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QRP

JURISDICTION

European Jurisdiction on Refugee and Complementary Protection: January to June 2023[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 June 2023

1. European Court of Human Rights

(Note: The judgments are not referred to chronologically, but in the order of the ECHR articles).

1.1 ECtHR, Judgement of 17/1/2023 - 84523/17 - Daraibou v. Croatia: Art. 2 violated because the lives of detained migrants were not protected and a fire in the detention centre was not properly investigated

Mr. Daraibou, a Moroccan national, was detained in a Croatian police station together with other migrants. One of them allegedly started a fire which resulted in the death of three migrants and serious injuries to the defendant. During the incident, two guards were responsible for monitoring the detainees. Disciplinary measures were taken against one guard, but no criminal proceedings were initiated. Croatia initiated significantly more criminal proceedings against the complainant. However, these proceedings were discontinued after his deportation to Morocco. The complainant alleges a violation of Art. 2 because the guards did not prevent the fire and no effective investigation of the incident was carried out.

The ECtHR ruled that protecting the health and welfare of detainees includes the duty to protect life from foreseeable dangers. The guards should have taken basic precautions with regard to persons in custody in order to minimise the risk of serious incidents. However, their surveillance while in the police station was seriously deficient, e.g. the video surveillance was not used continuously, and the officers in charge left the station and, thus, could not prevent the fire. The police station and its staff had also been ill-prepared for a fire. Art. 2 was therefore violated in the material aspect.

The procedural aspect of the right to life was also violated. A full investigation would have been necessary to establish the circumstances of the incident and to identify those responsible. The initial response of the authorities to the incident was prompt, but the

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investigation was not thorough. It only explored possible criminal or disciplinary responsibility of individual police officers, but not whether there were more general institutional shortcomings or failures that allowed the incident to be rectified and similar mistakes to be prevented in the future.

1.2 ECtHR, Judgement of 2/2/2023 - 59435/17 - Alhowais v. Hungary: Art. 2 and 3 violated in the deportation of the Applicants to Serbia, which led to the death of one of them

A Syrian national was crossing the Tisza River from Serbia to Hungary by boat with other persons, including his brother and an Iraqi family. The boat could not reach the shore because of the dense reeds. The refugees abandoned the boat. Hungarian police officers noticed them and allegedly shouted "Go back to Serbia", let loose police dogs, sprayed tear gas and threw stones at the refugees. The defendant and his brother tried to swim back to Serbia, but the brother drowned. The Hungarian authorities investigated the incident, but the public prosecutor's office stopped the investigation: it could not be established beyond doubt that criminal offences had been committed by the Hungarian police officers.

The ECtHR first examined possible procedural violations of Art. 2 and 3. The criminal legal investigation into the ill-treatment by police officers had been limited to examining whether they could be held responsible for throwing stones, spraying tear gas and using police dogs. Other elements of the operation were not considered. The investigation did not provide an assessment of the state's responsibility to protect the right to life. Art. 2 was thus violated.

The decision of the public prosecutor's office to close the investigation was based, to a considerable extent, on oral testimonies (mainly of the officials) and contradictions in the migrant's statements about the actual circumstances of the incident. The mother of the affected family was not interviewed; the authorities did not attempt to locate other affected migrants who had left Hungary or explore other possibilities to clarify the contradictions in the facts. Furthermore, Hungary failed to identify other police officers present and take their statements. The investigation had therefore been inadequate and ineffective; thus, the procedural part of Art. 3 was also violated.

Hungary also violated Art. 2 in a material way. The border police had sufficient knowledge to assess the dangers of crossing the river and to organise border operations accordingly. The border police were aware that the migrants were approaching Hungary, but did not prepare a rescue operation. There were also no organised procedures, as the officers did not follow an operational plan in search and rescue situations. They had, therefore, not taken all the operational measures that could reasonably be expected to avoid a real and immediate danger to the lives of the refugees and to protect the life of the person – who later drowned – as soon as they received information that one of the migrants was in distress. The lifeboat was only instructed to assist in the disembarkation of the Iraqi family, but no check was made to see if any other persons needed assistance. Furthermore, the border police did nothing to search for the brother, after which the rescue boat had left the spot where he had apparently disappeared. The rescue capacities did not meet the requirements of the emergency.

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1.3 ECtHR, Judgement of 26/1/2023 - 60990/14 - B.Y. v. Greece: Art. 3 violated due to ineffective investigation into the deportation of an asylum seeker to Turkey

The complainant, a Turkish citizen, claimed to have been forcibly deported from Greece to Turkey, although he had previously tried to apply for asylum in Greece.

On the procedural part of Art. 3, the ECtHR ruled on the complainant's allegation that Greek police officers had handed him over to Turkish authorities and, thus, subjected him to treatment in violation of Art. 3. The Greek authorities would have been obliged to carry out an effective investigation first. The registration number of the vehicle involved in the deportation belonged to the Greek police, but no investigation was carried out nor were any police officers interviewed. Eyewitnesses who were present at the alleged abduction were only able to testify eight months after the event. The incident had therefore not been effectively investigated and, thus, Art. 3 had been violated in the procedural aspect.

With regard to the material aspect (handing the complainant over to the Turkish authorities, inhuman and degrading treatment), the court found that the parties described the facts of the case differently. The Greek authorities had not confirmed the complainant's presence in Greece before the alleged abduction. The eyewitnesses could not testify that the person in the car was the complainant. The complainant had not provided any concrete or corroborating evidence of his presence in Greece, which would shift the burden of proof to the Greek authorities. Therefore, it could not be established that the substantive aspect of Art. 3 had been violated. These findings were also used to assess the Art. 5 complaint. The ECtHR found that Greek authorities had not violated Art. 5.

1.4 ECtHR, Judgement of 30/3/2023 - 21329/18 - J.A. and Others v. Italy: Art. 3, 5 and 4 of Protocol No. 4 violated due to detention of Tunisian nationals in Lampedusa hotspot and collective expulsion

The four Tunisian complainants had been rescued by an Italian ship that brought them to Lampedusa. They remained in the Lampedusa hotspot for ten days, where they were allegedly unable to leave the closed area of the hotspot or contact authorities, while living in inhuman and degrading conditions. The complainants and approximately 40 more people were then taken to the airport, where they were asked to sign an entry refusal form. They were then deported to Tunisia.

The ECtHR ruled that difficulties arising from an increased influx of migrants did not release the state from its obligations under Art. 3. The poor material conditions in the hotspot, taking into account the information provided by the complainants and supported by photographs and several reports, violated Art. 3.

The inability of the applicants to leave the closed area of the hotspot was clearly tantamount to a deprivation of liberty under Art. 5, all the more so as the maximum duration of their stay there was not laid down by any law, and the legal framework did not permit the use of the Lampedusa hotspot as a detention centre for foreigners. The applicants were neither informed of the legal reasons for their deprivation of liberty, nor could they challenge this de facto detention. Italy also violated Art. 5(1), (2) and (4).

The refusal of entry and deportation orders did not adequately take into account the individual situation of the complainants. Rather, according to Art. 4 of Protocol No. 4, they were collective, impermissible expulsions.

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1.5 ECtHR, Judgement of 4/4/2023 - 55363/19 - A.D. v. Greece: Art. 3 violated due to poor living conditions of a pregnant woman in the hotspot of Samos

A.D., a pregnant woman from Ghana, was accommodated at the Reception and Identification Centre (RIC) in Samos. She stated that she was six months pregnant when she arrived. Her medical history stated that she had already suffered several miscarriages. She had been living in a tent outside the RIC, where she did not have access to proper sanitation. After her tent was destroyed, she lived in another one on the RIC premises. There, too, the sanitary facilities were in a precarious hygienic condition.

The ECtHR declared the complaint admissible. The complainant's accommodation needs had only been taken into account after the birth of her child, although the authorities had been aware of them almost three months earlier. The complainant had been living in RIC Samos for about two and a half months while she was in the advanced stages of her pregnancy and needed special care. Her accommodation and (non-)treatment exceeded the threshold of seriousness required for the application of Art. 3. Greece, therefore, violated Art. 3. The ECtHR rejected the Greek government's objection that the complainant had not submitted written applications to the competent Greek authorities or courts and had therefore not exhausted domestic remedies.

1.6 ECtHR, Judgement of 13/6/2023 - 4892/18 and 4920/18 - H.A. and others v. Greece: Art. 3 and 13 violated because of living conditions in the Moria "hotspot"

The case concerned, inter alia, the living conditions of 67 third-country nationals accommodated in the Moria "hotspot" and the impossibility for two of the complainants to be reunited with their family members in Germany due to significant delays in the registration of asylum applications in Greece. The defendants had declared their intention to apply for asylum on 26/10/2017, their applications were registered on 20/12/2017 and the restriction to leave the island was lifted on 3/1/2018. The ECtHR removed 43 cases from the register because the defendants did not maintain contact with the lawyer, leading to the conclusion that they had lost interest in their cases or did not want to pursue their applications.

With regard to the remaining proceedings, the ECtHR ruled that the living conditions, due to the overcrowding, the resulting difficulties and the acute lack of ability to satisfy at least basic needs, were inhuman and degrading within the meaning of Art. 3. The complainants had also not been able to effectively appeal against this. Greece had therefore violated Art. 3 and 13.

The application for family reunification to Germany was rejected because the German authorities had questioned the family ties. Therefore, this delay did not lead to a violation of Art. 8.

1.7 ECtHR, Judgement of 4/5/2023 - 7534/20 - A.M. and Others v. France: Art. 3 and 5 violated because of the detention of a mother and her three children

A.M., an Angolan mother, and her three children, aged 8 months, 6 and 13 years, were detained for 10 days in two different centres for transfer to Portugal under the Dublin III Regulation. The family was only released by the French authorities after the ECtHR issued a provisional measure under Art. 39.

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The ECtHR ruled that France had subjected the children to treatment in which, taking their age into account, conditions and duration of detention exceeded the threshold of severity required by Art. 3. The mother's refusal to board was not determinative of whether the threshold of severity was exceeded in relation to the children. Because of the inseparable bond between mother and children, France had also violated Art. 3 with regard to the mother.

Since the French authorities and courts had not reviewed whether the detention of the mother and her three minor children constituted the "ultima ratio", France had violated Art. 5.1 with respect to the children. The lack of review of lawfulness was also attributable to the French courts, as they were obliged to review the lawfulness of the detention of minors.

1.8 ECtHR, Judgement of 4/5/2023 - 4289/21 - A.C. and M.C. v. France: Art. 3 and 5 violated for detaining a mother and her baby before deportation

A mother and her seven-and-a-half-month-old child were placed in a French detention-like centre at for nine days before being deported to Spain.

The ECtHR ruled that France had subjected the very young child to treatment which, in view of the conditions and duration of detention, exceeded the threshold of severity required by Art. 3. Because of the inseparable bond between mother and child, France had also violated Art. 3 with regard to the mother.

Furthermore, there was a violation of Art. 5(1) and (4). Although the authorities had considered less restrictive measures in their original decision on detention, they had not sufficiently examined whether the extension of detention to facilitate the child's departure was the “ultima ratio”. The French courts were obliged to ensure the legality of the detention. Since the detention was originally intended to last only 48 hours and was later extended by court order up to 28 days, the lawfulness of the extended detention had not been assessed for the child in accordance with Art. 5(4).

1.9 ECtHR, Judgement of 17/1/2023 - 26879/17 - Minasian and others v. Republic of Moldova: Art. 5. para. 4 violated due to detention of children with their mother without the children being parties to the proceedings

A mother and her three minor children were legally residing in Moldova after fleeing persecution in Georgia. The family irregularly crossed the border into Romania, but were immediately returned to Moldova. The Moldovan Bureau for Migration and Asylum (BMA) ordered the return of the mother to Ukraine; her children were not mentioned in this decision. All the defendants were subsequently detained.

On the basis of Art. 5(1), the ECtHR ruled that the mother's application was inadmissible because she had failed to lodge a complaint against her deprivation of liberty in the domestic proceedings. However, the children had no remedy under Moldovan law. Therefore, their appeals were admissible.

The ECtHR ruled that the children's detention was unlawful because they were not the subject of the expulsion decision and all the decisions of the national courts only stated that they were accompanying their mother. The children could not challenge their detention because there was no legal basis for doing so. For more than a month, their detention or release depended on the legal situation of their mother. Moldovan courts had

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not examined whether detention was "ultima ratio", as the children's situation had not been investigated and it had not been examined whether detention would have been appropriate, in particular with regard to contacts with peers, recreational activities and other activities. Moldova had therefore violated Art. 5 para. 4 with regard to the children.

1.10 ECtHR, Judgement of 9/2/2023 - 11247/18 - R.M. and Others v. Poland: Art. 5 violated due to detention of children

The complainants, R.M. and her three children, were detained for seven months until they were deported to Russia. After the Polish government admitted a violation of Art. 8 and undertook to compensate the complainants for the damage, the ECtHR dismissed this part of the complaint. It also ruled that claims under Art. 3 concerning the duration of the children's detention were included in the comparison with Art. 8. The detention of one of the children with psychosomatic symptoms did not violate Art. 3 as he was accompanied by the family and his health was monitored by professionals.

The material conditions for the children's admission to the detention facility were correct, but the facility constituted a place of deprivation of liberty. The national authorities had not explained whether the detention of the children for approximately seven months was alternatively loosely "ultima ratio" and what steps they took to keep the detention period to a strict minimum. The information provided to the complainants did not explain the legal basis and reasons for the detention. They, therefore, did not have a fair opportunity to challenge the legality in court. Art. 5(1)(f) was, therefore, violated in relation to the children, and Art. 5(4) in relation to all the defendants.

1.11 ECtHR, Judgement of 23/2/2023 - 21325/16 - Dshijri and 4/4/2023 - 26250/15 and 26819/15 - H.N. and M.M. v. Hungary: Art. 5 para. 1 violated for detention despite lawful stay during asylum procedure

The complainant, Mr. Dshijri, an Iraqi national, crossed the Hungarian border coming from Ukraine and applied for asylum. During the procedure, he was granted a residence permit for Hungary on humanitarian grounds, but was detained for four months because his identity and nationality were allegedly not clarified. According to the authorities, this could thwart the asylum procedure and pose a risk of flight. Less restrictive measures were considered inapplicable as the complainant had neither connections in Hungary nor means of subsistence. The complainant submitted declarations to clarify his identity. His detention was nevertheless prolonged until he was granted subsidiary protection.

As in Dzhijri v. Hungary, the cases of H.N. and M.M. concerned the detention of asylum seekers in Hungary on the grounds of an alleged risk of absconding and in order to clarify their identity. Humanitarian residence permits were granted for the duration of their asylum procedures and, subsequently, refugee status was granted .

The ECtHR found in all proceedings that the defendants had been granted a residence permit, which they held throughout the proceedings, and ruled that Hungary's argument that detention was intended to prevent unauthorised entry could not be accepted, as the defendants already held a humanitarian residence permit. Nor should detention be ordered merely because a person had applied for asylum. There was no indication that the defendants were not cooperating with the authorities. Hungary's argumentation on the necessity to clarify their identity and to prevent their escape was not sufficiently substantiated. Therefore, Hungary had violated Art. 5(1).

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1.12 ECtHR, Judgement of 30/5/2023 - 8757/20 – Azzaqui v. Netherlands: Art. 8 violated, as mental illness was not sufficiently taken into account before withdrawal of residence permit

Azzaqui, a 50-year-old Moroccan national, was granted a permanent residence permit for the Netherlands as early as 1991. Since 1982, he has committed numerous offences, including rape in 1992. Due to a recognised mental illness/personality disorder, he was considered incapable of culpability and was predominantly placed in a custodial hospital. Due to good behaviour, he was transferred to a supervised facility in 2016. During the revocation process, he relapsed (substance abuse), which is why he was ordered to be placed in the custodial clinic again by the court. In 2018, his residence permit was revoked, and a ten-year entry ban was imposed because he posed a threat to public order.

The ECtHR found that the decision on revocation interfered with the private life of the defendant and, therefore, examined the proportionality of the measure. It was acknowledged that the convictions were violent and sexual offences, which could constitute a "very serious reason" to justify expulsion. However, the authorities had not taken the defendant's severe mental illness into account as a mitigating factor. Little attention had been paid to the complainant's personal circumstances (good behaviour during the stay at the custodial clinic and positive progress after his relapse into drug abuse). Neither the Ministry nor the courts had taken the complainant's personal circumstances sufficiently into account. The complainant's medical treatment was aimed at reintegration into Dutch society, so no steps had been taken to prepare him for a return to Morocco. The authorities had not sufficiently taken into account the difficulties the applicant might encounter in Morocco due to his psychological vulnerability. They failed to sufficiently weigh the conflicting interests. As a result, his right to private and family life had been violated and Art. 8 was infringed.

1.13 ECtHR, Judgement of 22/6/2023 - 1103/16 - X.X. v. Poland: Art. 1 Protocol No. 7 violated due to deportation of a Belarusian national who allegedly poses a threat to national security

A Belarusian national with an unlimited residence permit for Poland was expelled because his stay was a threat to Poland's national security. The allegation was that he was working with Belarusian secret services. No additional reasons were given. The authorities classified certain documents issued at the beginning of the procedure as secret, so that neither the complainant nor his lawyer had access to them.

The ECtHR found that the complainant was subject to significant restrictions in the exercise of his right to be informed of the facts underlying the expulsion decision and his right of access to the documents and information on which the authority based its decision. The necessity of these restrictions was not independently examined and found to be justified. The complainant had only received general information about the charges against him and had not been informed about the possibility of gaining access to the documents contained in the file through a lawyer with the required security clearance. The complainant had already been deported to Belarus, which made it very difficult for him to present his case. The fact that the decision was made by independent, high-level judicial authorities was not sufficient to compensate for the procedural limitations. The procedural restrictions imposed on the complainant violated his rights under Art. 1 of Protocol No. 7, even taking into account Poland's discretionary powers.

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1.14 ECtHR, Judgement of 4/7/2023 - 13258/18, 15500/18, 57303/18 and 9078/20 - B.F. and others v. Switzerland: Art. 8, violated if family reunification is denied because refugees are dependent on social assistance

This case concerns four Eritrean nationals, B.F., D.E., S.Y., S.M., and one Chinese national of Tibetan origin, J.K., who live in Switzerland. They were recognised as refugees, but were not granted asylum, rather "provisional admission", as their reasons for fleeing had arisen after leaving their countries of origin and as a result of their own actions. This meant that the legal entitlement to family reunification no longer existed. Although this was still possible on a discretionary basis, it was conditional, among other things, on no social assistance being claimed. The applications were therefore rejected in all cases because all the applicants received social assistance. The Swiss Federal Administrative Court ruled that there was no violation of Art. 8 ECHR.

The ECtHR first held that Switzerland had a margin of appreciation in deciding whether to grant family reunification to refugees whose reasons for being granted protection arose only after they had left the country and on the basis of their own actions. However, refugees should not be required to "do the impossible", e.g. live independently of social assistance. The ECtHR therefore examined whether the applications were processed flexibly by the Swiss authorities, taking into account the necessary assessment of discretion, and whether an individual assessment was carried out with regard to the protection of the right to family life.

After examining various relevant elements, the ECtHR focused in particular on the failure to claim social assistance. He first found that J.K. had been integrated into the labour market for years and had done everything that could reasonably be expected to support himself and his family.

The ECtHR then assessed S.Y.'s situation and found that it was difficult for her to work full time as she was raising her three minor children alone. The ECtHR therefore held that by working part-time she had done all that could reasonably be expected to support herself and her children. Not being dependent on social assistance would constitute a permanent obstacle to family reunification for her.

With regard to the situation of B.F. and D.E., the ECtHR found that B.F. had never been gainfully employed in Switzerland, as she was recognised as being unable to work. The court was not convinced that the Swiss Federal Administrative Court (BVerwG) had sufficiently examined whether her state of health made it possible for B.F. to work, at least to some extent. In light of this, the ECtHR ruled that Switzerland had violated Art. 8 ECHR because there was no proper balancing of the complainant's interest in family reunification and the country's interest in protecting its economic well-being.

1.15 ECtHR, Pending ("Communicated") Proceedings Related to Refugee Protection

1.15.1 17/4/2023 - 35090/22 and 38444/22: Does forced deportation from Greece to Turkey violate Art. 2, 3, 5, 13 and 35?

All cases concern third-country nationals who were returned from Greece to Turkey without prior trial and detained on an island in the Evros River. The Turkish authorities forced the defendants to cross the river, whereupon the defendants' representatives requested assistance from the Greek authorities and the ECtHR granted interim measures. Turkey abandoned the complainants on two different islands, but later returned them to the

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original island, where a child died. The Greek authorities arrested the complainants and took them to a reception centre.

In relation to Greece, the ECtHR asks the parties, inter alia, whether domestic remedies were exhausted, whether the authorities violated Art. 2 and 3, whether the defendants had an effective remedy and whether their deprivation of liberty violated Art. 5(1), 5(2) and 5(4). With regard to Turkey, he asks whether domestic remedies have been exhausted and whether the authorities have violated Art. 2 and 3.

1.15.2 17/4/2023 - 10063/22 and 11762/22: On the compatibility of an expulsion of the complainants by Greece to Turkey with Art. 2, 3, 5 and 13?

This case concerns the deportation of a couple from Greece to Turkey without prior proceedings. The defendants left Turkey because they had been sentenced to imprisonment for their involvement in the FETO and entered Greece to move on to the wife's family in France. Greece sent them back to Turkey, although they stated that the woman had the right to stay in Greece and that the man was being persecuted by Turkey. The couple is currently serving their sentence in Turkey.

The ECtHR asks whether the defendants have exhausted domestic remedies, whether Greece has violated Art. 2 and 3, whether the defendants had an effective remedy and whether they were deprived of their liberty in violation of Art. 5(1), 5(2) and 5(4).

1.15.3 5/6/2023 - 55558/22: On the compatibility of Poland's treatment of detained Syrian applicants for international protection with Art. 3 and 8?

An Iraqi mother and her two minor children had crossed the Belarusian-Polish border and were held in a Polish-guarded centre until their deportation. The legality of their detention was confirmed by several Polish courts. The authorities did not grant them refugee status. The mother was admitted to a psychiatric hospital, after which the defendants were released and left for Germany. The ECtHR asks whether the defendants have exhausted all legal remedies, whether they were subjected to inhuman or degrading treatment and whether their private and family life was violated.

1.15.4 5/6/2023 - 27915/22: Compatibility of Lithuania's treatment of an Iraqi asylum seeker with Art. 3, 5 and 13?

An Iraqi national applied for asylum in Lithuania. He was accommodated in a migrant camp where he allegedly had no access to a lawyer. The complainant now lives in Germany. The ECtHR asks the parties, inter alia, whether the material conditions in the camp violated Art. 3, whether the complainant had an effective remedy to challenge them and whether he was deprived of his liberty within the meaning of Art. 5.

1.15.5 12/6/2023 - 25203/22: Compatibility of the deprivation of French nationality of an Algerian by France and the subsequent expulsion order with Art. 8 ECHR?

On 12 June 2023, the ECtHR communicated its case no. 25203/22. The case concerns the deprivation of French nationality of an Algerian-born applicant and the subsequent deportation order he had issued. He had acquired French nationality by naturalisation and had been imprisoned for his alleged participation in a criminal organisation in preparation for a terrorist act. The Court asks whether Art. 8 ECHR has been violated.

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1.15.6 12 and 19/6/2023 - 12752/22, 15182/22 and 40833/22: Compatibility with the ECHR of repatriation, living conditions at the Polish-Belarusian border and available legal remedies?

The cases concern eleven foreigners, including minors, who attempted to enter Poland in an irregular manner. Allegedly, the Polish authorities ignored their applications for international protection and deported them back to the Belarusian side of the border without a formal decision, while other decisions were immediately enforced without investigating the individual situation. Moreover, some applicants were stranded in the border forest area without food, water or shelter and in harsh weather conditions. The applicants invoke Art. 3 and 13 of the ECHR and Art. 4 of Protocol No. 4.

2. European Court of Justice

2.1 ECJ, Judgment of 12/1/2023 - C-280/21 - P.I. v. Lithuania: The term "political opinion" is to be interpreted broadly; it includes a situation where the act in defence of the interests of an applicant is perceived as opposition to a (private) group influencing the state through corruption

This case concerned a third-country national who applied for international protection in Lithuania on the basis of criminal proceedings in his country of origin. His application was rejected because he did not state a reason within the meaning of the Refugee Convention, which includes the term "political conviction". After the applicant appealed against this decision, the Supreme Court of Lithuania referred questions to the ECJ on the interpretation of Art. 10 of Directive 2011/95 (Qualification Directive).

The ECJ emphasised that the Directive had to be interpreted in the light of its general scheme, its purpose and with regard to the Refugee Convention and the Charter of Fundamental Rights of the European Union (hereinafter: CFR). The wording of Art. 10 of the Directive implied that the term "political opinion" was to be interpreted broadly. Referring to the UNHCR Handbook, the ECJ ruled that the Guiding Principles suggest a broad understanding of the term "political opinion", which encompasses any opinion or issue concerning the state apparatus, government, society or politics.

2.2 ECJ, Judgment of 12/1/2023 - C-323/21, C-324/21, C-325/21 - B., F. and K. v. The Netherlands: On the transfer deadline for readmission applications under the Dublin III Regulation

B. (and similarly F. and K.) applied for asylum successively in Italy, Germany and the Netherlands between March 2017 and December 2018, in Germany and the Netherlands two times each. At times he was considered a fugitive. On 4/10/2017, Italy granted the German application in the Dublin procedure, which meant that the 6-month period for transfer began to run. It was extended to 18 months until 4/4/2019 due to B.'s flight to the Netherlands. B. brought an action against the negative Dutch decision of 8/3/2019. The Dutch court set it aside because Germany had become responsible on 4/4/2019 due to the expiry of the transfer deadline (Art. 29 Dublin III Regulation).

The Netherlands had also submitted a transfer request to Italy, which was granted. Germany and the Netherlands disagreed on the expiry of the transfer deadline on 4/4/2019, i.e. from the date on which Italy granted the first German request for readmission after 18 months. The question was whether Germany, as the first Member

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State (MS) to request Italy's readmission, was still considered a "requesting MS" in the sense of Art. 29(2) of the Dublin III Regulation, or whether the Netherlands, as the last MS to request readmission, was entitled to this status.

The ECJ ruled that the change of responsibility (here: to Germany) pursuant to Art. 23 and 29 of the Dublin III Regulation also applies if during this time the person has filed a new application for international protection in a third MS (here: the Netherlands) and this has led to the acceptance of an application for re-admission filed by this third MS by the requested (originally responsible) MS (here: Italy).

According to Art. 27(1) of the Dublin III Regulation in conjunction with Art. 47 Charter of Fundamental Rights, the applicant must have an effective and speedy remedy in the third MS in order to invoke the transfer of responsibility to the second MS. The second MS remains responsible for processing the application if it has exceeded the time limit, irrespective of whether the first MS has accepted a possible request for return from the third MS.

2.3 ECJ, Judgment of 15/2/2023 - C-484/22 - G.S. v. Germany: Protection of the best interests of the child and the right to family life in the return proceedings of a minor

The applicant, who was born in Germany in December 2018, is a Nigerian national. In decisions of March 2017 and March 2018, the Federal Office for Migration and Refugees (BAMF) established a ban on deportation to Nigeria in favour of the applicant's father and a sister born in 2014. By decision of 13/6/2019, the BAMF rejected the applicant's application for refugee status, for recognition as entitled to asylum or for subsidiary protection and threatened to deport him to Nigeria, setting him a deadline of 30 days for voluntary departure. A complaint was filed against this.

The Administrative Court dismissed most of the claims, but lifted the threat of deportation on the grounds that his deportation was not compatible with the right to family life enshrined in both Art. 6 of the Basic Law and Art. 8 of the ECHR because of the ban on deportation in favour of the father and one of the plaintiff's sisters. The young applicant could not reasonably be expected to be separated from his father. The BAMF appealed against the ruling to the Federal Administrative Court, arguing that the reasons opposing deportation, namely the best interests of the child and respect for family ties within the meaning of Art. 5(a) and (b) of Directive 2008/115, were not to be taken into account in the procedure for threatening deportation, for which the BAMF was responsible. They could only be taken into account in the context of a further procedure concerning the execution of the deportation. The regional foreigners authorities were to be permanently responsible for this. With its referral to the ECJ, the BVerwG essentially wanted to know whether the BAMF's reasoning was correct.

The ECJ ruled that Art. 5 of Directive 2008/115 prevented the MS from issuing a return decision without taking into account the relevant aspects of family life raised by the third-country national in order to prevent the issuance of such a decision (reference to judgment of 8/5/2018 - C-82/16 - K. A. and Others [Family Reunification in Belgium], para. 104). Specifically, before adopting a return decision, the MS must make a full and detailed assessment of the minor's situation and take due account of the best interests of the child (reference to judgment of 14.1.2021 - C-441/19 TQ ./. Netherlands [Return of an unaccompanied minor] para. 60). It is not sufficient for the person to be able to assert

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these protected interests only in the context of subsequent proceedings on the enforcement of the return decision in order to obtain a stay of enforcement, if necessary. Consequently, Art. 5(a) and (b) of Directive 2008/115 preclude national case-law according to which the obligation to take into account the best interests of the child and his or her family ties when issuing a threat of deportation is deemed to be fulfilled as long as the deportation is not (yet) carried out.

2.4 ECJ, Judgment of 16/2/2023 - C-745/21 - L.G. v. Netherlands: National law may oblige an MS to consider an asylum application on a discretionary basis if this is in the best interests of the child

A Syrian woman travelled to the Netherlands via Lithuania, applied for asylum and later married a third-country national legally living in the Netherlands. The Dutch authority did not process the application because Lithuania was responsible and had accepted the Dutch request to take her back. The applicant appealed against the refusal, citing the best interests of the unborn child. The referring court found that under national law, the pregnant applicant's child is deemed to be born if this is in the best interests of the child. The Dutch court then referred questions on the Dublin Regulation to the ECJ.

The ECJ ruled that Art. 16(1) of the Dublin III Regulation does not apply if there is a relationship of dependency either between a spouse who has applied for international protection and the spouse who is legally resident in the MS where international protection has been applied for or between the unborn child of this spouse and the spouse who is also the father of the child.

Art. 17(1) of the Dublin III Regulation precludes a national rule which obliges authorities to examine the asylum application of a pregnant applicant solely on the basis of the child's well-being if other criteria speak in favour of the responsibility of another MS. Art. 17 does not prohibit this. However, the national court had to examine whether national standards had been violated because the application for international protection had been rejected even though the applicant was pregnant at the time of the application.

2.5 ECJ, Judgment of 30/3/2023 - C-338/21 - S.S. and Others v. The Netherlands: On the relationship between the Dublin Procedure and the Residence Directive for Victims of Trafficking in Human Beings

For three third-country nationals, applications for international protection in the Netherlands had been rejected. The authority ordered their transfer to Italy, and Italy agreed. They then applied for a humanitarian residence permit as victims of trafficking. The Secretary of State ruled that the applications were irrelevant. The persons concerned applied for a review, which was unsuccessful. In the opinion of the Secretary of State, the transfer deadline stipulated in Art. 29 of the Dublin III Regulation was not enforced by the review application.

The ECJ ruled that Directive 2004/81 on the issuance of residence permits to third-country nationals who are victims of trafficking in human beings does not prevent MS from allowing an appeal against the refusal of a humanitarian residence permit with suspensive effect on the prior transfer decision under the Dublin III Regulation. This practice strengthened the protection of third-country nationals by enabling them to remain in the MS until the decision on the appeal. The Directive 2004/81/EC stipulates that victims who cooperate with law enforcement authorities may receive a residence permit. Art. 6 of

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Directive 2004/81/EC provides for a reflection period for victims to recover, to escape the influence of the perpetrators and to make an informed decision on whether to cooperate with law enforcement authorities. During this reflection period, they could not be transferred under the Dublin III Regulation.

However, if an application pursuant to Directive 2004/81 is rejected and an appeal is lodged against it, which has a suspensive effect under the respective national law and, therefore, prevents a transfer pursuant to the Dublin III Regulation, this is not an appeal pursuant to Art. 27(3) of the Dublin III Regulation. The expiry of the transfer deadline pursuant to Art. 29 (1) and (2) of the Dublin III Regulation is neither suspended nor interrupted by this.

2.6 ECJ, Judgment of 30/3/2023 - C556/21 - E. N., S. S. and J. Y. v. The Netherlands: Dublin Regulation allows provisional measures requested by authorities only at second instance

This case concerned three third-country nationals who had applied for international protection in the Netherlands. The Secretary of State submitted requests for withdrawal to other MS, which were granted. Therefore, the asylum applications were not processed in the Netherlands. The courts of first instance in the Netherlands annulled these decisions and ordered the Secretary of State to take a new decision on the applications. The Secretary of State appealed and applied for interim measures, which were granted by the Council of State. The Council of State then referred questions to the ECJ for a preliminary ruling.

The ECJ ruled that MS may establish a second instance court to decide on an appeal against a transfer decision and lay down procedural rules, including interim measures, as this is not regulated by EU law. A court of second instance could, at the request of the authority, take interim measures to suspend the transfer deadline. However, this was only permissible if the implementation of the transfer decision had already been suspended during the first instance appeal proceedings pursuant to Art. 27(3) or (4) of the Dublin III Regulation.

In contrast, in the proceedings under review, the transfer decision was not stayed at first instance, so the possibility of applying for a temporary injunction at second instance would allow the authorities to postpone a transfer deadline and thus avoid jurisdiction to process the applications, which would unduly delay the progress of the protection proceedings and undermine the objectives of the Regulation. This was inadmissible.

2.7 ECJ, Judgment of 18/4/2023 - C-1/23 - Afrin v. Belgium: EU law precludes standards that require family reunification to be applied for in person at the competent diplomatic mission without exception

This case concerned a Syrian family, X. and Y. and their children A. and B., of whom Y. is recognised as a refugee in Belgium, while X. and their joint children are still in Syria. They applied for family reunification by e-mail, stating that they were in an exceptional situation that prevented them from submitting the application in person to the Belgian diplomatic mission abroad. The Belgian authorities stated that an application in writing and by e-mail was inadmissible under Belgian law. In the appeal proceedings, the Belgian court requested a preliminary ruling on the compatibility of the Belgian standards with the Family Reunification Directive.

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The ECJ ruled that Union law precludes national rules which require family members of the sponsor, in particular those of a recognised refugee, to appear in person at the competent consular post of a MS, even if it is impossible or excessively difficult for them to get to that post. Requiring personal appearance at the diplomatic mission or consular post in order to apply for family reunification, without allowing for exceptions to take into account the specific situation of the sponsor's family members, would de facto prevent them from exercising their right to family reunification. Such a national rule, applied without flexibility, undermines the objective pursued by the Directive, deprives it of its effectiveness, violates the right to respect for family unity enshrined in the EU CFR and constitutes a disproportionate interference with this right in relation to the legitimate objective of combating fraud. However, MS may require the family members of the sponsor to appear in person at a later date. MS must then facilitate such an appearance and reduce it to the strict minimum.

2.8 ECJ, Judgment of 26/4/2023 - C-629/22 - A.L. v. Sweden: Art. 6(2) Return Directive obliges MS to allow an irregularly-staying third-country national who has a right of residence in another MS to leave there before a return decision is taken

The case concerned the third-country national, A.L., who was staying in Sweden irregularly but held a temporary Croatian residence permit. The Swedish authorities expelled him and asked him to leave Sweden. At the same time, they imposed a (re-)entry ban. However, they did not ask him to return to Croatia voluntarily, as they assumed that he would not comply anyway. However, A.L. did indeed leave voluntarily and appealed against the decision. In the course of the proceedings, the Swedish court referred questions on this to the ECJ.

The ECJ ruled that Art. 6(2) of the Return Directive obliges a MS to allow an irregularly residing third-country national who has a right of residence in another MS to go to that state before a return decision is taken. This also applies if they consider it unlikely that he or she will comply with such a request. Art. 6(2) of the Return Directive had direct effect and could therefore be invoked by individuals before national courts. If a MS does not allow the third-country national to go to the other MS voluntarily before issuing a return decision, the national authorities and courts dealing with an appeal against that return decision and the associated entry ban are obliged to take all necessary measures to remedy the non-compliance with the obligations arising from Art. 6 of the Return Directive. This could lead to the invalidity of the return decision and the entry ban.

2.9 ECJ, Judgment of 27/4/2023 - C528/21 - M.D. v. Hungary: TFEU and Return Directive preclude the issuing of an entry ban on a third-country national who is a family member of EU citizens if individual circumstances ("dependency relationship") are not taken into account

This case concerned the third-country national, M.D., who had settled in Hungary with his mother, his partner and their common minor child. The two last mentioned have Hungarian citizenship but have not exercised their right to free movement within the EU. M.D.'s application for a permanent residence permit was rejected because he had been sentenced to imprisonment for helping migrants cross the border illegally. He was considered a threat to national security. Hungary revoked M.D.'s residence permit and issued a return decision and an entry and residence ban without examining his personal situation. In the course of the proceedings, M.D. left Hungary.

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The ECJ ruled that Art. 20 of the Treaty of the Functioning of the European Union (TFEU) must be interpreted as preventing Hungary from adopting a decision prohibiting the entry into the territory of the EU of a third-country national who is a family member of a Union citizen who has never exercised his or her right to free movement, without first having examined whether there is a relationship of dependency which would de facto force that Union citizen to leave the territory of the EU. If such a relationship of dependence exists, a travel and residence ban based on national security may only be issued after weighing all relevant circumstances, in particular taking into account the best interests of the child who is a citizen of the Union.

The entry ban falls within the scope of Art. 11 of the Return Directive, although no return decision has been taken. Art. 5 of the Return Directive precludes a third-country national from being the subject of a decision prohibiting him from entering the territory of the EU on the same grounds as the withdrawal of his residence permit, without taking into account his state of health, his family life and the best interests of his child. The national courts would have to disregard national legislation that is incompatible with Art. 5 of the Return Directive and, if necessary, apply the provision of the Directive directly. The Return Directive and the EU Charter of Fundamental Rights of the European Union (CFR) preclude the practice of Hungarian authorities which, relying on the SIS alert, refuse to apply a final court decision ordering the suspension of the enforcement of an entry ban.

2.10 ECJ, Judgement of 22/6/2023 – C-823/21 – EU Commission v. Hungary: Hungarian embassy procedure disproportionately hinders the possibility to apply for asylum

In 2020, following the outbreak of the COVID-19 pandemic, Hungary enacted a law that requires certain third-country nationals or stateless persons who are on the territory of Hungary, or present themselves at the Hungarian borders and wish to claim international protection, to go through a pre-procedure. They must go to the Hungarian embassy in Belgrade (Serbia) or in Kiev (Ukraine) to personally submit a declaration of intent to file an application for international protection. After examining this declaration, the competent Hungarian authorities may decide at their discretion to issue a travel document allowing entry into Hungary to apply for international protection.

The EU Commission considered this to be an unlawful restriction of access to the asylum procedure contrary to Art. 6 of the Asylum Procedures Directive in conjunction with Art. 18 Charter of Fundamental Rights of the European Union.

The ECJ agreed: a pre-trial or other administrative formalities were not laid down as a requirement in Art. 6 of the Asylum Procedures Directive and were contrary to its objective of ensuring effective, simple and rapid access to the procedure for granting international protection. The Hungarian law unduly restricts the effective exercise of the right to apply for asylum and to remain during the examination of the application. Hungary's objection that this is justified, inter alia, for reasons of public health, is not valid. The regulation is neither appropriate nor proportionate to achieve the objective of protecting public health. The authorities had not demonstrated that no other proportionate measure could be taken. Hungary had generally invoked the threat to public policy and internal security to justify the compatibility of its legislation with EU law, without demonstrating that it was necessary to derogate specifically from the requirements of Art. 6 of the Directive.

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2.11 ECJ, Judgment of 6/7/2023 - C-8/22 - XXX. v. Belgium; C-663/21 - A.A. v. Austria; C-402/22 - M.A. v. The Netherlands: Clarification of the requirements for withdrawal and refusal of refugee status in the case of third-country nationals convicted of a criminal offence

All three legal disputes here concerned the contestation of decisions on the recognition or rejection of the refugee status of third-country nationals who had been convicted of a crime classified as particularly serious.

In the Belgian case (C-8/22), the ECJ clarified that the withdrawal of refugee status requires that the person concerned has been convicted of a particularly serious criminal offence and that it has been established that he or she constitutes a serious danger to the general public of the MS in which he or she resides. The danger could not be assumed on the basis of the conviction alone. The MS could only make use of the possibility of disqualification if both conditions prescribed by EU law were met - without being obliged to do so. The principle of proportionality had to be observed: The offences must be particularly serious and there must be a considerable danger to the general public.

The balancing of the refugee's interests against the security interests of the MS was of decisive importance in the Austrian case (C-663/21). The ECJ ruled that the authority was not obliged to take into account the extent and nature of the measures to which the third-country national could be exposed upon return to his or her country of origin.

The Dutch case (C-402/22) concerned the interpretation of the term "final conviction for a particularly serious offence". The ECJ took the view that this only covered offences that most seriously affected the legal order of the society in question. The degree of seriousness could not be achieved by cumulating less serious offences. The assessment of gravity involves an appreciation of all the particular circumstances of the case in question, such as the nature and degree of the penalty threatened (let alone imposed), the nature of the offence committed, any mitigating or aggravating circumstances, whether the offence was committed intentionally, the nature and extent of the damage caused by the offence and the nature of the criminal proceedings for the punishment of the offence.

2.12 ECJ, Judgment of C-608/22 (case still pending) - A.H. v. Austria: Does the Taliban's accumulation of measures against Afghan women constitute an act of persecution? If so, is individualisation still necessary?

The questions referred by the Austrian Administrative Court are:

1. Is the accumulation of measures taken, promoted or tolerated in a state by an actor who is de facto in power, and in particular, constituting that women
   - are denied participation in political office and political decision-making processes,
   - are provided no legal means to be able to receive protection from gender-specific and domestic violence,
   - are generally at risk of forced marriages although such marriages have been banned by the de facto governmental actor, but women are not effectively protected against forced marriages and such marriages are sometimes performed with the participation of de facto state officials, knowing that they are forced marriages,

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- are not allowed to pursue gainful employment or are only allowed to do so to a limited extent at home,
- are granted a more difficult access to health facilities only,
- are denied access to education - completely or to a large extent (for example, girls are only granted primary school education),
- are not allowed to stay or move in public without being accompanied by a man (in a certain relationship of relatives), at most in the case of exceeding a certain distance from the place of residence,
- have to cover their body completely and veil their face in public,
- are not allowed to practice any sport,

within the meaning of Art. 9(1)(b) of the Qualification Directive be regarded as so serious that a woman is affected by it in a manner similar to that described in subparagraph (a) of Art. 9(1) of the Directive?

2. Is it sufficient for the granting of the status of a person entitled to asylum that a woman is affected by these measures in the country of origin solely on account of her sex, or is it necessary to examine her individual situation in order to assess whether a woman is affected by these measures - to be considered cumulatively - within the meaning of Article 9(1)(b) of Directive 2011/95/EU (the Qualification Directive)?