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JURISDICTION

European Jurisdiction on Refugee and Complementary Protection: January-July 2022[1]

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This compilation of case law samples, summarizes and refers to jurisdiction of international relevance for the application of legal standards in the field of refugee and complementary protection by the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) in the period January to July 2022.

1. European Court of Human Rights

1.1 ECtHR, Judgement of 10/2/2022, Al Alo v. Slovakia (no 32084/19): Trial and conviction of a Syrian for human smuggling violated Article 6 paras. 1 and 3 European Convention of Human Rights (ECHR) (right to fair trial)

The defendant, Syrian, was sentenced to imprisonment in Slovakia for human smuggling. He had been intercepted with two other migrants at the Slovak-Austrian border in January 2017. The other two, of whom he was accused of smuggling, testified before their trial and were deported before the trial of the defendant. During the trial, recourse was made to their written statements, but no attempt was made to summon them and interrogate them in person. The complainant therefore considers Article 6 (1) and (3) c) and d) ECHR to have been violated.

The ECtHR rejected the government's argument that although the addresses and identification cards of the witnesses were known, it was the duty of the complainant to prove that the witnesses would come back to Slovakia. Slovakia had not made use of the possibility to summon the witnesses abroad. However, it was the State's duty to make all reasonable efforts to ensure the presence of absent witnesses at the trial. Since there was an opportunity to do so and no acceptable justification was given for this omission, there were no valid reasons for disposing of the pre-trial statements of the witnesses. It is true that the lack of a valid reason for the non-appearance of a witness is not in itself proof of unfair proceedings. The complainant had also waived his right to appear at the preliminary hearing and the examination of witnesses there. However, the information provided to him about the pre-trial proceedings had been neither extensive nor detailed and had not indicated the possibility that the statements made there could be used as evidence against him at trial. His decision not to be present at the pre-trial questioning and not to examine the statements on that occasion should therefore not be regarded as a complete waiver of his rights under Article 6.3(d). Rather, he had been deprived of the

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opportunity to examine witnesses at the court hearing whose statements were of considerable weight for his proceedings. Therefore, the proceedings violated Article 6 paras. 1 and 3 d ECHR.

1.2 ECtHR, Judgement of 24/4/2022, M.B.K and Others v. Hungary (no. 73860/17): Violation Article 3 and 5 ECHR for seven months of detention for Afghan family (parents and four children) in transit facility Röszke

The family arrived at the transit zone in March 2017 and remained there until refugee status was granted, and they were transferred to a reception center in October 2017. The ECtHR, referring to its decision on R.R. and others (no. 36037/17 - U. v. 02.05.2021 – a period of four months in the transit zone violated the rights of the minor applicant), the ECtHR once again found a violation of Article 3 ECHR with regard to the minor.

In contrast, he ruled that for the adults the living conditions in the transit zone had generally been acceptable. The fact that the family was not separated was a relief, even if the accommodation as a whole could have led to feelings of frustration, fear and powerlessness. Article 3 ECHR was therefore not violated in the case of the adult defendants.

As to Article 5 ECHR, the ECtHR, referring to the similarity of the facts in the present case and in R.R., found violations of Article 5 (1) and (4) ECHR. Although it held that the complaint under Article 3 ECHR was inadmissible with respect to the adult complainants with regard to Article 13 ECHR. The other complaints (Article 13 ECHR in conjunction with Article 3 ECHR with regard to the children and Article 34 ECHR) were, however, admissible. Referring to the considerations in R.R. et al. however, it was unnecessary to consider them separately. EUR 17,000 for non-material damages and EUR 1,500 for the legal proceedings were awarded.

1.3 ECtHR, Judgement of 3/3/2022, NikoGhosyan et al. v. Poland (no. 14743/17): Six-month detention of a family

The complainant, an Armenian family, had tried several times from 10/2016 to 11/2016 to enter Poland and to apply for asylum there. They were sent back to Ukraine. On 06/11/2016 they applied for asylum. The application was rejected in April 2017. During this time and until May 2017, the defendants were held in administrative detention in a guarded center in Biala Podlaska.

The ECtHR held on Article 5 para. 1 ECHR that to examine the information provided by the complainants on their reasons for entering Poland, had initially constituted sufficient cause for their detention. However, as no information had been obtained from them since December 2016, the relying on it was not sufficient for the extension of the detention. The statutory presumption that the defendants were at high risk of absconding had not been sufficiently or individually examined by the Polish court (e.g., a decision by the district court in which one of the defendants was given the wrong gender). The fact that three minor children were also affected had also not been taken into account when it was decided to detain the defendants. Detention of small children should be avoided. The authority would have to show that this measure was taken as a last resort if less restrictive ones were not available. The almost six-month detention of the defendant was not a "last resort"; an alternative was available.

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1.4 ECtHR, Judgement of 8/3/2022, Sabani v. Belgium (no. 53069/15): Violation of Article 8 ECHR by detention for deportation to dwelling without legal basis

The case concerns a national of the Albanian minority living in Serbia. She came to Belgium in 2009 and filed numerous applications for asylum and regularization (on medical and humanitarian grounds) until 2015, all of which were rejected. On March 19, 2015, she received an order to leave ("OQT") with a ban on entry. On 20 March 2015, Serbia responded positively to a readmission request from the Aliens Department ("AO"). A repatriation scheduled for 1 April 2015 was cancelled due to the filing of another asylum application. On 2 April 2015, the defendant received a TQV, which was associated with a custodial measure. She was arrested in her apartment and placed in a closed facility. On 15 April 2015, the Council Chamber of the Court of First Instance ("TPI") in Brussels decided to keep the complainant in custody because the reasoning of the OU's decision was sufficient and adequate and the OU had acted with due diligence. The Court of Appeal took the same view. The appeal was dismissed on 10 June 2015, on the grounds that it had become moot because a new TQV with an extension of the custodial measure was issued against the defendant on 25 May 2015. Another repatriation was planned for 27 May 2015, but this was also canceled due to the filing of an asylum application. The detention was maintained and the defendant was returned on 30 June 2015.

She claims that she did not have the right to have the lawfulness of her deprivation of liberty reviewed by the courts due to the extension of her detention and subsequent deportation in violation of Article 5 (4) ECHR. She also complains of a violation of Article 8 ECHR because the police entered her house to arrest her without a legal basis or a judicial order. The Belgian authorities invoked regulatory law, according to which the police may detain people who do not have valid residence documents.

The ECtHR did not see a clear and precise legal basis for entering a home for the purpose of arresting a foreigner who is obliged to leave the country and found a violation of Article 8 ECHR.

1.5 ECtHR, Judgement of 10/3/2022, Shenturk and Others v. Azerbaijan (no. 41326/17): Deportations of Turkish citizens from Azerbaijan to Turkey violated Article 3 and 5 ECHR

The case concerns four Turkish nationals who moved to Azerbaijan where they worked in private schools and companies affiliated with the Gülen movement. Their asylum applications in Azerbaijan were ignored and they were deported to Turkey, where they were taken into custody for alleged involvement in the so-called Fetullah terrorist organization/parallel state structure. The complainants allege that their detention and subsequent deportation from Azerbaijan to Turkey violates Articles 3, 5 and 13 of the Basic Law.

ECtHR on violation of Article 5 para. 1: The entire detention of the first defendant and the various periods of detention of the second, third and fourth defendants were not based on formal decisions and thus violated Article 5 para. 1. The deportation to Turkey violated the formal extradition procedure and the relevant international guarantees.

Violation of Article 3 ECHR: The authorities of Azerbaijan had at no time examined the fears of the complainant of being mistreated after deportation to Turkey. The decision to deport her from Azerbaijan, based on the cancellation of her passport or residence permit,

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was only a pretext to carry out a "disguised extradition". Effective guaranties of protection against arbitrary refoulement were denied. Azerbaijan had not fulfilled its obligation under Article 3 ECHR by failing to assess the risks of treating the defendants in violation of Article 3 ECHR.

1.6 ECtHR, Judgement of 22/3/2022, T.K. et al. v. Lithuania (no. 55978/20): Deportation of a Tajik family without a fresh examination of possible ill-treatment violates Article 3 ECHR

The asylum application of a Tajik family was rejected in Lithuania. They were to be deported to Tajikistan. T.K. was a member of the Tajik Islamist Renaissance Party (IRPT), a banned organization in Tajikistan, and claimed that his deportation violated Articles 3 and 13 ECHR.

The ECtHR held, the existence of a risk of ill-treatment must be assessed on the basis of the facts which were known or should have been known to Lithuania at the time of the proceedings. The general situation in Tajikistan did not indicate that deportation posed a real risk of treatment contrary to Article 3 ECHR, so that the personal circumstances should have been examined. The practice of ill-treatment of IRPT members was part of the asylum application. The information provided by the country of origin did not suggest that only leaders and high-ranking members of the IRPT were subject to persecution. The Lithuanian authorities had not made an adequate assessment of the practice of ill-treatment of persons in a similar situation to the complainants and had instead focused on the lack of previous threats and persecution of the complainants. Article 3 would therefore be violated if the defendants were deported to Tajikistan without a reassessment of whether they would be at risk of ill-treatment upon their return. (At the same time decision according to Article 39 of the Procedural Regulation until the judgment has become final or further decision of the ECtHR).

1.7 ECtHR, Judgement of 29/3/2022, N.K. v. Russia (no. 45761/18): Detention and deportation of a Tajik violate Articles 3 and 5 ECHR

A Tajik was charged in absence with membership in an extremist organization by Tajik authorities and later detained in Russia pending deportation. He invoked Articles 3, 5, and 34 in relation to the conditions of detention in Russia, the violation of the one-time measures against the deportation order, the lack of investigation into his abduction, and his mistreatment and fear of a long prison sentence in Tajikistan.

The ECtHR recalled, in previous cases with similar facts, it was held that persons whose extradition had been requested by the Tajik authorities on grounds of politically motivated crimes constituted a vulnerable group for whom there was a real risk of treatment contrary to Article 3 ECHR in the event of deportation. The Russian authorities knew that the complainant was threatened with forcible transfer to the country where he could be subjected to torture or ill-treatment and that relevant protective measures should have been taken. Nevertheless, they did not attempt to investigate the matter and thus to take into account the provisional measures under Article 39 of the Procedural Code or to take steps regarding the complainant's precarious situation. Rather, by ordering his deportation, the Russian authorities had exposed the complainant to the real risk of mistreatment in Tajikistan, were involved in his forcible return, and had not conducted an effective investigation into his abduction. Thus, they would have violated Article 3. They had also failed to comply with the ECtHR's interim measure, thereby violating their

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obligations under Article 34. The conditions of detention in Russia had violated Articles 3 and 5(4) ECHR.

1.8 ECtHR, Judgement of 5/4/2022, AA et al. v. North Macedonia (no. 55798/16 and 4 others): No violation of Article 4 Prot. No. 4 in case of "March of Hope"

The eight complainants, Afghan, Iraqi and Syrian nationals, crossed the border into northern Macedonia ("March of Hope") in March 2016 with a group of approximately 1,500 refugees coming from the Idomeni camp in Greece. They complaint, they were collectively deported without prior administrative identification procedure, examination of their personal situation or the possibility to apply for asylum, contrary to Article 4 Prot. No. 4 ECHR.

The ECtHR unanimously ruled that there were no reasons for not using the Bogorodica border crossing point or any other border crossing point to present grounds against expulsion. The complainants were not interested in applying for asylum, but only in transit, which was no longer possible. Northern Macedonia had provided effective access to procedures for legal entry, in particular by offering the possibility of applying for international protection at border crossing points, especially with regard to protection under Article 3 ECHR. The complainants had had no objective reasons for not making use of this procedure. Rather, they had endangered themselves by illegally entering the country and taking advantage of their numerical superiority. The lack of individual deportation decisions had been a consequence of their behavior.

1.9 ECtHR, Judgement of 26/4/2022, M.A.M./Switzerland (no. 29836/20): Deportation of a converted Christian to Pakistan would violate his rights under Articles 2 and 3 ECHR

The complainant, a Pakistani, converted to Christianity while his asylum application was being processed in Switzerland. After the application was rejected by the authorities, the Swiss Federal Administrative Court also rejected the appeal because the conversion was not taken into account.

The ECtHR held, the Swiss authorities knew of the complainant's activities in the Salvation Army and his worship activities without questioning him. With regard to Article 3 ECHR, however, the State has an obligation to assess the risk of ill-treatment in the event of deportation as soon as the authorities or the courts become aware of facts that could expose a person to such a risk. It was true that the court had examined the situation of Christians in Pakistan and had concluded that there was no risk of collective persecution. However, it should have additionally taken into account the special situation of converted Christians. With regard to Articles 2 and 3 ECHR, the court had not examined thoroughly enough the situation of converts and the complainant's personal situation with regard to his conversion, the seriousness of his convictions, the way in which he expressed his faith in Switzerland and wanted to express it in Pakistan, his family's knowledge of his conversion, and his vulnerability to expulsion and blasphemy charges. If the complainant was deported to Pakistan without the Swiss authorities having first conducted a thorough and rigorous ex nunc assessment of the general situation of Christian converts in Pakistan and of the complainant's personal situation as a Christian convert in the event of his return, Articles 2 and 3 ECHR would be violated.

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1.10 ECtHR, Judgement of 17/5/2022, Ali Reza v. Bulgaria (no. 35422/16): Due to detention for almost seven months pending the execution of the deportation order

The complainant, an Iraqi national, came to Bulgaria in 2000 and was initially granted subsidiary protection due to the war situation in Iraq, then a residence permit in 2003. In 2015, he was deported "for reasons of national security" and was placed in administrative detention between June 2015 and January 2016 while his appeal against the deportation was being considered. In December 2017 he married his Bulgarian partner. Since January 2016, he was subject to administrative surveillance. He had to report to a police station once a week. The detention had been ordered – according to the Bulgarian authorities – because the deportation could not be carried out due to the lack of required travel documents.

The ECtHR found, the failure of other States to issue travel documents cannot be blamed on Bulgarian authorities. However, they had not taken any active steps to remedy the situation or to examine the prospects for the complainant's deportation. Regarding Article 5 (4) ECHR, the complainant had a domestic remedy at his disposal, which he did not use. (Non-material damage: EUR 3,500, no application made in respect of costs and expenses.)

1.11 ECtHR, Judgement of 2/6/2022, H.M. et al. v. Hungary (no. 38967/17): Due to detention and treatment of a pregnant woman and her family in Tompa transit zone

The complainants, an Iraqi family of six, were detained in the Tompa transit zone between Hungary and Serbia for four months between 29 March and 11 August 2017. The father/husband was a victim of torture by the national security services in Iraq. In Tompa, they were housed in a container, which they were only allowed to leave for medical reasons. The mother's high-risk pregnancy resulted in several hospitalizations. During one of these, the husband accompanied her as an interpreter and was handcuffed in front of the children. The mother suffered from psychological and medical problems, the father was a torture survivor who needed psychiatric or psychological treatment but did not receive it. They alleged violations of Articles 3, 8, 5(1) and (4) and 13 ECHR.

Referring to R.R. and Others .v. Hungary (Judgement of 02/03/2021, no. 36037/17) and referring to the children, the ECtHR ruled that the conditions in the transit zone had not been adequate for them, Article 3 ECHR had therefore been violated.

In contrast, with regard to the adults, the conditions had not generally reached the threshold required for Article 3. Regarding the complaints about inadequate medical care for the mother and lack of psychological care for the father: In the case of the mother, the medical treatment was considered adequate; however, her severe anxiety and psychological suffering to which she was subjected at the end of the high-risk pregnancy reached the level of severity required for Article 3. With respect to the father, the general conditions of detention did not violate the Convention. However, the use of handcuffs to restrain him en route and in the hospital was not considered justified.

Regarding Article 5 par. 1 and 4 ECHR, the ECtHR ruled, the detention of the defendants was not lawful. They had no legal remedies available to them to have the lawfulness reviewed. It awarded the family compensation of EUR 12,500 for non-material damage and EUR 1,500 for procedural costs.

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1.12 ECtHR, Judgement of 14/6/2022, L.B. v. Lithuania (no. 38121/20): Violation of Article 2 Prot. No. 4 by refusing to issue a travel document to a permanent resident under subsidiary protection

The authorities in Lithuania had acknowledged that the complainant could not safely return to his country of origin (Russia). The ECtHR held that an alien who has been granted subsidiary protection and who states that he does not dare to approach the authorities of his country of origin as a beneficiary of subsidiary protection must be presumed to have an objective reason for not being able to obtain a travel document from those authorities. The Lithuanian authorities had not examined whether the complainant was able to obtain a passport from Russian authorities in view of his personal circumstances.

The ECtHR recognized that the right of the complainant to leave Lithuania under Article 2 Protocol No. 4 is practically ineffective without a travel document. The refusal to issue him an alien's passport was an interference with his right to freedom of movement. According to EU law, as a permanent resident of Lithuania, he had the right to cross the borders between EU Member States without a travel document. In addition, however, without a valid travel document, he was prevented from traveling to countries outside the Schengen area and outside the EU, including the UK, where his children lived.

The ECtHR considered that the refusal to issue the complainant an alien's passport was neither justified nor proportionate, as it was based only on formalistic grounds, was made without an adequate examination of the situation in his country of origin and without an adequate assessment of the complainant's possibilities to obtain a Russian passport; so also ECtHR, Judgement of 26/04/18, Hoti v. Croatia (no. 63311/14), paras. 119-123; Judgement of 12/1/2017, Abuhmaid v. Ukraine (no. 31183/13), para. 122. For these reasons, the ECtHR found a violation of Article 2 Protocol No. 4. Lithuania must pay the complainant EUR 5,000 as compensation for non-material damage within three months of the judgment becoming final pursuant to Article 44 para 2 ECHR.

1.13 ECtHR, Interim Measure of 14/6/2022, N.S.K. v. United Kingdom (no. 28774/22; formerly K.N. v. United Kingdom): Interim measures to stop threatened deportation to Rwanda

On April 13, 2022, the UK government entered into an agreement with the government of Rwanda on an "asylum partnership." Under this agreement, asylum seekers whose applications have not previously been assessed by the UK can be "resettled" in Rwanda.

K.N., an Iraqi national, left Iraq in April 2022, traveling to Turkey and then across Europe before crossing the English Channel by boat. Claiming that he was in danger in Iraq, he applied for asylum upon arrival in the UK on 17 May 2022. On 24 May 2022, he was served with a "Notice of Intent" that authorities were considering deeming his asylum claim inadmissible in the UK and "resettling" him in Rwanda. On 27.05.2022, a doctor at the Immigration Removal Centre prepared a report stating that K.N. was possibly a victim of torture.

On 6 June 2022, the immigration authorities declared the asylum application inadmissible. At the same time, a deportation order to Rwanda was issued for 14 June 2022. The High Court refused to grant his application for interim relief: Rwanda would comply with the agreement, even if it was not legally binding. The transitional period would be short, and the challenge before the High Court would probably be heard in July. If

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successful, it would be reinstated in the UK. The High Court acknowledged that the question of whether the decision to treat Rwanda as a safe third country may have been based on insufficient research and raised "serious questions" that would have to be considered by the court when it addressed the merits of the challenge.

On 13 June 2022, the ECtHR received an application for the issuance of an urgent interim measure against the UK government pursuant to Article 39 of the Procedural Code in order to stop the threatened deportation to Rwanda. The ECtHR issued the urgent interim measure. The decision of the ECtHR according to Article 39 of the Procedural Code provides that the defendant may be deported to Rwanda at the earliest three weeks after the final national decision in the judicial review procedure has been issued.

In particular, the ECtHR took into account concerns raised by UNHCR that asylum seekers transferred to Rwanda from the UK will not have access to fair and efficient refugee status determination procedures, as well as the High Court's finding that whether the decision to treat Rwanda as a safe third country was "irrational" or based on insufficient investigation and gave rise to "serious disputes." There was a risk of treatment contrary to the complainant's Convention rights and, since Rwanda was not bound by the ECHR, there was no legally enforceable mechanism for the complainant's return to the UK even in the event of a successful challenge in the domestic courts.

Following this decision, the ECtHR received five further applications for interim measures. On 15 June 2022, the ECtHR decided to also issue interim measures in two cases (R.M. v. UK, no. 29080/22, and H.N. v. UK, no. 29084/22) to suspend the deportation of the defendants until 20 June 2022 to allow their applications to be examined in more detail. Three other applications were rejected.

1.14 ECtHR, Judgment of 21/6/2022, Akad v. Turkey (no. 1557/19): Violation of Articles 3, 5 and 13 ECHR in case of deportation to Syria

The complainant, a Syrian national, had been living in Turkey with temporary protection status since 2014. When he attempted to enter Greece in 2018, he was caught by Turkish authorities and deported to Syria two days later, without being able to do anything about the return decision. He stated that he and the twelve other Syrians were handcuffed in pairs during the approximately twenty-hour bus ride. According to his account, he was picked up immediately after crossing the border by two armed fighters from the Al-Nusra organization, interrogated blindfolded and beaten.

At the Turkish border with Syria, he was forced to sign a number of documents without knowing their content; it later turned out that one of these documents was a form for voluntary return. He was not allowed to make phone calls, he was not provided with an interpreter, and he had no way to contact a lawyer or a complaints office. The Turkish government claimed that the defendant had been informed about the deportation and had wanted to return to Syria voluntarily.

The ECtHR ruled that the defendant had been subjected to forcible return and that there had been two violations of Article 3 ECHR. It was common knowledge that the area to which he was taken was a war zone. There was sufficient evidence of a real risk that the complainant would be subjected to treatment in violation of Article 3 if he was returned to Syria. Furthermore, Turkish legislation was also violated, which provides that an alien who has been granted temporary protection may only be expelled in exceptional

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circumstances, which was not the case here. Second, a violation of Article 3 ECHR was also found, as the applicant was handcuffed during his detention and transfer, which was not justified. Consequently, the ECtHR held that the complainant had been subjected to degrading treatment.

Regarding Article 13 in conjunction with Article 3 ECHR, the ECtHR ruled that the deportation to Syria did not comply with the expulsion procedure and the requirements of Turkish law. He had been deported without first having the opportunity to lodge a suspensive appeal or to challenge the decision before his deportation.

The ECtHR also found violations of Article 5 paras. 1, 2, 4 and 5 ECHR: The complainant was arbitrarily deprived of his liberty; the legal guarantees were not respected. He had not been informed of the reasons for his detention or of the possibility of challenging the lawfulness of the detention order. From the time of his arrest until his deportation to Syria, he had had no access to a lawyer or an outside person. As a result, a judicial review of the lawfulness of his detention had not been possible.

1.15 ECtHR, Judgement of 30/6/2022, A.B. et al. v. Poland (no. 42907/17) and A.I v. Poland (39028/17): Collective deportation of Chechen families at the Polish-Belarusian border violates Articles 3 and 13 ECHR as well as Article 4 of Prot. No. 4

The complainants are six Russian nationals from Chechnya who expressed their fear of persecution in their country of origin to Polish border guards on more than twenty occasions and applied for international protection in writing on another eight occasions. According to them, border guards had ignored all of their statements and written requests. Administrative decisions had been issued to turn them back at the Polish border because they did not have documents allowing them to enter Poland.

On Article 3 ECHR, the ECtHR accepted the applicants' claims that there was no guarantee that their asylum applications would be seriously examined by the Belarusian authorities and that their return to Chechnya might violate the Convention. The Polish authorities had accused the complainants of risk of chain deportation and treatment prohibited under Article 3 for failing to initiate a procedure for granting international protection in at least 33 cases in which they presented themselves at the border. The ECtHR emphasized that a State may not deny access to its territory to a person who presents himself at a border crossing and claims that he may be subjected to ill-treatment if he remains on the territory of the neighboring state, as long as no application for international protection has been filed, unless reasonable measures are taken to eliminate such a risk.

Referring to independent reports and previous case law, the ECtHR ruled that the decisions to refuse entry taken in the complainants' cases were not taken with due regard to the individual situation of each applicant, but rather were part of a broader policy by Poland to refuse to accept applications for international protection from persons who presented themselves at the Polish-Belarusian border and to send them back to Belarus in violation of international law. Therefore, there was a collective expulsion within the meaning of Article 4 of Protocol No. 4. Also, the defendants had no access to effective legal remedies with suspensive effect against their expulsion. Therefore a violation of Article 13 ECHR has been confirmed by the Court.

Violation Article 34 ECHR: The ECtHR's provisional measure of 16 June 2017 contained an order not to return the complainant to Belarus. However, the Polish government

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intentionally did not comply and turned the defendant away from the checkpoint on the day the measure was issued and on another occasion.

In A.I. and Others v. Poland, the ECtHR also found violations of Articles 3 and 13 ECHR as well as Article 4 of Prot. No. 4. The facts of both cases are similar, except for the ECtHR's decision to revoke the provisional measure in A.I. and Others because the defendants had been admitted in Poland in the meantime.

1.16 ECtHR, Judgment of 7/7/2022, Safi et al. v. Greece (no. 5418/15): Violations of Article 2 and Article 3 in pushback operation by Greek coast guard in 2014

The subject of the proceedings is a pushback operation by the Greek Coast Guard and a shipwreck on 20 January 2014, near the island of Farmakonisi, in which three women and eight children from Afghanistan died. The refugees were not taken aboard the Coast Guard vessel, nor were life jackets handed out. The refugee boat had been in tow with the Greek Coast Guard for at least 15 minutes, and two officers had boarded it to secure the tow. It was thus under Greek control before it sank. Sixteen surviving Syrian, Afghan, and Palestinian claimants rose violations of Articles 2, 3, and 13 ECHR for serious omissions by the Coast Guard.

The ECtHR ruled that both the procedural requirements and the positive obligations arising from the right to life under Article 2 ECHR had been violated. On the procedural aspect, the ECtHR pointed to serious problems of interpretation that were not addressed during the national proceedings, as well as the lack of access of the complainants to important evidence. He stated that it was highly doubtful whether the claimants were able to participate adequately in the proceedings. The National Prosecutor's Office had failed to pursue obvious avenues of inquiry, thereby undermining the possibility of clarifying the circumstances of the shipwreck. The lack of a thorough and effective investigation by the national authorities resulted in a violation of the procedural guarantees of Article 2 ECHR.

Regarding the violation of the positive obligations under Article 2 ECHR, the ECtHR held that the Greek authorities, when carrying out the operation, had not done everything that could reasonably be expected to ensure the level of protection for the defendants required by Article 2 ECHR. and her dependents, in particular that the Coast Guard did not request additional assistance or a more appropriate boat for the rescue operation when it realized that the boat was in a distress situation and that the authorities, such as the Coordination and Search Center, were informed of the incident very late. The failures and delays in the conduct and organization of the operation led the ECtHR to rule that the Greek government had violated its obligations under Article 2 ECHR.

He further found a violation of Article 3 ECHR with respect to twelve of the complainants, focusing on the strip search under the control of the Greek military. The individuals had been strip-searched in an open-air basketball court, forced to undress and assume embarrassing postures in front of at least thirteen other people. The government had presented neither a justification nor a legitimate objective for this strip search. The defendants had been in an extremely vulnerable situation, having just survived a shipwreck, exhausted and shocked by the events, and worried about the fate of their loved ones. The conditions of the strip search had led to a feeling of arbitrariness, inferiority and fear among the claimants that went beyond the inevitable humiliation of a strip search. Article 3 ECHR was violated with regard to these twelve defendants. Greece must pay a total of EUR 330,000 to the defendants as compensation for the non-material damage.

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1.17 Pending ("communicated") proceedings of significance under refugee law (as of July 2022)

1.17.1 ECtHR, Submission of 24/5/2022, A.D. v. Malta (no. 12427/22): Lawfulness of detention of a minor - Articles 3, 5, 13 and 14 ECHR

The complainant, an Ivorian national, arrived in Malta in November 2021 to apply for asylum as a minor. He was initially issued a document restricting his freedom of movement on public health grounds. He was later diagnosed with pulmonary tuberculosis and was treated in hospital before being transferred to a detention center with adult males. He was undergoing age determination proceedings at the time, the initial decision of which concluded that he was already an adult. An appeal against this is pending. He has challenged the lawfulness of his detention before the Court of Magistrates and the Immigration Appeals Board, complaining under Articles 3, 5, 13 and 14 ECHR about the unlawful arbitrariness of his detention, the poor living conditions associated with it and the lack of effective remedies.

1.17.2 ECtHR, Submission of 31/5/2022, Omarova v. Netherlands (no. 60074/21): Article 8 – Family Life

The case concerns a Kyrgyz national whose international protection was denied and who was married to a Uighur political activist. The Dutch authorities did not consider her asylum claims credible and found that her husband could move in with her and lead a family life in Kyrgyzstan. The complainant rose a violation of Article 8 ECHR (family life). The authorities had failed to provide a fair balance.

1.17.3 ECtHR, Submission of 1/6/2022, S.A. v. Greece (no. 51688/21): Article 3 due to inadequate living conditions and lack of adequate medical treatment of a child

A five-year-old Syrian national had applied for asylum in Greece (represented by guardians) and was accommodated at the Mavrovouni Reception and Identification Centre (RIC) on Lesvos. She complains of a violation of Article 3 due to inadequate living conditions and lack of appropriate medical treatment, taking into account her vulnerability as a child and her health problems.

1.17.4 ECtHR, Submission of 14/6/2022, Mohamed v. Serbia (no. 4662/22): Article 3 and Article 13 ECHR for unlawful extradition/risk of life imprisonment

The defendant is a citizen of Bahrain. He stated that he had fled his country out of fear of persecution. On 3 November 2021 he was arrested in Serbia on the basis of an international arrest warrant issued by Bahrain. The ECtHR granted a provisional measure pursuant to Article 39 Procedural Code in order to stop his extradition to Bahrain; however, Serbia extradited him anyway, disregarding this measure. The complainant argued that his extradition violated Article 3 ECHR, as he was facing a life sentence, and Article 13 ECHR, as he had no effective domestic remedy for his complaints under Article 3 ECHR and the Serbian authorities had refused to accept his asylum application.

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2. European Court of Justice

2.1 ECJ, Judgment of 20/1/2022, ZK (C-432/20): Austria's interpretation of the standards on loss of permanent residence in Directive 2003/109/EC is not in line with the objectives of the Directive

The case concerns a Kazakh national whose application for an extension of his long-term residence status in Austria was rejected. According to Article 9 para. 1c of Directive 2003/109/EC (status of third-country nationals who are long-term residents), long-term residents cannot maintain their residence status if they leave the territory of the EU for twelve consecutive months. The plaintiff did not leave the territory of the EU for a period of one year, but only stayed there for a few days each year. Therefore, the Administrative Court Vienna raised questions on the interpretation of Article 9 para. 1c of the Directive.

Although the term "absence" is interpreted differently in different language versions of the Directive, the ECJ held that the term, as used in the provision and in everyday language, means the physical "non-presence" of the long-term resident concerned in the territory of the Union, so that any physical presence is capable of interrupting an absence. The Directive does not require a presence of a certain duration or stability. The ECJ emphasized from Recitals 2, 4, 6 and 12 the objective of the Directive to ensure the integration of third-country nationals who have settled permanently and lawfully in the Member State and to approximate their rights to those of citizens of the Union. This objective supports an interpretation of Article 9 para. 1c, according to which third-country nationals who are long-term residents may move and reside freely outside the territory of the Union, like citizens of the Union, as long as they are not absent for the entire period of twelve consecutive months.

Article 9(1)(c) must therefore be interpreted as meaning that any physical presence of a long-term resident for a period of twelve consecutive months, even if not exceeding a few days, is sufficient to prevent the loss of long-term resident status.

2.2 ECJ, Judgement of 22/2/2022, XXXX v. Belgium (C-483/20): Member State may grant protection under the principle of family unity to a complainant already enjoying international protection in another Member State

The plaintiff was granted refugee status in Austria in December 2015. At the beginning of 2016, he moved to Belgium to live with his two daughters, one of whom was a minor. Both daughters were granted subsidiary protection in December 2016. In 2018, the complainant applied for international protection in Belgium. This was rejected by the Commissioner General for Refugees and Stateless Persons (CGRA) on the grounds that he was already granted protection by another MS.

He argued that this circumstance did not entitle Belgium to declare his application for international protection inadmissible because of the principles of family unity and the best interests of the child. Subsequently, the Council of State referred a question to the ECJ for a preliminary ruling on the interpretation of Article 33 para. 2 lit. a of Directive 2013/32 in light of Articles 7 and 24 para. 2 of the Charter of Fundamental Rights of the European Union.

The ECJ referred to the fundamental importance of the principle of mutual trust between Member States. A Member State need not (only exceptionally) make use of the possibility

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to consider an application for international protection inadmissible under Article 33 para. 2 of Directive 2013/32 if the person would risk being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter in the Member State where he or she already enjoys protection. The reason for the applicant to apply for international protection in Belgium was not the need for this protection, but to ensure the unity of his family.

The ECJ focused on Article 23 para. 2 of Directive 2011/95: Although this provision does not provide for the extension of refugee status or subsidiary protection to family members of beneficiaries of international protection, it obliges Member States to ensure that family members of beneficiaries of international protection are granted a number of benefits (listed in Article 24 to 35 of the Directive). It further recognized that the provisions of Directive 2011/95 are to be interpreted in light of Articles 7 and 24 paras. 2 and 3 of the Charter. Article 33 para. 2 lit. a of Directive 2013/32 was therefore to be interpreted as allowing a Member State to deny protection to a person already enjoying protection in another Member State, without prejudice to the application of Article 23 para. 2 of Directive 2011/95, which gives the person the right to receive benefits in that Member State under Articles 24 to 35 of Directive 2011/95.

2.3 ECJ, Judgement of 3/3/2022, UN v. Subdelegación del Gobierno en Pontevedra (C-409/20): On the interpretation of the Return Directive and the possibility for illegally staying third-country nationals to regularize their stay

Directive 2008/115/EC (Return Directive), in particular Article 6 para. 1 and Article 8 para. 1 in conjunction with Article 6 para. 4 and Article 7 paras. 1 and 2, must be interpreted as not precluding a provision of a Member State under which the illegal stay of a third-country national in the territory of that Member State, in the absence of aggravating circumstances, is initially punishable by a fine, which may be imposed with the imposition of a fine.

The third-country national may be ordered to leave the territory of the Member State within a certain period of time if his or her residence is not regularized before the expiry of that period. Only if the third-country national does not regularize his or her stay, the deportation may be ordered, provided that the mentioned time limit is set in accordance with the requirements provided for in Article 7 paras. 1 and 2 of the Directive.

2.4 ECJ, Judgement of 10/3/2022, K. v. Landkreis Gifhorn (C-519/20): Interpretation of Articles 16 and 18 of the Return Directive – Detention pending deportation and detention facilities for deportees in Germany

A Pakistani national was detained for three months in the Langenhagen section of Hanover Prison after his application for asylum was rejected. The department was physically separate from the rest of the JVA, but had common staff and common areas with the JVA. The questions referred by the AG Hannover focused on the interpretation of Articles 16 and 18 of the Return Directive 2008/115/EC, in particular the terms "specialized detention facility" and "emergency situation".

The ECJ clarified that the specific facility could in principle be a "special detention facility" within the meaning of Article 16 para. 1 of the Directive. When deciding on a detention in a correctional facility, the national courts must themselves examine whether the national legal provision on the basis of which the detention takes place is compatible with Union

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Open Access Publication, https://doi.org/10.57947/qrp.v61i1.39

law, in particular with the requirements of Article 18 of the Directive. Detention in a regular correctional facility is only permissible if an exceptionally high number of persons are accommodated in special detention facilities. The measure had to be distinguished from the detention of criminals. An "emergency situation" as required by Article 18 of the Directive had not existed in Germany.

The ECJ further stated that the design of the premises as well as the qualifications and powers of the staff had to be taken into account and that the majority of the staff members entrusted with the supervision had special training and were exclusively assigned to the department in which the detention pending deportation takes place. This department of the correctional facility could therefore be considered a "specialized detention facility" within the meaning of Article 16 of the Return Directive, provided that the conditions of detention were not equivalent to deprivation of liberty in a prison and were designed in such a way that the fundamental rights guaranteed by the Charter of Fundamental Rights and enshrined in Article 16 paras 2 to 5 and Article 17 of the Return Directive were respected.

However, the "emergency situations" provided for in Article 18 of the Directive do not authorize the Member States to derogate from all appropriate measures. Rather, the obligations of the Directive and strict guarantees against arbitrariness must be ensured. Article 18 of the Directive in conjunction with Article 47 of the Charter must be interpreted in such a way that the national court must be able to examine whether the conditions of Article 18 of the Refugee Directive are met when ordering or extending detention in a correctional facility.

On the interpretation of Article 16 para. 1 of the Return Directive oon the application of legal provisions that permit detention in detention centers separately from prisoners and temporarily when the conditions of an "emergency situation" pursuant to Article 18 para. 1 of the Return Directive are not met, the ECJ stated: Article 16 Return Directive is to be interpreted both restrictively and in accordance with the scope of application of Article 18 Return Directive in such a way that detention outside a specialized institution is no longer justified if its overcrowding lasts longer than a few days or is systematically repeated. The ECJ referred to the El Dridi Judgment, which held that Articles 16 and 18 of the Return Directive are unconditional provisions and sufficiently precise to have direct effect. Article 16 para. 1 of the Return Directive must be interpreted in such a way that a national court must not apply legal provisions that permit the detention of third-country nationals in correctional facilities if the conditions of Article 18 para. 1 and 16 para. 1 cl. 2 of the Return Directive are not or are no longer met.

2.5 ECJ, Judgement of 26/4/2022, I.A. v. Austria (Bundesamt für Fremdenwesen und Asyl – BFA) (C-368/20 and C-369/20): Interpretation of Article 29 para. 2 of the Dublin III Regulation: Involuntary admission of an asylum seeker to a psychiatric hospital is not detention within the meaning of Article 29 para. 2 of the Dublin III Regulation

A Moroccan national applied for asylum in Austria after traveling through Italy. Austria issued a transfer request and a deportation order to Italy. The applicant was transferred to Italy one month after the expiration of the transfer deadline due to his court-ordered admission to a psychiatric department of a hospital. He brought an action before the Austrian courts, which then suspended the proceedings and referred questions to the ECJ

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in connection with the extension of the transfer deadline and the concept of "deprivation of liberty" under Article 29 of the Dublin III Regulation (EU) No. 604/2013.

The ECJ examined whether the term "deprivation of liberty" within the meaning of Article 29 para. 2 of the Dublin III Regulation could be understood to include an admission to a psychiatric department of a hospital pronounced by a court against the will of the person concerned. The language version of the norm could not serve as the sole basis for interpretation. Many language versions use the terms "deprivation of liberty" or "imprisonment," while a minority use broader terms (including arrest, detention, deprivation of liberty). The majority of language versions use the ordinary meaning, which denotes a custodial sentence imposed in the course of criminal proceedings. The court-ordered, involuntary confinement of a person in a psychiatric ward of a hospital could therefore not be classified as a "deprivation of liberty" within the meaning of Article 29 para. 2 of the Dublin III Regulation. The term was to be interpreted narrowly. It did not entail the risk that authorities would encounter difficulties or be unable to ensure the effective functioning of the Dublin system. The concept of "deprivation of liberty" was therefore not applicable to the involuntary admission of an asylum seeker to a psychiatric department of a hospital, authorized by a court decision on the grounds that he posed a danger to himself or to society because of his mental illness.

2.6 ECJ (Grand Chamber), Judgement of 26/4/2022, N.W. et al. v. Austria (Landespolizeidirektion Steiermark and Bezirkshauptmannschaft Leibnitz) (C-368/20 and C-369/20): Schengen Border Code precludes temporary introduction of border controls if they exceed the maximum duration of six months and there is no new threat

The plaintiff had twice refused to show his passport after the introduction of controls at the border with Austria. He received a fine of EUR 36 because of this. In his opinion, the controls violated EU law.

The first question of the Austrian Administrative Court was whether EU law precludes a national regulation that cumulatively permits the reintroduction of border controls for a period exceeding the two-year limit set out in Articles 25 and 29 of the Schengen Borders Code without a corresponding implementing decision by the Council.

The ECJ emphasized that the interpretation must take into account not only the wording but also the context and objectives of the relevant legislation. Recital 27 of the Code states that exceptions and derogations to the free movement of persons must be interpreted narrowly and that, in light of Recitals 21 and 23 and Article 3 TEU, the reintroduction of internal border controls should remain an exception and should only be implemented as a last resort should be. The Code fits into the general framework of an area of freedom, security and justice, which is intended to strike a proper balance between the free movement of persons and the need to protect public order and internal security in the territory. The concrete objective pursued by the maximum period of six months laid down in Article 25 para. 4 of the Code follows the general one. Austria had not demonstrated any new threat that would have justified triggering new time limits and enabling the control measures to which the branch was subjected.

Article 25 para. 4 of the Code must be interpreted as precluding the temporary reintroduction of border checks at internal borders if this exceeds the total maximum period of six months and there is no new threat which would justify a renewed application of the time limits laid down in Article 25. Article 25 para. 4 of the Code precludes a national

Quarterly on Refugee Problems, 2022, Vol. 61, Issue 1, 101-120
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rule which requires a person, under penalty of a fine, to present a passport or identity card at an internal border when entering the territory of that Member State if the reintroduction of the internal border is contrary to that provision. A sanction mechanism is not compatible with the provisions of the Schengen Borders Code. On the contrary, Article 25 para. 4 of the Code precludes a provision requiring a passport or identity card check under the above-mentioned conditions.

Comment Hoffmann: According to the argumentation of the judgment, the border controls with Austria, which have been repeatedly extended by Germany for years, could also be illegal. According to a document of the EU Commission, Germany justified them with so-called "secondary migration" from one Member State to another and with the situation at the EU's external borders. In the event of a serious threat to public order, border controls may be introduced for a limited period. However, Germany, Austria and other states have been regularly prolonging the measures for years. In its ruling, the ECJ now points out that the Schengen area is one of the EU's greatest achievements. "*The reintroduction of internal border controls must therefore remain an exception and should only be used as a last resort.*" The ECJ pointed out that states may only extend such controls in the event of "*a new serious threat to its public policy or internal security.*" "*In the present case, Austria (...) does not appear to have demonstrated that there is a new threat.*" However, a final decision rests with the competent court in Austria according to the Court.

2.7 ECJ, Judgement of 30/6/2022, M.A. v. Lithuania (C-72/22 PPU): Emergency regulations in Lithuania not in conformity with EU law – Reference for a preliminary ruling from the Lithuanian Superior Administrative Court

The third-country national M.A. had illegally crossed the border to Lithuania in 2021 with the massive influx of refugees from Belarus. Due to irregular entry and stay and on the grounds of "risk of absconding", the Lithuanian authorities took him into custody. M.A. attempted to apply for international protection. In Lithuania, due to the high number of refugees, a state of emergency was declared, prohibiting refugees who had entered illegally from applying for asylum. At the same time, the emergency regulations provided for the detention of refugees.

The ECJ emphasized that the asylum procedure must guarantee effective access to international protection – both in accordance with the Procedures Directive 2013/32/EU and through the right to asylum guaranteed in Article 18 of the Charter of Fundamental Rights. EU law does not permit the detention of asylum seekers solely on the grounds of illegal entry or residence. If a third-country national were deprived of the opportunity to apply for international protection on the grounds of an irregular stay, he would be prevented from actually exercising the right to asylum, as enshrined in the Charter. Even after a state of emergency has been declared due to a massive influx of refugees, it must remain possible to apply for international protection. The ECJ therefore sees in the Lithuanian regulation of 2021 a violation of the Procedures Directive, which in Article 7 para. 1 provides for the right to apply for international protection for each adult with legal capacity as well as a violation of the regulations on the detention of asylum seekers in the Reception Conditions Directive 2013/33/EU. Detention in the sense of EU law is limited to absolutely necessary situations in which a serious threat is established after an individual assessment. EU law does not allow detention of asylum seekers solely on the grounds of illegal entry or stay. The ruling referred to the seriousness of the interference with the right to liberty and thus limited detention under EU law to strictly necessary

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situations in which a serious threat is established after an individual assessment. Unlawful residence does not constitute such a threat to society

2.8. Opinions of the Advocate General in Pending Cases

2.8.1 Opinion of 24/3/2022, RO v. Germany (C-720/20): Germany is responsible for the asylum application of a minor child whose parents have already been granted refugee status in another Member State [Editor's Comment: meanwhile decided, see judgement)

The parents had moved to Germany after being granted refugee status in Poland, where they do not have a residence title. The child was born in Germany. In its questions for reference, the Administrative Court Cottbus wants to know whether an analogous application of Article 20 para. 3 of Dublin III Regulation (EU) No. 604/2013 and Article 33 para. 2 lit. a of Procedures Directive 2013/32/EU is possible. However, the Advocate General rejected the analogy because it contradicted the purpose of the regulations: From Article 3 para. 2 and 6 para. 1 Dublin III Regulation in conjunction with the principle of the best interests of the child it follows that Germany is responsible for the asylum application.

2.8.2 Opinion of 2/6/2022, Germany v. MA, PB (C-245/21) and LE (C-248/21): - Suspension of Dublin transfer due to COVID-19 preliminary ruling request of the Federal Administrative Court on the interpretation of the Dublin III Regulation and the legal consequences of a decision to suspend a transfer in the context of the COVID-19 pandemic

The administration of a Member State has the possibility, under certain conditions, to suspend the execution of a transfer decision under the Dublin III Regulation and thus interrupt the six-month transfer period, provided that this was done in connection with judicial protection directed against the transfer decision according to the Advocate General Pikamäe. However, the motive of preventing a transfer of responsibility to the requesting Member State after the expiry of the six-month period because the latter has difficulties in carrying out transfers of asylum applicants to other Member States in good time during a health crisis does not in itself constitute a legitimate reason to justify an interruption of the transfer period.

The case concerns the decision to transfer asylum seekers to Italy and the subsequent suspension of that transfer decision because implementation was not possible due to the pandemic.

According to the Dublin Regulation, the transfer shall be carried out "as soon as practically possible, but no later than six weeks after the tacit or express acceptance of the request by another Member State [...] or the date on which the appeal or review no longer has suspensive effect" (Article 27 para. 3). As a legal consequence of this deadline, the Regulation explicitly provides that if the deadline is not met, the asylum seeker may no longer be taken into custody and the Member State responsible is released from its obligation to take charge; responsibility then passes to the requesting Member State.

Advocate General Pikamäe held, that the competent national administrative authorities are empowered to suspend the implementation of the transfer decision ex officio pending the outcome of the appeal or review, and consequently to interrupt the expiry of the transfer period. However, this provision only refers to the suspension after an appeal has been lodged by the asylum seeker. The Dublin Regulation does not allow Member States to suspend and interrupt the transfer deadline due to practical difficulties. However, the

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motive to prevent a transfer of responsibility to the requesting Member State after the expiry of the six-month time limit because it has difficulties to carry out transfers of asylum seekers to other Member States in time during a health crisis does not in itself constitute a legitimate reason to justify an interruption of the transfer deadline. The clear deadlines are set in the interest of legal certainty and predictability of the CEAS procedures for all Member States. A deviation from the objective of a speedy procedure could therefore only be accepted exceptionally for legitimate reasons attributable to the applicant. However, the Dublin Regulation does not allow a Member State to suspend a transfer and interrupt the transfer period due to difficulties in timely implementation during the COVID-19 pandemic.

Regarding the appeal or review that allows for ex officio suspension and interruption of time limits, the Advocate General specified that this does not include litigation pending before a court and, therefore, a judicial review initiated by the administrative authorities themselves does not justify an interruption and cannot be used to invoke a suspension. It emphasizes that the decision to suspend cannot be "until further notice", as this would mean that the suspension of the enforcement of an administrative act would be at the sole discretion of the authority and asylum seekers would be kept in a situation of legal uncertainty for a long period of time.

2.8.3 Opinion of 2/6/2022, O.T.E. v. Netherlands (C-66/21): On the 'reflection period' for victims of trafficking in human beings (RL 2004/81) – Reference for a preliminary ruling from the District Court of The Hague.

The plaintiff, a Nigerian national, applied for international protection in the Netherlands in April 2019, having previously filed corresponding applications in Italy and Belgium. The Netherlands rejected his application as inadmissible and requested his readmission to Italy under the Dublin Regulation (EU) No. 604/2013. Before the application was granted, he expressed his wish to file a complaint that he had been trafficked in Italy. The complaint was rejected for lack of evidence. The plaintiff makes claims that the decision is unlawful because he should have been granted a reflection period pursuant to Article 6 of Directive 2004/81. The questions concern the connection between the reflection period for victims of trafficking in human beings stipulated in Article 6 of Directive 2004/81 and the Dublin III Regulation.

Advocate Generale de La Tour first examined whether an "expulsion order", which is excluded during a reflection period according to Article 6 para. 2 of the Directive, includes the transfer according to the Dublin III Regulation. The term "expulsion" was to be understood as an independent concept of EU law, since the Directive did not specify the geographical scope of expulsion or the national law of the Member States. Referring to the wording of the Return Directive, he clarified that the term "return" refers to the physical transfer of a third-country national from the Member State concerned and that a "return order" also includes the enforcement of a transfer decision under the Dublin III Regulation to another Member State.

The "reflection period" guaranteed in Article 6 para. 1 of Directive 2004/81 concerns the question whether Member States are prevented from issuing a transfer decision during this period and whether a transfer decision issued before the beginning of this period may be enforced or prepared. According to Article 6 para. 1, the EU legislator prohibits the enforcement of an expulsion order during the reflection period of a victim of trafficking in

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ISSN 2750-7882, Section: Jurisdiction
Open Access Publication, https://doi.org/10.57947/qrp.v61i1.39

human beings. However, a Member State may issue a transfer decision or the preparatory measures for the execution of such transfer without the actual transfer of the third-country national concerned during the reflection period.

On the question of the beginning and end of the reflection period when a Member State does not establish it in national law, he considered that defining the beginning by the moment when the third-country national claims to the authorities that he is a victim of trafficking in human beings, without the authorities having any indication of the existence or the nature of the crime, would not be compatible with the personal scope of the Directive. The reflection period starts as soon as the authorities are informed and have reason to believe that the third-country national falls within the scope of the Directive and should be informed accordingly about the possibilities of the Directive and his/her obligations. The end of the reflection period is not left to the discretion of the Member States. The criteria in Article 6 para. 4 Directive 2004/81 are to be applied. The norm is to be interpreted narrowly. The Member State may not automatically terminate it, except in serious cases, which are explicitly mentioned in Article 6 para. 4.

2.8.4 Opinion of 21/6&2022, Netherlands (Staatssecretaris van Justitie en Veiligheid) v. C and B (C-704/20 und C-39/21):

The background to this Opinon are questions referred by the Dutch Council of State and the District Court of The Hague on the judicial duty of review in the context of the lawfulness of detention pending deportation. Advocate General de la Tour argues that all conditions for detention pending deportation must be examined, regardless of the reasons put forward by the person concerned. This comprehensive obligation to examine results from the interpretation of secondary Union law in the light of Articles 6 and 47 of the EU Charter. The prerequisites and conditions for the detention of third-country nationals are regulated in particular in the Return Directive 2008/115/EC, the Reception Directive 2013/33/EU and the Dublin III Regulation (EU) No. 604/2013. The essence of the right to liberty and the right to an effective remedy would be violated if a court were not allowed to examine all conditions and circumstances of detention ex officio and order release in the event of any violations. A restriction to the arguments asserted by the person concerned would not be compatible with this principle of effectiveness.

It is true that the EU legislator has not laid down common rules on the scope of a judicial review of the lawfulness of detention. Therefore, it was up to the respective Member State to establish procedural rules, provided that they did not violate the principles of equivalence and effectiveness. He stressed the importance of respecting the right to effective judicial protection guaranteed in Article 47 of the Charta of Fundamental Rights. It would violate this right if a court were prevented from releasing a person if it found that the detention was unlawful. Article 15 of the Return Directive, Article 9 of the Reception Conditions Directive and Article 28 of the Dublin III Regulation in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights. Articles 6 and 47 of the Charta are therefore to be interpreted in such a way that a national court must examine whether the conditions for detention pending deportation exist on the basis of all factual and legal aspects that are considered relevant.

Subsequently, the Advocate Generale turned to the third question in C-39/21, whether the national legal and judicial practice of deciding on the lawfulness of a detention order in the second and last instance is compatible with Union law. He proposed the following

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interpretation for Article 15 of the Return Directive in conjunction with Articles 6 and 47 of the Charter of Fundamental Rights that they do not preclude a rule according to which a national court deciding on an appeal at second and final instance against a first-instance judgment which had ruled on the lawfulness of detention may give abbreviated reasons for its judgment if it adheres to the reasoning and result of the first-instance judgment.

2.8.5 Opinion of 30/6/2022, Supreme Administrative Court of Lithuania (C-280/21): Filing a lawsuit against a person associated with the corrupt state may be considered political dissidence

P.I., a third-country national, complained to the courts of his country of origin about a delay in the execution of a commercial contract with a person who has good connections to an influential group. As a result, the State (with corrupt connections to this group and this person) initiated criminal proceedings against him. P.I. claimed that his actions were resistance to a corrupt system. The court held that refusal to cooperate with a corrupt system without explicit denunciation could be considered "political opinion" only if corruption was widespread in the country and legal action could not be considered a mere invitation to contract compliance.

The Court requested a preliminary ruling on the interpretation of the concept of political opinion. The applicant's political opinion, as defined in Article 10 of the Qualification Directive 2004/83/EC, is a reason for the recognition of refugee status, if this opinion is attributed to the applicant by the persecutor.

Can the oppression of the asylum seeker by the state apparatus, against which he cannot legally defend himself due to the widespread corruption in the state, constitute a "political opinion"? The Advocate General emphasizes that in the light of all the circumstances and taking into account the plausibility of this attribution of political opinion, it is necessary to examine and interpret Article 10 para. 1 lit. e) and para. 2 of the Qualification Directive in such a way that a person's action in defense of his or her property interests against non-state actors may be regarded as political opinion if there is a well-founded fear that this action may be perceived as resistance and may be perceived by state authorities as an act of political dissidence against which they may consider retaliatory measures.