EASO Newsletter on Asylum Case Law

March-May 2021

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

Note

The EASO Newsletter on Asylum Case Law is based on the EASO Case Law Database which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries and by the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). The database presents more extensive summaries of the cases than what is published in this newsletter.

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

The database serves as a centralised platform on jurisprudential developments related to asylum and cases are available in the Latest updates (last ten cases registered, arranged based on the date of registration), Digest of cases (all registered cases arranged chronologically based on the date of pronouncement) and through the Search bar.

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Main highlights

The cases presented in this issue of the "EASO Newsletter on Asylum Case Law" have been pronounced from March to May 2021.

European courts

The CJEU held that applicants challenging a transfer decision in a Dublin procedure must be able to plead circumstances that take place after the transfer decision is taken.

The CJEU interpreted the concept of a 'subsequent application' and held that an application for international protection may not be rejected as inadmissible on the ground that a previous application for asylum was made by the same person and rejected in a third country.

In addition, the CJEU clarified that the best interests of the child must be assessed when deciding on the return of the parent of the minor child.

The ECtHR rejected a complaint as inadmissible under the ECHR, Article 3 related to a Dublin transfer to Italy and reception conditions.

National courts

In France, the Council of State ruled in Dublin cases in which third-country nationals refused to undergo a COVID-19 PCR test prior to the transfer to the responsible Member State.

In Croatia, the Constitutional Court clarified the duty of national authorities when examining the application of the concept of a safe third country for Serbia, while the Dutch Council of State and the Luxembourg Administrative Tribunal examined the safe country of origin concept for Mongolia and Serbia, respectively.

In the Netherlands, the Council of State referred a case to the CJEU for the interpretation of the Dublin III Regulation, Article 29.

The Court of Rome in Italy annulled a Dublin transfer to Bulgaria for reasonable doubt with regard to reception conditions and risk of treatment contrary to the ECHR, Article 3.

Access to the asylum procedure

France, Council of State [Conseil d'État], *Association nationale d'assistance aux frontières pour les étrangers, Association Médecins du Monde*, 23 April 2021.

Two associations requested the Council of State to order the immediate closure of the temporary police premises at the Menton border crossing point with Italy and to suspend an order not to allow access to representatives of the associations. They argued that third-country nationals were unlawfully detained, refused entry to France and held in inappropriate conditions, in violation of fundamental rights and access to the asylum procedure in France.

The Council of State dismissed the request, noting that refusals of entry were applied in accordance with the national legislation and it was not proven that living conditions were inappropriate if returned. The Council of State also held that a refusal of entry is compatible with EU law and made a distinction between third-country nationals found after crossing the border, for whom the Return Directive applies, and those who have not crossed yet and to whom the Schengen Borders Code is applicable, as in this case. Thus, the Council of State dismissed the request to order an immediate closure of the temporary police premises at the border with Italy.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1786

Dublin procedure

Refusal to take a COVID-19 PCR test

The Council of State annulled a Dublin transfer when the applicant was not informed, in a language he understands, of the consequences of refusing to take a COVID-19 PCR test.

An applicant refused to undergo a COVID-19 PCR test prior to a Dublin transfer to Sweden, and the Council of State noted that the applicant was not duly informed, in a language that he could understand, of the consequences of such a refusal. The Council of State ordered the French authorities to register the applicant's request for international protection because he could not be considered to have intentionally opposed the transfer or to have absconded, and the time limit for the transfer could not be extended because the determining authority had breached the applicant's right to asylum.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1684

France, Council of State [Conseil d'État], *French Minister of the Interior* v *B.A.*, No 450928, 10 April 2021.

The Council of State ruled that the applicant intentionally refused to undergo a COVID-19 PCR test prior to a Dublin transfer and his application could not be registered in France.

In this case, the Council of State held that the applicant intentionally refused to undergo the COVID-19 PCR test prior to the Dublin transfer to Germany, knowing that the refusal would prevent the transfer. The Council of State held

that the French determining authorities were lawfully entitled to refuse the registration of the application since the extended 18-months' time limit for the transfer had not expired.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1683

Effective remedy

European Union, Court of Justice of the European Union [CJEU], ***H.A.*** v ***Belgium***, C-194/19, 15 April 2021.

The CJEU held that applicants challenging a transfer decision in a Dublin procedure must be able to plead circumstances that took place after the transfer decision was taken.

The case concerned the scope of the remedy against a Dublin transfer decision. When exercising this remedy, the Grand Chamber of the CJEU held that an applicant must be able to rely on circumstances that follow the adoption of the transfer decision. The court further stated that sufficient judicial protection may be afforded by a specific remedy, distinct from an action seeking to have the lawfulness of a transfer decision reviewed, that enables an *ex nunc* examination of the situation that is binding on the authorities. The remedy must prevent the competent authorities of the requesting Member State from carrying out the transfer, where circumstances precluding the implementation arise after the transfer decision. In addition, using the remedy must not be conditional on the person having been deprived of liberty or the transfer being imminent.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1664

Referral for a preliminary ruling (Dublin III Regulation, Article 29)

Netherlands, Court of The Hague [Rechtbank Den Haag], ***B., F. and K.*** v ***State Secretary of Security and Justice***, No 201904712/1/V3, 19 May 2021.

The Council of State referred a case to the CJEU on the interpretation of the Dublin III Regulation, Article 29.

Following three similar cases where the applicants have applied for asylum in several Member States, the Netherlands included, the Council of State referred questions for preliminary ruling on the interpretation of the Dublin III Regulation, Article 29. The Council of State asked whether, after having absconded in two Member States, an asylum applicant can rely on the expiry of the time limit for a transfer between the two Member States in an action brought against a transfer decision in a third Member State.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1821

Transfer to Bulgaria

Italy, Civil Court [Tribunali], ***Applicant (Pakistan)*** v ***Ministry of the Interior*** (Ministero dell'Interno), Reg. No. 80834/2018, 2 April 2021.

The Court of Rome annulled a Dublin transfer to Bulgaria for reasonable doubt with regard to reception conditions and the risk of ill treatment contrary to the ECHR, Article 3.

A Pakistani applicant contested a Dublin transfer decision to Bulgaria and invoked systemic deficiencies in the reception system and a risk of being subject to ill treatment contrary to the ECHR, Article 3. The Court of Rome annulled the transfer and based its decision on the findings of an AIDA Country Report which mentioned deficiencies in the reception system, both for applicants and beneficiaries of international protection,

namely conditions that are contrary to the respect for fundamental rights.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1825

Premature transfer to Greece

Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant (Syria)* v *Bundesrepublik Deutschland represented by Rosenheim Federal Police Directorate*, M 22 E 21.30294, 4 May 2021.

The Administrative Court of Munich ruled on an unlawful and premature transfer of an applicant to Greece, in violation of the ECHR, Article 3, the Dublin III Regulation and the recast Asylum Procedures Directive.

The case concerned an appeal against a Dublin transfer that took place between Germany and Greece. The Administrative Court of Munich allowed the appeal and ordered the Federal Police to bring the deported applicant back to Germany. The court held that the Dublin III Regulation cannot be circumvented and replaced by an agreement between two Member States, as EU law precedes bilateral agreements. The court also found that the conditions in Greece for asylum applicants and beneficiaries of international protection constitute a potential violation of the ECHR, Article 3 and the EU Charter, Article 4. It stressed that a serious assessment of the admissibility of the transfer would have had to be carried out. The court further noted that the applicant had a right to remain pending a first judicial review of the Dublin transfer, in accordance with the Dublin III Regulation, Article 27(3) and that his return to Greece was and continued to be contrary to the ECHR, Article 3 and the EU Charter, Article 4.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1767

Transfer to Italy

Council of Europe, European Court of Human Rights [ECHR], *A.B. and others (Libya)* v *Finland*, No 41100/19, 20 April 2021.

The ECtHR rejected as inadmissible a complaint under the ECHR, Article 3 related to a Dublin transfer to Italy and reception conditions.

The applicants, a Libyan family of two adults and five children, applied for international protection in Finland. A Dublin transfer decision to Italy was issued and they contested it. The Finnish Supreme Administrative Court rejected the appeal based on assurances received from the Italian authorities on the reception of the applicants and compliance with the principle of keeping families together.

The applicants complained before the ECtHR which found that there was no evidence of a sufficiently real and serious risk of hardship upon return to Italy, analysed from material, physical or psychological perspectives, including the best interests of the children. Moreover, the court noted that no formal procedures or travel arrangements had been adopted by Finland and that the Finnish authorities would inform the Italian counterparts of the family's removal so that appropriate measures would be in place for the take charge of the applicants upon arrival.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1810

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant (Syria)* v *Ministry of Migration and Asylum (Ministere de l'Immigration et de l'Asile)*, No 45764, 5 May 2021.

The Administrative Tribunal rejected an appeal against a Dublin transfer to Italy, finding that there were no systemic flaws in the asylum procedure and reception conditions.

A Syrian national applied for international protection in Luxembourg and absconded from

the assigned accommodation facility after the Italian authorities accepted a take back Dublin request. He appealed the ministerial decision, arguing that a transfer to Italy would expose him to the risk of suffering inhumane and degrading treatment as he would lack access to minimum material reception conditions. The Tribunal was not provided with evidence of systemic flaws in the asylum procedure and reception conditions in Italy which would amount to inhuman and degrading treatment within the meaning of the Charter. Thus, the Tribunal rejected the applicant's appeal and upheld the decision of the ministry.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1798

Netherlands, Court of The Hague [Rechtbank Den Haag], ***Applicants (Nigeria)*** v ***State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid)***, NL19.8324 and NL19.8326, 4 May 2021.

The Court of the Hague ruled on the quality of the asylum reception in Italy for particularly vulnerable applicants.

The Court of the Hague ruled in a case concerning the Dublin transfer of a Nigerian family with children to Italy. The applicants were regarded as particularly vulnerable. In October 2019, the court ruled to adjourn the case pending a ruling by the ECtHR on the transfer of particularly vulnerable applicants to Italy under the Dublin III Regulation (*M.T. v the Netherlands*).

At the time of the interim judgments, on the basis of amended Italian legislation (the Salvini Decree), reception centres that met the requirements set by the ECtHR in *Tarakhel* were no longer accessible to particularly vulnerable applicants. In *M.T. v the Netherlands*, the ECtHR ruled that the consequences of the Decree No 113/2018 (the 'Salvini Decree') had been reversed as a result of new legislation and that particularly vulnerable applicants had been received in the same locations and under the same conditions as before the entry into force of the decree, which currently meet the necessary requirements. The Court of the Hague followed the judgment of the ECtHR and ruled that the quality of the asylum reception in Italy was adequate to particularly vulnerable applicants, and that sufficient access to medical facilities was offered.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1819

Transfer to Malta

Netherlands, Court of The Hague [Rechtbank Den Haag], ***Applicant (Sudan)*** v ***State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid)***, NL21.136, 19 April 2021.

The Court of the Hague held that it would investigate the asylum and reception situation of applicants after a Dublin transfer to Malta.

A Sudanese applicant for international protection in the Netherlands appealed against a Dublin transfer to Malta by invoking systemic deficiencies in the asylum and reception system. The State Secretary claimed that the applicant did not prove that detention and reception conditions in Malta amount to inhuman and degrading treatment. The Court of the Hague considered that a full and ***ex nunc*** investigation of the asylum and reception system in Malta should be conducted, along with an assessment of a potential risk of inhuman treatment upon return. The Court of the Hague referred to the ECtHR case *Feilazoo v Malta* and to the cooperation between Malta and EASO through the 2021 Operating Plan and adopted an interim decision. The Court of the Hague requested the parties to provide further information by answering specific questions so that a more thorough investigation can be undertaken on the Dublin transfer of asylum applicants to Malta.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1805

First instance procedures

Subsequent application

European Union, Court of Justice of the European Union [CJEU], *L.R.* v *Bundesrepublik Deutschland*, C-8/20, 20 May 2021.

An application for international protection may not be rejected as inadmissible on the ground that a previous application for asylum made by the same person was rejected in a third country.

An Iranian national unsuccessfully applied for asylum in Norway and was returned in 2008. In 2014, he lodged another application in Germany, where his request was rejected as inadmissible based on the Dublin III Regulation and a refusal from Norway to take charge of the applicant. The applicant contested the negative decision and Germany sought guidance from the CJEU on the concept of a subsequent application as defined in the recast Asylum Procedures Directive.

The court first clarified that an application submitted to a third country cannot be regarded as an application for international protection and that a decision taken by a third country cannot be qualified as a final decision. Consequently, the fact that a previous application in a third country was rejected does not lead to the classification as a subsequent application after a negative decision. When a take back request is not possible or not accepted under the Dublin III Regulation, the requesting Member State cannot regard the further application as a subsequent application, which would be grounds for inadmissibility. The wording of the recast Asylum Procedures Directive does not permit to treat a third country similarly to a Member State for the purpose of applying the inadmissible ground, and in addition, such treatment cannot depend on the assessment of the level of protection of asylum applicants in the third country.

Link:

https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1796

Legal aid

Cyprus, Supreme Court of Cyprus [Ανώτατο Δικαστήριο Κύπρου], Applicant (Bangladesh), ECLI:CY:AD:2021:D98, 17 March 2021.

No free legal aid is provided by law in habeas corpus petition if the person lost the status of asylum applicant.

The court held that according to national legislation free legal aid for the purpose of filling a ***habeas corpus*** request (a writ that determines the lawfulness of detention) can be granted only to asylum applicants. The third-country national had lost the status of asylum applicant since he did not request the reopening of his asylum application and did not appeal the negative decision. The request for legal aid was dismissed.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1637

Personal interview

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.K. (Guinea)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, No 20038667, 19 March 2021.

The CNDA held that missing the personal interview due to a postal malfunction was a legitimate reason to refer the case back to OFPRA.

The applicant's request for international protection was rejected as he was not present for the personal interview. On appeal, the court overturned OFPRA's decision and sent the application back for re-examination. The court held that the applicant was deprived of

the right to be heard before OFPRA due to a postal malfunction. In this case, the responsibility lied with a third party, the Post Office, and the court acknowledged the existence of a legitimate reason that justified the applicant's absence.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1703

Minor applicants and changes to residence permits

Italy, Council of State [Consiglio di Stato], *Applicant* v *Ministry of the Interior (Ministero dell'Interno)*, No 02525/2021REG.PROV.COLL., 18 March 2021.

The court highlighted the importance of a minor to participate in and submit new elements if there is a change from an unaccompanied minor permit to a work permit.

The case concerned an unaccompanied minor who requested to change his permit, which was granted for minor age, to a work permit. After the rejection of the request by the Quaestor, on appeal, the Council of State held that, when there are no sufficient elements to assume the social and civil integration of the applicant, he/she is required to provide additional information on schooling, professional training, social and civil behaviour, family ties, etc. Only in these cases, the Quaestor is requested to assess the new elements, even if Italian immigration law is not binding on the matter. The Council of State found that the appeal was well founded and referred the case back for a reassessment in accordance with the principles set out above. In fact, the court found that the applicant submitted documents proving the employment status and a considerable continuity of income.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1808

Second instance procedures

Suspensive effect of appeal

Italy, Civil Court [Tribunali], *Applicant (Kosovo)* v *Ministry of the Interior (Ministero dell'interno)*, 11 March 2021.

The Court of Trieste suspended a removal and allowed the suspensive effects of an appeal based on the integration path in Italy and economic difficulties in Kosovo.

An applicant from Kosovo applied for international protection in Italy, which was dismissed as manifestly unfounded. The applicant appealed the decision, and the judge upheld the suspension of the removal pending a decision on appeal. The Court of Trieste noted that the applicant came from Kosovo to provide support to his parents who are affected by health problems and without income, and that the integration path in Italy and economic difficulties in Kosovo justified the suspension of the removal. The Court of Trieste concluded that a removal from Italy would place the applicant in a worse situation, and based on serious and substantiated reasons, the suspension was allowed, pending a decision on the merits of the application for international protection.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1666

Assessment of applications

Safe third country

Croatia, Constitutional Court [Ustavni Sud], *Applicants (Afghanistan)* v *Ministry of the Interior*, U-I 11-4865/2018; U-III-837/2019; U-III-926/2019, 4 March 2021.

The Constitutional Court clarified the nature and content of the duty of national authorities when examining the application of the safe third country concept.

The Constitutional Court examined the application of the safe third country concept to Serbia. It reiterated the ECtHR judgment in *Ilias and Ahmed* v. *Hungary*, which found that in all cases of a removal of an asylum seeker from a Contracting State to a third intermediate country without examining the merits of the asylum application, whether or not the receiving third country is an EU Member State or whether the third country is a party to the Convention, the country of removal must thoroughly examine whether there is a real risk that the asylum seeker in the receiving third country would be deprived of access to an adequate asylum procedure protecting him/her from expulsion or return *(refoulement).* If it is established that existing guarantees are not sufficient, then the asylum seekers should not be removed to a third country.

Similarly, the court mentioned the ECtHR findings in *M.K. and Others* v *Poland*. The Constitutional Court made a thorough assessment of the nature and content of the duty to ensure that the third country is safe. The Constitutional Court took into account reports with a focus on reception conditions, the asylum procedure, the COVID-19 outbreak and the way Serbia manages asylum requests in practice. The Constitutional Court held that, prior to sending back applicants to Serbia, an individual assessment must be carried out in order to establish what status the applicant would be given in Serbia and the safeguards related to procedures (access to legal assistance and interpretation). The court held that the administrative proceedings and the judicial administrative examinations did not establish with sufficient certainty that Serbia is a safe European third country and that Croatia failed to fulfil its obligations under the ECHR, Article 3. The case was referred back to the lower administrative court for re-examination.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1823

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A (Syria)* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, 8 April 2021.

The FAC referred a case back for re-examination in light of a medical situation prior to a transfer to Greece.

A Syrian national's application for international protection was rejected in Switzerland based on the safe third country concept and the fact that he had been previously granted refugee protection in Greece. The applicant contested the transfer to Greece and invoked medical reasons. The Federal Administrative Court referred the case back for re-examination by the SEM in light of the applicant's medical condition and the possibility to access adequate medical treatment in Greece.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1779

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A, B, C, D (Irak)* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, E-1332/2021, 9 April 2021.

The Federal Administrative Court referred a case back for re-examination of the execution of a transfer to Greece (access to medical treatment), following the application of the safe third country concept.

An Iraqi family applied for international protection and the Eurodac comparison revealed that in 2018 they had been granted international protection in Greece. The SEM applied the safe third country concept and did not analyse the merits of the application, ordering their transfer to Greece. The applicants contested the decision as they were detained for 1 month in Greece and experienced aggression and death threats by private parties, so they feared for their security. They also argued that they had difficulties accessing medical treatment in Greece. The Federal Administrative Court held that the SEM reasoned insufficiently its decision to transfer, as it did not take a clear position on the allegations of threats and prejudices and did not investigate sufficiently access to medical treatment. The case was referred back for re-examination.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1777

Safe country of origin

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant (Mongolia)* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, No 202002809/1/V2, 7 April 2021.

The Council of State ruled on the need to reassess the designation of Mongolia as a safe country of origin for LGBTI+ applicants.

The Council of State ruled on Mongolia being a safe country of origin for an LGBTI+ applicant. It stated that an assessment should consider the following elements: democratic governance, protection of the right to freedom and security, freedom of expression, freedom of religion and association, protection against discrimination and prosecution, and independent justice and access to legal remedies.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1708

Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant (Serbia)* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile),* No 45804, 19 April 2021.

The Administrative Tribunal ruled on Serbia as a safe country of origin for an applicant claiming persecution from a drug trafficking gang.

The Administrative Tribunal noted that designating a country as safe in the national legislation or regulation is not sufficient to justify the use of an accelerated procedure. In Luxembourg, such a provision obliges the Minister to proceed to an individual examination of the application for international protection and to assess whether the applicant has given serious reasons to believe that Serbia is not a safe country of origin because of a personal situation.

The court held that the analysis of the situation described by the applicant does not allow the identification of any convincing elements to overturn the presumption from the inclusion of Serbia on the list of safe countries. Furthermore, for a lack of protection in the country of origin to be accepted, it is necessary that the person has reasonably attempted to obtain this protection. In this case, the applicant did not seek police protection by filing a complaint following the second assault he suffered. The applicant did not provide sufficient evidence to conclude that, in

general, the Serbian police is powerless or unwilling to offer protection and the only claim that the Serbian police would not intervene in drug trafficking cases without being corroborated by any objective and tangible element is insufficient to conclude otherwise. The court dismissed the appeal.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1787

UNRWA protection

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *X (Palestine)* v *Commissaire général aux réfugiés et aux apatrides (CGRS)*, No 250 868, 11 March 2021.

CALL ruled that UNRWA protection is no longer effective in Gaza for an unpredictable duration.

The Council analysed the case of an applicant of Palestinian origin in accordance with CJEU case law, namely EL Kott, in order to determine if UNRWA (the United Nations Relief and Works Agency) assistance has ceased.

Based on recent country of origin information (COI Focus of 1 February 2021), CALL held that, despite the information available on its website and the continuity of services, UNRWA faced significant budgetary cuts that lead to important reductions of expenses and the reallocation of resources. These measures have impacted the assistance which is provided, especially essential services, including medical treatment, basic food, financial assistance and a safe and dignified living environment. CALL concluded that only minimal services are maintained by UNRWA in Gaza, UNRWA is facing deteriorating working conditions, and is facing financial difficulties due also to the COVID-19 pandemic. CALL ruled that UNRWA assistance ceased to be effective, and its duration is unpredictable. The applicant was granted refugee status.

CALL previously ruled in similar cases on 24 February and 25 February 2021.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1655

Availability of state protection for persecution from non-state actors

Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *Applicant (Turkey)* v *Commissaire général aux réfugiés et aux apatrides (CGRS)*, No 253 776, 30 April 2021.

CALL granted refugee status to an applicant from Turkey based on individual circumstances and due to insufficient state protection for gender-based violence.

A Turkish national alleged fear of persecution based on previous threats from her former husband and his family. CALL overturned the negative decision and assessed if state protection was available. Based on country of origin information, CALL found that there was insufficient protection in Turkey for cases concerning domestic violence, feminicide and crimes of honour, and granted the applicant refugee status, also based on her particular vulnerability and psychological fragility, demonstrated with medical certificates.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1824

Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant (El Salvador)* v *State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid)*, NL20.9421, 16 April 2021.

The Court of the Hague referred a case back for re-examination due to insufficient analysis of the risk of harm from gang violence and the availability of state protection in El Salvador.

An applicant from El Salvador applied for international protection on grounds related to past events and threats from a Pandilla gang. Following a negative decision, the applicant appealed and claimed a lack of state protection

against gang violence if returned. The Council of State allowed the appeal and held that the determining authority erred in properly investigating the applicant's allegations on the availability of state protection and in establishing if there is a real risk of serious harm upon return, within the meaning of the ECHR, Article 3.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1799

Country of origin information

France, National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *B. (Ethiopia)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA),* No 19050187, 30 April 2021.

The CNDA granted subsidiary protection to an applicant from Ethiopia due to the situation in the country of origin.

An Ethiopian national from the Tigray region was refused refugee status due to a lack of consistency in his statements during the personal interview, oral hearing and in the written documentation. However, based on an extensive analysis of recent country of origin information, the CNDA concluded that the situation is critical in the Tigray region and granted the applicant subsidiary protection. The CNDA took note of an EASO COI Query from 30 March 2021, Security situation in Tigray region between 1 March 2020 – 28 February 2021, which indicated that the conflict continues in the region and the situation is fragile.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1804

Italy, Civil Court [Tribunali], *Applicant (Mali)* v *Territorial Commission for the Recognition of International Protection (Bologna),* R.G. 538/2021, 16 April 2021.

The Court of Bologna granted subsidiary protection to an applicant from Mali and clarified the duty of the determining authority to consider subsequent applications.

The applicant requested to have his residence permit for humanitarian protection renewed and to have his situation re-examined in light of the worsening security situation in his country of origin, Mali. The determining authority refused the request for reassessment, but the Court of Bologna, in the appeal, ruled that the applicant's request must be considered as a subsequent application for which an analysis on the merits must be conducted. The Court of Bologna further decided that the applicant was eligible for subsidiary protection based on recent country of origin information, noting the current situation of indiscriminate violence deriving from armed conflict.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1737

Religion-based persecution

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant (Iran)* v *State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid),* 201902732/1/V2, 12 May 2021.

The Council of State clarified the assessment procedure in cases of conversion to a new faith.

Based on a conversion to Christianity, an Iranian national's application for international protection was rejected by the determining authority and the Court of the Hague. The Council of State allowed the appeal and clarified the credibility assessment to be conducted in similar cases, based on the answers to the questions related to the following three elements: motives and process

of conversion, knowledge, and activities. The Council of State concluded that the State Secretary had to clearly state in its decision the reasons and the weight of statements which are considered implausible about the alleged conversion.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1827

Persecution based on political opinion

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], ***Applicant (Iran)*** v ***State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid),*** No 202101144/1/V2, 12 April 2021.

The Council of State ruled on persecution based on political opinion in Iran.

An Iranian woman claimed persecution after being involved in an altercation about women's rights with the judge sitting on a case where she acted as a lawyer. She was arrested by the security service and detained, interrogated, assaulted for 2 days and forced to sign statements, after which she was released with a warning. She also wrote articles criticising the authorities on a number of political topics. While the State Secretary did not deem the situation sufficiently serious, the Council ruled on appeal that, based on the country of origin information about Iran, on the basis of which the State Secretary had designated human rights activists as a risk group, it is likely that the applicant's problems arose because the discussion with the judge was about women's rights and because of her involvement in political activism. Therefore, the State Secretary did not provide enough reasons why the applicant was not regarded as part of an at-risk group. The court considered the applicant's appeal well-founded.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1813

Sweden, Migration Court of Appeal [Migrationsöverdomstolen], ***A. (Turkey)*** v ***Swedish Migration Agency (Migrationsverket),*** UM12806-20, 8 March 2021.

The Migration Court of Appeal referred a case back for an applicant who invoked risks due to his connection with the Gülen movement in Turkey.

A Turkish national who alleged to be a supporter of the Gülen movement in Turkey and risked, upon return, long-term imprisonment and punishment for not having completed military service was rejected international protection. The Swedish Migration Agency found that in the applicant's case no evidence was provided for the risk associated with his involvement with the Gülen movement and lack of military service. On appeal, the Migration Court of Appeal held that the Migration Court has a special investigative responsibility in cases concerning the need for protection and this applies in particular when the country information and other investigations in the case indicate that the applicant belongs to a special risk group. The Court of Appeal further noted that the Migration Court rejected the request for an oral hearing, thus the applicant did not have the chance to present and clarify the circumstances of the case. The Court of Appeal ruled that the Migration Court failed to examine and conduct an explicit and proper risk assessment. The case was referred back for re-examination.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1763

Vulnerable groups (single women)

Ireland, High Court, ***E (Pakistan)*** v ***The International Protection Appeals Tribunal (IPAT) and others,*** [2021] IEHC 220, 2 March 2021.

The High Court referred a case back to the IPAT for an insufficient assessment of the future risk

of persecution upon return of a single Pakistani woman.

The High Court allowed the relief sought by a Pakistani woman and referred the case back for a new examination considering the risks a single Pakistani female may encounter in her country of origin upon return. The High Court made an extensive analysis on the obligations of the IPAT to assess past persecution and the risk of future persecution. The High Court held that, although some particular facts or events relied upon as evidence of past persecution have not been contested, it would not relieve the administrative authority of the obligation to verify whether, nevertheless, there is a risk of future persecution in the event of a return. Practically, the precise impact of the finding of a lack of credibility on the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. Consequently, the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1752

Human trafficking

Italy, Civil Court [Tribunali], *Applicant (Nigeria)* v *Ministry of the Interior - Territorial Commission*, 6 April 2021.

The Court of Lecce granted refugee status to a Nigerian victim of human trafficking who feared persecution upon return.

The court noted that the applicant was the victim of acts of torture by the subjects who forced her into prostitution. The Court of Lecce considered that the applicant's statements were corroborated with country of origin information and various sources on human trafficking in Nigeria. The court also held that "in cases where the persecutions suffered in the past are of exceptional gravity, even where a future repetition of the same appears objectively unrealistic or unlikely, the person who has been affected can be recognised as a refugee". It further noted that it is not possible to repatriate an individual who has been affected, personally or indirectly through his family, by atrocious forms of persecution from which s/he is still suffering the trauma.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1791

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A and B (Nigeria)* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM),* E-5718/2020, 4 March 2021.

The Federal Administrative Court confirmed a negative decision against a Nigerian victim of human trafficking and the return decision.

A Nigerian woman who was granted temporary admission in Switzerland appealed against the decision and requested to be granted refugee status on grounds related to a risk for her life and physical integrity upon return, as she had been a victim of human trafficking in Italy.

The Federal Administrative Court rejected her appeal as manifestly unfounded as the applicant did not demonstrate that Nigerian authorities would not offer protection, there was no reason to conclude that there was an absence of state protection against prostitution networks, and there was no evidence of social exclusion for victims of human trafficking which would render it difficult to re-establish a life in Nigeria. The court held that the applicant was in constant contact with her family, especially her mother, and there was no indication in the file that she would be rejected by her family upon return.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1775

Subsidiary protection

Italy, Civil Court [Tribunali], *Applicant (Burkina Faso)* v *Ministry of the Interior (Territorial Commission Foggia),* R.G. No 778/20, 19 March 2021.

The Civil Court of Bari granted subsidiary protection due to armed conflict in Burkina Faso and to climate change.

The Civil Court of Bari ruled that the determining authority had failed to adequately assess the situation in Burkina Faso. According to recent country of origin reports, the security situation in the country had deteriorated and was unstable due to an internal armed conflict that started in the northern areas. The court noted that the situation of insecurity was spreading throughout the whole country. The Civil Court concluded that due to a combination of factors, including armed conflict, climate change and other natural disasters, the situation was worsening. Given that the region of origin of the applicant was located in the central-eastern part of the country, the court decided to grant him subsidiary protection.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1674

Exclusion

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicants (Iraq)* v *State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid),* 202002645/1/V2, 28 April 2021.

The Council of State decided to exclude an Iraqi applicant from international protection as he worked for and facilitated torture in the General Security Service in Baghdad.

The case concerned Iraqi nationals whose applications for a temporary residence permit were rejected, confirmed by a final decision of the Council of State for a removal order with an entry ban for one of the applicants. The decision was based on grounds related to the involvement of this applicant in torture during his position in the General Security Service in Baghdad. The applicant also did not demonstrate that he does not pose a real, current and sufficiently serious threat to public order.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1812

Deportation of applicants who enjoy international protection in another EU+ country

Ireland, High Court, *MAH (Somalia)* v *Minister for Justice*, 2020/188JR, 30 April 2021.

The High Court ruled against a deportation order for a Somalian applicant who was granted refugee status in Hungary.

A Somali applicant applied for international protection in Ireland but was rejected because he had been granted refugee status in Hungary and a removal order was issued. The applicant contested the decision and claimed that he risked being subject to treatment contrary to the ECHR, Articles 3 and 8 if returned to Hungary. The High Court allowed the relief sought and held that the Minister for Justice failed to properly assess the country of origin information with regard to beneficiaries of international protection in Hungary, that the Minister did not take into consideration recent cases against Hungary before the CJEU and the European Parliament resolution regarding Hungary's serious breach of fundamental rights of asylum seekers and refugees.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1806

Germany, High Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), ***Applicant (Syria)*** v ***Federal Office for Migration and Refugees***, 19 April 2021.

The High Administrative Court annulled a deportation to Greece of a beneficiary of international protection due to a risk of treatment contrary to the EU Charter, Article 4.

A Syrian national was refused asylum in Germany and a deportation order was issued as he had been granted refugee status in Greece. On appeal, the High Administrative Court annulled the contested decision by finding that a return to Greece would expose the applicant to treatment contrary to the ECHR, Article 3 and the EU Charter, Article 4 due to a lack of and insufficient access to accommodation, labour market and social benefits for beneficiaries of international protection.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1828

Reception

Duration of reception conditions

France, Council of State [Conseil d'État], ***C.*** v ***French Office of Immigration and Integration (l'Office français de l'immigration et de l'intégration, OFII),*** No 448453, 12 March 2021.

The Council of State held that the state has an obligation to ensure material reception conditions until a final decision is taken on the asylum application.

A national from Burundi entered France with her son and applied for international protection in Mayotte. The French Office for the Protection of Refugees and Stateless Persons rejected her application and her appeal on the merits of the case was pending. The Mayotte Administrative Court rejected her request to be offered accommodation in a sheltered structure, to be paid the asylum applicant's allowance and to be temporarily authorised to work, so the applicant contested the decision before the Council of State.

The Council of State noted that the applicant and her son were deprived of any resources, living in an improvised room with 12 people, without running water or electricity. The Council held that the State must immediately grant financial aid until her asylum application was finally decided, in order to provide her and her son with a standard of living that guarantees their livelihood and protects their physical and mental health. The judge dismissed the request for a working permit as there were no elements to prove that the applicant sought a job and there was no emergency justifying such an authorisation.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1638

COVID-19 and medical care

Italy, Civil Court [Tribunali], *Applicant (Guinea Bissau)* v *Territorial Commission of Milan (Commissione Territoriale di Milano)*, N. RG. 48243-1/2019, 3 March 2021.

The Court of Milan upheld the suspension of the enforcement of an inadmissibility decision based on exceptional situation caused by COVID-19 pandemic.

The Court of Milan upheld the application for a suspension of the enforcement of an inadmissibility decree for an applicant from Guinea Bissau, considering the serious and irreparable harm that would be caused by the COVID-19 pandemic in case of rejection. The court considered that the revocation of the temporary permit for asylum request would allow the applicant to receive only urgent or essential hospital care, without access to national health services and a family doctor. According to the court, this would cause the impossibility of observing the requirements of 9 March 2020 of the Istituto Superiore della Sanità to keep contact with a family doctor to monitor for COVID-19 symptoms, thus provoking serious and irreparable harm to individual and collective health.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1784

Reduction of daily allowance

Sweden, Supreme Administrative Court [Högsta förvaltningsdomstolens], *A.A.* v *Migration Board, Sweden (Migrationsverket),* 4234-20, 3 May 2021.

The Supreme Administrative Court confirmed the Migration Board decision to reduce the daily allowance for rejected applicants who do not cooperate in voluntary return.

The applicant, whose international protection application was rejected by the Migration Board, refused to comply with the expulsion decision. After informing her, the Migration Board decided to reduce her daily allowance, according to the provision of the Swedish Alien's Act. On appeal, the Administrative Court of Linköping ruled that, although it appears that the applicant does not intend to return to her country of origin voluntarily, it is not apparent from the investigation that she had been asked to assist in any measure necessary for the enforcement of the expulsion order or that her conduct must be interpreted as a refusal to assist in such a measure. Therefore, the Court quashed the Migration Board decision.

The Migration Board requested the Supreme Administrative Court to confirm the initial decision according to which the conditions for a reduction in the daily allowance were met, as after being informed about the procedures and her obligations, the applicant refused to voluntarily leave the country and that constituted a refusal to assist in a measure which is necessary for the enforcement of an expulsion order. The Supreme Administrative Court upheld the Migration Board's decision to reduce her daily allowance.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1783

Detention

Detention of families and minor children

Council of Europe, European Court of Human Rights [ECHR], ***R.R. and others (Iran and Afghanistan)*** v ***Hungary***, No 36037/17, 2 March 2021.

The ECtHR held that Hungary violated the rights under the ECHR, Article 3 and 5 for a family of applicants in the Röszke transit zone.

The ECtHR ruled in a case concerning a family of five, one Iranian and four Afghan nationals, who arrived in Hungary from Serbia, entered the Röszke transit zone and applied for asylum. The court held that there had been a violation of the ECHR, Article 3 due to the confinement of minors, the lack of attention of the State to assess the needs of the applicants, and the living conditions in the Röszke transit zone. The ECHR, Articles 5(1) and 5(4) were also violated due to the extended duration of the detention, the delays in the examination of the asylum claims, the conditions of the stay and the lack of a judicial review of the applicants' detention.

Link: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1617

Detention with COVID-19 quarantined inmates

Council of Europe, European Court of Human Rights [ECHR], ***Feilazoo*** v ***Malta***, No 6865/19, 11 March 2021.

The ECtHR found several violations concerning detention pending deportation and conditions in which the applicant was detained with COVID-19 quarantined inmates.

A Nigerian national was placed in immigration detention pending deportation for around 14 months. The ECtHR noted that the applicant was detained in ***de facto*** isolation without exercise, and in a subsequent period he had been detained with people under COVID-19 quarantine unnecessarily. Overall, the court found the conditions inadequate. Additionally, it found that the authorities had not been diligent in processing his deportation and that the reasons for the applicant's detention had ceased to be valid. Finally, the ECtHR held that the authorities had not guaranteed the applicant's right to petition before the court.

Link: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1620

Legality of detention pending deportation

Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], A., K., U. v ***Republic of Cyprus, through the Director of the Department of Population and Immigration Records***, No 24/21, 12 April 2021.

The court ruled on the status of an asylum seeker in a subsequent application and its implications for detention.

A national of Nepal arrived in Cyprus legally with a work permit and applied for international protection, which was rejected in July 2019. A subsequent application was also rejected. In January 2021, the applicant was arrested due to staying illegally, ordered to leave the country and detained due to a risk of absconding. The applicant had not submitted an appeal according to authorities but applied for the reopening of the subsequent application. The detention order was annulled due to the adoption of a new decree under the Refugee Law, and the deportation order was suspended due to the reopening of the applicant's file to the Asylum Service, but on 8 February a detention order was re-issued based on the Refugee Act. The applicant appealed the decision and requested the court

to rule that the detention order under the provisions of Article 9F(2d) of the Law on Refugees, Law 6 (I) / 2000 was unlawful. The court allowed the appeal and held that based on national legislation a third-country national must be an applicant for international protection in order to be detained under Article 9F of the Refugee Law. Therefore, the detention order had no legal basis since the applicant had lost the status of an asylum applicant in July 2019.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1725

Estonia, Supreme Court [Riigikohtusse Poordujale], *X. (Russian Federation)* v *Police and Border Guard Board (Decision of Tartu Circuit Court of 16 December 2020)*, No 3-20-2119/52, 15 April 2021.

The Supreme Court ruled on detention grounds in asylum and return procedures.

A national of the Russian Federation was apprehended by the Police and Border Guard Board (PBGB) as a suspect of an illegal border crossing. He lodged an application for international protection and was detained by the PBGB. The applicant appealed against his detention. The Supreme Court held that the recast Reception Conditions Directive, Article 8(3) provides an exhaustive list of grounds for detention and national law may not extend grounds for detention. Thus, an applicant can only be detained under this provision if he is already detained on the grounds foreseen by the directive. The Supreme Court also noted that the CJEU clarified that the recast Reception Conditions Directive does not aim to harmonise all national rules governing the stay of third-country nationals in a Member State, and therefore the conditions of initial detention of third-country nationals suspected of staying illegally are governed by national law. The court concluded that neither the PBGB nor the courts have convincingly justified the existence of a risk of absconding. Thus, the court upheld the appeal and annulled the detention order.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1662

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant (Morocco)* v *State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid),* No 202006914/1/V3, 2 April 2021.

The Council of State ruled on the detention of Moroccan nationals pending deportation which depend on a laissez-passer from Moroccan authorities.

The Council of State ruled on a case concerning a Moroccan national who was placed in immigration detention and not cooperating for his deportation to Morocco. The court considered whether Moroccan nationals whose deportation is dependent on the issuance of a laissez-passer by Moroccan authorities are likely to be deported to Morocco within a reasonable time.

The District Court considered that the fact that the Moroccan authorities did not provide a laissez-passer in 2020 does not mean that there was no prospect of deportation, as the Repatriation and Departure Service (DT&V) was collaborating with the authorities. The foreign national appealed the decision. The Council of State noted that given the long period since the last issue of a laissez-passer (the last one was in 2019), it has become clear that they are not issued and that there is no prospect of deportation to Morocco within a reasonable time. The Council considered the appeal well-founded and detention unlawful.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1814

Duration of detention

Italy, Civil Court [Tribunali], *Applicant* vs *Ministry of the Interior (Questura di Gorizia),* 16 March 2021.

The Court of Trieste ruled on time limits for the detention of asylum applicants.

An applicant in detention challenged the decision rejecting his application for international protection and filed an application to suspend its effectiveness. No decision regarding the applicant's case was taken within the time limit established by law. The Legislative Decree 142/2015, Article 6.6 provides that detention, or the extension of detention, may not go beyond the time strictly necessary to examine an application. The Tribunal of Trieste held that the conditions for a further extension of detention were not met, since the examination of the application for suspension continued beyond the time necessary, to the detriment of the applicant's personal freedom.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1693

Humanitarian protection

Italy, Civil Court [Tribunali], *Applicant (Senegal)* v *Ministry of the Interior - Questura of Rome*, 1580/2020, 11 March 2021.

The Tribunal of Rome ordered that a residence permit be issued to a Senegalese applicant for medical treatment due to a risk for his life.

A national of Senegal requested a residence permit for medical reasons from the police headquarters (Questura of Rome), alleging that he suffered from liver cirrhosis caused by Hepatitis B which needed treatment. The applicant's request was dismissed by the Questura of Rome because the medical documentation did not attest to a lack of treatment in Senegal and an impossibility to travel to his country due to his illness. The applicant appealed. Based on country of origin information, the Tribunal found that the Senegalese health system would not be able to guarantee the quality of medical treatment received in Italy and that the treatment would be at the expense of the person. The Tribunal concluded that the applicant's fundamental right to health would be seriously compromised if he were to be returned, along with a violation of his dignity, and ordered the police headquarters to issue a residence permit for medical treatment.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1699

Italy, Civil Court [Tribunali], *Applicant (Pakistan)* v *Questura di Prato — Ministry of the Interior*, 17 March 2021.

Special protection was granted to a Pakistani national in light of new legislation and after balancing integration in Italy and the risk of violation of the right to family and private life.

A national of Pakistan who was granted humanitarian protection as an unaccompanied minor applied for the renewal of his residence permit for humanitarian protection. The renewal request was rejected and the applicant appealed. The Court of Firenze considered that the new Decree No 130/2020 establishes special protection and covers situations when a third-country national would be at risk of treatment contrary to the ECHR, Article 3 if returned to the country of origin and cases where "there are reasonable grounds for believing that removal from the national territory entails a violation of the right to respect for private and family life (Article 8 of the ECHR), by providing for account to be taken of the nature and effectiveness of the family ties of the person concerned, of his or her actual social ties". The court held that the applicant was eligible for special protection as he arrived in Italy at the age of 16, followed language training and is employed, so he is well integrated in Italy and an expulsion would breach his right to family and private life.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1822

Return

Best interests of the child

European Union, Court of Justice of the European Union [CJEU], *M.A.* v *Belgium*, Case C-112/20, 11 March 2021.

The CJEU clarified that the best interests of the child must be assessed when deciding on the return of the child's father.

The case concerned a third-country national against whom a removal order and an entry ban were issued in Belgium. The applicant unsuccessfully appealed against these measures and lodged an appeal before the Council of State, where he argued that the return decision affects his minor child's right to private and family life. The case was referred to the CJEU which held that the best interests of the child must be considered before issuing a return decision with an entry ban, even if the decision is addressed to the parent of a minor. The CJEU noted that the Return Directive, Article 5 cannot be interpreted restrictively and family life (EU Charter, Article 24) must be considered before issuing a return decision.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1625

Forced return during the COVID-19 pandemic

Belgium, Court of Cassation [Cour de Cassation], *MY* v *Belgian State (represented by the State Secretary for Asylum and Migration)*, P.21.0277.F, 10 March 2021.

The Court of Cassation ruled that a forced removal in the context of the COVID-19 pandemic was lawful and does not qualify as a non-essential trip.

Following a negative decision, the applicant was detained pending a forced removal and complained against the extension of his detention, arguing that the removal is not a 'trip' listed under the COVID-19 authorised travel. The Court of Cassation clarified that a forced removal is not unlawful and not comparable to the trips allowed by the Royal Decree, as expulsion of a foreigner in the context of the pandemic is not a 'trip' within the meaning of the restrictions.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1676

Deportation and *non-refoulement*

Council of Europe, European Court of Human Rights [ECHR], *K.I.* v *France*, 15 April 2021

The ECtHR held that the deportation of a Chechen refugee to Russia, without a fresh assessment of risks, after his status was revoked due to a terrorism conviction, would constitute a violation of the European Convention, Article 3.

A Russian applicant, whose refugee status was granted in France, had his status withdrawn following his conviction for terrorism and received a deportation order. The applicant unsuccessfully argued before French courts that his deportation to Russia would entail a breach of the ECHR, Article 3 because he had been previously detained and tortured in Russia due to his family ties with individuals in favour of the Chechen guerrilla. The applicant further complained before the ECtHR which ruled that the revocation of the refugee status based on a threat to public security does not mean that the applicant would not benefit of the application of the *non-refoulement* principle. The court held that there would be a violation of the ECHR, Article 3 in the absence of an *ex nunc* assessment of the risks in case of enforcement of the return order.

Link:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1672