had resulted in the material support granted to them being withdrawn and had forced them to return to Serbia without their fears of a possible violation of art. 3 having been examined. The case was referred to Grand Chamber in December 2015. A year later, the Court states that there is no contact any more with their lawyer and therefor has to conclude that the applicants do not intend to pursue their application; thus, the case is struck out of the list. Restoring the case to the list is only possible under Art. 37(2). According to the dissenting opinion of judges Ranzoni, Lopez Guerra, Sicilianos and Lemmens the Court should have ruled the case.

☞ ECtHR 25 Aug. 2022, 36896/18 ***W.O. a.o. v HU*** CE:ECHR:2022:0825JUD003689618

* violation of ECHR, 3+5
* see also: ECtHR 2 Mar. 2021, 16483/12, R.R. a.o. v Hungary
* *The conditions of detention for a period of almost seven months of an Afghan asylum seeking family in the transit zone at the Hungarian-Serbian border, amounts to de facto deprivation of liberty.*

New ☞ ECtHR 23 May 2024, 65275/19 ***W.S. v GR*** CE:ECHR:2024:0523JUD006527519

* violation of ECHR, 3
* *Inadequate living conditions and detention conditions for unaccompanied minor asylum seeker.*

☞ ECtHR 21 Mar. 2017, 61411/15 ***Z.A. v RU*** CE:ECHR:2017:0321JUD006141115

* violation of ECHR, 3
* referral to Grand Chamber on 18 Sep 2017
* *4 joint cases. The applicants were asylum seekers from Iraq, the Palestinian Territories, Somalia and Syria. While travelling independently of each other via Moscow's Sheremetyevo Airport, they had been denied entry into Russia and had ended up spending between 5 and 23 months in the transit zone of the airport.*
  Contrary to the Russian Government's claim that the applicants had not been on Russian territory, the Court considered them to have been subject to Russian law. The applicants were asylum seekers whose applications had not yet been considered, and their confinement in the transit zone therefore amounted to a de facto deprivation of liberty. As the Government had only referred to Annex 9 to the Chicago Convention on International Civil Aviation that did not set any rules on detention, the Court considered that the deprivation of liberty did not have any legal basis in domestic law and was therefore in breach of art. 5(1).
  Referring to the applicants' credible and reasonably detailed description of the conditions of detention in the transit zone, and the absence of any evidence to the contrary advanced by the Government, the Court found it established that the applicants did not have individual beds and did not have access to shower and cooking facilities. The complete failure to take care of these essential needs during detention for extended periods of time was considered to amount to inhuman and degrading treatment within the meaning of art. 3

☞ ECtHR (GC) 21 Nov. 2019, 61411/15 ***Z.A. a.o. v RU*** CE:ECHR:2019:1121JUD006141115

* violation of ECHR, 3
* *In line with the Chamber judgment (28 March 2017), the Grand Chamber found the conditions of the applicant asylum seekers' detention for periods between 5 and 23 months in the transit zone of Sheremetyevo Airport to constitute degrading treatment in violation of art. 3.*
  On the basis of four factors relevant to the delimitation of the concept of deprivation of liberty of non-citizens being confined in airport transit zones and reception centres, the Court concluded that art. 5 was applicable to the applicants' situation that should be distinguished from a land border transit zone. Due to the absence of a legal basis for the confinement in the transit zone, art. 5(1) had been violated.

4.3.6 CtRC Views on Best Interests of the Child (Art. 37)

☞ CtRC 4 Feb. 2022, CRC/C/89/D/73/2019 ***A.M.K. & S.K. v BE***

* violation of CRC, 37
* *The authors of the communication are both Armenian nationals. They submitted the communication on behalf of their two daughters, born in Belgium (2011 and 2016). The parents have been living in Belgium since 2009. Their asylum application was rejected in 2010. In parallel, the parents applied for a residence permit on medical grounds. In 2013 the Belgium authorities issued a return decision and an entry ban after rejecting a third application for a residence permit on medical grounds. In 2019 the family was arrested and detained in the 'family house' at a closed centre for aliens near Zaventem International Airport in Brussels. Several petitions were filed to end this detention, but these were dismissed. Subsequently, both children submitted separately an application for regularization in their own name in 2019. In 2020 the children were regularized and the whole family was allowed to remain in Belgium, revoking the order to leave (return decision with an entry ban).*
  The CtRC notes that the children were detained for four weeks in a family house which, although it bears that name, is a closed detention centre. In this regard, the CtRC considers that the deprivation of liberty of children for reasons related to their migratory status – or that of their parents – is generally disproportionate and therefore arbitrary within the meaning of Art. 37(b) CRC. The CtRC concludes that the detention of the children constituted a violation of Art. 37 of the CRC.

☞ CtRC 3 Feb. 2022, CRC/C/89/D/55/2018 ***E.H. a.o. v BE***

* violation of CRC, 37

* *The applicant is a Serbian national born in Kosovo belonging to the Roma community and she is submitting the communication on behalf of her four minor children, all born in Belgium (2012, 2013, 2014, and 2017). In 2011, she filed an application for regularization, which was rejected. Subsequently, she was ordered several times to leave Belgium. The four children lived with their paternal grandmother while their father was serving a prison sentence in Belgium. In 2018 the children (age 1, 4, 5 and 6) were arrested with their mother and detained in a closed centre for foreigners as they were subject to a removal order. After the appeal against the removal order was rejected in court, an asylum application was filed for the children.*
The Antwerp Council Chamber, considering the petition for release, considered that it was in the children's interest not to be separated from their mother, who had to leave the country, and that their detention was a last resort because their mother had already ignored several orders to leave the country and had twice absconded from the detention centre where she had been held pending expulsion. Within a week the asylum application was rejected. After a period of 4 weeks the family filed an emergency petition to end the detention. The petition was rejected, however, as the family had been placed in an open pre-departure house. The mother subsequently left this facility with her children and was again arrested and taken again to a closed centre.
The CtRC remarks that the children were detained in a closed centre for four weeks the first time, and for three weeks and four days the second time. The CtRC observes, to begin with, that although the place of detention was called a family home, it was still in a closed detention centre. On this point, the CtRC considers that depriving children of liberty on the basis of their migration status (or that of their parents) is generally disproportionate and therefore arbitrary within the meaning of Art. 37(b) CRC. The CtRC considers that, by failing to consider possible alternatives to the detention of the children, the State party did not duly take their best interests into account as a primary consideration either when it detained them or when it extended their detention. Violation of Art. 37 CRC.