EASO Newsletter on Asylum Case Law

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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 and the European Court of Human Rights. 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.

Main highlights

The cases presented in this issue of the "EASO Newsletter on Asylum Case Law" have been pronounced from December 2020 to February 2021.

European courts

The Court of Justice of the EU (CJEU) confirmed in a Grand Chamber formation that Hungary infringed EU law and failed to fulfil its obligations under the recast Asylum Procedures Directive, the recast Reception Conditions Directive and the Returns Directive.

The CJEU interpreted the Qualification Directive, Article 12(1)(a) regarding the protection offered in UNRWA's area of operations. On this topic, national courts assessed the UNRWA's capacity to offer assistance and the criteria to consider when such protection is no longer available.

In cases against Slovakia and Greece, the European Court of Human Rights (ECtHR) found violations related to the length or lawfulness of the applicants' detention pending extradition, respectively pending the outcome of asylum procedure.

National courts

The Danish Refugee Board confirmed the assessment of the Danish Immigration Service and ruled in three cases that the change in the situation in Rif Damascus is significant and the applicants do not risk being subject to torture, inhuman or degrading treatment. Following this change in the jurisprudence, the Danish Immigration Service will reassess the issuance of residence permits to several hundred Syrian nationals from the Damascus area.[1]

In France, the Council of State ruled that the government's measure to interrupt the issuance of family reunification visas, due to the COVID-19 pandemic, for family members of third-country nationals residing in France was disproportionate and is contrary to the right to respect for family life.

National courts reassessed the situation in some countries of origin (e.g. Afghanistan and Somalia) in order to determine if the applicants are eligible for international protection.

Germany and the Netherlands revoked transfers to Greece after assessing and identifying deficiencies in living conditions and access to medical and social assistance for beneficiaries of international protection.

[1] Denmark, Ministry of Immigration and Integration. (2021, February). *Around 350 Syrian refugees' need for protection needs to be reassessed.* Omkring 350 syriske flygtninges behov for beskyttelse skal genvurderes — Udlændinge- og Integrationsministeriet (uim.dk)

Access to procedure

Reasons for inadmissibility

European Union: Court of Justice of the EU, *M.S., M.W., G.S.* v *Minister for Justice and Equality [Ireland]*, 10/12/2020

The CJEU ruled on the reasons for inadmissibility in a Member State not bound by the recast Asylum Procedures Directive but bound by the recast Qualification Directive.

The CJEU held that an application for international protection in Ireland was inadmissible because the three applicants benefited from subsidiary protection in another Member State, namely Italy. Ireland is bound by the recast Qualification Directive, Article 25(2a), which provides that an application may be rejected as inadmissible when an applicant has been granted refugee status in another Member State, but Ireland is not bound by the recast Asylum Procedures Directive, which allows an application to be rejected as inadmissible when an applicant has been granted either refugee status or subsidiary protection in another Member State. The CJEU held that Ireland is not precluded from considering an application to be inadmissible when the applicant benefits from subsidiary protection in another Member State.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1429

Transit zones in Hungary

European Union: Court of Justice of the EU, *European Commission* v *Hungary*, 17/12/2020

The CJEU ruled that Hungary failed to fulfil its obligations under the recast Asylum Procedures, recast Reception Conditions and Return Directives.

The CJEU's Grand Chamber examined several aspects concerning asylum applicants, including access to procedures, detention and return. It concluded that Hungary restricted access to the asylum procedure by imposing a law requiring applicants from the Serbian-Hungarian border to access the procedure only through one of two transit zones, Röszke and Tompa. Hungary also limited access by imposing limits on the number of third-country nationals authorised to enter the transit zones each day. In addition, Hungary did not respect the right to remain on the territory pending appeal procedures. The CJEU also confirmed its previous finding in *FMS and Others*, that the conditions in which applicants and those subject to return were held in the transit zones of Röszke and Tompa, amounted to detention, as they could not lawfully and freely leave the area. The CJEU also noted all the safeguards that need to be provided in detention.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1428

Pushbacks to Slovenia

Italy: Civil Court [Tribunali], *Applicant (Pakistan)* v *Ministry of the Interior (Ministero dell'Interno)*, 18/01/2021

The court ruled that informal readmissions to Slovenia are illegal.

The applicant reached Italy, where he was taken to a police station, asked to sign certain documents in Italian and taken to an area on the Slovenian border. He was then rejected to Croatia and subsequently to Bosnia and Herzegovina, where he had no support. He allegedly suffered violence from the Slovenian authorities and ill treatment by the Croatian authorities during the chain refoulement and had not been able to apply for international protection in neither of these countries.

The Italian court ruled that pushbacks to Slovenia in accordance with the informal readmissions agreements are illegal. It noted that there is no doubt that the compulsory repatriation to Slovenia affects the legal position of the person, with the result that the return of the person must be ordered by reasoned administrative decision, notified to the person and open to judicial review. The court observed that Italy should not have initiated informal refusals in the absence of guarantees from Slovenia on respect for fundamental rights. Based on reports and investigations by international press outlets, the reports of NGOs on the ground, the UNHCR resolutions and the letter of December 2020 from the Council of Europe's Commissioner for Human Rights on the situation of migrants in Bosnia and Herzegovina, the court held that the ministry was in a position to know that readmission to Slovenia would result in informal readmission to Croatia and return to Bosnia and Herzegovina, and that migrants would be subjected to ill treatment by the police. Thus, the court concluded that the conduct of the Italian authorities was contrary to their obligations under national and international laws.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1531

Dublin procedure

The effects of Brexit

Ireland: High Court, *AHS (Iraq)* v *The Minister for Justice and Equality & ors*, 08/12/2020

The High Court rejected an appeal against a Dublin transfer to the UK, holding that the UK will continue to abide by the international refugee and human rights laws.

The applicant, an Iraqi national, challenged a Dublin transfer decision from Ireland to the UK, where he previously lodged an application for international protection. The applicant appealed on grounds related to an alleged failure of the International Protection Office to take into consideration the Dublin III Regulation, Article 17, due to legal uncertainty caused by the UK's withdrawal from the EU and to a request to consider the applicant's family connections in Ireland. The High Court held that there is no reason to consider that the UK would not continue to fulfil its obligations under the Geneva Convention and under the ECHR after the withdrawal from the EU or that the withdrawal will result in a real risk of being subject to inhuman or degrading treatment.

On the family connections argument, the High Court assessed that the applicant's cousins residing in Ireland does not render Article 7.3 of the Dublin III Regulation applicable to the case. The High Court noted that the relationship with a cousin is not covered under the definition of "family members".

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1431

Family life considerations

Switzerland: Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], *A,B,C (Syria)* v *State Secretariat for Migration (Staatssekretariat für Migration – SEM)*, 25/01/2021

The Federal Administrative Court ruled on the right to family life and its impact in the Dublin procedure.

A., a Syrian national, applied for international protection in Switzerland, stating during the interview that she had a religious wedding to a Syrian national who was provisionally admitted in Switzerland, where he had lived several years. She was transferred to Croatia under the Dublin III Regulation, as it was considered that she had not been in a relationship with her partner prior to her arrival in Switzerland, so family provisions of the Dublin procedure were not applicable in her case. Furthermore, a religious marriage does not constitute a legal marriage in Switzerland. A. requested family reunification and to be included in the provisional admission of her partner. The SEM held that the formal requirements for her to be included in his provisional admission were not met due to the lack of civil marriage but did not answer the issue of family reunification.

The Federal Administrative Court held that a family can request protection under ECHR, Article 8, regardless of the form of protection and residence status of the family member living in Switzerland. It further ruled that Article 8 does not guarantee an entitlement to residence in Switzerland and it only requires the latter to balance the interests at stake, to examine whether the interests of the family outweigh the general interest to enforce a legally-binding transfer decision. The court ruled that the family relationship started only after A. had entered Switzerland, when the responsibility of Croatia for her asylum application has been determined. The court stated that by getting married and having another child, the couple acted with full conscience of their uncertain situation. Although the separation of the family for the duration of the asylum procedure in Croatia is drastic, the court noted that family contact can be maintained and due consideration was given to the well-being of the children. The court concluded that Switzerland has no obligation to examine the asylum application and referred the case back to the SEM, which, in the Dublin procedure, has the discretionary power to examine an asylum application on humanitarian grounds.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1500

First instance procedures

Personal interview

Belgium: Council of State [Raad van State - Conseil d'État], *L'Ordre des barreaux francophones et germanophones and others*, 07/12/2020

The Council of State suspended the CGRS pilot project to hold interviews by videoconference for applicants from open centres.

Several NGOs challenged a decision of the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) to conduct personal interviews by videoconference. The interim judge ordered the suspension of the CGRS decision, finding that the decision included rules relating to the short-term organisation of videoconference interviews with asylum applicants staying in open centres. The decision also mentioned the intention to develop a longer-term framework for interviews by videoconference, alongside in person interviews. The judge held that the CGRS did not have the competence to change the rules by which personal interviews are organised and that such a change must be done by Royal Decree.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1437

Implicit withdrawal of an application

Greece: Administrative Court of Appeals [Διοικητικό Εφετείο], *Applicant*, 16/12/2020

The Administrative Court of Appeal confirmed a decision to discontinue the examination of an application due to unjustified absence at the personal interview.

The case concerned national legal provisions (Law No 4375/2016, Article 47(2) and (3)) which introduced a rebuttable presumption in favour of the tacit withdrawal of the application for international protection when the applicant for international protection is not present at the scheduled interview for the examination of his application. Based on this presumption, the determining authority can discontinue the examination of the application at first instance, without issuing a decision on the file. The law provides the right to request the continuation of the procedure within 9 months from the date of adoption of the interruption act, if the applicant puts forward concrete evidence of objective reasons beyond his/her control, which prevented him/her from attending the interview. The Athens Administrative Court of Appeal noted that the applicant did not attend the interview at the notified date and time and the determining authority lawfully discontinued the examination and rejected his request to continue the procedures as he only invoked vague, unclear and not specific arguments.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1486

Time limits and COVID-19

Netherlands: Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid),* 16/12/2020

The Council of State confirmed that the COVID-19 pandemic led to a force majeure in asylum procedures and thus the time limit for pronouncing a decision was automatically suspended.

Due to the COVID-19 outbreak, the State Secretary extended the period of 6 months to take a decision on an asylum application. The applicant appealed before the Court of the Hague against the lack of a decision on her application, arguing that the extension was not legal. The Council of State held that the COVID-19 outbreak had made it temporarily halted decisions on asylum applications, as it was physically impossible to conduct interviews. Thus, the situation amounted to force majeure, where the time limit for taking a decision is automatically suspended. This also applies when the IND would have to pay delay penalties. This period started on 16 March 2020 and ended on 16 May 2020. In such a situation, the IND should have informed the applicants as soon as possible.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1450

Indiscriminate violence in Somalia (Lower Shabelle and Mogadishu)

France: National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.Y. (Somalia)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA),* 16/12/2020

The CNDA ruled that the indiscriminate violence in Somalia (Lower Shabelle and Mogadishu) does not reach a level that would justify granting subsidiary protection.

The case concerned the rejection of international protection for a Somali national. On appeal, the CNDA dismissed the request to be granted refugee status as the applicant did not fulfil the requirements of the Geneva Convention. Regarding subsidiary protection, the CNDA ruled that the province of Lower Shabelle, the applicant's area of interest, did not experience an indiscriminate violence of such level as to expose anyone solely by mere presence to a serious and individual threat to life or person. Even considering that the applicant would have to enter Somalia through Mogadishu, closest to his home region, the CNDA stated that indiscriminate violence was at the same level as assessed for his home

region, the Lower Shabelle. The CNDA dismissed the appeal and stated that the applicant did not present any evidence on his personal situation or circumstances to justify international protection.

The court cited EASO, *Judicial practical guide on country of origin information*, 2018; EASO, *Country of Origin Information report South and Central Somalia*, 2014.

Permanent link to the case: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1433

Indiscriminate violence in Afghanistan

France: National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.K. (Afghanistan)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 18/12/2020

The CNDA reassessed the level of violence in the Nangarhar province as exceptional and continuous, granting subsidiary protection to the applicant.

The case concerned the rejection of international protection for an Afghan national. The CNDA reassessed the situation in Afghanistan and stated that the applicant should be granted subsidiary protection. The CNDA based its judgment on recent country of origin information reports published by EASO, the UN Secretary-General, data collected by the United Nations Mission in Afghanistan (UNAMA), the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) and the NGO ACLED.

It concluded that the level of indiscriminate violence generated by armed conflict in the Nangarhar province is of exceptional intensity and since June 2020, mere presence in the region exposed the person to a serious and individual threat to life or person. It was ruled that the requirements for granting subsidiary protection are fulfilled.

Permanent link to the case: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1434

Luxembourg: Administrative Tribunal [Tribunal administratif], *Applicants (Afghanistan)* v *Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile)*, 14/01/2021

The Administrative Tribunal ruled that the mere invocation of an asylum seeker's Afghan nationality can no longer be sufficient to establish the need to grant protection.

The case concerned the rejection of international protection for a family from Afghanistan. The Administrative Tribunal of Luxembourg refused to grant refugee status, arguing that the applicants did not establish that being a trader is essential for the husband's identity or conscience so they were not considered to be members of a particular social group. Regarding subsidiary protection, the court held that the applicants did not allege or establish that they would risk the death penalty in their country of origin and that a minimum level of seriousness was not reached by the Taliban having taken goods from the applicant's shop without paying and that the applicant was injured by them in an isolated incident. Considering the regional differences in the level of violence, the court held that the mere invocation of Afghan nationality can no longer be sufficient to establish the need to grant international protection.

The judgment cites EASO, *Country Guidance: Afghanistan*, June 2019, *COI Report: Afghanistan — Security Situation*, September 2020 and *COI Report: Afghanistan, Key socio-economic indicators. Focus on Kabul City, Mazar-e Sharif and Herat City*, August 2020.

Permanent link to the case: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1504

UNRWA as an actor of protection

European Union: Court of Justice of the EU, *Bundesrepublik Deutschland* v *XT*, 13/01/2021

The CJEU ruled on the interpretation of Article 12(1)(a) of the Qualification Directive for a stateless person of Palestinian origin.

The case concerned a former Palestinian refugee from the UNRWA refugee camp of Yarmouk. He was granted subsidiary protection in Germany, which he appealed. The Federal Administrative Court stayed the proceedings and referred several questions to the CJEU, which held that, in order to determine whether the protection or assistance from UNRWA has ceased, it is necessary to consider all the fields of UNRWA's area of operations that a stateless person of Palestinian origin could access and safely remain there. Previous residence, family ties or the right to residence in one of UNRWA's area of operations are an indication, but not conclusive evidence, that the person would be able to access and remain there.

The CJEU held that UNRWA's protection or assistance cannot be regarded as having ceased when a stateless person of Palestinian origin left the UNRWA area of operations from a field in which personal safety was at serious risk and in which UNRWA was not in a position to provide protection or assistance if: i) the person voluntarily travelled from another field in which personal safety was not at serious risk and in which he/she could receive protection or assistance from UNRWA; and ii) the person could not reasonably expect to receive UNRWA's protection or assistance in the field where he/she travelled or could not reasonably return to the field from which he/she came.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1472

France: National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *E.* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 09/12/2020

The CNDA ruled that a Palestinian from Lebanon suffering from a serious chronic disease is entitled to refugee status as the UNRWA is unable to provide adequate medical care.

The applicant is a Palestinian from Lebanon suffering from a genetic disease which affects haemoglobin production and requires regular blood transfusions. When he could no longer easily secure a source of blood transfusions and needed a certain medication, the UNRWA refused to supply it due to the high costs. The CNDA held that Palestinian refugees from Lebanon do not have access to the public health system and must rely exclusively on the services offered by UNRWA and the Palestinian Red Crescent, which are insufficient and systematically underfunded. For this reason, many Palestinian refugees are forced to seek assistance from relatives, friends, NGOs, charities or even go into debt when they suffer from chronic diseases or need complex medical procedures. The CNDA granted refugee status as the UNRWA is unable to provide the applicant with sufficient access to tertiary health care, which concerns the most serious illnesses, and to the medicines on which he is dependent for his survival.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1548

Habitual residence

Belgium: Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], *X (Palestine)* v *Commissioner General for Refugees and Stateless Persons*, 10/12/2020

The CALL held that in the case of multiple habitual residences, the mere fact of not being afraid in one and being able to return there is not enough to consider that an applicant benefits from sufficient protection.

The Palestinian applicant had resided in Gaza and in the United Arab Emirates (UAE). The Council considered that it was necessary to analyse the application with regard to both countries of habitual residence, although he no longer held a residence permit in the UAE. The Council held that a stateless person must demonstrate that he/she fulfils the conditions of the Geneva Convention with regard to just one of the countries of habitual residence in order to be recognised as a refugee; the mere fact of habitually residing in a country does not imply being entitled to benefit from protection in the sense of the Geneva Convention. Thus, the mere fact of not being afraid in one of the habitual countries of residence and being able to return there is not enough to consider that an applicant benefits from sufficient protection and may face possible fear in another of his/her countries of habitual residence. In this case, the Council recognised the applicant as a refugee who provided sufficient proof of fearing persecution in Gaza.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1589

Safe third country and the right to family life

Netherlands: Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant (Nicaragua)* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 20/01/2021

The Council of State ruled that the right to family life must be taken into consideration when assessing the possibility of applying the concept of safe third country.

The case concerned a Nicaraguan applicant who married and had a child in Costa Rica, prior to moving to Nicaragua and then to the Netherlands. Her asylum application was rejected as inadmissible on grounds that Costa Rica is a safe third country and she could reasonably be able to apply for asylum there. The applicant contested the decision and argued that the principle of reasonableness was interpreted too narrowly and her family situation was not sufficiently considered. In a second appeal, the Council of State quashed the lower court decision and held that the right to family life has to be taken into consideration when applying the safe third country concept.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1512

Exclusion

Finland: Supreme Administrative Court [Korkein hallinto-oikeus], *A (Iran)* v *Finnish Immigration Service (FIS)*, 12/01/2021

The Supreme Administrative Court ruled that serious circumstances should justify a negative decision based on exclusion grounds.

An Iranian national and former activist in the Kurdistan Worker's Party (PKK), was rejected international protection as FIS considered that he was aware of PKK policies and terrorist acts. On appeal, the court ruled that, as an exception, the exclusion clause must be interpreted narrowly. Suspicion or speculation alone is not sufficient to exceed the threshold for evidence, but the authority must show that there are reasonable or serious grounds for suspecting that a person has committed an act within the meaning of the exclusion clause. In this case, the court overturned the decision, referred the case back to FIS and found that A. had not held a managerial position in PKK, nor could his position be considered particularly important on other grounds. His work was focused on informing about the organisation and could not to be judged personally responsible for acts of PKK fighters.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1457

See also Finland: Supreme Administrative Court *[Korkein hallinto-oikeus]*, *A. (Turkey) v Finnish Immigration Service*, 12/01/2021

France: National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.M. (Sri Lanka)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 27/01/2021

The CNDA ruled on exclusion of a Sri Lankan national for international protection and states that prescribed criminal offences under French law are considered as war crimes within the meaning of the Geneva Convention, Article 1F (a).

A Sri Lankan national argued against a negative decision that war crimes prescribed under French law can no longer fall under the exclusion clause of the Geneva Convention, Article 1F(a). In light of Constitutional Council Decision No. 2003-485 DC and the CJEU case Shajin Ahmed, the CNDA considered that it is not bound by the limitations of national criminal law for the assessment of the exclusion grounds. The CNDA concluded that the forced recruitment of 15-year-olds in combat units qualify as a war crime and the exclusion ground of the Geneva Convention, Article 1F(a) duly applies in the case.

The judgement cites EASO Judicial analysis *Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU)*, January 2016.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1603

Reception

European Union: Court of Justice of the EU, *K.S., M.H.K.* v *The International Protection Appeals Tribunal, The Minister for Justice and Equality, Ireland, The Attorney General, and R.A.T., D.S.* v *Minister for Justice and Equality*, 14/01/2021

The CJEU ruled that applicants who are the subject of a Dublin transfer decision may access the labour market in the host Member State.

The cases concerned the legality of decisions refusing access to the labour market while Dublin transfers to another Member State had been requested. In both cases, the applicants applied for international protection in Ireland and were subject to Dublin transfers to the United Kingdom. Their application for access to the labour market was rejected and they contested the decision before the High Court, which referred to the CJEU and asked whether an applicant for international protection who is the subject of a Dublin transfer decision may rely on the Reception Conditions Directive, Article 15(1). The CJEU noted that in the definition of "applicant" there is no distinction in the recast Reception Conditions Directive between those who are subject to the Dublin procedure and those who are not, and that the recast Reception Conditions Directive applies to the Dublin procedure. The CJEU further reiterated its case law (Cimade and GISTI), which held that "the obligations for the Member State in receipt of such an application to grant the minimum conditions laid down by Directive 2003/9 cease only when that applicant has actually been transferred by that Member State". The CJEU concluded that applicants for international protection cannot be excluded from access to the labour market on the sole ground that a transfer decision has been taken under the Dublin III Regulation.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1479

Detention

Council of Europe: European Court of Human Rights, *Shiksaitov* v *Slovakia*, 10/12/2020

The ECtHR found a violation of Article 5 due to the authorities' lack of diligence in determining the admissibility of extradition to the country of origin despite refugee status granted by another EU Member State.

The case concerned the lawfulness of the detention of a Russian national by the Slovak authorities in view of extradition to Russia. The applicant was granted refugee status in Sweden based on political opinions, but an international arrest warrant was issued against him for acts of terrorism committed in Russia and he was detained by Slovak authorities when apprehended at the border. The Supreme Court in Slovakia held that his extradition is inadmissible because of his refugee status in Sweden. Before the ECtHR, the applicant alleged failures of the Slovak authorities with regard to the initial and preliminary detention, as well as with detention pending extradition.

The court noted that detention pending extradition lasted 1 year, 9 months and 18 days (from 15 January 2015 to 2 November 2016) and that information about the applicant's refugee status, as well as documents relating to his criminal prosecution in Russia (which had allowed for an assessment – for the purposes of the applicability of the relevant exclusion clauses – of the political/non-political nature of his acts) had been available to the Slovak authorities since February 2015. The court held that the Slovak authorities failed to proceed actively and diligently when gathering relevant information and determining the legal aspects of the case, and that the grounds for detention had not been valid for the whole period concerned. The court unanimously concluded a violation of Articles 5(1) (right to liberty and security) and 5(5) (enforceable right to compensation) of the ECHR.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1427

Council of Europe: European Court of Human Rights, *E.K. (Turkey)* v *Greece*, 14/01/2021

The ECtHR found that a detained applicant did not benefit from a sufficiently thorough assessment of the lawfulness of his detention.

The case concerned a Turkish applicant who contested the lawfulness of his detention at the border and his extended detention in an alien's centre pending the outcome of the asylum application and an eventual removal. The applicant also invoked procedural irregularities and an alleged ineffective review of the lawfulness of the detention, along with poor material conditions in the detention centres. The court found that the conditions of detention were not contrary to the ECHR, Article 3 and that the detention was lawful, but found that the court failed to conduct a thorough and sufficient assessment of the lawfulness of detention.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1480

European Union: Court of Justice of the EU, *M. and others* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 24/02/2021

The CJEU ruled that administrative detention is possible when implementing a forced removal to the Member State that granted asylum.

The case concerned three third-country nationals who were rejected international protection in the Netherlands because they have been already granted refugee status in Bulgaria, Spain and Germany respectively. A return order was issued against them, and because they did not comply, they were placed in administrative detention pending the

implementation of the transfer. The applicants complained against the measure and claimed that in the absence of a return decision within the meaning of the Return Directive, their detention was unlawful. The Council of State referred the case to the CJEU and asked whether the Return Directive precludes a State from placing in detention a third-country national staying illegally in the country and who opposes the enforcing of a transfer to the country where he obtained refugee status.

The CJEU clarified that the Return Directive is not intended to harmonise entirely the rules concerning the stay of third-country nationals and that the Return Directive does not govern a situation when a Member State decided to proceed with the forced transfer of that national to the Member State which has granted him or her refugee status. In such a case, the Member State exercises its sole competence in illegal immigration matters.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1614

Content of protection

Conditions in Greece

Germany: High Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe), *Applicant (Eritrea)* v *Federal Office for Migration and Refugees (BAMF)*, 21/01/2021

The Higher Administrative Court cancelled the removal of a refugee granted protection in Greece due to inadequate living conditions in Greece for beneficiaries of international protection.

The Federal Migration and Asylum Office rejected as inadmissible an application for international protection made by an Eritrean national because he was previously granted refugee status in Greece and a removal order was issued. The applicant argued against the removal order that he would face inadequate conditions and material hardship if retuned to Greece. The Higher Administrative Court allowed the appeal and concluded that the applicant would be at serious risk of facing degrading treatment in Greece due to difficulties in accessing basic material conditions, including accommodation, food and social benefits. The court also noted that the COVID-19 situation and restrictions pose additional hardship for refugees, specifically to access the labour market. The court noted that beneficiaries of international protection in Greece are left without support and proscribed the removal of the applicant.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1510

Netherlands: Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant* v *The Secretary of State for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 28/01/2021

The Council of State overturned the lower court decision for failure to adequately identify and assess a particular vulnerability of the applicant based on his mental health problems.

Due to having obtained refugee status in Greece, the applicant was rejected asylum in the Netherlands. Medical reports were presented before the courts to prove the applicant had serious mental problems and that he would be at risk of treatment contrary to ECHR, Article 3 in case of removal to Greece due to difficult access to medical and social services for beneficiaries of international protection, along with poor living conditions. The Council of State allowed the appeal, overturned the lower court decision and held

that the applicant's particular vulnerability was not duly identified and assessed. Moreover, the Council of State found that the applicant's medical problems were very serious and his vulnerability would expose him to a difficult situation in Greece since he will be struggling to access medical and mental health care.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1570

Family reunification

Greece: Administrative Court [Διοικητικό Πρωτοδικείο], *Applicant (Congo)* v *Asylum Service*, 20/01/2021

The Administrative Court of Athens clarified that a family reunification application must be individually assessed in accordance with the Family Reunification Directive and the principle of proportionality.

A Congolese national was granted refugee status and her family members requested residence permits under family reunification provisions. The request was dismissed for failure to produce relevant documents and no interview was conducted. In the appeal, the Administrative Court ruled that the decision to reject the refugee's application cannot be based solely on the absence of supporting documents. Without prejudice to the principles of proportionality and good administration, as enshrined in the Family Reunification Directive, if an applicant cannot submit relevant documents due to a particular situation, for example if he or she cannot access official documents due to fear of persecution, the administration must carry out the necessary investigation to confirm the existence of the family relationship of the refugee applicant. The court held that the determining authority can even rely on the assistance of Greek consular authorities to interview the refugee and family members.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1488

France: Council of State [Conseil d'État], *La Cimade, l'Association des avocats pour la défense du droit des étrangers (ADDE), le Groupe d'information et de soutien aux immigrées (Gisti) and others*, 21/01/2021

The Council of State ruled that the government's decision to suspend the issuance of family reunification visas because of the COVID-19 pandemic is disproportionate and contrary to the right to family life and the best interest of the child.

The French Council of State ruled on applications submitted by several associations against the decision of the French government to suspend and interrupt the issuance of family reunification visas for family members of third-country nationals residing in France because of the COVID-19 pandemic. The judge suspended the application of the contested decision which was adopted on 18 March 2020 by the French Prime Minister, noting that there was no proof of the movements of people to amount to a significant risk of spreading COVID-19, and the same measures of testing and quarantine already applied for travellers could be applied for the people concerned. In addition, the judge held that the impugned measures were disproportionate and constituted a serious violation of the right to respect for family life and the best interests of the children.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1502

Cessation of protection

European Union: Court of Justice of the EU, *Secretary of State for the Home Department [UK]* v *OA (Somalia)*, 20/01/2021

The CJEU Interpreted the recast Qualification Directive with regard to the possibility to avail oneself of the protection of the country of origin (Somalia).

The case concerned the revocation of refugee status of a Somali national based on a change in the situation in the country of origin. OA contested the revocation decision, and the Upper Tribunal referred the case to the CJEU, which ruled that the Directive 2004/83 Article 11(1e) must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in relation to the cessation of refugee status must be the same as the requirements in relation to the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2). Moreover, it clarified that any social and financial support provided by private actors, for example family members or the clan, does not fulfil the requirements to be considered relevant in the assessment of the effectiveness or availability of the protection provided by the state within the meaning of the recast Qualification Directive.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1477

France: National Court of Asylum [Cour Nationale du Droit d'Asile (CNDA)], *M.S. (Russia)* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, 28/12/2020

The CNDA ruled on cessation grounds as provided in the Geneva Convention, Article 1C (1) concerning a Russian national.

By decision of 15 January 2020, the refugee status of a Russian national was terminated by OPFRA for security-related reasons and because he had obtained a Russian Federation passport at the Strasbourg consulate. The applicant further argued fear of persecution in the appeal procedures, and the CNDA analysed first the applicability of the cessation clause provided in the Geneva Convention, Article 1C(1). Based on an extensive analysis of the recast Qualification Directive and the CJEU case law (C-391/16, C-77/17, C-78/17), the CNDA concluded that the applicant had voluntarily been issued a passport by the Russian Federation's authorities without any proof to have been obtained by corruption or that compelling reasons or any coercion justified this approach. The CNDA concluded that the applicant had deliberately placed himself again under the Russian authorities' protection. Consequently, the cessation clause was correctly applied, and the applicant's protection must cease in the absence of any other reasons to maintain the refugee status.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1606

Denmark: Refugee Board [Flygtningenævnet], *Applicant (Syria)* v *Danish Immigration Service*, 17/02/2021

The Refugee Board rejected an extension of protection for a Syrian applicant, holding that the general situation in Rif Damascus is no longer of such a nature that mere presence in the area poses a serious risk.

The case concerned the refusal of the Immigration Service to renew the residence permit of a person who obtained it as a family member. The Immigration Service assessed that the applicant's allegations do not justify the granting of refugee status and that the situation in the Rif Damascus (applicant's province) is no longer of such a nature that anyone will be at risk solely due to mere presence in the area. This decision was confirmed by the Refugee Board which held, based on updated country of origin

information, that since May 2018 the situation significantly changed and improved in Rif Damascus.

Permanent link to the case: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1601

See also Denmark, Refugee Board, *Applicant (Syria) vs Danish Immigration Service*, 16/02/2021 and *Applicant (Syria) vs Danish Immigration Service (no. 2)*, 17/02/2021

Return

European Union: Court of Justice of the EU, *TQ* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 14/01/2021

The CJEU ruled that, before issuing a return decision for an unaccompanied minor, Member States must confirm that there are adequate reception facilities for minors in the state of return.

The case concerned the return of an unaccompanied minor after his application for international protection was rejected in the Netherlands. The applicant contested the negative decision which also constituted a return decision and claimed that he has no family members in his country of origin. The Council of State referred the case to the CJEU and asked if the distinction made in the national legislation is compatible with the EU law. The national legislation provides that an investigation must be conducted by the determining authority for unaccompanied minors under 15 years to verify if the state of return provides adequate reception facilities. However, no investigation is being conducted for unaccompanied minor older than 15 years and the return remains pending until the minor reaches the age of 18, while the applicant is tolerated in the Netherlands. The CJEU held that Member States may not distinguish between unaccompanied minors based on their age to ascertain whether the state of return provides adequate reception facilities and the best interests of the child must be taken into consideration.

The court held that the recast Return Directive precludes a Member State, after it has adopted a return decision in respect of an unaccompanied minor and has been satisfied that there are adequate reception facilities in the state of return, from refraining to subsequently remove the minor until he or she reaches the age of 18. In that event, the minor must be removed from the territory, subject to any changes to the individual situation. The court stated that, if adequate reception facilities in the state of return are no longer guaranteed at the stage of the removal of the unaccompanied minor, the Member State would not be able to enforce the return.

Permanent link to the case: https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1466

Relocations and resettlement

Spain: Supreme Court [Tribunal Supremo], *Fructuoso, Begoña, Benita and Hipolito (Syria)* v *Spanish Public Administration (Administracion General del Estado)*, 17/12/2020

The Supreme Court confirmed that refugees resettled in Spain are beneficiaries of refugee status.

The case concerned Syrian nationals who arrived in Spain under the resettlement programme in 2015 but were granted subsidiary protection. The applicants contested the decision, but administrative courts held that they are eligible for subsidiary protection in light of the risk of serious threats to their life or integrity if returned to their country of origin, Syria.

In the appeal on points of law, the Supreme Court ruled that, according to the current national legislation, the beneficiaries of a resettlement programme approved by the government in cooperation with the UNHCR must be granted refugee status and not subsidiary protection. The court noted that the mere fact of being a beneficiary of a resettlement programme leads to granting refugee status and a different interpretation would mean that personal circumstances make it impossible to grant protection provided for in the 'protection framework' regulated by the law. The court also noted that what characterises resettlement is a fully voluntary act of states to establish resettlement programmes.

Permanent link to the case:
https://caselaw.easo.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1573