Newsletter on European Asylum Issues for Judges

2017/3

NEAIS

Quarterly update on

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

on

- *European Asylum Issues*

Published by the Centre for Migration Law (CMR) Jean Monnet Centre of Excellence of Radboud University Nijmegen (NL), in close co-operation with the University of Essex (UK), Aarhus University (DK), the Refugee Law Reader and the International Association of Refugee Law Judges (IARLJ)

New in this Issue of NEAIS

About

NEAIS is a newsletter designed for judges who need to keep up to date with European developments in the area of asylum. This newsletter contains European legislation and jurisprudence on four central themes: (1) qualification for protection; (2) procedural safeguards; (3) responsibility sharing and (4) reception conditions of asylum seekers. On all other issues regarding migration or borders law we would like to refer to the other newsletter: the Newsletter on European Migration Issues (NEMIS).
This Newsletter is part of the CMR Jean Monnet Centre of Excellence Work Program 2015-2018.

website http://cmr.jur.ru.nl/neais/
subscribe email to c.grutters@jur.ru.nl
ISSN 2213-249X

CMR
Centre for Migration Law

Contents

Editorial

Welcome to the third issue in 2017 of NEAIS. In this issue we would like to draw your attention to the following.

In the past 3 months, a substantial number of questions relevant to this newsletter have been referred to the CJEU: three questions about the interpretation of Qualification II; five about the Asylum Procedure II; and three about Dublin III.

Qualification
In C-369/17 (***Ahmed***) the Court is asked whether the exclusion clause that disqualifies a person for international protection (as was decided in C-57/09, ***B. &. D.***) has to be applied in the same manner as to the question whether a person disqualifies for subsidiary protection.
The facts of case C-77/17 (***X.***) are very similar to C-78/17 (***X.***). Both cases relate to the question whether Art. 14(5) Qual. II (exclusion of refugeehood on security issues) is compatible with Art. 18 Charter and Art. 78 TFEU.
In C-56/17 (***Fathi***) several questions are raised. Firstly, the Bulgarian judge wants to know what type of limitations are acceptable in the context of freedom of religion. Secondly, the judge asks what type of proof of (missing) components covered by the concept of religion is permitted to require or has to be presented.

Procedure
In C-113/17 (***Q.J.***) the Court is presented with an intriguing question. What can a national court do if the national authorities, i.e. Slovakian authorities, repeatedly deny to provide protection to a person who qualifies for international protection? Is it possible that a national court itself issues a residence permit if national authorities refuse to do so and ignore the outcome of appeals? Would this qualify as an alternative to an effective remedy?
In C-175/17 (***X.***) and C-180/17 (***X. & Y.***) the question is raised whether lodging higher appeal has a suspended effect (to the expulsion) and if so whether this effect is automatic?

Dublin
Article 92(2) Dublin III states what qualifies as absconding. The question raised in C-163/17 (***Jawo***) is whether it is sufficient for a prolonged period, to cease to live in the accommodation allocated to the asylum seeker and the authority is not informed of his whereabouts and therefore a planned transfer cannot be carried out.

Relocation Schemes
In 2015 both the Slovakian and the Hungarian government requested the annulment of a Council Decision (2015/1601) in which provisional measures were taken to relocate a substantial number of asylum seekers that were present in Italy and Greece. After making clear that this Council Decision applies only for a limited period and is therefore provisional, the Court states that such a non-legislative act belongs to the power of the Council.
Secondly, as a consequence the adoption of such a non-legislative act is not subject to the requirements related to the participation of national parliaments. In the remainder of the judgment the Court subsequently qualifies all the pleas as unfounded, thus indicating that these provisional measures were taken lawfully.

Nijmegen, September 2017, Carolus Grütters & Tineke Strik

1 Qualification for Protection

1.1 Qualification for Protection: Adopted Measures

case law sorted in chronological order

Directive 2004/83 — **Qualification I**

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

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

* Revised by Dir. 2011/95

CJEU Judgments

☞	CJEU C-560/14 ***M.***	9 Feb.	2017	art. 4
☞	CJEU C-573/14 ***Lounani***	31 Jan.	2017	art. 12(2)(c)+12(3)
☞	CJEU C-429/15 ***Danqua***	20 Oct.	2016	
☞	CJEU C-373/13 ***T.***	24 June	2015	art. 21(2)+(3)
☞	CJEU C-472/13 ***Shepherd***	26 Feb.	2015	art. 9(2)+12(2)
☞	CJEU C-562/13 ***Abdida***	18 Dec.	2014	art. 15(b)
☞	CJEU C-542/13 ***M'Bodj***	18 Dec.	2014	art. 28+29
☞	CJEU C-148/13 ***A., B., C.***	2 Dec.	2014	art. 4
☞	CJEU C-481/13 ***Qurbani***	17 July	2014	art. 14(6)
☞	CJEU C-604/12 ***H.N.***	8 May	2014	
☞	CJEU C-285/12 ***Diakite***	30 Jan.	2014	art. 15(c)
☞	CJEU C-199/12 ***X., Y., Z***	7 Nov.	2013	art. 9(1)(a)+10(1)(d)
☞	CJEU C-364/11 ***El Kott a.o.***	19 Dec.	2012	art. 12(1)(a)
☞	CJEU C-277/11 ***M.M.***	22 Nov.	2012	art. 4(1)
☞	CJEU C-71/11 and C-99/11 ***Y. & Z.***	5 Sep.	2012	art. 2(c)+9(1)(a)
☞	CJEU C-57/09 and C-101/09 ***B. & D.***	9 Nov.	2010	art. 12(2)(b)+(c)
☞	CJEU C-31/09 ***Bolbol***	17 June	2010	art. 12(1)(a)
☞	CJEU C-175/08 ***Abdulla a.o.***	2 Mar.	2010	art. 2(c)+11+14
☞	CJEU C-465/07 ***Elgafaji***	17 Feb.	2009	art. 2(e)+15(c)

CJEU pending cases

☞	CJEU C-473/16 ***F.***	pending	art. 4
☞	CJEU C-353/16 ***M.P.***	pending	art. 2(e)+15(b)

See further: § 1.3

Directive 2011/95 — **Qualification II**

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

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

* Recast of Dir. 2004/83

CJEU Judgments

☞	CJEU C-150/15 ***N.***	15 Apr.	2016(deleted)	art. 9+10
☞	CJEU C-443/14 and C-444/14 ***Alo & Osso***	1 Mar.	2016	art. 33+29

CJEU pending cases

New	☞	CJEU C-369/17 ***Ahmed***	pending	art. 17(1)(b)
New	☞	CJEU C-77/17 ***X. & X.***	pending	art. 14(5)
New	☞	CJEU C-56/17 ***Fathi***	pending	art. 9
	☞	CJEU C-585/16 ***Alheto***	pending	art. 12(1)(a)
	☞	CJEU C-391/16 ***M.***	pending	art. 14(4)+(6)

See further: § 1.3

Directive 2001/55 — **Temporary Protection**

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

* OJ 2001 L 212/12

ICCPR — **Anti-Torture**

International Covenant on Civil and Political Rights

* 999 UNTS 14668 — impl. date: 1976

* art. 7: Prohibition of torture or cruel, inhuman or degrading treatment or punishment

CCPR Views

☞	CCPR 2370/2014 ***A.H.***	7 Sep.	2015	art. 7 (qual.)
☞	CCPR 2360/2014 ***Warda Osman Jasin***	22 July	2015	art. 7 (qual.)
☞	CCPR 1763/2008 ***Ernst Sigan Pillai et al.***	25 Mar.	2011	art. 7 (qual.)
☞	CCPR 1544/2007 ***Hamida***	11 May	2010	art. 7 (qual.)

See further: § 1.3

CAT — **Anti-Torture**

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

* 1465 UNTS 85 — impl. date: 1987

* art. 3: Protection against Refoulement

CAT Views

New	☞	CAT 623/20	1 May	2017	art. 3 (qual.)
	☞	CAT 613/2014 ***F.B.***	15 Dec.	2015	art. 3 (qual.)
	☞	CAT 490/2012 ***E.K.W.***	25 June	2015	art. 3 (qual.)
	☞	CAT 387/2009 ***Sathurusinghe Jagath Dewage***	17 Dec.	2013	art. 3 (qual.)
	☞	CAT 439/2010 ***M.B.***	17 July	2013	art. 3 (qual.)
	☞	CAT 467/2011 ***Y.B.F. et al.***	15 July	2013	art. 3 (qual.)
	☞	CAT 431/2010 ***Y.***	12 July	2013	art. 3 (qual.)
	☞	CAT 385/2009 ***M.A.F. et al.***	4 Feb.	2013	
	☞	CAT 432/2010 ***H.K.***	8 Jan.	2013	art. 3 (qual.)
	☞	CAT 391/2009 ***M.A.M.A. et al.***	10 July	2012	art. 3 (qual.)
	☞	CAT 381/2009 ***Abolghasem Faragollah et al.***	21 Nov.	2011	art. 3 (qual.)
	☞	CAT 379/2009 ***Bakatu-Bia***	3 June	2011	art. 3 (qual.)
	☞	CAT 336/2008 ***Harminder Singh Khalsa***	26 May	2011	art. 3 (qual.)
	☞	CAT 339/2008 ***Said Amini***	30 Nov.	2010	art. 3 (qual.)
	☞	CAT 373/2009 ***M.A. and L.G.***	19 Nov.	2010	art. 3 (qual.)
	☞	CAT 300/2006 ***A.T.***	11 May	2007	art. 3 (qual.)
	☞	CAT 281/2005 ***E.P.***	1 May	2007	art. 3 (qual.)
	☞	CAT 279/2005 ***C.T. and K.M.***	22 Jan.	2007	art. 3 (qual.)
	☞	CAT 233/2003 ***Agiza***	24 May	2005	art. 3 (qual.)
	☞	CAT 43/1996 ***Tala***	15 Nov.	1996	art. 3 (qual.)

See further: § 1.3

ECHR — **Non-Refoulement**

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

* ETS 005 — impl. date: 1953

* art. 3: Prohibition of Torture, Inhuman or Degrading Treatment or Punishment

ECtHR Judgments

New	☞	ECtHR Ap.no. 43538/11 ***E.P.***	11 July	2017	art. 3 (qual.)
New	☞	ECtHR Ap.no. 41282/16 ***M.O.***	20 June	2017	art. 3 (qual.)
New	☞	ECtHR Ap.no. 15993/09 ***M.M.***	16 May	2017	art. 3 (qual.)
	☞	ECtHR Ap.no. 20669/13 ***S.M.***	28 Mar.	2017	art. 3 (qual.)
	☞	ECtHR Ap.no. 52722/15 ***S.K.***	14 Feb.	2017	art. 3 (qual.)
	☞	ECtHR Ap.no. 16744/14 ***X.***	26 Jan.	2017	art. 3 (qual.)
	☞	ECtHR Ap.no. 41738/10 ***Paposhvili***	13 Dec.	2016(GC)	art. 3 (qual.)
	☞	ECtHR Ap.no. 59166/12 ***J.K. a.o.***	23 Aug.	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 14348/15 ***U.N.***	26 July	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 29094/09 ***A.M.***	5 July	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 34648/14 ***R.D.***	16 June	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 7211/06 ***R.B.A.B.***	7 June	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 49867/08 ***Babajanov***	10 May	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 43611/11 ***F.G.***	23 Mar.	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 27081/13 ***Sow***	19 Jan.	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 59689/12 ***M.D. and M.A.***	19 Jan.	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 13442/08 ***A.G.R.***	12 Jan.	2016	art. 3 (qual.)
	☞	ECtHR Ap.no. 17724/14 ***Tadzhibayev***	1 Dec.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 4601/14 ***R.H.***	10 Sep.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 76100/13 ***M.K.***	1 Sep.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 4455/14 ***L.O.***	18 June	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 71398/12 ***M.E.***	8 Apr.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 49341/10 ***W.H.***	8 Apr.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 1412/12 ***M.T.***	26 Feb.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 80086/13 ***A.F.***	15 Jan.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 68900/13 ***Eshonkulov***	15 Jan.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 18039/11 ***A.A.***	15 Jan.	2015	art. 3 (qual.)
	☞	ECtHR Ap.no. 74759/13 ***Fozil Nazarov***	11 Dec.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 52589/13 ***M.A.***	18 Nov.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 71932/12 ***Trabelsi***	4 Sep.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 17897/09 ***M***	4 Sep.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 34098/11 ***A.A. a.o.***	24 July	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 58363/10 ***M.E.***	8 July	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 71932/12 ***Mohammadi***	3 July	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 39093/13 ***Gayratbek Saliyev***	17 Apr.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 20110/13 ***Ismailov***	17 Apr.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 689519/10 ***A.A.M.***	3 Apr.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 35/10 ***Zarmayev***	27 Feb.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 58802/12 ***A.A.***	7 Jan.	2014	art. 3 (qual.)
	☞	ECtHR Ap.no. 11161/11 ***B.K.A.***	19 Dec.	2013	art. 3 (qual.)
	☞	ECtHR Ap.no. 7974/11 ***N.K.***	19 Dec.	2013	art. 3 (qual.)

☞	ECtHR Ap.no. 1231/11 ***T.H.K***	19 Dec.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 48866/10 ***T.A.***	19 Dec.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 28127/09 ***Ghorbanov a.o.***	3 Dec.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 10466/11 ***R.J.***	19 Sep.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 886/11 ***K.A.B.***	5 Sep.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 61204/09 ***I.***	5 Sep.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 71680/10 ***A.***	27 June	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 50094/10 ***M.E.***	6 June	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 25393/10 ***Rafaa***	30 May	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 18372/10 ***Mo.M.***	18 Apr.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 17299/12 ***Aswat***	16 Apr.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 70073/10 ***H. and B.***	9 Apr.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 2964/12 ***I.K.***	28 Mar.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 60367/10 ***S.H.H.***	29 Jan.	2013	art. 3 (qual.)
☞	ECtHR Ap.no. 52077/10 ***S.F.***	15 May	2012	art. 3 (qual.)
☞	ECtHR Ap.no. 33809/08 ***Labsi***	15 May	2012	art. 3 (qual.)
☞	ECtHR Ap.no. 24027/07 ***Babar Ahmad***	10 Apr.	2012	art. 3 (qual.)
☞	ECtHR Ap.no. 27765/09 ***Hirsi***	23 Feb.	2012	art. 3 (qual.)
☞	ECtHR Ap.no. 8139/09 ***Othman***	17 Jan.	2012	art. 3 (qual.)
☞	ECtHR Ap.no. 23505/09 ***N.***	20 July	2010	art. 3 (qual.)
☞	ECtHR Ap.no. 25904/07 ***N.A.***	17 July	2008	art. 3 (qual.)
☞	ECtHR Ap.no. 1948/04 ***Salah Sheekh***	11 Jan.	2007	art. 3 (qual.)
☞	ECtHR Ap.no. 24245/03 ***D.***	22 June	2006	art. 3 (qual.)
☞	ECtHR Ap.no. 2345/02 ***Said***	5 July	2005	art. 3 (qual.)
☞	ECtHR Ap.no. 58510/00 ***Venkadajalasarma***	17 Feb.	2004	art. 3 (qual.)
☞	ECtHR Ap.no. 40035/98 ***Jabari***	11 July	2000	art. 3 (qual.)
☞	ECtHR Ap.no. 24573/94 ***H.L.R.***	27 Apr.	1997	art. 3 (qual.)
☞	ECtHR Ap.no. 13163/87 ***Vilvarajah***	30 Oct.	1991	art. 3 (qual.)
☞	ECtHR Ap.no. 15576/89 ***Cruz Varas***	20 Mar.	1991	art. 3 (qual.)
☞	ECtHR Ap.no. 14038/88 ***Soering***	7 July	1989	art. 3 (qual.)

See further: § 1.3

1.2 Qualification for Protection: Proposed Measures

Regulation **Qualification III**

Replacing qualification directive

* COM (2016) 466, 13 July 2016

1.3 Qualification for Protection: Jurisprudence

case law sorted in alphabetical order

1.3.1 CJEU Judgments on Qualification for Protection

☞ CJEU C-148/13 ***A., B., C.*** 2 Dec. 2014

* interpr. of Dir. 2004/83 **Qualification I** art. 4

* ref. from 'Raad van State' (Netherlands)

* *Joined cases: C-148, 149, 150/13. Art 4(3)(c) must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals. Art 4 must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts.*

☞ CJEU C-562/13 ***Abdida*** 18 Dec. 2014

* interpr. of Dir. 2004/83 **Qualification I** art. 15(b)

* ref. from 'Court du Travail de Bruxelles' (Belgium)

* *Although the CJEU was asked to interpret art 15(b) of the QDir, the Court ruled on another issue related to the Returns Directive. To be read in close connection with C-542/13 [M'bodj] ruled on the same day by the same composed CJEU.*
It is clear from paragraphs 27, 41, 45 and 46 of the judgment in M'Bodj (C−542/13) that Articles 2(c) and (e), 3 and 15 of Directive 2004/83 are to be interpreted to the effect that applications submitted under that national legislation

do not constitute applications for international protection within the meaning of Article 2(g) of that directive. It follows that the situation of a TCN who has made such an application falls outside the scope of that directive, as defined in Article 1 thereof.

☞ CJEU C-175/08 ***Abdulla a.o.*** 2 Mar. 2010
* interpr. of Dir. 2004/83 **Qualification I** art. 2(c)+11+14
* ref. from 'Bundesverwaltungsgericht' (Germany)
* *When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.*

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

☞ CJEU C-57/09 and C-101/09 ***B. & D.*** 9 Nov. 2010
* interpr. of Dir. 2004/83 **Qualification I** art. 12(2)(b)+(c)
* ref. from 'Bundesverwaltungsgericht' (Germany)
* *The fact that a person has been a member of an organisation (which, because of its involvement in terrorist acts, is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism) and that that person has actively supported the armed struggle waged by that organisation, does not automatically constitute a serious reason for considering that that person has committed 'a serious non-political crime' or 'acts contrary to the purposes and principles of the United Nations.*

☞ CJEU C-31/09 ***Bolbol*** 17 June 2010
* interpr. of Dir. 2004/83 **Qualification I** art. 12(1)(a)
* ref. from 'Fővárosi Bíróság' (Hungary)
* *Right of a stateless person, i.e. a Palestinian, to be recognised as a refugee on the basis of the second sentence of Article 12(1)(a)*

☞ CJEU C-429/15 ***Danqua*** 20 Oct. 2016
* interpr. of Dir. 2004/83 **Qualification I**
* ref. from 'Court of Appeal' (Ireland)
* *The principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection.*

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

☞ CJEU C-364/11 ***El Kott a.o.*** 19 Dec. 2012

* interpr. of Dir. 2004/83 **Qualification I** art. 12(1)(a)

* ref. from 'Fővárosi Bíróság' (Hungary)

* *The cessation of protection or assistance from organs or agencies of the UN other than the UNHCR 'for any reason' includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the MS responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency.*
The fact that a person is ipso facto 'entitled to the benefits of the directive' means that that MS must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive.

☞ CJEU C-465/07 ***Elgafaji*** 17 Feb. 2009

* interpr. of Dir. 2004/83 **Qualification I** art. 2(e)+15(c)

* ref. from 'Raad van State' (Netherlands)

* *Minimum standards for determining who qualifies for refugee status or for subsidiary protection status - Person eligible for subsidiary protection - Article 2(e) - Real risk of suffering serious harm - Article 15(c) - Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of armed conflict*

☞ CJEU C-604/12 ***H.N.*** 8 May 2014

* interpr. of Dir. 2004/83 **Qualification I**

* ref. from 'Supreme Court' (Ireland)

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

☞ CJEU C-573/14 ***Lounani*** 31 Jan. 2017

* interpr. of Dir. 2004/83 **Qualification I** art. 12(2)(c)+12(3)

* AG: 31 May 2016

* ref. from 'Conseil d'État' (Belgium) 11-12-2014

* *Article 12(2)(c) Qualification I must be interpreted as meaning that it is not a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established that an applicant for international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Decision 2002/475/JHA on combating terrorism.*
Article 12(2)(c) and Article 12(3) Qualification I must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, such as those of which the defendant in the main proceedings was convicted, may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council. For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted, by the courts of a Member State, on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.

☞ CJEU C-560/14 ***M.*** 9 Feb. 2017

* interpr. of Dir. 2004/83 **Qualification I** art. 4

* ref. from 'Supreme Court' (Ireland) 05-12-2014

* *The right to be heard, as applicable in the context of Qualification I, does not require, as a rule, that, where national legislation, such as that at issue in the main proceedings, provides for two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, the applicant for subsidiary protection is to have the right to an interview relating to his application and the right to call or cross-examine witnesses when that interview takes place.*
An interview must nonetheless be arranged where specific circumstances, relating to the elements available to the competent authority or to the personal or general circumstances in which the application for subsidiary protection has been made, render it necessary in order to examine that application with full knowledge of the facts, a matter which is for the referring court to establish.

☞ CJEU C-277/11 ***M.M.*** 22 Nov. 2012

* interpr. of Dir. 2004/83 **Qualification I** art. 4(1)

* ref. from 'High Court' (Ireland)

* *The requirement that the MS concerned cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1)QD, cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged – before adopting its decision – to inform the applicant that*

it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard.
However, in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance, in each of those procedures, of the applicant's fundamental rights and, more particularly, of the right to be heard in the sense that the applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection. See also the follow-up: C -560/14.

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

☞ CJEU C-150/15 ***N.*** 15 Apr. 2016
* interpr. of Dir. 2011/95 **Qualification II** art. 9+10
* ref. from 'Oberverwaltungsgericht Sachsen' (Germany)
* *Persecution on religious grounds. This case is a 'follow-up' on Y & Z (C-71/11+99/11). On 19 January the case was forwarded to the Grand Chamber. On 9 March 2016 the case was deleted.*

☞ CJEU C-481/13 ***Qurbani*** 17 July 2014
* interpr. of Dir. 2004/83 **Qualification I** art. 14(6)
* interpr. of Refugee Convention [art. 31]
* ref. from 'Oberlandesgericht Bamberg' (Germany)
* *Although the Court accepted in Bolbol (C-31/09) and El Karem (C-364/11) that it had jurisdiction to interpret the provisions of the Geneva Convention to which EU law made a renvoi, it must be noted that the present request for a preliminary ruling contains no mention of any rule of EU law which makes a renvoi to Article 31 of the Geneva Convention and, in particular, no mention of Article 14(6) of Directive 2004/83. The point should also be made that the present request contains nothing which suggests that the latter provision is relevant in the case in the main proceedings.*
Therefore, the Court rules that it has no jurisdiction to reply to the questions referred for a preliminary ruling.

☞ CJEU C-472/13 ***Shepherd*** 26 Feb. 2015
* interpr. of Dir. 2004/83 **Qualification I** art. 9(2)+12(2)
* ref. from 'Bayerisches Verwaltungsgericht München' (Germany)
* *This case is about an American soldier who works at maintenance on helicopters and fears that he contributes to the commission of war crimes. So, he deserts the army and applies for asylum in Germany expecting to be prosecuted in the USA. The Court restricts the issue to the interpretation of desertion in the context of persecution and does not elaborate on the definition of 'war crimes'.*
The Court states that the factual assessment which it is for the national authorities alone to carry out, under the supervision of the courts, in order to determine the situation of the military service concerned, must be based on a body of evidence capable of establishing, in view of all the circumstances of the case, particularly those concerning the relevant facts as they relate to the country of origin at the time of taking a decision on the application and to the individual position and personal circumstances of the applicant, that the situation in question makes it credible that the alleged war crimes would be committed. Further, the refusal to perform military service must constitute the only means by which the applicant for refugee status could avoid participating in the alleged war crimes, and, consequently, if he did not avail himself of a procedure for obtaining conscientious objector status, any protection under Article 9(2)(e) is excluded, unless that applicant proves that no procedure of that nature would have been available to him in his specific situation.
Article 9(2)(b) and (c) must be interpreted as meaning that, in circumstances such as those in the main proceedings, it does not appear that the measures incurred by a soldier because of his refusal to perform military service, such as the imposition of a prison sentence or discharge from the army, may be considered, having regard to the legitimate exercise, by that State, of its right to maintain an armed force, so disproportionate or discriminatory as to amount to acts of persecution for the purpose of those provisions.

☞ CJEU C-373/13 ***T.*** 24 June 2015
* interpr. of Dir. 2004/83 **Qualification I** art. 21(2)+(3)
* ref. from 'Verwaltungsgerichtshof Baden Württemberg' (Germany)
* *A residence permit, once granted to a refugee, may be revoked, either pursuant to Article 24(1) of the Qualification directive, where there are compelling reasons of national security or public order, or pursuant to Article 21(3) of that directive, where there are reasons to apply the derogation from the principle of non-refoulement laid down in Article 21(2).*

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

☞ CJEU C-199/12 — ***X., Y., Z*** — 7 Nov. 2013
* interpr. of Dir. 2004/83 — **Qualification I** — art. 9(1)(a)+10(1)(d)
* ref. from 'Raad van State' (Netherlands)
* *Joined cases C-199, 200, 201/12. The court ruled on the issue whether homosexuals - for the the assessment of the grounds of persecution - may be regarded as being members of a social group.*
Art. 10(1)(d) must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.
Article 9(1), read together with Article 9(2)(c), must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.
Article 10(1)(d), read together with Article 2(c), must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member States are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.

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

1.3.2 CJEU pending cases on Qualification for Protection

New ☞ CJEU C-369/17 — ***Ahmed***
* interpr. of Dir. 2011/95 — **Qualification II** — art. 17(1)(b)
* ref. from 'Fővárosi Közigazgatási és Munkaügyi Bíróság' (Hungary) 16-06-2017
* *Does it follow from the expression 'that he or she has committed a serious crime' used in Article 17(1)(b) that the penalty provided for a specific crime under the law of the particular MS may constitute the sole criterion to determine whether the person claiming subsidiary protection may be excluded from it?*

☞ CJEU C-585/16 — ***Alheto***
* interpr. of Dir. 2011/95 — **Qualification II** — art. 12(1)(a)
* ref. from 'Administrativen sad Sofia-grad' (Bulgaria)
* *On the meaning of the exception clause in Art 12(1)(a) Qual. Dir. II on the situation of Palestinians falling within the scope of Art 1D of the Refugee Convention and the meaning of the second sentence of Art 12(1)(a) on the question what happens if such protection or assistance has ceased for any reason.*

☞ CJEU C-473/16 — ***F.***
* interpr. of Dir. 2004/83 — **Qualification I** — art. 4
* *On the issue of tests to determine homosexuality. Must Article 4 be interpreted as not precluding a forensic psychologist's expert opinion based on projective personality tests from being sought and evaluated, in relation to LGBTI applicants for asylum, when in order to formulate that opinion no questions are asked about the applicant for asylum's sexual habits and that applicant is not subject to a physical examination?*
If the expert opinion (referred to in question 1) may not be used as proof, must Article 4 be interpreted, in the light of

Article 1 of the Charter of Fundamental Rights of the European Union, as meaning that when the asylum application is based on persecution on grounds of sexual orientation, neither the national administrative authorities nor the courts have any possibility of examining, by expert methods, the truthfulness of the applicant for asylum's claims, irrespective of the particular characteristics of those methods?

New ☞ CJEU C-56/17 ***Fathi***

* interpr. of Dir. 2011/95 **Qualification II** art. 9

* ref. from 'Administrativen sad Sofia-grad' (Bulgaria) 03-02-2017

* *Does it follow from Article 9 that the concept of religion does not encompass any acts considered to be criminal in accordance with the national law of the MS? Is it possible for such acts that are considered to be criminal in the applicant's country of origin to constitute acts of persecution?*
In connection with the prohibition of proselytism and the prohibition of acts contrary to the religion on which the laws and regulations in the country in question are based, are limitations to be regarded as permitted that are established to protect the rights and freedoms of others and public order in the applicant's country of origin? Do these prohibitions as such constitute acts of persecution within the meaning of the cited provisions of the directive when violation of them is threatened with the death penalty even if the laws are not explicitly aimed against a particular religion?

☞ CJEU C-391/16 ***M.***

* interpr. of Dir. 2011/95 **Qualification II** art. 14(4)+(6)

* ref. from 'Nejvyšší správní soud' (Czech Republic) 14-07-2016

* *Is Art. 14(4) and (6) of the QD II invalid on the grounds that it infringes Art. 18 of the Charter of Fundamental Rights of the European Union, Art. 78(1) of the Treaty on the Functioning of the European Union and the general principles of EU law under Art. 6(3) of the Treaty on European Union?*

☞ CJEU C-353/16 ***M.P.***

* interpr. of Dir. 2004/83 **Qualification I** art. 2(e)+15(b)

* ref. from 'Supreme Court' (UK) 22-06-2016

* *Does Art. 2(e), read with Art. 15(b), cover a real risk of serious harm to the physical or psychological health of the applicant if returned to the country of origin, resulting from previous torture or inhuman or degrading treatment for which the country of origin was responsible?*

New ☞ CJEU C-77/17 ***X. & X.***

* interpr. of Dir. 2011/95 **Qualification II** art. 14(5)

* ref. from 'Conseil du Contentieux des Étrangers' (Belgium) 13-02-2017

* *Must Article 14(5) be interpreted as creating a new ground for exclusion from refugee status (provided for in Article 13) and, consequently, from Article 1A of the Geneva Convention?*

1.3.3 ECtHR Judgments and decisions on Qualification for Protection

☞ ECtHR Ap.no. 71680/10 ***A. v. SWE*** 27 June 2013

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 34098/11 ***A.A. a.o. v. SWE*** 24 July 2014

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 58802/12 ***A.A. v. CH*** 7 Jan. 2014

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 18039/11 ***A.A. v. FRA*** 15 Jan. 2015

* violation of **ECHR** art. 3 (qual.)

* *Case of deportation to Sudan. The applicant was an asylum seeker originating from the South Darfur region and belonging to a non-Arab tribe. He had arrived in France in October 2010, was arrested and issued with a removal order, released and then rearrested a number of times. He lodged an asylum application in June 2011.*
The applicant stated that one of his brothers had joined the JEM opposition movement in Sudan, and that he himself had shared the movement's ideas but refused to be involved in its armed activities. He alleged that the Sudanese authorities had interrogated and tortured him several times in order to extract information about JEM. A medical certificate produced by the applicant was brief, yet giving credibility to his allegations of ill-treatment, and the French government had not commented on this certificate. The applicant's allegation to have been given a prison sentence for providing support to the Sudanese opposition forces was not supported by any document, but the Court considered this as reflecting the fact that the Sudanese authorities were convinced of the applicant's involvement in a rebel movement.
As to the inconsistencies in the applicant's account, the ECtHR held that his description of events in Sudan had remained constant both before the Court itself and before the French asylum office OFPRA. Only the chronology was differing slightly, and the Court stated that mere discrepancy in the chronological account was no major inconsistency, noting that the asylum application had been examined in the accelerated procedure with little time left for the applicant to prepare his case. Thus, the decisive part of the applicant's account was credible.
Referring to its previous finding of the human rights situation in Sudan as alarming, particularly as regards political opponents (ECtHR Ap.no. 58802/12, A.A. v. Switzerland [7 January 2014], see NEAIS 2014/1), the Court considered the applicant to be at serious risk of ill-treatment both as belonging to an ethnic minority and because of his supposed links with an opposition group.

☞ ECtHR Ap.no. 689519/10 ***A.A.M. v. SWE*** 3 Apr. 2014

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 80086/13 ***A.F. v. FRA*** 15 Jan. 2015

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 13442/08 ***A.G.R. v. NL*** 12 Jan. 2016

* no violation of **ECHR** art. 3 (qual.)
* Joined cases with: 25077/06; 46856/07; 8161/07; 39575/06
* *These five cases concerned Afghan asylum seekers who had been excluded from refugee status under art. 1 F of the UN Refugee Convention due to their past activities as more or less high ranking officers in the former Afghan army or intelligence service until the collapse of the communist regime in 1992. They claimed that their forcible return to Afghanistan would expose them to a real risk of ill-treatment.*
In A.G.R. v. NL the Court found, apart from the applicant's unsubstantiated claims, nothing in the case file specifically indicating whether, and if so why, the Mujahideen would have been interested in the applicant on alleged occasions in 1992 and 1995. It further found no tangible elements showing that the applicant had since 2005 attracted the negative attention of any governmental or non-governmental body or any private individual in Afghanistan. The Court further noted that since 2010 the UNHCR has no longer classified people who have worked for the KhAD/WAD under the former Afghan regime as one of the specific categories of persons exposed to a potential risk of persecution in Afghanistan.
As to the general security situation in Afghanistan, the Court did not find that there was a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of an individual being returned to Afghanistan.

☞ ECtHR Ap.no. 23378/15 ***A.I. v. CH*** 30 May 2017

* violation of **ECHR** art. 2+3 (qual.)
* *The applicant was a Sudanese national who applied for asylum in Switzerland in 2012. During his stay in Switzerland, he had been an active member of two organisations opposing the current government of Sudan.*
The Court confirmed its previous findings that the human rights situation in Sudan was alarming, in particular for political opponents, and that it had further deteriorated since 2014. Individuals suspected of being members or supporters of rebel groups, are still being arrested and tortured, such risk of ill-treatment not solely affecting high-profile opponents, but everyone opposing or being suspected of opposing the Sudanese regime. That regime was also known to carry out surveillance of opposition activities abroad..
Despite the fact that the Court did not find it substantiated that the Sudanese authorities had shown any interest in the applicant while he was still in Sudan and until his arrival to Switzerland, the Court accepted that he had been actively and increasingly involved in the opposition groups during his stay as an asylum seeker in that country. Given the risk for everyone suspected of opposing the regime, and the surveillance of political opponents abroad, it could not be excluded that the applicant had attracted the attention of the intelligence services. Thus, there were reasonable grounds to believe that he would risk being arrested and tortured on arrival in the airport of Khartoum.

☞ ECtHR Ap.no. 44095/14 ***A.L. (X) v. RUS*** 29 Oct. 2015

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

☞ ECtHR Ap.no. 29094/09 ***A.M. v. NL*** 5 July 2016

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

13 does not compel States to set up a second level of appeal when the first level of appeal is in compliance with the abovementioned requirements. Thus, art. 13 had not been violated. No violation of art. 3 was found in case of deportation of the applicant to Afghanistan. The Court referred to the applicant's account of his activities and situation in Afghanistan since the fall of the communist regime in 1992. It held that there was no indication that he had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his past activities since his departure from the country in 2002. The Court further noted that UNHCR does not include persons involved in the former communist regime and/or Hezb-e Wahdat in their potential risk profiles in respect of Afghanistan. Finally, neither the applicant's Hazara origin nor the general security situation in Afghanistan was considered as constituting the basis of a real risk of ill-treatment.

☞ ECtHR Ap.no. 17299/12 ***Aswat v. UK*** 16 Apr. 2013

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 11161/11 ***B.K.A. v. SWE*** 19 Dec. 2013

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 49867/08 ***Babajanov v. TUR*** 10 May 2016

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 24027/07 ***Babar Ahmad v. UK*** 10 Apr. 2012

* no violation of **ECHR** art. 3 (qual.)

* *In a case concerning six alleged international terrorists who have been detained in the UK pending extradition to the USA, the Court held that neither their conditions of detention at a 'supermax' prison in USA (ADX Florence) nor the length of their possible sentences (mandatory sentence of life imprisonment without the possibility parole for one of the applicants, and discretionary life sentences for the others) would make such extradition a violation of art. 3.*

☞ ECtHR Ap.no. 15576/89 ***Cruz Varas v. SWE*** 20 Mar. 1991
* no violation of **ECHR** art. 3 (qual.)
* *Recognizing the extra-territorial effect of Art. 3 similarly applicable to rejected asylum seekers; finding no Art. 3 violation in expulsion of Chilean national denied asylum, noting that risk assessment by State Party must be based on facts known at time of expulsion.*

☞ ECtHR Ap.no. 24245/03 ***D. v. TUR*** 22 June 2006
* violation of **ECHR** art. 3 (qual.)
* *Deportation of woman applicant in view of the awaiting execution of severe corporal punishment in Iran would constitute violation of Art. 3, as such punishment would inflict harm to her personal dignity and her physical and mental integrity; violation of Art. 3 would also occur to her husband and daughter, given their fear resulting from the prospective ill-treatment of D.*

New ☞ ECtHR Ap.no. 43538/11 ***E.P. v. NL*** 11 July 2017
* no violation of **ECHR** art. 3 (qual.)
* Joined cases with: 63104/11;72586/11; 77691/11; 41509/12 and 46051/13.
* *No violation of art 3 in case of forcible return to Afghanistan. Cases declared inadmissible by a Committee (similar to M.M. v. Netherlands and other decisions of 16 May 2017, see above).*

☞ ECtHR Ap.no. 68900/13 ***Eshonkulov v. RUS*** 15 Jan. 2015
* violation of **ECHR** art. 3 (qual.)
* *Case of violation of art 3: extradition to Uzbekistan, largely similar to Fozil Nazarov v. Russia (74759/13).* Violation of art. 5(1)(f) and art. 5(4) due to detention of the applicant pending expulsion. Violation of art. 6(2) on account of the wording of the extradition decision, amounting to a declaration of the applicant's guilt prejudging the assessment of the facts by the Uzbekistani courts.

☞ ECtHR Ap.no. 43611/11 ***F.G. v. SWE*** 23 Mar. 2016
* violation of **ECHR** art. 3 (qual.)
* An Iranian is refused asylum in Sweden and faces expulsion to Iran. The Chamber of the Court is divided (4-3) as to the question whether the applicant risks religious persecution in Iran and the case is referred tot the Grand Chamber (2 June 2014).
No violation of ECHR arts. 2 and 3 on account of the applicant's political past if he were to be deported to Iran. However, there is a violation of ECHR arts. 2 and 3 in case of return to Iran without an *ex nunc* assessment of the consequences of the applicant's conversion.
In contrast to the Chamber judgment 16 January 2014, which observed that the applicant had expressly stated before the domestic authorities that he did not wish to rely on his religious conversion as a ground for asylum, the Grand Chamber noted that the Swedish authorities had become aware that there was an issue of the applicant's *sur place* conversion. While he did rely on his conversion in his appeal to the Migration Court, and his conversion to Christianity had not been questioned during the appeal, the Migration Court had not considered this issue further and did not carry out an assessment of the risk that he might encounter, as a result of his conversion, upon return to Iran. Thus, despite being aware of the applicant's conversion and that he might therefore belong to a group of persons who, depending on various factors, could be at risk of ill-treatment, the Swedish authorities had not carried out a thorough examination of the applicant's conversion, the seriousness of his beliefs, and how he intended to manifest his Christian faith in Iran if deported. Moreover, the conversion had not been considered a 'new circumstance' justifying a re-examination of the case. The Swedish authorities had therefore never made an assessment of the risk that the applicant might encounter as a result of his conversion in case of return to Iran. The Court concluded that the applicant had sufficiently shown that his claim for asylum on the basis of his conversion merits an assessment by the national authorities.
In light of the special circumstances of this case, the Grand Chamber quite extensively stated the general principles regarding the assessment of applications for asylum, mainly focusing on the procedural duties incumbent on States under ECHR arts. 2 and 3. While it is in principle for the applicant to submit, as soon as possible, his claim for asylum with the reasons in support of it, and to adduce evidence capable of proving substantial grounds for believing that deportation would imply a real risk of ill-treatment, in relation to claims based on a well-known general risk the obligations under arts. 2 and 3 entail that State authorities carry out an assessment of that risk of their own motion. Given the absolute nature of the rights guaranteed under arts. 2 and 3, this also applies if a State is made aware of facts relating to a specific individual that could expose him to a risk of ill-treatment, in particular in situations where the authorities have been made aware that the asylum seeker may, plausibly, be a member of a group systematically exposed to a practice of ill-treatment and there are serious reasons to believe in the existence of that practice and in his or her membership of the group concerned.

☞ ECtHR Ap.no. 74759/13 ***Fozil Nazarov v. RUS*** 11 Dec. 2014
* violation of **ECHR** art. 3 (qual.)
* *Case of extradition or administrative removal to Uzbekistan. The applicant was an Uzbek citizen who had been accused of criminal offences relating to prohibited religious activities in Uzbekistan.*
Referring to its previous case law, the Court considered the general human rights situation in Uzbekistan alarming, with the practice of torture against persons in police custody being described as 'systematic' and 'indiscriminate',

and there was no concrete evidence of any fundamental improvement. Persons charged with membership of a religious extremist organisation and terrorism, like the applicant, were at an increased risk of ill-treatment.
While the failure to seek asylum immediately after arrival in another country might be relevant for the assessment of the credibility of the applicant's allegations, it was not possible to weigh the risk of ill-treatment against the reasons for the expulsion. The Russian government had not put forward any facts or argument capable of persuading the Court to reach a different conclusion from that made in similar past cases. Due to the available material disclosing a real risk of ill-treatment to persons accused of criminal offences like those with which the applicant was charged, and to the absence of sufficient safeguards to dispel this risk, it was concluded that the applicant's forcible return to Uzbekistan would give rise to a violation of art. 3.

☞ ECtHR Ap.no. 39093/13 ***Gayratbek Saliyev v. RUS*** 17 Apr. 2014
* violation of **ECHR** art. 3 (qual.)
* *The applicant was a Kyrgyz citizen of Uzbek ethnicity, wanted in Kyrgyzstan for violent offences allegedly committed during inter-ethnic riots in 2010. He was detained pending extradition, and released in 2013. His application for asylum in Russia had been refused.*
Considering the widespread and routine use of torture and other ill-treatment by law-enforcement agencies in the southern part of Kyrgyzstan in respect of members of the Uzbek community to which the applicant belonged, the impunity of law enforcement officers and the absence of sufficient safeguards for the applicant in the requesting country, the ECtHR found it substantiated that he would face a real risk of ill-treatment if returned to Kyrgyzstan. That risk was not considered to be excluded by diplomatic assurances from the Kyrgyz authorities, as invoked by Russia. Art. 3 would therefore be violated in case of his extradition to Kyrgyzstan. Also violation of art. 5(4) due to length of detention appeal proceedings.

☞ ECtHR Ap.no. 28127/09 ***Ghorbanov a.o. v. TUR*** 3 Dec. 2013
* violation of **ECHR** art. 3 (qual.)
* *The applicants were 19 Uzbek citizens who had been recognised as refugees by the UNHCR both in Iran and in Turkey, and the Turkish authorities had issued them asylum-seeker cards as well as temporary residence permits. Nonetheless, they had been summarily deported from Turkey to Iran twice in 2008.*
While the complaint that they had been at risk of further deportation from Iran to Uzbekistan had been declared manifestly ill-founded by the ECtHR as the applicants had been living in Iran as recognised refugees for several years before entering Turkey, this complaint concerned the circumstances of their deportation from Turkey. The Court held these circumstances to have caused feelings of despair and fear as they were unable to take any step to prevent their removal in the absence of procedural safeguards, and the Turkish authorities had carried out the removal without respect for the applicants' status as refugees or for their personal circumstances in that most of the applicants were children who had a stable life in Turkey. Thus, the Court concluded that the suffering had been severe enough to be categorised as inhuman treatment. Violation of Art. 3, 5(1) and 5(2).

☞ ECtHR Ap.no. 70073/10 ***H. and B. v. UK*** 9 Apr. 2013
* no violation of **ECHR** art. 3 (qual.)
* joined case with: 44539/11
* *Both cases concerned the removal to Kabul of failed Afghan asylum seekers who had claimed to be at risk of ill-treatment by Taliban in Afghanistan due to their past work as a driver for the UN and as an interpreter for the US forces, respectively. The UK Government was proposing to remove the applicants directly to Kabul, and the cases therefore essentially deal with the adequacy of Kabul as an internal flight alternative. It had not been claimed that the level of violence in Afghanistan was such that any removal there would necessarily breach ECHR art. 3. The Court found no evidence to suggest that there is a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of being returned to Afghanistan.*
The Court pointed to the disturbing picture of attacks carried out by the Taliban and other armed anti-government forces in Afghanistan on civilians with links to the international community, with targeted killing of civilians associated with, or perceived as supporting, the Afghan Government or the international community. Thus, the Court quoted reports about an 'alarming trend' of the assassination of civilians by anti-government forces, and the continuing conduct of a campaign of intimidation and assassination. At the same time the Court considered that there is insufficient evidence at the present time to suggest that the Taliban have the motivation or the ability to pursue low level collaborators in Kabul or other areas outside their control.
H. had left the Wardak province as an infant and had moved to Kabul where he had lived most of his life with his family. He had worked as a driver for the UN in Kabul between 2005 and 2008. Like the UK authorities, the ECtHR found no reason to suggest either that he had a high profile in Kabul such that he would remain known there or that he would be recognised elsewhere in Afghanistan as a result of his work.
B. had until early 2011 worked as an interpreter for the US forces in Kunar province with no particular profile, and had not submitted any evidence or reason to suggest that he would be identified in Kabul or that he would come to the adverse attention of the Taliban there. The Court pointed out that the UK Tribunal had found him to be an untruthful witness and found no reason to depart from this finding of fact. As regards B.'s claim that he would be unable to relocate to Kabul because he would be destitute there, the ECtHR noted that he is a healthy single male of 24 years, and found that he had failed to submit evidence suggesting that his removal to Kabul, an urban area under Government control where he still has family members including two sisters, would be in violation of art. 3.

☞ ECtHR Ap.no. 24573/94 ***H.L.R. v. FRA*** 27 Apr. 1997
* no violation of **ECHR** art. 3 (qual.)
* *Finding no violation of Article 3 in case of expulsion of a citizen of Columbia as there was no 'relevant evidence' of risk of ill-treatment by non-state agents, whereby authorities 'are not able to obviate the risk by providing adequate protection'.*

☞ ECtHR Ap.no. 27765/09 ***Hirsi v. ITA*** 23 Feb. 2012

* violation of **ECHR** art. 3 (qual.)

* *For the first time the Court applied Article 4 of Protocol no. 4 (collective expulsion) in the circumstance of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with article 3 ECHR, as it transferred them to Libya 'in full knowledge of the facts' and circumstances in Libya.*

☞ ECtHR Ap.no. 61204/09 ***I. v. SWE*** 5 Sep. 2013

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 2964/12 ***I.K. v. AUT*** 28 Mar. 2013

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 20110/13 ***Ismailov v. RUS*** 17 Apr. 2014

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 59166/12 ***J.K. a.o. v. SWE*** 23 Aug. 2016

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 40035/98 ***Jabari v. TUR*** 11 July 2000

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 886/11 ***K.A.B. v. SWE*** 5 Sep. 2013

* no violation of **ECHR** art. 3 (qual.)

* *The applicant is a Somali asylum seeker, originating from Mogadishu. He applied for asylum in 2009, claiming that he had fled Somalia due to persecution by the Islamic Courts and al-Shabaab, in particular by telephone calls threatening him to stop spreading Christianity. While the Swedish authorities intended to deport the applicant to Somaliland, the ECtHR did not find it sufficiently substantiated that he would be able to gain admittance and to settle there. The Court therefore assessed his situation upon return to Somalia in the context of the conditions prevailing in Mogadishu, his city of origin.*
The general situation of violence in Mogadishu was assessed in the light of the criteria applied in Sufi and Elmi v. UK (28 June 2011). Against the background of recent information, in particular concerning al-Shabaab, the Court's majority held that the security situation in Mogadishu has improved since 2011 or the beginning of 2012, as the general level of violence has decreased. The situation is therefore not, at present, of such a nature as to place everyone present in the city at a real risk of treatment contrary to arts. 2 or 3.
The two dissenting judges consider the majority's analysis of the general situation deficient and its conclusions premature, due to the unpredictable nature of the conflict and the volatility and instability of the situation in Mogadishu.
As regards the applicant's personal situation, the Court refers to the careful examination of the case by the Swedish authorities, and the extensive reasons given for their conclusions. It further notes that the applicant does not belong to any group at risk of being targeted by al-Shabaab, and allegedly has a home in Mogadishu where his wife lives, the Court concludes that he had failed to make it plausible that he would face a real risk of being killed or subjected to ill-treatment upon return there.

☞ ECtHR Ap.no. 40081/14 ***L.M. a.o. v. RUS*** 15 Oct. 2015

* violation of **ECHR** art. 2+3 (qual.)

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

☞ ECtHR Ap.no. 4455/14 ***L.O. v. FRA*** 18 June 2015

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 33809/08 ***Labsi v. SK*** 15 May 2012

* violation of **ECHR** art. 3 (qual.)

* *An Algerian man, convicted in France of preparing a terrorist act, and convicted in his absence in Algeria of membership of a terrorist organisation, had been expelled to Algeria upon rejection of his asylum request in Slovakia. On the basis of the existing information about the situation in Algeria for persons suspected of terrorist activities, the Court found that there had been substantial grounds for believing that he faced a real risk of being exposed to treatment contrary to art. 3. The responding government's invocation of the security risk represented by the applicant was dismissed due to the absolute guarantee under art. 3. Assurances given by the Algerian authorities concerning the applicant's treatment upon return to Algeria were found to be of a general nature, and they had proven insufficient since the request for a visit by a Slovak official to the applicant, held in detention upon return, had not been followed.*
The applicant's expulsion only one working day after the Slovak Supreme Court's judgment, upholding the dismissal of his asylum request, had effectively prevented him from attempting redress by a complaint to the Slovak Constitutional Court.
Expulsion of the applicant in disregard of an interim measure issued by the Court under Rule 39, preventing the Court from properly examining his complaints and from protecting him against treatment contrary to art. 3, was a violation of the right to individual application under art. 34.

☞ ECtHR Ap.no. 52589/13 ***M.A. v. SWI*** 18 Nov. 2014

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 59689/12 ***M.D. and M.A. v. BEL*** 19 Jan. 2016

* violation of **ECHR** art. 3 (qual.)

* *The applicants were two Russian nationals of Chechen origin, having applied for asylum four times. Their first asylum claim was rejected on the ground that a personal vendetta did not constitute a reason for granting asylum. This decision was upheld on appeal, now based on lack of credibility. The applicants failed to attend a hearing before the Conseil d'Etat, and their appeals in the subsequent claims were examined in the extremely urgent procedure.*
The Court noted that, by refusing to consider the fourth asylum claim, the Belgian authorities' approach to the consideration of whether there were new elements was too restrictive, failing to meet the standard of careful and rigorous examination. There had been no assessment of the relevance, authenticity or probative value of the evidence

put forward as new material which had been rejected on the basis of the assumption that, according to the dates, it could have been produced in an earlier claim. The applicants' explanations for not submitting these documents earlier had not been considered. This was held to have put an unreasonable burden of proof on the applicants.
Due to the absence of review of the risk incurred by the applicants, in view of the documents submitted in support of their fourth asylum claim, the Court held that there had been insufficient evidence for the Belgian authorities to be assured that they would not be at risk of harm if deported to Russia.

☞ ECtHR Ap.no. 58363/10 ***M.E. v. DEN*** 8 July 2014
* no violation of **ECHR** art. 3 (qual.)
* *The applicant stateless Palestinian, who was granted asylum in Denmark in 1993, had been expelled due to criminal offences and was deported to Syria in 2010. He claimed this to be in violation of art. 3 in that he had been tortured upon return by the Syrian authorities. The Danish Government did not challenge this allegation of ill-treatment, but contested the alleged art. 3 violation.*
In examining whether the Danish authorities were, or should have been, aware that the applicant would face a real and concrete risk of being subjected to such treatment, the ECtHR noted that the Syrian uprising and armed conflict had not yet begun at the time of deportation. It further noted that the applicant had not relied on art. 3 until a month after his deportation. Referring to an expert opinion on the ne bis in idem principle in Syrian law, provided during the expulsion case, the Court was not convinced that the Danish authorities should have been aware that the applicant would risk detention and 'double persecution' upon return to Syria. The Court also pointed out that the principle of ne bis in idem does not by itself raise an issue under art. 3.
Even while various international sources were reporting ill-treatment of detainees in Syria at the time of deportation, the Court stated that the applicant did not belong to a threatened minority, and had never been politically active or in conflict with the Syrian regime, nor been perceived as an opponent to the government due to his stay abroad. The Court therefore concluded that there were no substantial grounds to believe that he had been at risk of being subjected to treatment in breach of art. 3 upon return to Syria.

☞ ECtHR Ap.no. 50094/10 ***M.E. v. FRA*** 6 June 2013
* violation of **ECHR** art. 3 (qual.)
* *The applicant was an Egyptian belonging to the Coptic Christian community in his country of origin where he had been exposed to a number of attacks due to his religious belief. His reports of these incidents to the police had been unsuccessful, and before leaving Egypt in 2007 he was accused of proselytizing for which he was sentenced in absentia to 3 years of imprisonment.*
The ECtHR referred to reports on numerous instances of violence and other persecution against Coptic Christians in Egypt in 2010-11, and on reluctance of Egyptian authorities to prosecute the perpetrators, and found no evidence that the situation had improved. The Court found strong evidence that the applicant would be a potential prime target for persecution and violence as a convicted proselytizer, whether free or imprisoned, and pointed to the serious doubt about on the applicant's ability to receive adequate protection from the Egyptian authorities. Given his background and the situation of Coptic Christians in Egypt, art. 3 would be violated in case of enforcement of the decision to deport the applicant.
Contrary to the judgment in I.M. v. France [2 February 2012 – see NEAIS 2012/1 p. 10], the ECtHR did not consider the examination of this case in the French 'fast-track' asylum procedure incompatible with art. 13. The Court emphasised the very substantial delay in the applicant's lodging of his asylum request (almost 3 years) and the fact that he had been able to lodge an appeal with suspensive effect against the removal order as well as an asylum request with suspensive effect. Given his delay, the applicant could not validly argue that the reduced and very short deadlines to prepare the asylum request in the special procedure had affected the accessibility of the remedies available to him, and there was therefore no violation of art. 13 in conjunction with art. 3.

☞ ECtHR Ap.no. 71398/12 ***M.E. v. SWE*** 8 Apr. 2015
* no violation of **ECHR** art. 3 (qual.)
* *The applicant (a Libyan asylum seeker) had first explained that he had been involved in illegal transport of weapons for powerful clans from southern Libya, and that he had been stopped and interrogated under torture by the authorities. Subsequently he had added to his grounds for asylum, stating that he was homosexual and had entered into a relationship with N. in Sweden. The first Chamber did not find a violation of art. 3 ECHR. After referral to the Grand Chamber, the* Swedish Migration Board granted the applicant a permanent residence permit resulting in the case being struck.

☞ ECtHR Ap.no. 76100/13 ***M.K. v. FRA*** 1 Sep. 2015
* no violation of **ECHR** art. 3 (qual.)
* *The case concerned an Algerian national who had been sentenced to 9 years of imprisonment for murder and then served with a deportation order. After dismissal of his appeals against that order he requested asylum, invoking fear of reprisals in Algeria from the family of the person he had assassinated.*
While noting the different findings of the various French authorities as regards the probative value of statements submitted by the applicant in support of the alleged threats, the ECtHR shared the doubts expressed by the domestic courts in that regard. In any event, the ECtHR was not convinced that the Algerian authorities would be unable to extend the appropriate protection to the applicant, in particular if he would relocate to another part of the country. In this regard the Court noted that the applicant was a single man at 29 years of age, and that he had not established that it would be impossible for him to settle in an area where he had no close relatives in order to avoid the alleged risk. The case was therefore rejected as manifestly ill-founded.

New ☞ ECtHR Ap.no. 15993/09 ***M.M. v. NL*** 16 May 2017
* no violation of **ECHR** art. 3 (qual.)
* See also: A.G.R v. NL, 12 Jan. 2016

* Joined cases with: 26268/09; 33314/09; 53926/09
* *Cases declared inadmissible. The four cases concerned Afghan asylum seekers who had been excluded from refugee status under art. 1 F of the UN Refugee Convention due to past activities as high ranking officers in the former Afghan security service KhAD/WAD and as a highly placed executive official of the communist party PDPA, respectively, until the collapse of the regime in 1992. They claimed that their forcible return to Afghanistan would expose them to a real risk of ill-treatment.*
The Court noted that the applicants had not sought to flee Afghanistan when the Mujahedin seized power in 1992, but only fled after the Taliban had taken power in the country. While they had been in hiding or/and captured before their flight, the Court found no indication that, since their departure from Afghanistan, any of the four applicants had attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of their involvement with the former communist regime. The Court further noted that UNHCR does not include persons involved in the former communist regime in its potential risk profiles in respect of Afghanistan. Therefore, the Court did not find it demonstrated that the applicants, on individual grounds, would be exposed to a real risk of treatment contrary to art. 3.
As to the general security situation in Afghanistan, the Court did not find that there is a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of an individual being returned to Afghanistan.

New

☞ ECtHR Ap.no. 41282/16 ***M.O. v. CH*** 20 June 2017

* no violation of **ECHR** art. 3 (qual.)
* *The applicant was an Eritrean national whose application for asylum had been rejected as his account was dismissed by the Swiss authorities as not credible, due to a number of discrepancies and lack of substance and detail in various parts, such as that concerning his departure from Eritrea and other key elements of the claim.*
The Court noted that it is evident that the human rights situation in Eritrea is of grave concern, and that people of various profiles are at risk of serious human rights violations. In that regard, it referred in particular to a 2016 judgment of the UK Upper Tribunal issuing country guidance, according to which a person whose asylum claim has not been found credible, but who is able to satisfy the authorities that he left the country illegally, and that he is of or approaching draft age, is likely to be perceived on return as a draft evader or deserter and as a result face a real risk of persecution or serious harm. However, the Court found that the general human rights situation was not such that any Eritrean national would be at risk of ill-treatment if returned to the country.
As to the applicant's personal circumstances, the Court reiterated that, as a general principle, the national authorities are best placed to assess the credibility of an individual. It further stated that the assessment by the Swiss authorities was adequate, sufficiently reasoned and supported by material originating from reliable and objective sources. The Court therefore endorsed the finding that the applicant had failed to substantiate that he would face a real risk of being subjected to treatment contrary to art. 3 in case of return to Eritrea.

☞ ECtHR Ap.no. 1412/12 ***M.T. v. SWE*** 26 Feb. 2015

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

☞ ECtHR Ap.no. 17897/09 ***M.V. & M.T. v. FRA*** 4 Sep. 2014

* violation of **ECHR** art. 3 (qual.)
* *On several occasions in 2007, the applicants (a Russian couple) had accommodated an uncle who was a former Chechen rebel. After his last stay with them they had been harassed by men supposedly affiliated with the current Chechen President Kadyrov who came to their house, interrogated them about their uncle, and threatened and maltreated them.*
Referring to the applicants' family connections, in particular the uncle who had participated in the Chechen rebellion, and to the previous attacks and threats on their persons, and the general situation previously as well as presently in Chechnya, the Court held that their return would result in a real risk of ill-treatment by the Russian authorities.

☞ ECtHR Ap.no. 18372/10 ***Mo.M. v. FRA*** 18 Apr. 2013

* violation of **ECHR** art. 3 (qual.)
* *The applicant had been accused of spying for the rebels in Chad, and had been taken into custody for five days, interrogated and subjected to torture. In addition, his shop had been destroyed, his possessions confiscated, and his family threatened.*
The Court held the general situation in Chad to give cause for concern, particularly for persons suspected of collaboration with the rebels. As regards the applicant's personal situation, the Court considered the medical

certificates produced by him as sufficient proof of the alleged torture. As to his risk of ill-treatment in case of return, the Court noted that he had produced a warrant issued by the authorities against him, the authenticity of which had not been seriously disputed by the French Government. Due to the reasoning given by the French authorities and the fact that they had not been able to examine some of the evidence produced by the applicant, the Court could not rely on the French courts' assessment of the applicant's risk. Due to his profile, the medical certificates and the past and present situation in Chad, the Court found a real risk that he would be subjected to treatment contrary to art. 3.

☞ ECtHR Ap.no. 71932/12 ***Mohammadi v. AUT*** 3 July 2014

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 23505/09 ***N. v. SWE*** 20 July 2010

* violation of **ECHR** art. 3 (qual.)

* *The Court observed that women are at particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. The Court could not ignore the general risk to which she might be exposed should her husband decide to resume their married life together, or should he perceive her filing for divorce as an indication of an extramarital relationship; in these special circumstances, there were substantial grounds for believing that the applicant would face various cumulative risks of reprisals falling under Art. 3 from her husband, his or her family, and from the Afghan society.*

☞ ECtHR Ap.no. 50364/14 ***N.A. v. CH*** 30 May 2017

* no violation of **ECHR** art. 2+3 (qual.)

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

☞ ECtHR Ap.no. 25904/07 ***N.A. v. UK*** 17 July 2008

* violation of **ECHR** art. 3 (qual.)

* *The Court has never excluded the possibility that a general situation of violence in the country of destination will be of a sufficient level of intensity as to entail that any removal thereto would necessarily breach Art. 3, yet such an approach will be adopted only in the most extreme cases of general violence where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.*

☞ ECtHR Ap.no. 7974/11 ***N.K. v. FRA*** 19 Dec. 2013

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 8139/09 ***Othman v. UK*** 17 Jan. 2012

* no violation of **ECHR** art. 3 (qual.)

* referral to the Grand Chamber requested; refused by the ECtHR Panel on 9 May 2012

* *Notwithstanding widespread and routine occurrence of torture in Jordanian prisons, and the fact that the applicant as a high profile Islamist was in a category of prisoners frequently ill-treated in Jordan, the applicant was held not to be in real risk of ill-treatment if being deported to Jordan, due to the information provided about the 'diplomatic assurances' that had been obtained by the UK government in order to protect his Convention rights upon*

deportation; the Court took into account the particularities of the memorandum of understanding agreed between the UK and Jordan, as regards both the specific circumstances of its conclusion, its detail and formality, and the modalities of monitoring the Jordanian authorities' compliance with the assurances.
Holding that ECHR art. 5 applies in expulsion cases, but that there would be no real risk of flagrant breach of art. 5 in respect of the applicant's pre-trial detention in Jordan. Holding that deportation of the applicant to Jordan would be in violation of ECHR art. 6, due to the real risk of flagrant denial of justice by admission of torture evidence against him in the retrial of criminal charges.

☞ ECtHR Ap.no. 41738/10 ***Paposhvili v. BEL*** (GC) 13 Dec. 2016

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 7211/06 ***R.B.A.B. v. NL*** 7 June 2016

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 34648/14 ***R.D. v. FRA*** 16 June 2016

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 4601/14 ***R.H. v. SWE*** 10 Sep. 2015

* no violation of **ECHR** art. 3 (qual.)

* *The applicant Somali woman, originating from Mogadishu, had applied for asylum in Sweden in 2011. She had*

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

☞ ECtHR Ap.no. 10466/11 ***R.J. v. FRA*** 19 Sep. 2013

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 25393/10 ***Rafaa v. FRA*** 30 May 2013

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 52077/10 ***S.F. v. SWE*** 15 May 2012

* violation of **ECHR** art. 3 (qual.)

* *Observing that the human rights situation in Iran gives rise to grave concern, and that the situation appears to have deteriorated since the Swedish domestic authorities determined the case and rejected the applicants' request for asylum in 2008-09, the Court noted that it is not only the leaders of political organisations or other high-profile persons who are detained, but that anyone who demonstrates or in any way opposes the current regime in Iran may be at risk of being detained and ill-treated or tortured. Acknowledging that the national authorities are best placed to assess the facts and the general credibility of asylum applicants' story, the Court agreed that the applicant's basic story was consistent notwithstanding some uncertain aspects that did not undermine the overall credibility of the story.*
While the applicants' pre-flight activities and circumstances were not sufficient independently to constitute grounds for finding that they would be in risk of art. 3 treatment if returned to Iran, the Court found that they had been involved in extensive and genuine political and human rights activities in Sweden that were of relevance for the determination of the risk on return, given their existing risk of identification and their belonging to several risk categories. Thus, their sur place activities taken together with their past activities and incidents in Iran lead the Court to conclude that there would be substantial grounds for believing that they would be exposed to a real risk of treatment contrary to art. 3 if deported to Iran in the current circumstances.

☞ ECtHR Ap.no. 60367/10 ***S.H.H. v. UK*** 29 Jan. 2013

* no violation of **ECHR** art. 3 (qual.)

* *The applicant had been seriously injured during a rocket launch in Afghanistan in 2006 and left disabled, following several amputations, for the UK in 2010. His asylum application had been refused, and he was refused permission to appeal this decision. The Court reiterated that art. 3 does not imply an obligation on States to provide all illegal immigrants with free and unlimited health care. Referring to the applicant's assertion that disabled persons were at higher risk of violence in the armed conflict in Afghanistan, the Court held that expulsion would only be in violation*

of art. 3 in very exceptional cases of general violence where the humanitarian grounds against removal were compelling. It pointed out that the applicant had not complained that his removal to Afghanistan would put him at risk of deliberate ill-treatment from any party, nor that the levels of violence were such as to entail a breach of art. 3.
The Court emphasised that the applicant had received both medical treatment and support throughout the four years he had spent in Afghanistan after his accident. It did not accept the applicant's claim that he would be left destitute due to total lack of support upon return to Afghanistan, as he had not given any reason why he would not be able to make contact with his family there.

☞ ECtHR Ap.no. 52722/15 ***S.K. v. RUS*** 14 Feb. 2017

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 20669/13 ***S.M. v. FRA*** 28 Mar. 2017

* no violation of **ECHR** art. 3 (qual.)

* *The applicant was a Sudanese national having applied for asylum in France on the basis of his alleged non-Arab ethnicity from Darfur and participation in anti-government activities. The Court held, in accordance with the French authorities which it considered better placed to assess the facts of the case, that the applicant had not provided sufficient elements of information to make the existence of a risk of ill-treatment in case of his return to Sudan credible. The application was therefore rejected as manifestly ill-founded.*

☞ ECtHR Ap.no. 2345/02 ***Said v. NL*** 5 July 2005

* violation of **ECHR** art. 3 (qual.)

* *Asylum seeker held to be protected against refoulement under Art. 3; the Dutch authorities had taken the failure to submit documents establishing his identity, nationality, or travel itinerary as affecting the credibility of his statements; the Court instead found the applicant's statements consistent, corroborated by information from Amnesty International, and thus held that substantial grounds had been shown for believing that, if expelled, he would be exposed to a real risk of ill-treatment as prohibited by Art. 3.*

☞ ECtHR Ap.no. 1948/04 ***Salah Sheekh v. NL*** 11 Jan. 2007

* violation of **ECHR** art. 3 (qual.)

* *There was a real chance that deportation to 'relatively safe' areas in Somalia would result in his removal to unsafe areas, hence there was no 'internal flight alternative' viable. The Court emphasised that even if ill-treatment be meted out arbitrarily or seen as a consequence of the general unstable situation, the asylum seeker would be protected under Art. 3, holding that it cannot be required that an applicant establishes further special distinguishing features concerning him personally in order to show that he would be personally at risk.*

☞ ECtHR Ap.no. 14038/88 ***Soering v. UK*** 7 July 1989

* violation of **ECHR** art. 3 (qual.)

* *Holding extradition from UK to USA of German national charged with capital crime and at risk of serving on death row is a violation of Art. 3 recognising the extra-territorial effect of the ECHR.*

☞ ECtHR Ap.no. 27081/13 ***Sow v. BEL*** 19 Jan. 2016

* no violation of **ECHR** art. 3 (qual.)

* *The applicant was a Guinean woman who had partially undergone FGM and claimed to be at risk of re-excision in case of return to her country of origin. In the first two asylum applications she had also claimed to have been exposed to forced marriage, but these asylum claims had been rejected due to inconsistencies, lack of credibility and failure to demonstrate the risk of being re-excised. In her third asylum application the applicant had concentrated on her fears of being subjected again to excision. The Belgian authorities refused to consider that application, arguing that no new*

elements had been submitted and that the evidence provided should have been submitted with one of the previous claims. The Court noted that the Belgian authorities had subjected the first asylum claim to a detailed and thorough examination, basing their conclusion that the applicant would not be at risk of re-excision on a report showing that certain categories of persons, to which she did not belong, were exposed to such risk. The Court found nothing arbitrary or manifestly unreasonable in this assessment and, consequently, no violation of art. 3.
As regards art. 13, the court considered it legitimate for States to provide specific rules to reduce repetitive and abusive or manifestly unfounded asylum applications. It could not be required to make ex nunc examinations of each new asylum claim where the alleged risk had already been subject to careful and rigorous examination in a previous asylum claim, unless new facts were presented. In this case, the new documents submitted had been probative of an undisputed fact that had already been considered. There was therefore no violation of art. 13.

☞ ECtHR Ap.no. 48866/10 ***T.A. v. SWE*** 19 Dec. 2013

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 1231/11 ***T.H.K v. SWE*** 19 Dec. 2013

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 17724/14 ***Tadzhibayev v. RUS*** 1 Dec. 2015

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 71932/12 ***Trabelsi v. BEL*** 4 Sep. 2014

* violation of **ECHR** art. 3 (qual.)

* *The applicant Tunisian citizen had been sentenced to ten years' imprisonment in Belgium in 2003 for attempting to blow up a military base and for instigating a criminal conspiracy. He had in 2005 been sentenced to ten years' imprisonment in absentia by a Tunisian military court for belonging to a terrorist organisation. In 2008, the US authorities requested his extradition on charges for offences relating to Al Qaeda-inspired terrorism, among which two charges made him liable to life imprisonment. In spite of a Rule 39 indication by the ECtHR of interim measures in 2011, the Belgian authorities extradited the applicant to the US in 2013.*
While reiterating that the imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by the ECHR, provided that it is not disproportionate, the ECtHR pointed out that for it to be compatible with art. 3 such a sentence should not be irreducible de jure and de facto. In view of the gravity of the terrorist offences with which the applicant was charged, a discretionary life sentence was not considered to be grossly disproportionate.
Even though the US had, by a diplomatic note in 2010, repeated their guarantees towards Belgium in respect of the

possibility of commutation of a life sentence, the ECtHR held that the US authorities had at no point provided any concrete assurance that the applicant would be spared an irreducible life sentence. The Court further noted that while US legislation provided various possibilities for reducing life sentences which gave the applicant some prospect of release, it did not lay down any procedure amounting to a mechanism for reviewing such sentences for the purposes of ECHR art. 3. The life imprisonment to which the applicant might be sentenced could therefore not be described as reducible. Consequently, his extradition to the US had amounted to a violation of Art. 3.
In addition, by the actual extradition of the applicant in spite of the Rule 39 indication, Belgium had deliberately and irreversibly lowered the level of protection of the rights in art. 3. ECHR art. 34 had therefore also been violated.

☞ ECtHR Ap.no. 14348/15 ***U.N. v. RUS*** 26 July 2016

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 58510/00 ***Venkadajalasarma v. NL*** 17 Feb. 2004

* no violation of **ECHR** art. 3 (qual.)

* *Current situation in Sri Lanka makes it unlikely that Tamil applicant would run a real risk of being subject to ill-treatment after his expulsion from the Netherlands.*

☞ ECtHR Ap.no. 13163/87 ***Vilvarajah v. UK*** 30 Oct. 1991

* no violation of **ECHR** art. 3 (qual.)

* *Finding no breach of Art. 3 although applicants claimed to have been subjected to ill-treatment upon return to Sri Lanka; this had not been a foreseeable consequence of the removal of the applicants, in the light of the general situation in Sri Lanka and their personal circumstances; a mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Art. 3, and there existed no special distinguishing features that could or ought to have enabled the UK authorities to foresee that they would be treated in this way.*

☞ ECtHR Ap.no. 49341/10 ***W.H. v. SWE*** 8 Apr. 2015

* no violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 16744/14 ***X. v. CH*** 26 Jan. 2017

* violation of **ECHR** art. 3 (qual.)

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

☞ ECtHR Ap.no. 35/10 ***Zarmayev v. BE*** 27 Feb. 2014
* no violation of **ECHR** art. 3 (qual.)
* *The applicant was a Russian citizen of Chechen origin who had been granted asylum in Belgium in 2005 under false identity. As a result, his refugee status had been withdrawn in 2009, and he was convicted for a number of criminal offences. As Belgium then accepted a request for his extradition to Russia, he lodged four unsuccessful asylum applications in Belgium from 2009 to 2013.*
The ECtHR noted that the situation in Chechnya is not so serious as to warrant the general prohibition of returns under ECHR art. 3. As regards the applicant's personal circumstances, the Court pointed to internal inconsistencies in his account of events, unexplained additions to this account, and the unreliability of letters of support that he had produced. The Court further referred to diplomatic assurances indicating that the applicant, if convicted in Russia, would be detained in an ECHR-compliant institution, and that the Belgian embassy would be permitted to visit him in prison and talk with him unsupervised.
His personal circumstances therefore did not justify the finding of a violation of art. 3 in case of his extradition.

1.3.4 CAT Views on Qualification for Protection

☞ CAT 300/2006 ***A.T. v. FRA*** 11 May 2007
* violation of **CAT** art. 3 (qual.)
* *Violation of the Convention when France charged dual French/Tunisian national of terrorism, revoked his French citizenship, and expelled him to Tunisia while his asylum and CAT claims were still pending.*

☞ CAT 381/2009 ***Abolghasem Faragollah et al. v. CH*** 21 Nov. 2011
* violation of **CAT** art. 3 (qual.)
* *The Committee is of the opinion that in the light of all the circumstances, including the general human rights situation in Iran, the personal situation of the claimant, who continues to engage in opposition activities for the Democratic Association for Refugees and whose son has been granted refugee status, and bearing in mind its preceding jurisprudence, the Committee is of the opinion that he could well have attracted the attention of the Iranian authorities. The Committee therefore considers that there are substantial ground for believing that he would risk being subjected to torture if returned to Iran. The Committee notes that Iran is not a State Party to the CAT and the complainant therefore would be deprived of the legal option of recourse.*

☞ CAT 233/2003 ***Agiza v. SWE*** 24 May 2005
* violation of **CAT** art. 3 (qual.)
* *The non-refoulement under CAT is absolute even in context of national security concerns; insufficient diplomatic assurances were obtained by sending country.*

☞ CAT 379/2009 ***Bakatu-Bia v. SWE*** 3 June 2011
* violation of **CAT** art. 3 (qual.)
* *The present human rights situation in the Democratic Republic of the Congo, is such that, in the prevailing circumstances, substantial grounds exist for believing that the complainant is at risk of being subjected to torture if returned to the Democratic Republic of the Congo.*

☞ CAT 279/2005 ***C.T. and K.M. v. SWE*** 22 Jan. 2007
* violation of **CAT** art. 3 (qual.)
* *Rwandan women repeatedly raped in detention in Rwanda by state officials have substantial grounds to fear torture if returned while ethnic tensions remain high. Complete accuracy seldom to be expected of victims of torture, and inconsistencies in testimony do not undermine credibility if they are not material.*

☞ CAT 490/2012 ***E.K.W. v. FIN*** 25 June 2015
* violation of **CAT** art. 3 (qual.)
* *The Committee notes the complainant's argument that violence against women in the Democratic Republic of the Congo is widespread. In this regard, the Committee recalls its previous jurisprudence and its views in the case of Njamba and Balikosa v. Sweden, in which the Committee was not able to identify any particular area in the Democratic Republic of the Congo that could be considered safe for the complainants. The Committee observes that in recent credible reports, namely the 2013 report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo (A/HRC/24/33) and the concluding observations of the Committee on the Elimination of Discrimination against Women on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo (CEDAW/C/COD/CO/6-7), it is stated that the widespread violence against women, including rape by national armed groups, security and defence forces, is mostly inherent in conflict-affected and rural areas of the country, especially in the east. The Committee is concerned, however, that according to these reports such violence is also taking place in other parts of the country.*
Accordingly, the Committee finds that, taking into account all the factors in this particular case, substantial grounds exist for believing that the complainant will be in danger of torture if returned to the Democratic Republic of the Congo.

☞ CAT 281/2005 ***E.P. v. AZE*** 1 May 2007
* violation of **CAT** art. 3 (qual.)
* *Violation of the Convention when Azerbaijan disregarded Committee's request for interim measures and expelled*

applicant who had received refugee status in Germany back to Turkey where she had previously been detained and tortured.

☞ CAT 613/2014 ***F.B. v. NL*** 15 Dec. 2015

* violation of **CAT** art. 3 (qual.)

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

☞ CAT 432/2010 ***H.K. v. CH*** 8 Jan. 2013

* no violation of **CAT** art. 3 (qual.)

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

☞ CAT 336/2008 ***Harminder Singh Khalsa v. CH*** 26 May 2011

* violation of **CAT** art. 3 (qual.)

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

☞ CAT 373/2009 ***M.A. and L.G. v. SWE*** 19 Nov. 2010

* violation of **CAT** art. 3 (qual.)

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

☞ CAT 385/2009 ***M.A.F. et al. v. SWE*** 4 Feb. 2013

* no violation of **CAT**

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

☞ CAT 391/2009 ***M.A.M.A. et al. v. SWE*** 10 July 2012

* violation of **CAT** art. 3 (qual.)

* *As to the State party's position in relation to the assessment of the first complainant's risk of being subjected to*

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

☞ CAT 439/2010 ***M.B. v. CH*** 17 July 2013

* no violation of **CAT** art. 3 (qual.)

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

New ☞ CAT 623/20 ***N.K.*** 1 May 2017

* no violation of **CAT** art. 3 (qual.)

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

☞ CAT 339/2008 ***Said Amini v. DNK*** 30 Nov. 2010

* violation of **CAT** art. 3 (qual.)

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

☞ CAT 387/2009 ***Sathurusinghe Jagath Dewage v. AUS*** 17 Dec. 2013

* violation of **CAT** art. 3 (qual.)

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

☞ CAT 43/1996 ***Tala v. SWE*** 15 Nov. 1996

* violation of **CAT** art. 3 (qual.)

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

☞ CAT 431/2010 ***Y. v. CH*** 12 July 2013

* no violation of **CAT** art. 3 (qual.)

* *In assessing the risk of torture in the present case, the Committee takes note of the complainant's arrest and ill-treatment in 1998 and of the allegation that she suffers from mental health problems because of ill-treatment in the past and the continuous harassment and persecution by the Turkish authorities. In this regard, the Committee observes that the complainant submits as documentary evidence a confirmation by the TOVAH Rehabilitation Centre that she has been under treatment from 2002 to 2006, as well as a medical report dated 23 August 2010 issued by a Swiss psychiatrist who, inter alia, refers to a suspected post-traumatic stress disorder. The Committee further notes the State party's arguments that the complainant has not invoked her mental health problems during the asylum proceedings, that the alleged origin of these problems is not proven, that a suspected post-traumatic stress disorder*

cannot be considered an important indication of her persecution in Turkey, and that treatment for her condition is available in Turkey.
The Committee takes note of the information submitted by the parties on the general human rights situation in Turkey. It notes the information presented in recent reports that, overall, some progress was made on observance of international human rights law, that Turkey pursued its efforts to ensure compliance with legal safeguards to prevent torture and mistreatment through its ongoing campaign of "zero tolerance" for torture and that the downward trend in the incidence and severity of ill-treatment continued. Reports also indicate that disproportionate use of force by law enforcement officials continues to be a concern and cases of torture continue to be reported. However, the Committee notes that none of these reports mention that family members of PKK militants are specifically targeted and subjected to torture. As to the complainant's allegation that she would be arrested and interrogated upon return, the Committee recalls that the mere risk of being arrested and interrogated is not sufficient to conclude that there is also a risk of being subjected to torture.

☞ CAT 467/2011 ***Y.B.F. et al. v. CH*** 15 July 2013
* no violation of **CAT** art. 3 (qual.)
* *The Committee concludes accordingly that the information submitted by the first complainant, including the unclear nature of his political activities in Yemen prior to his departure from that country and the low-level nature of his political activities in Switzerland, is insufficient to show that he would personally be exposed to a risk of being subjected to torture if returned to Yemen. The Committee is concerned at the many reports of human rights violations, including the use of torture, in Yemen, but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.*

1.3.5 CCPR Views on Qualification for Protection

☞ CCPR 2370/2014 ***A.H. v. DK*** 7 Sep. 2015
* violation of **ICCPR** art. 7 (qual.)
* *The Committee takes note of the author's assertions that, due to his former work in fighting drug-related crime, in close cooperation with several English-speaking agencies, he is at "great risk of being exposed to serious harm and abuse, even death" by the Taliban in Afghanistan, in particular due to his assistance in securing the arrest of two Taliban-affiliated drug lords. The Committee also notes the author's claim that, due to his past work, the author belongs to several risk groups under the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan of 6 August 2013, and that this fact was conceded by the State party. The Committee further notes the author's assertions that, in the context of his past work, he was the victim of an abduction attempt and received written threats, and his brother was kidnapped and killed. It notes that those serious allegations were not specifically refuted by the State party. The Committee also notes the author's assertions about his fears of the Afghan authorities, who reportedly believe that he is a supporter of Christianity because of a video recording in which he compares Christianity with Islam, although the State party pointed to the lack of evidence about the exact circumstances and time of production of the video in question. The Committee further notes the author's allegations that neither the Danish Immigration Service nor the Board initiated any investigation as to the veracity and validity of the evidence produced in support of his detailed allegations.*
The Committee is of the view that the facts as presented, read in their totality, including the information on the author's personal circumstances, such as his past experience in combating drug-related crimes which implicated Taliban-affiliated drug lords, the threats to the author and his family prior to his deportation to Afghanistan, the absence of comprehensive and objective verification by the State party's authorities of the evidence submitted by the author in support of his claims, and the unstable state of his mental health, which the Board identified in its decision of 17 March 2014 and which has likely rendered him particularly vulnerable, disclose a real risk for the author of treatment contrary to the requirements of article 7 of the Covenant as a consequence of his removal to Afghanistan, which was not given sufficient weight by the State party's authorities. Accordingly, the Committee is of the view that, by removing the author to Afghanistan, the State party has violated its obligations under article 7 of the Covenant.

☞ CCPR 1763/2008 ***Ernst Sigan Pillai et al. v. CAN*** 25 Mar. 2011
* violation of **ICCPR** art. 7 (qual.)
* *The Committee notes the argument invoked by the State party regarding the harm being the necessary and foreseeable consequence of the deportation to Sri Lanka. In that respect the Committee recalls its General Comment No. 31 in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm. The Committee further notes that the diagnosis of Mr. Pillai's post-traumatic stress disorder led the Immigration and Refugee Board to refrain from questioning him about his earlier alleged torture in detention. The Committee is accordingly of the view that the material before it suggests that insufficient weight was given to the authors' allegations of torture and the real risk they might face if deported to their country of origin, in the light of the documented prevalence of torture in Sri Lanka. Notwithstanding the deference given to the immigration authorities to appreciate the evidence before them, the Committee considers that further analysis should have been carried out in this case. The Committee therefore considers that the removal order issued against the authors would constitute a violation of Art 7 of the Covenant if it were enforced.*

☞ CCPR 1544/2007 ***Hamida v. CAN*** 11 May 2010
* violation of **ICCPR** art. 7 (qual.)
* *The CCPR observes that the State party refers mainly to the decisions of various authorities which have rejected the author's applications essentially on the grounds that he lacks credibility, having noted inconsistencies in his*

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

☞ CCPR 2360/2014 ***Warda Osman Jasin v. DK*** 22 July 2015

* violation of **ICCPR** art. 7 (qual.)

* *The author of the communication is Warda Osman Jasin, born on 2 May 1990 in Somalia. She submits the communication on behalf of herself and her three minor children: S, SU and F. The author is a Somali national seeking asylum in Denmark and subject to deportation to Italy (under Dublin) following the Danish authorities' rejection of her application for refugee status in Denmark. She submits that reception conditions in Italy and basic human standards for refugees with valid or expired residence permits do not comply with international obligations of protection.*

The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face in Italy, rather than rely on general reports and on the assumption that, as she had benefited from subsidiary protection in the past, she would, in principle, be entitled to work and receive social benefits in Italy today. The Committee considers that the State party failed to devote sufficient analysis to the author's personal experience and to the foreseeable consequences of forcibly returning her to Italy. It has also failed to seek proper assurance from the Italian authorities that the author and her three minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant, by requesting that Italy undertake (a) to renew the author's and her children's residence permits and not to deport them from Italy; and (b) to receive the author and her children in conditions adapted to the children's age and the family's vulnerable status, which would enable them to remain in Italy. Consequently, the Committee considers that, under the circumstances, removal of the author and her three minor children to Italy on the basis of the initial decision of the Danish Refugee Appeals Board would be in violation of article 7 of the Covenant.

2 Asylum Procedure

2.1 Asylum Procedure: Adopted Measures

case law sorted in chronological order

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

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

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

* Revised by Dir. 2013/32

CJEU Judgments

☞	CJEU C-239/14 ***Tall***	17 Dec.	2015	art. 39
☞	CJEU C-175/11 ***H.I.D.***	31 Jan.	2013	art. 23(3)+23(4)+39
☞	CJEU C-69/10 ***Samba Diouf***	28 July	2011	art. 39
☞	CJEU C-133/06 ***Eur. Parliament v. EU***	6 May	2008	

See further: § 2.3

Directive 2013/32 — **Asylum Procedure II**

On common procedures for granting and withdrawing international protection

* OJ 2013 L 180/60 — impl. date: 20-07-2015 — UK, IRL opt out

* Recast of Dir. 2005/85

CJEU pending cases

New	☞	CJEU C-348/16 ***Sacko***	26 July	2017	art. 12+14+31+46
New	☞	CJEU C-404/17 ***A.***	6 July	2017	art. 31(8)
New	☞	CJEU C-180/17 ***X. & Y.***	pending		art. 46
New	☞	CJEU C-175/17 ***X.***	pending		art. 9
New	☞	CJEU C-113/17 ***Q.J.***	pending		art. 46(3)
New	☞	CJEU C-56/17 ***Fathi***	pending		art. 46(3)

See further: § 2.3

CAT — **non-refoulement**

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

* 1465 UNTS 85 — impl. date: 1987

* art. 3: Protection against Refoulement

CAT Views

☞	CAT 438/2010 ***M.A.H. & F.H.***	12 July	2013	art. 3 (proc.)
☞	CAT 379/2009 ***Bakatu-Bia***	8 July	2011	art. 3 (proc.)
☞	CAT 319/2007 ***Nirma Singh***	30 May	2011	art. 22

See further: § 2.3

ECHR — **effective remedy**

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

* ETS 005 — impl. date: 1953

* art. 3: Protection against Refoulement
art. 13: Right to Effective Remedy

ECtHR Judgments

New	☞	ECtHR Ap.no. 47287/15 ***Ilias & Ahmed***	14 Mar.	2017	art. 3 (proc.)
	☞	ECtHR Ap.no. 12552/12 ***Kebe a.o.***	12 Jan.	2017	art. 3 (proc.)
	☞	ECtHR Ap.no. 11981/15 ***B.A.C.***	13 Oct.	2016	art. 3 (proc.)
	☞	ECtHR Ap.no. 29094/09 ***A.M.***	5 July	2016	art. 13 (proc.)
	☞	ECtHR Ap.no. 44883/09 ***Nasr and Ghali***	23 Feb.	2016	art. 3 (proc.)
	☞	ECtHR Ap.no. 70055/10 ***S.J.***	19 Mar.	2015	art. 13 (proc.)
	☞	ECtHR Ap.no. 6528/11 ***A.C. a.o.***	22 Apr.	2014	art. 13 (proc.)
	☞	ECtHR Ap.no. 2283/12 ***Mohammed***	6 June	2013	art. 3 (proc.)
	☞	ECtHR Ap.no. 50094/10 ***M.E.***	6 June	2013	art. 13 (proc.)
	☞	ECtHR Ap.no. 39630/09 ***El-Masri***	13 Dec.	2012	art. 13 (proc.)
	☞	ECtHR Ap.no. 33210/11 ***Singh***	2 Oct.	2012	art. 13 (proc.)
	☞	ECtHR Ap.no. 14743/11 ***Abdulkhakov***	2 Oct.	2012	art. 3 (proc.)
	☞	ECtHR Ap.no. 33809/08 ***Labsi***	15 May	2012	art. 13 (proc.)
	☞	ECtHR Ap.no. 27765/09 ***Hirsi***	23 Feb.	2012	art. 3 (proc.)
	☞	ECtHR Ap.no. 9152/09 ***I.M.***	2 Feb.	2012	art. 13 (proc.)
	☞	ECtHR Ap.no. 39472/07 ***Popov***	19 Jan.	2012	art. 3 (proc.)
	☞	ECtHR Ap.no. 12294/07 ***Zontul***	17 Jan.	2012	art. 3 (proc.)
	☞	ECtHR Ap.no. 30696/09 ***M.S.S.***	21 Jan.	2011	art. 3 (proc.)
	☞	ECtHR Ap.no. 30471/08 ***Abdolkhani***	22 Sep.	2009	art. 13 (proc.)
	☞	ECtHR Ap.no. 246/07 ***Ben Khemais***	24 Feb.	2009	art. 3 (proc.)
		ECtHR Ap.no. 45223/05 ***Sultani***	20 Sep.	2007	art. 3 (proc.)

☞				
☞	ECtHR Ap.no. 25389/05 ***Gebremedhin***	26 Apr.	2007	art. 13 (proc.)
☞	ECtHR Ap.no. 13284/04 ***Bader***	8 Nov.	2005	art. 3 (proc.)
☞	ECtHR Ap.no. 38885/02 ***N.***	26 July	2005	art. 3 (proc.)
☞	ECtHR Ap.no. 51564/99 ***Conka***	5 Feb.	2002	art. 13 (proc.)
☞	ECtHR Ap.no. 40035/98 ***Jabari***	11 July	2000	art. 3 (proc.)
☞	ECtHR Ap.no. 25894/94 ***Bahaddar***	19 Feb.	1998	art. 3 (proc.)

See further: § 2.3

2.2 Asylum Procedure: Proposed Measures

Regulation **Asylum Procedure III**

Establishing a common procedure for international protection in the Union.

* COM (2016) 467, 13 July 2016

2.3 Asylum Procedure: Jurisprudence

case law sorted in alphabetical order

2.3.1 CJEU Judgments on Asylum Procedure

New

☞ CJEU C-348/16 ***Sacko*** 26 July 2017

* interpr. of Dir. 2013/32 **Asylum Procedure II** art. 12+14+31+46

* ref. from 'Tribunale di Milano' (Italy) 22-06-2016

* *The Asylum Procedures Directive must be interpreted as not precluding the national court or tribunal hearing an appeal against a decision rejecting a manifestly unfounded application for international protection from dismissing the appeal without hearing the applicant where the factual circumstances leave no doubt as to whether that decision was well founded, on condition that, first, during the proceedings at first instance, the applicant was given the opportunity of a personal interview on his or her application for international protection, in accordance with Article 14 of the directive, and the report or transcript of the interview, if an interview was conducted, was placed on the case-file, in accordance with Article 17(2) of the directive, and, second, the court hearing the appeal may order that a hearing be conducted if it considers it necessary for the purpose of ensuring that there is a full and ex nunc examination of both facts and points of law, as required under Article 46(3) of the directive.*

☞ CJEU C-133/06 ***Eur. Parliament v. EU*** 6 May 2008

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

* *Under Article 202 EC, when measures implementing a basic instrument need to be taken at Community level, it is the Commission which, in the normal course of events, is responsible for exercising that power. The Council must properly explain, by reference to the nature and content of the basic instrument to be implemented, why exception is being made to that rule.*
In that regard, the grounds set out in recitals 19 and 24 in the preamble to Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, which relate respectively to the political importance of the designation of safe countries of origin and to the potential consequences for asylum applicants of the safe third country concept, are conducive to justifying the consultation of the Parliament in respect of the establishment of the lists of safe countries and the amendments to be made to them, but not to justifying sufficiently a reservation of implementing powers which is specific to the Council.

☞ CJEU C-175/11 ***H.I.D.*** 31 Jan. 2013

* interpr. of Dir. 2005/85 **Asylum Procedure I** art. 23(3)+23(4)+39

* ref. from 'High Court' (Ireland)

* *1. Article 23(3) and (4) must be interpreted as not precluding a MS from examining by way of prioritised or accelerated procedure, in compliance with the basic principles and guarantees set out in Chapter II of the Directive, certain categories of asylum applications defined on the basis of the criterion of the nationality or country of origin of the applicant.*
2. Article 39 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows an applicant for asylum either to lodge an appeal against the decision of the determining authority before a court or tribunal such as the Refugee Appeals Tribunal (Ireland), and to bring an appeal against the decision of that tribunal before a higher court such as the High Court (Ireland), or to contest the validity of that determining authority's decision before the High Court, the judgments of which may be the subject of an appeal to the Supreme Court (Ireland).

☞ CJEU C-69/10 ***Samba Diouf*** 28 July 2011

* interpr. of Dir. 2005/85 **Asylum Procedure I** art. 39

* ref. from 'Tribunal Administratif' (Luxembourg)

* *On (1) the remedy against the decision to deal with the application under an accelerated procedure and (2) the right to effective judicial review in a case rejected under an accelerated procedure.*
Art. 39 does not imply a right to appeal against the decision to assess the application for asylum in an accelerated procedure, provided that the reasons which led to this decision can be subject to judicial review within the framework of the appeal against the rejection of the asylum claim.

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

2.3.2 CJEU pending cases on Asylum Procedure

New ☞ CJEU C-404/17 ***A.*** 6 July 2017
* interpr. of Dir. 2013/32 **Asylum Procedure II** art. 31(8)
* ref. from 'Förvaltningsrätten i Malmö' (Sweden)
* *Is an application in which the applicant's information is deemed to be reliable and so is taken as the basis for the assessment, but insufficient to form the basis of a need for international protection on the ground that the country-of-origin information suggests that there is acceptable protection, to be regarded as clearly unfounded under Article 31 (8) of the recast Asylum Procedure Directive?*

New ☞ CJEU C-56/17 ***Fathi***
* interpr. of Dir. 2013/32 **Asylum Procedure II** art. 46(3)
* ref. from 'Administrativen sad Sofia-grad' (Bulgaria) 03-02-2017
* *Does it follow from Article 4(2) that an appraisal of the facts and circumstances may be conducted only on the basis of the statements made and the documents presented by the applicant, but it is still permitted to require proof of the missing components covered by the concept of religion, where without this information the application for international protection would be considered unfounded?*

New ☞ CJEU C-113/17 ***Q.J.***
* interpr. of Dir. 2013/32 **Asylum Procedure II** art. 46(3)
* ref. from 'Najvyšší súd Slovenskej republiky' (Slovakia)
* *On the issue of an effective remedy in the case of repeated refusal by the authorities to provide protection, and subsequent successful appeals. Is a national Court in such a case authorised to provide protection?*

New ☞ CJEU C-175/17 ***X.***
* interpr. of Dir. 2013/32 **Asylum Procedure II** art. 9
* *Should the expulsion of an asylum-seeker be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the asylum-seeker concerned being required to submit a separate request to that effect?*

New ☞ CJEU C-180/17 ***X. & Y.***
* interpr. of Dir. 2013/32 **Asylum Procedure II** art. 46
* ref. from 'Raad van State' (Netherlands) 07-04-2017
* *Should the expulsion of an applicant be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the applicant concerned being required to submit a separate request to that effect?*

2.3.3 ECtHR Judgments and decisions on Asylum Procedure

☞ ECtHR Ap.no. 6528/11 ***A.C. a.o. v. SPA*** 22 Apr. 2014
* violation of **ECHR** art. 13 (proc.)
* *The applicants were 30 asylum seekers of Sahrawi origin, claiming that their return to Morocco would expose them to the risk of inhuman and degrading treatment in reprisal of their participation in the Gdeim Izik camp in Western Sahara which they had fled upon its dismantling by Moroccan police.*
The applicants had applied for judicial review of the rejection by the Spanish Ministry of the Interior of their applications for international protection. As they had applied for the stay of execution of the orders for their deportation, the court (Audiencia Nacional) had provisionally suspended the removal procedure for the first 13 applicants, and the following day rejected the applications for stay of execution. Likewise, the decisions to reject the applications for stay of execution of the other 17 applicants' deportation orders had been adopted very shortly after the provisional suspension. The appeals on the merits of the asylum applications were still pending before the Spanish courts.
The ECtHR reiterated its previous considerations of the necessity of automatic suspension of the removal in order for appeals to comply with the requirement of effectiveness of the remedy under art. 13 in cases pertaining to Arts. 2 or 3.

Even while recognising that accelerated procedures may facilitate the processing of asylum applications in certain circumstances, the Court held that in this case rapidity should not be achieved at the expense of the effective procedural guarantees protecting the applicants against refoulement to Morocco. As the applicants had not had the opportunity to provide any further explanations on their cases, and their applications for asylum did not in themselves have suspensive effect, the Court found a violation of Art. 13 taken together with Arts. 2 and 3. According to Art. 46 ECHR the Court stated that Spain was to guarantee, legally and materially, that the applicants would remain within its territory pending a final decision on their asylum applications. Violation of ECHR Art. 13 in conjunction with Arts. 2 and 3.

☞ ECtHR Ap.no. 29094/09 ***A.M. v. NL*** 5 July 2016

* no violation of **ECHR** art. 13 (proc.)

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

☞ ECtHR Ap.no. 30471/08 ***Abdolkhani v. TUR*** 22 Sep. 2009

* violation of **ECHR** art. 13 (proc.)

* *Holding a violation of Art. 13 in relation to complaints under Art. 3; the notion of an effective remedy under Art. 13 requires independent and rigorous scrutiny of a claim to risk of refoulement under Art. 3, and a remedy with automatic suspensive effect.*

☞ ECtHR Ap.no. 14743/11 ***Abdulkhakov v. RUS*** 2 Oct. 2012

* violation of **ECHR** art. 3 (proc.)

* *The applicant, an Uzbek national, applied for refugee status and asylum in Russia. The Russian authorities arrested him immediately upon arrival as they had been informed that he was wanted in Uzbekistan for involvement in extremist activities. The applicant claimed to be persecuted in Uzbekistan due to his religious beliefs, and feared being tortured in order to extract confession to offences. His application for refugee status was rejected, but his application for temporary asylum was still pending.*
The Russian authorities ordered the applicant's extradition to Uzbekistan, referring to diplomatic assurances given by the Uzbek authorities. However, the extradition order was not enforced, due to an indication by the ECtHR of an interim measure under Rule 39. Meanwhile, the applicant was abducted in Moscow, taken to the airport and brought to Tajikistan.
Extradition of the applicant to Uzbekistan, in the event of his return to Russia, was considered to constitute violation of ECHR Art. 3, due to the widespread ill-treatment of detainees and the systematic practice of torture in police custody in Uzbekistan, and the fact that such risk would be increased for persons accused of offences connected to their involvement with prohibited religious organisations.
The Court found it established that the applicant's transfer to Tajikistan had taken place with the knowledge and either passive or active involvement of the Russian authorities. Tajikistan is not a party to the ECHR, and Russia had therefore removed the applicant from the protection of his rights under the ECHR. The Russian authorities had not made any assessment of the existence of legal guarantees in Tajikistan against removal of persons facing risk of ill-treatment.
As regards this issue of potential indirect refoulement, the Court noted in particular that the applicant's transfer to Tajikistan had been carried out in secret, outside any legal framework capable of providing safeguards against his further transfer to Uzbekistan without assessment of his risk of ill-treatment there. Any extra-judicial transfer or extraordinary rendition, by its deliberate circumvention of due process, was held to be contrary to the rule of law and the values protected by the ECHR.

☞ ECtHR Ap.no. 11981/15 ***B.A.C. v. GRE*** 13 Oct. 2016

* violation of **ECHR** art. 3 (proc.)

* art. 8+13

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

☞ ECtHR Ap.no. 13284/04 ***Bader v. SWE*** 8 Nov. 2005

* violation of **ECHR** art. 3 (proc.)

* *Asylum seeker held to be protected against refoulement due to a risk of flagrant denial of fair trial that might result in the death penalty; such treatment would amount to arbitrary deprivation of life in breach of Art 2; deportation of both the asylum seeker and his family members would therefore give rise to violations of Art 2 and 3.*

☞ ECtHR Ap.no. 25894/94 ***Bahaddar v. NL*** 19 Feb. 1998
* no violation of **ECHR** art. 3 (proc.)
* *Although prohibition of ill-treatment contained in Art 3 of Convention is also absolute in expulsion cases, applicants invoking this Art are not dispensed as a matter of course from exhausting available and effective domestic remedies and normally complying with formal requirements and time-limits laid down by domestic law.*
In the instant case applicant failed to comply with time-limit for submitting grounds of appeal (failed to request extension of time-limit even though possibility open to him) no special circumstances absolving applicant from compliance – even after time-limit had expired applicant had possibility to lodge fresh applications to domestic authorities either for refugee status or for residence permit on humanitarian grounds – Court notes at no stage during domestic proceedings was applicant refused interim injunction against expulsion – thus no imminent danger of ill-treatment.

☞ ECtHR Ap.no. 246/07 ***Ben Khemais v. ITA*** 24 Feb. 2009
* violation of **ECHR** art. 3 (proc.)
* *Violation of Art 3 due to deportation of the applicant to Tunisia. 'Diplomatic assurances' alleged by the respondent Government could not be relied upon. Violation of Art 34 as the deportation had been carried out in spite of an ECtHR decision issued under Rule 39 of the Rules of Court.*

☞ ECtHR Ap.no. 51564/99 ***Conka v. BEL*** 5 Feb. 2002
* violation of **ECHR** art. 13 (proc.)
* *The detention of rejected Roma asylum seekers before deportation to Slovakia constituted a violation of Art 5. Due to the specific circumstances of the deportation the prohibition against collective expulsion under Protocol 4 Art 4 was violated; the procedure followed by the Belgian authorities did not provide an effective remedy in accordance with Art 13, requiring guarantees of suspensive effect.*

☞ ECtHR Ap.no. 39630/09 ***El-Masri v. MKD*** 13 Dec. 2012
* violation of **ECHR** art. 13 (proc.)
* *Whereas this case did not concern an asylum applicant, the ECtHR's reasoning and conclusions may be of interest in order to illustrate general principles of potential relevance to asylum cases under ECHR Arts 3 and 13 as well.*
The applicant, a German national of Lebanese origin, had been arrested by the Macedonian authorities as a terrorist suspect, held incommunicado in a hotel in Skopje, handed over to a CIA rendition team at Skopje airport, and brought to Afghanistan where he was held in US detention and repeatedly interrogated, beaten, kicked and threatened until his release four months later.
The Court accepted evidence from both aviation logs, international reports, a German parliamentary inquiry, and statements by a former Macedonian minister of interior as the basis for concluding that the applicant had been treated in accordance with his explanations. In view of the evidence presented, the burden of proof was shifted to the Macedonian government which had not conclusively refuted the applicant's allegations which there therefore considered as established beyond reasonable doubt.
Macedonia was held to be responsible for the ill-treatment and unlawful detention during the entire period of the applicant's captivity. In addition, arts. 3 and 13 ECHR had been violated due to the absence of any serous investigation into the case by the Macedonian authorities.
In two concurring opinions, ECtHR judges made further observations concerning the right to the truth as a separate aspect of Art. 13 or as inherent aspect of Art. 3 ECHR respectively.

☞ ECtHR Ap.no. 25389/05 ***Gebremedhin v. FRA*** 26 Apr. 2007
* violation of **ECHR** art. 13 (proc.)
* *Holding that the particular border procedure declaring 'manifestly unfounded' asylum applications inadmissible, and refusing the asylum seeker entry into the territory, was incompatible with Art. 13 taken together with Art.3; emphasising that in order to be effective, the domestic remedy must have suspensive effect as of right.*

☞ ECtHR Ap.no. 27765/09 ***Hirsi v. ITA*** 23 Feb. 2012
* interpr. of **ECHR** art. 3 (proc.)
* *For the first time the Court applied Art 4 of Protocol no. 4 (collective expulsion) in the circumstance of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with Art 3 ECHR, as it transferred them to Libya 'in full knowledge of the facts' and circumstances in Libya.*

☞ ECtHR Ap.no. 9152/09 ***I.M. v. FRA*** 2 Feb. 2012
* violation of **ECHR** art. 13 (proc.)
* *The Court therefore observed, with regard to the effectiveness of the domestic legal arrangements as a whole, that while the remedies of which the applicant had made use had been available in theory, their accessibility in practice had been limited by the automatic registration of his application under the fast-track procedure, the short deadlines imposed and the practical and procedural difficulties in producing evidence, given that he had been in detention and applying for asylum for the first time.*

New ☞ ECtHR Ap.no. 47287/15 ***Ilias & Ahmed v. HUN*** 14 Mar. 2017
* violation of **ECHR** art. 3 (proc.)
* Referral to Grand Chamber on 18 Sep 2017
* *Violation of ECHR art. 3.*
The applicants were Bangladeshi nationals who transited through Greece, Macedonia and Serbia and arrived in

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

☞ ECtHR Ap.no. 40035/98 ***Jabari v. TUR*** 11 July 2000
* violation of **ECHR** art. 3 (proc.)
* *Given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Art 3, the notion of an effective remedy under Art 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Art 3.*

☞ ECtHR Ap.no. 12552/12 ***Kebe a.o. v. UKR*** 12 Jan. 2017
* violation of **ECHR** art. 3 (proc.)
* art. 13
* *The applicant Eritrean national had arrived in Ukraine as a stowaway on board a commercial vessel flying the flag of Malta. While the respondent government disputed to have exercised jurisdiction when refusing him entry while he was on board the ship, the Court held that the border control carried out by the Ukrainian authorities had brought him within Ukraine's jurisdiction insofar as the matter concerned his possible entry to Ukraine and the exercise of related ECHR rights and freedoms.*
As the applicant's claim under art. 3 was arguable for the purposes of art. 13, the Ukrainian authorities had been under an obligation to furnish effective guarantees to protect him against arbitrary removal, directly or indirectly, back to his country of origin. In such cases, the effectiveness of a remedy imperatively requires close, independent and rigorous scrutiny, as well as a particularly prompt response. In addition, art. 13 requires access to a remedy with automatic suspensive effect. The Court considered the information provided sufficient to demonstrate that the authorities were or should have been aware that the applicant was an asylum seeker. He had, however, not had a realistic and practical opportunity to submit an asylum application, and any domestic appeal would not have had an automatic suspensive effect. As it was only after the Court's indication of interim measures under Rule 39 that the applicant was granted leave to enter Ukraine and lodge his asylum application, he had not been afforded an effective domestic remedy. Therefore, there had been a violation of art. 13 in conjunction with art. 3.

☞ ECtHR Ap.no. 33809/08 ***Labsi v. SVK*** 15 May 2012
* violation of **ECHR** art. 13 (proc.)
* *An Algerian man, convicted in France of preparing a terrorist act, and convicted in his absence in Algeria of membership of a terrorist organisation, had been expelled to Algeria upon rejection of his asylum request in Slovakia. On the basis of the existing information about the situation in Algeria for persons suspected of terrorist activities, the Court found that there had been substantial grounds for believing that he faced a real risk of being exposed to treatment contrary to Art. 3. The responding government's invocation of the security risk represented by the applicant was dismissed due to the absolute guarantee under Art. 3. Assurances given by the Algerian authorities concerning the applicant's treatment upon return to Algeria were found to be of a general nature, and they had proven insufficient since the request for a visit by a Slovak official to the applicant, held in detention upon return, had not been followed. The applicant's expulsion only one working day after the Slovak Supreme Court's judgment, upholding the dismissal of his asylum request, had effectively prevented him from attempting redress by a complaint to the Slovak Constitutional Court. Expulsion of the applicant in disregard of an interim measure issued by the Court under Rule 39, preventing the Court from properly examining his complaints and from protecting him against treatment contrary to Art. 3, was a violation of the right to individual application under Art. 34.*

☞ ECtHR Ap.no. 50094/10 ***M.E. v. FRA*** 6 June 2013
* no violation of **ECHR** art. 13 (proc.)
* *The applicant was an Egyptian belonging to the Coptic Christian community in his country of origin where he had been exposed to a number of attacks due to his religious belief. His reports of these incidents to the police had been unsuccessful, and before leaving Egypt in 2007 he was accused of proselytizing for which he was sentenced in absentia to 3 years of imprisonment.*
The ECtHR referred to reports on numerous instances of violence and other persecution against Coptic Christians in Egypt in 2010-11, and on reluctance of Egyptian authorities to prosecute the perpetrators, and found no evidence that the situation had improved. The Court found strong evidence that the applicant would be a potential prime target for persecution and violence as a convicted proselytizer, whether free or imprisoned, and pointed to the serious doubt about on the applicant's ability to receive adequate protection from the Egyptian authorities. Given his background and the situation of Coptic Christians in Egypt, Art. 3 would be violated in case of enforcement of the decision to deport the applicant.
Contrary to the judgment in I.M. v. France (9152/09), the ECtHR did not consider the examination of this case in the French 'fast-track' asylum procedure incompatible with Art. 13. The Court emphasised the very substantial delay in the applicant's lodging of his asylum request (almost 3 years) and the fact that he had been able to lodge an appeal with suspensive effect against the removal order as well as an asylum request with suspensive effect. Given his delay,

the applicant could not validly argue that the reduced and very short deadlines to prepare the asylum request in the special procedure had affected the accessibility of the remedies available to him, and there was therefore no violation of Art. 13 in conjunction with Art. 3.

☞ ECtHR Ap.no. 30696/09 ***M.S.S. v. BEL + GRC*** 21 Jan. 2011

* violation of **ECHR** art. 3 (proc.)

* *A deporting State is responsible under Art. 3 ECHR for the foreseeable consequences of the deportation of an asylum seeker to another EU Member State, even if the deportation is being decided in accordance with the Dublin Regulation; the responsibility of the deporting State comprises not only the risk of indirect refoulement by way of further deportation to risk of ill-treatment in the country of origin, but also the conditions in the receiving Member State if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.*

☞ ECtHR Ap.no. 2283/12 ***Mohammed v. AUT*** 6 June 2013

* no violation of **ECHR** art. 3 (proc.)

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

☞ ECtHR Ap.no. 38885/02 ***N. v. FIN*** 26 July 2005

* violation of **ECHR** art. 3 (proc.)

* *Asylum seeker held to be protected against refoulement under Art. 3, despite the Finnish authorities' doubts about his identity, origin, and credibility; two delegates of the Court were sent to take oral evidence from the applicant, his wife and a Finnish senior official; while retaining doubts about his credibility on some points, the Court found that the applicant's accounts on the whole had to be considered sufficiently consistent and credible; deportation would therefore be in breach of Art. 3.*

☞ ECtHR Ap.no. 44883/09 ***Nasr and Ghali v. ITA*** 23 Feb. 2016

* violation of **ECHR** art. 3 (proc.)

* *Violation of ECHR arts. 3, 5, 8 and 13. The case concerned the extrajudicial transfer or 'extraordinary rendition' from Italy, with the cooperation of Italian officials, of an Egyptian citizen who had been granted asylum in Italy. He became an imam, was a member of an Islamist movement and was suspected and later convicted in Italy of membership of a terrorist organisation. Following his abduction by CIA agents in a street in Milan in February 2003 the applicant was taken to a US Air Force base in Italy, put on a plane and flown via Germany to Cairo. On arrival he was interrogated by the Egyptian intelligence services. He was detained until April 2004 in cramped and unhygienic cells from where he was taken out at regular intervals and subjected to interrogation sessions during which he was ill-treated and tortured. Approximately 20 days after his release he was rearrested and remained in detention in Egypt until February 2007.*
The Court noted that in spite of efforts by the Italian investigators and judges who had identified the persons responsible – both US nationals and Italian intelligence officers – and secured their convictions, these had remained ineffective due to the Italian executive authorities' attitude. As this had ultimately resulted in impunity for those responsible, the Court held that the domestic investigation had been a violation of the procedural aspect of art. 3. Since the Italian authorities had been aware of the 'extraordinary rendition' operation and had actively cooperated with the CIA during the initial phase of the operation, the Court further considered that those authorities had known or should have known that this would place the applicant at a real risk of ill-treatment and of detention conditions contrary to art. 3. There had therefore also been a violation of the substantive aspect of art. 3.
By allowing the CIA to abduct the applicant in order to transfer him to Egypt, and thereby subjecting him to unacknowledged detention in complete disregard of the guarantees enshrined in art. 5 which constituted a particularly serious violation of his right to liberty and security, Italy's responsibility was engaged with regard both to his abduction and to the entire period of detention following his handover to the US authorities. The Court therefore found a violation of art. 5.
The Court held the Italian authorities' actions and omissions to engage the responsibility under art. 8 for the interference with the right to respect for the private and family life of both the applicant and his wife. Since the investigation carried out by the Italian police, prosecuting authorities and courts had been deprived of its effectiveness by the executive's decision to invoke State secrecy, there had also been a violation of art. 13 in conjunction with arts. 3, 5 and 8

☞ ECtHR Ap.no. 39472/07 ***Popov v. FRA*** 19 Jan. 2012

* violation of **ECHR** art. 3 (proc.)

* *Although the applicants – a Kazakhstani couple and their two children aged 5 months and 3 years – had been detained in an administrative detention centre authorised to accommodate families, the conditions during their two*

weeks detention were held to have caused the children distress and to have serious psychological repercussions. Thus, the children had been exposed to conditions exceeding the minimum level of severity required to fall within the scope of ECHR Art. 3, and this provision had been violated in respect of the children. Since that minimum level of severity was not attained as regards the parents, there was no violation of Art. 3 in respect of these applicants.
ECHR Art. 5 was violated in respect of the children, both because the French authorities had not sought to establish any possible alternative to administrative detention (Art. 5(1)(f)), and because children accompanying their parents were unable to have the lawfulness of their detention examined by the courts (Art. 5(4)).
ECHR Art. 8 was violated due to the detention of the whole family. As there had been no particular risk of the applicants absconding, the interference with the applicants' family life, resulting from their placement in a detention centre for two weeks, had been disproportionate. In this regard the Court referred to its recent case law concerning 'the child's best interest' as well as to Art. 3 of the UN Convention on the Rights of the Child and to Directive 2003/9 on Reception Conditions.

☞ ECtHR Ap.no. 70055/10 ***S.J. v. BEL*** 19 Mar. 2015

* no violation of **ECHR** art. 13 (proc.)

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

☞ ECtHR Ap.no. 71386/10 ***Savriddin v. RUS*** 25 Apr. 2013

* violation of **ECHR** art. 3 (proc.)+5(4)+34

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

☞ ECtHR Ap.no. 33210/11 ***Singh v. BEL*** 2 Oct. 2012

* violation of **ECHR** art. 13 (proc.)

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

☞ ECtHR Ap.no. 45223/05 ***Sultani v. FRA*** 20 Sep. 2007

* no violation of **ECHR** art. 3 (proc.)

* *Finding no violation of Art. 3, despite the applicant's complaint that the most recent asylum decision within an accelerated procedure had not been based on an effective individual examination; the Court emphasized that the first decision had been made within the normal asylum procedure, involving full examination in two instances, and held this to justify the limited duration of the second examination which had aimed to verify whether any new grounds could change the previous rejection; in addition, the latter decision had been reviewed by administrative courts at two levels; the applicant had not brought forward elements concerning his personal situation in the country of origin, nor sufficient to consider him as belonging to a minority group under particular threat.*

☞ ECtHR Ap.no. 12294/07 ***Zontul v. GRC*** 17 Jan. 2012

* violation of **ECHR** art. 3 (proc.)

* *The applicant was an irregular migrant complaining that he had been raped with a truncheon by one of the Greek coast guard officers supervising him in a detention centre upon interception of the boat on which he and 164 other migrants attempted to go from Turkey to Italy. Due to its cruelty and intentional nature, the Court considered such treatment as amounting to an act of torture under ECHR Art. 3. Given the seriousness of the treatment, the penalty imposed on the perpetrator – a suspended term of six months imprisonment that was commuted to a fine – was considered to be in clear lack of proportion. An additional violation of ECHR Art. 3 stemmed from the Greek authorities' procedural handling of the case that had prevented the applicant from exercising his rights to claim damages at the criminal proceedings.*

2.3.4 CAT Views on Asylum Procedure

☞ CAT 379/2009 ***Bakatu-Bia v. SWE*** 8 July 2011

* violation of **CAT** art. 3 (proc.)

* *The Committee observes that, according to the Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo (2010) and the Report of the United Nations High Commissioner for Human Rights and the activities of her Office in the Democratic Republic of the Congo (2010) on the general human rights situation in the Democratic Republic of the Congo, serious human rights violations, including violence against women, rape and gang rape by armed forces, rebel groups and civilians, continued to take place throughout the country and not only in areas affected by armed conflict. Furthermore, in a recent report, the High Commissioner for Human Rights stressed that sexual violence in DRC remains a matter of serious concern, particularly in conflict-torn areas, and despite efforts by authorities to combat it, this phenomenon is still widespread and particularly affects thousands of women and children. The Committee also notes that the Secretary-General in his report of 17 January 2011, while acknowledging a number of positive developments in DRC, expressed his concern about the high levels of insecurity, violence and human rights abuses faced by the population.*

☞ CAT 343/2008 ***Kalonzo v. CAN*** 1 June 2012

* violation of **CAT** art. 3

* *The Committee also takes note of the State party's reference to reports dating from 2007 and 2008 that mention few cases of the torture of UPDS members or Luba from Kasaï. In this regard, the Committee is of the view that, even if cases of torture are rare, the risk of being subjected to torture continues to exist for the complainant, as he is the son of a UDPS leader, is a Luba from Kasaï and has already been the victim of violence during his detention in Kinshasa in 2002. In addition, the Committee considers that the State party's argument that the complainant could resettle in Kinshasa, where the Luba do not seem to be threatened by violence (as they are in the Katanga region), does not entirely remove the personal danger for the complainant. In this regard, the Committee recalls that, in accordance with its jurisprudence, the notion of "local danger" does not provide for measurable criteria and is not sufficient to entirely dispel the personal danger of being tortured.*
The Committee against Torture concludes that the complainant has established that he would run a real, personal and foreseeable risk of being subjected to torture if he were to be returned to the Democratic Republic of the Congo.

☞ CAT 416/2010 ***Ke Chun ROng v. AUS*** 29 Nov. 2012

* violation of **CAT** art. 3

* *The Committee notes that the claims and evidence have not been sufficiently verified by the Australian immigration authorities. The Committee observes that the review on the merits of the complainants' claims regarding the risk of torture that he faced, was conducted predominantly based on the content of his initial application for a Protection visa, which he filed shortly after arriving in the country, without knowledge or understanding of the system. The Committee further observes that the complainant was not interviewed in person neither by the Immigration Department, which rejected his initial application, nor by the Refugee Review Tribunal and therefore he did not have the opportunity to clarify any inconsistencies in his initial statement. The Committee is of the view that complete accuracy is seldom to be expected by victims of torture. The Committee also observes that the State party does not dispute that Falun Gong practitioners in China have been subjected to torture, but bases it decision to refuse protection to the complainant in the assessment of his credibility.*

☞ CAT 438/2010 ***M.A.H. & F.H. v. CH*** 12 July 2013

* no violation of **CAT** art. 3 (proc.)

* *The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.*

☞ CAT 319/2007 ***Nirma Singh v. CAN*** 30 May 2011

* violation of **CAT** art. 22

* *The complaint states that he did not have an effective remedy to challenge the decision on deportation and that the judicial review of the Immigration Board decision, denying him Convention refugee status, was not an appeal on the merits, but rather a very narrow review for gross errors of law. The Committee observes that none of the grounds above include a review on the merits of the complainant's claim that he would be tortured if returned to India. With regard to the procedure of risk analysis, the Committee notes that according to the State party's submission, PRRA submissions may only include new evidence that arose after the rejection of the refugee protection claim; further, the PRRA decisions are subject to a discretionary leave to appeal, which was denied in the case of the complainant. The Committee refers to its Concluding observations (CAT/C/CR/34/CAN, 7 July 2005, § 5(c)), that the State party should*

provide for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk of torture. The Committee accordingly concludes that in the instant case the complainant did not have access to an effective remedy against his deportation.

3 Responsibility Sharing

3.1 Responsibility Sharing: Adopted Measures

case law sorted in chronological order

Regulation 343/2003 — **Dublin II**

Establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

* OJ 2003 L 50/1 — impl. date: 01-09-2003 — UK, IRL opt in

* Implemented by Regulation 1560/2003 (OJ 2003 L 222/3)
Revised by Reg. 604/2013

CJEU Judgments

☞	CJEU C-394/12 ***Abdullahi***	10 Dec.	2013	art. 10(1)+18+19
☞	CJEU C-4/11 ***Puid***	14 Nov.	2013	art. 3(2)
☞	CJEU C-648/11 ***M.A.***	6 June	2013	art. 6
☞	CJEU C-528/11 ***Halaf***	6 June	2013	art. 3(2)
☞	CJEU C-245/11 ***K.***	6 Nov.	2012	art. 15+3(2)
☞	CJEU C-620/10 ***Kastrati***	3 May	2012	art. 2(c)
☞	CJEU C-411+493/10 ***N.S. and M.E.***	21 Dec.	2011	art. 3(2)
☞	CJEU C-19/08 ***Petrosian***	29 Jan.	2009	art. 20(1)(d)+20(2)

See further: § 3.3

Regulation 604/2013 — **Dublin III**

Establishing the criteria and mechanisms for determining the MS responsible for examining an application for international protection lodged in one of the MS by a TCN or a stateless person (revised)

* OJ 2013 L 180/31 — impl. date: 01-01-2014 — UK, IRL opt in

* Recast of Reg. 343/2003

New	☞	CJEU C-60/16 ***Khir Amayry***	13 Sep.	2017	art. 28
New	☞	CJEU C-670/16 PPU ***Mengesteab***	26 July	2017	art. 20+21+27
New	☞	CJEU C-646/16 PPU ***Jafari***	26 July	2017	art. 12+13
New	☞	CJEU C-490/16 ***A.S.***	26 July	2017	art. 13(1)
	☞	CJEU C-36/17 ***Ahmed***	5 Apr.	2017	
	☞	CJEU C-528/15 ***Al Chodor***	15 Mar.	2017	art. 28
	☞	CJEU C-578/16 ***C.K.***	16 Feb.	2017	art. 17
	☞	CJEU C-155/15 ***Karim***	7 June	2016	
	☞	CJEU C-63/15 ***Ghezelbash***	7 June	2016	art. 27
	☞	CJEU C-695/15 ***Mirza***	17 Mar.	2016	art. 3(3)

CJEU pending cases

New	☞	CJEU C-213/17 ***X.***	pending	art. 23(3)
New	☞	CJEU C-163/17 ***Jawo***	pending	art. 29(2)
	☞	CJEU C-48/17 ***X.***	pending	
New	☞	CJEU C-47/17 ***X.***	pending	
	☞	CJEU C-647/16 ***Hassan***	pending	art. 26
	☞	CJEU C-360/16 ***Aziz Hassan***	pending	art. 23+24
	☞	CJEU C-201/16 ***Majid Shiri***	pending	art. 27+29

See further: § 3.3

Regulation 2725/2000 — **Eurodac**

Concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

* OJ 2000 L 316/1 — impl. date: 15-01-2003

* implemented by Regulation 407/2002 (OJ 2002 L 62/1)

Regulation 603/2013 — **Eurodac II**

Concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (recast)

* OJ 2013 L 180/1 — impl. date: 20-07-2015 — UK, IRL opt in

* Recast of Reg. 2725/2000

Council Decision 2015/1523

1st Relocation scheme Italy and Greece of 14 Sept. 2015
* OJ 2015 L 239/146
* This proposal contains the second elaboration of provisional measures to assist Italy and Greece in their effort to deal with the increasing numbers of asylum seekers: relocation of in total 40.000 asylum seekers

Council Decision 2015/1601
2nd Relocation scheme Italy and Greece of 22 Sept. 2015
* OJ 2015 L 248/80
* This proposal contains the second elaboration of provisional measures to assist Italy and Greece in their effort to deal with the increasing numbers of asylum seekers. It is the very first council decision on migration and asylum that was not accepted unanimously. Relocation of 120.000 asylum seekers.

Decision
European Agenda on Migration
* COM(2015) 240 final

The ECAS is lacking a kind of fair distribution system of asylum seekers. This agenda consists of several measures including a relocation system (for a limited number of asylum seekers) and a resettlement proposal for refugees.

ECHR — **Conditions**
European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
* ETS 005 — impl. date: 1953
* art. 3+13: Degrading reception conditions

ECtHR Judgments

☞	ECtHR Ap.no. 51428/10 ***A.M.E.***	15 Feb.	2015	art. 3+13
☞	ECtHR Ap.no. 29217/12 ***Tarakhel***	4 Nov.	2014	art. 3+13
☞	ECtHR Ap.no. 2283/12 ***Mohammed***	6 June	2013	art. 3+13
☞	ECtHR Ap.no. 27725/10 ***Mohammed Hussein et al.***	2 Apr.	2013	art. 3+13
☞	ECtHR Ap.no. 30696/09 ***M.S.S.***	21 Jan.	2011	art. 3+13
☞	ECtHR Ap.no. 32733/08 ***K.R.S.***	2 Dec.	2008	art. 3+13
☞	ECtHR Ap.no. 43844/98 ***T.I.***	7 Mar.	2000	art. 3+13

See further: § 3.3

Council Regulation — **Emergency support**
On the provision of emergency support within the Union
* OJ 2016 L 070/1

3.2 Responsibility Sharing: Proposed Measures

Amendment — **Dublin III amendments**
Determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State
* COM(2014) 382

Negotiations on this amendment have stopped.

Regulation amending Regulation — **Dublin III amendments**
Establishing a crisis relocation mechanism
* COM(2015) 450, 9 Sep 2015

Negotiations on this amendment have stopped.

Regulation — **Common List safe Countries of Origin**
List of safe countries of origin
* COM(2015) 452, 9 Sep 2015

EP and Council negotiating

Regulation — **Asylum Agency**
On the European Union Agency for Asylum and repealing EASO Reg.
* COM (2016) 271, 4 May 2016

New

Council and EP agreed

Regulation — **Eurodac II**
Recast of Eurodac: for the comparison of fingerprints
* COM (2016) 272, 4 May 2016

Council adopted position, Dec 2016

Regulation — **Dublin IV**
Recasting Dublin III
* COM (2016) 270, 4 May 2016

Regulation **Resettlement**

On a Union resettlement framework

* COM (2016) 468, 13 July 2016

3.3 Responsibility Sharing: Jurisprudence

case law sorted in alphabetical order

3.3.1 CJEU Judgments on Responsibility Sharing

New

☞ CJEU C-490/16 ***A.S.*** 26 July 2017

* interpr. of Reg. 604/2013 **Dublin III** art. 13(1)

* *On a proper construction of Article 13(1) of Dublin III, a third-country national whose entry has been tolerated by the authorities of a first MS faced with the arrival of an exceptionally large number of third-country nationals wishing to transit through that MS in order to lodge an application for international protection in another MS, without satisfying the entry conditions in principle required in that first Member State, must be regarded as having 'irregularly crossed' the border of that first MS, within the meaning of that provision.*

☞ CJEU C-394/12 ***Abdullahi*** 10 Dec. 2013

* interpr. of Reg. 343/2003 **Dublin II** art. 10(1)+18+19

* ref. from 'Asylgerichtshof' (Austria)

* *Art. 19(2) Dublin II must be interpreted as meaning that, in circumstances where a MS has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Art. 10(1) of that regulation – namely, as the MS of the first entry of the applicant for asylum into the EU – the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that MS, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Art. 4 of the Charter (of FREU).*

☞ CJEU C-36/17 ***Ahmed*** 5 Apr. 2017

* interpr. of Reg. 604/2013 **Dublin III**

* order

* ref. from 'Verwaltungsgericht Minden' (Germany)

* *Order of the Court (Article 99). The provisions and principles of Dublin III which govern, directly or indirectly, the time limits for lodging an application for a take-back are not applicable in a situation, such as that at issue in the main proceedings, in which a third-country national has lodged an application for international protection in one MS after being granted the benefit of subsidiary protection by another MS.*

☞ CJEU C-528/15 ***Al Chodor*** 15 Mar. 2017

* interpr. of Reg. 604/2013 **Dublin III** art. 28

* *Art. 2(n) and 28(2), read in conjunction, must be interpreted as requiring Member States to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of Article 28(2) Dublin III.*

☞ CJEU C-578/16 ***C.K.*** 16 Feb. 2017

* interpr. of Reg. 604/2013 **Dublin III** art. 17

* *Article 17(1) must be interpreted as meaning that the question of the application, by a MS of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that MS, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.*
Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:
even where there are no substantial grounds for believing that there are systemic flaws in the MS responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Dublin III can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;
in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;
it is for the authorities of the MS having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the MS concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer; and

where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting MS may choose to conduct its own examination of that person's application by making use of the 'discretionary clause'.
Article 17(1) of Dublin III, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that MS to apply that clause.

☞ CJEU C-63/15 — ***Ghezelbash*** — 7 June 2016
* interpr. of Reg. 604/2013 — **Dublin III** — art. 27
* ref. from 'Rechtbank Den Haag' (Netherlands)
* *Art. 27(1), read in the light of recital 19 of the regulation, must be interpreted as meaning that, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Art. 12 of the regulation*

☞ CJEU C-528/11 — ***Halaf*** — 6 June 2013
* interpr. of Reg. 343/2003 — **Dublin II** — art. 3(2)
* ref. from 'Administrativen sad Sofia-grad' (Bulgaria) 12-10-2011
* *Art. 3(2) must be interpreted as permitting a MS, which is not indicated as "responsible", to examine an application for asylum even though no circumstances exist which establish the applicability of the humanitarian clause in Art. 15. That possibility is not conditional on the MS responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned. The MS in which the asylum seeker is present is not obliged, during the process of determining the MS responsible, to request the UHCR to present its views where it is apparent from the documents of the UNHCR that the MS indicated as "responsible" is in breach of the rules of European Union law on asylum.*

New ☞ CJEU C-647/15 — ***Hungary v. Council*** — 6 Sep. 2017
* legality of C.Dec. 2015/1601 — **2nd Relocation scheme**
* *Council decision on relocation of asylum seekers is lawful.*

New ☞ CJEU C-646/16 PPU — ***Jafari*** — 26 July 2017
* interpr. of Reg. 604/2013 — **Dublin III** — art. 12+13
* ref. from 'Verwaltungsgerichtshof' (Austria)
* *The fact that the authorities of one MS, faced with the arrival of an unusually large number of third-country nationals seeking transit through that MS in order to lodge an application for international protection in another Member State, tolerate the entry into its territory of such nationals who do not fulfil the entry conditions generally imposed in the first MS, is not tantamount to the issuing of a 'visa' within the meaning of Article 12.*
Article 13(1) Dublin III must be interpreted as meaning that a third-country national whose entry was tolerated by the authorities of one MS faced with the arrival of an unusually large number of third-country nationals seeking transit through that MS in order to lodge an application for international protection in another MS, without fulfilling the entry conditions generally imposed in the first MS, must be regarded as having 'irregularly crossed' the border of the first MS within the meaning of that provision.

☞ CJEU C-245/11 — ***K.*** — 6 Nov. 2012
* interpr. of Reg. 343/2003 — **Dublin II** — art. 15+3(2)
* ref. from 'Asylgerichtshof' (Austria)
* *Art. 15(2) must be interpreted as meaning that a MS which is not responsible for examining an application for asylum pursuant to the criteria laid down in Chapter III of Dublin II becomes so responsible. It is for the MS which has become the responsible MS within the meaning of that regulation to assume the obligations which go along with that responsibility. It must inform in that respect the MS previously responsible.*
This interpretation of Art. 15(2) also applies where the MS which was responsible pursuant to the criteria laid down in Chapter III of Dublin II did not make a request in that regard in accordance with the second sentence of Art. 15(1).

☞ CJEU C-155/15 — ***Karim*** — 7 June 2016
* interpr. of Reg. 604/2013 — **Dublin III**
* ref. from 'Migrationsöverdomstolen' (Sweden)
* *Art. 19(2) must be interpreted to the effect that that provision, in particular its second subparagraph, is applicable to a third-country national who, after having made a first asylum application in a MS, provides evidence that he left the territory of the MS for a period of at least three months before making a new asylum application in another MS.*
Art. 27(1) must be interpreted to the effect that, an asylum applicant may, in an action challenging a transfer decision made in respect of him, invoke an infringement of the rule set out in the second subparagraph of Art. 19(2).

☞ CJEU C-620/10 — ***Kastrati*** — 3 May 2012
* interpr. of Reg. 343/2003 — **Dublin II** — art. 2(c)
* ref. from 'Kammarrätten i Stockholm, Migrationsöverdomstolen' (Sweden)
* *The withdrawal of an application for asylum within the terms of Art. 2(c) Dublin II, which occurs before the MS responsible for examining that application has agreed to take charge of the applicant, has the effect that that regulation can no longer be applicable. In such a case, it is for the MS within the territory of which the application was lodged to take the decisions required as a result of that withdrawal and, in particular, to discontinue the*

examination of the application, with a record of the information relating to it being placed in the applicant's file.

New

☞ CJEU C-60/16 ***Khir Amayry*** 13 Sep. 2017

* interpr. of Reg. 604/2013 **Dublin III** art. 28

* ref. from 'Migrationsöverdomstolen' (Sweden)

* *Dublin III does not preclude national legislation, which provides that, where the detention of an applicant for international protection begins after the requested MS has accepted the take charge request, that detention may be maintained for no longer than two months, provided, (1): that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, (2): that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect.*
Dublin III does preclude national legislation, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out.

☞ CJEU C-648/11 ***M.A.*** 6 June 2013

* interpr. of Reg. 343/2003 **Dublin II** art. 6

* ref. from 'Court of Appeal (England & Wales)' (UK)

* *Fundamental rights include, in particular, that set out in Art. 24(2) of the Charter, whereby in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests are to be a primary consideration. The second paragraph of Art. 6 Dublin II cannot be interpreted in such a way that it disregards that fundamental right (see, by analogy, Detiček, para. 54 and 55, and Case C−400/10 PPU McB. [2010] ECR I−8965, para. 60). Consequently, although express mention of the best interest of the minor is made only in the first paragraph of Art. 6, the effect of Art. 24(2) of the Charter, in conjunction with Art. 51(1) thereof, is that the child's best interests must also be a primary consideration in all decisions adopted by the Member States on the basis of the second paragraph of Art. 6.*
Thus, Art. 6 must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an unaccompanied minor with no member of his family legally present in the territory of a MS has lodged asylum applications in more than one MS, the MS in which that minor is present after having lodged an asylum application there is to be designated the 'MS responsible'.

New

☞ CJEU C-670/16 PPU ***Mengesteab*** 26 July 2017

* interpr. of Reg. 604/2013 **Dublin III** art. 20+21+27

* *Article 27(1) must be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.*
Article 21(1) must be interpreted as meaning that a take charge request cannot validly be made more than three months after the application for international protection has been lodged, even if that request is made within two months of receipt of a Eurodac hit within the meaning of that article.
Article 20(2) must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.

☞ CJEU C-695/15 ***Mirza*** 17 Mar. 2016

* interpr. of Reg. 604/2013 **Dublin III** art. 3(3)

* ref. from 'Debreceni Közigazgatási' (Hungary)

* *Art. 3(3) must be interpreted as meaning that the right to send an applicant for international protection to a safe third country may also be exercised by a MS after that MS has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that MS before a decision on the substance of his first application for international protection had been taken.*
Art. 3(3) must also be interpreted as not precluding the sending of an applicant for international protection to a safe third country when the MS carrying out the transfer of that applicant to the MS responsible has not been informed, during the take-back procedure, either of the rules of the latter MS relating to the sending of applicants to safe third countries or of the relevant practice of its competent authorities.
Art. 18(2) must be interpreted as not requiring that, in the event that an applicant for international protection is taken back, the procedure for examining that applicant's application be resumed at the stage at which it was discontinued.

☞ CJEU C-411+493/10 ***N.S. and M.E.*** 21 Dec. 2011

* interpr. of Reg. 343/2003 **Dublin II** art. 3(2)

* ref. from 'High Court' (Ireland)

* *Joined cases. The decision adopted by a MS on the basis of Article 3(2) whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of Dublin II, implements EU law for the purposes of Article 6 TEU and Article 51 of the Charter of Fundamental Rights of the EU.*
EU law precludes the application of a conclusive presumption that the MS which Article 3(1) Dublin II indicates as responsible observes the fundamental rights of the EU. Article 4 of the Charter must be interpreted as meaning that the MSs, including the national courts, may not transfer an asylum seeker to the 'MS responsible' within the meaning of Dublin II where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that MS amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision. Subject to the

right itself to examine the application referred to in Article 3(2) Dublin II, the finding that it is impossible to transfer an applicant to another MS, where that State is identified as the MS responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the MS which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another MS to be identified as responsible for the examination of the asylum application. The MS in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the MS responsible which takes an unreasonable length of time. If necessary, the first mentioned MS must itself examine the application. Articles 1, 18 and 47 of the Charter do not lead to a different answer.
In so far as the preceding questions arise in respect of the obligations of the United Kingdom of Great Britain and Northern Ireland, the answers to the second to sixth questions referred in Case C-411/10 do not require to be qualified in any respect so as to take account of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the UK.

☞ CJEU C-19/08 ***Petrosian*** 29 Jan. 2009
* interpr. of Reg. 343/2003 **Dublin II** art. 20(1)(d)+20(2)
* ref. from 'Kammarrätten i Stockholm, Migrationsöverdomstolen' (Sweden)
* *Articles 20(1)(d) and 20(2) of Dublin II are to be interpreted as meaning that, where the legislation of the requesting MS provides for suspensive effect of an appeal, the period for implementation of the transfer begins to run, not as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation.*

☞ CJEU C-4/11 ***Puid*** 14 Nov. 2013
* interpr. of Reg. 343/2003 **Dublin II** art. 3(2)
* ref. from 'Hessischer Verwaltungsgerichtshof' (Germany)
* *Where the MS cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible in accordance with the criteria (set out in Chapter III) of Dublin II provide substantial grounds for believing that the asylum seeker concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Art. 4 of the Charter (of FREU), which is a matter for the referring court to verify, the MS which is determining the MS responsible is required not to transfer the asylum seeker to the MS initially identified as responsible and, subject to the exercise of the right itself to examine the application, to continue to examine the criteria set out in that chapter, in order to establish whether another MS can be identified as responsible in accordance with one of those criteria or, if it cannot, under Art. 13 of the Reg.*
Conversely, in such a situation, a finding that it is impossible to transfer an asylum seeker to the MS initially identified as responsible does not in itself mean that the MS which is determining the MS responsible is required itself, under Art. 3(2) of Dublin II, to examine the application for asylum.

New ☞ CJEU C-643/15 ***Slovakia v. Council*** 6 Sep. 2017
* legality of C.Dec. 2015/1601 **2nd Relocation scheme**
* *Council decision on relocation of asylum seekers is lawful.*

3.3.2 CJEU pending cases on Responsibility Sharing

☞ CJEU C-360/16 ***Aziz Hassan***
* interpr. of Reg. 604/2013 **Dublin III** art. 23+24
* *On the meaning of responsibility (to take back or charge) in case of a second asylum application in another MS.*

☞ CJEU C-647/16 ***Hassan***
* interpr. of Reg. 604/2013 **Dublin III** art. 26
* *Does Article 26 of the Dublin III Regulation prevent the competent authorities in a Member State, who have requested another Member State to take responsibility under a take back or take charge request of an applicant who has applied for international protection or any other person caught by Article 18(1)(c) or (d), from taking a transfer decision and notifying the applicant before the requested State has accepted the take back or take charge request?*

New ☞ CJEU C-163/17 ***Jawo***
* interpr. of Reg. 604/2013 **Dublin III** art. 29(2)
* ref. from 'Verwaltungsgerichtshof Baden-Württemberg' (Germany) 03-04-2017
* *Is an asylum seeker absconding only where he purposefully and deliberately evades apprehension by the national authorities responsible for carrying out the transfer in order to prevent or impede the transfer, or is it sufficient if, for a prolonged period, he ceases to live in the accommodation allocated to him and the authority is not informed of his whereabouts and therefore a planned transfer cannot be carried out?*

☞ CJEU C-201/16 ***Majid Shiri***
* interpr. of Reg. 604/2013 **Dublin III** art. 27+29
* ref. from 'Verwaltungsgerichtshof' (Austria) 12-04-2016
* *Are the provisions of Dublin III that confer the right to an effective remedy against a transfer decision, in particular Art. 27(1), to be interpreted as meaning that an applicant for asylum is entitled to claim that responsibility has been*

transferred to the requesting MS on the ground that the six month transfer period has expired (Art. 29(2) in conjunction with Art. 29(1) of Regulation No 604/2013 in light of the 19th recital)?
And if so, does the transfer of responsibility under the first sentence of Art. 29(2) occur by the fact of the expiry of the transfer period without any order or, for responsibility to be transferred because the period has expired, is it also necessary that the obligation to take charge of, or to take back, the person concerned has been refused by the responsible MS?

☞ CJEU C-48/17 ***X.***
* interpr. of Reg. 604/2013 **Dublin III**
* ref. from 'Rechtbank Den Haag (zp Haarlem)' (Netherlands) 01-02-2017
* *On the question whether a take charge or take back Dublin request is automatically accepted if the MS addressed does not answer within the time limit mentioned in the Regulation.*

uest

New ☞ CJEU C-47/17 ***X.***
* interpr. of Reg. 604/2013 **Dublin III**
* ref. from 'Rechtbank Den Haag' (Netherlands) 01-02-2017
* *What is the meaning of a 'reasonable period of time' in the Implementing Regulation of Dublin in the context of the responsibility for the substantive assessment of the asylum request?*

New ☞ CJEU C-213/17 ***X.***
* interpr. of Reg. 604/2013 **Dublin III** art. 23(3)
* ref. from 'Rechtbank Den Haag' (Netherlands) 25-04-2017
* *Must Article 23(3) be interpreted as meaning that Italy has become responsible for examining the application for international protection lodged by the applicant in that country, despite the fact that The Netherlands is the Member State primarily responsible on the basis of the applications for international protection, within the meaning of Article 2(d), previously lodged in that country, the last of which was still under examination in the Netherlands at that time, because the Administrative Law Division of the Raad van State had not yet delivered judgment in the appeal brought by the applicant?*

3.3.3 ECtHR Judgments and decisions on Responsibility Sharing

☞ ECtHR Ap.no. 51428/10 ***A.M.E. v. NL*** 15 Feb. 2015
* no violation of **ECHR** art. 3+13
* *No violation of ECHR art. 3 in case of transfer of the applicant to Italy under the Dublin Regulation.*
The applicant was a Somali asylum seeker who arrived in Italy in April 2009 and was granted a residence permit for subsidiary protection, valid until August 2012. In May 2009 he left the Italian CARA reception centre to which he had been transferred, and in October 2009 he applied for asylum in the Netherlands which requested Italy to take the applicant back according to the Dublin Regulation. When notified of the intention to transfer him to Italy, he applied to the ECtHR which issued a Rule 39 indication of his non-removal to Italy.
Referring to its previous judgment (29217/12, Tarakhel v. SWI), the Court pointed to the situation of asylum seekers as a particularly underprivileged and vulnerable population group in need of special protection. At the same time, the Court reiterated that the current situation in Italy for asylum seekers could in no way be compared to the situation in Greece at the time of the judgment in M.S.S. v. Belgium and Greece [21 January 2011], and the structure and overall situation of reception arrangements in Italy could not in themselves act as a bar to all transfers of asylum seekers to Italy.
As regards the applicant's individual circumstances, the Court noted that he had deliberately sought to mislead the Italian authorities by telling that he was an adult in order to prevent his separation from those with whom he had arrived in Italy. Whereas the authorities were entitled to rely on such information given by claimants themselves unless there was a flagrant disparity, the applicant was in any event to be considered an adult asylum seeker upon transfer to Italy, as the validity of this residence permit had expired and he would have to submit a fresh asylum request there.
Unlike the applicants in the Tarakhel case, the applicant was an able young man with no dependents. Bearing in mind how he had been treated by the Italian authorities, the applicant had not established that his future prospects, whether material, physical or psychological, disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3. The complaint was therefore rejected as manifestly ill-founded.

☞ ECtHR Ap.no. 32733/08 ***K.R.S. v. UK*** 2 Dec. 2008
* no violation of **ECHR** art. 3+13
* *Based on the principle of intra-community trust, it must be presumed that a MS will comply with its obligations. In order to reverse that presumption the applicant must demonstrate in concreto that there is a real risk of his being subjected to treatment contrary to Article 3 of the Convention in the country to which he is being removed.*

☞ ECtHR Ap.no. 30696/09 ***M.S.S. v. BEL & GRC*** 21 Jan. 2011
* violation of **ECHR** art. 3+13
* *A deporting State is responsible under ECHR Art. 3 for the foreseeable consequences of the deportation of an asylum seeker to another EU Member State, even if the deportation is being decided in accordance with the Dublin Regulation; the responsibility of the deporting State comprises not only the risk of indirect refoulement by way of further deportation to risk of ill-treatment in the country of origin, but also the conditions in the receiving Member*

State if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.

☞ ECtHR Ap.no. 27725/10 ***Mohammed Hussein et al. v. NL & ITA*** 2 Apr. 2013

* no violation of **ECHR** art. 3+13

* *The case concerns the pending return of a Somali asylum seeker and her two children from the Netherlands to Italy under the Dublin Regulation. It is marked by discrepancies in issues of central importance between the applicant's initial complaint that she had not been enabled to apply for asylum in Italy, had not been provided with reception facilities for asylum seekers, and had been forced to live on the streets in Italy, and her subsequent information to the ECtHR. Thus, in her response to the facts submitted by the Italian Government to the ECtHR she admitted that she had been granted a residence permit for subsidiary protection in Italy, and that she had been provided with reception facilities, including medical care, during her stay in Italy.*
Upholding its general principles of interpretation of ECHR art. 3, the Court reiterated that the mere fact of return to a country where one's economic position will be worse than in the expelling State is not sufficient to meet the threshold of ill-treatment proscribed by art. 3. Aliens subject to expulsion cannot in principle claim any right to remain in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State, absent exceptionally compelling humanitarian grounds against removal.
While the general situation and living conditions in Italy of asylum seekers, accepted refugees and other persons granted residence for international protection may disclose some shortcomings, the Court held that it had not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group as was the case in M.S.S. v. Belgium and Greece. The Court further noted that the applicant's request for protection in Italy had been processed within five months, that accommodation had been made available to her along with access to health care and other facilities, and that she had been granted a residence permit entitling her to a travel document, to work, and to benefit from the general schemes for social assistance, health care, social housing and education under Italian law. As the applicant had failed to show that she and her children would not benefit from the same support again if returned to Italy, her complaints under ECHR art. 3 against Italy and the Netherlands were considered manifestly ill-founded, and therefore inadmissible.

☞ ECtHR Ap.no. 2283/12 ***Mohammed v. AUT*** 6 June 2013

* violation of **ECHR** art. 3+13

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

☞ ECtHR Ap.no. 5888/10 ***Mucalim v. NL & MAL*** 14 Mar. 2017

* no violation of **ECHR** art. 3

* *The applicant Somali asylum seeker had complained that he would be subjected to inhuman detention conditions if returned to Malta under the Dublin Regulation, and to the perils of war if sent on from Malta to Somalia. As it appeared that the applicant had been granted subsidiary protection in Malta, the risk of refoulement to Somalia was found to have been removed. For the same reason, the Court considered any dispute about the conditions of detention in immigration context to be moot.*

☞ ECtHR Ap.no. 43844/98 ***T.I. v. UK*** 7 Mar. 2000

* no violation of **ECHR** art. 3+13

* *The Court considered that indirect removal to an intermediary country, which was also a Contracting Party, left the responsibility of the transferring State intact. Subsequently, the transferring State was required not to deport a person where substantial grounds had been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Art 3 in the receiving country. In this case the Court considered that there was no reason to believe that Germany would have failed to honour its obligations under Art 3 of the Convention and protect the applicant from removal to Sri Lanka if he submitted credible arguments demonstrating that he risked ill-treatment in that country.*

☞ ECtHR Ap.no. 29217/12 ***Tarakhel v. SWI*** 4 Nov. 2014

* violation of **ECHR** art. 3+13

* *The applicants were an Afghan family with six minor children who had entered Italy and applied for asylum. Here they had been transferred to a reception centre where they considered the conditions poor, particularly due to lack of appropriate sanitation facilities, lack of privacy and a climate of violence. Having travelled on to Switzerland, their transfer under the Dublin Regulation was tacitly accepted by Italy, and they complained to the Court that such transfer to Italy in the absence of individual guarantees would be in violation of the ECHR.*
While the overall situation of the Italian reception system could not act as a bar to all transfers of asylum seekers to Italy, the ECtHR noted the insufficient capacity of the reception system for asylum seekers in Italy, causing the risk of

being left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions. In this connection the court did not apply the 'systemic failure' test introduced in some decisions in 2013.
The Court reiterated that asylum seekers as a particularly underprivileged and vulnerable group require special protection under art. 3, and emphasised that this requirement is particularly important when the persons concerned are children, in view of the specific needs and extreme vulnerability of children seeking asylum. This applies even when the children seeking asylum are accompanied by their parents. Reception conditions for children must therefore be adapted to their age in order to ensure that those conditions do not create a situation of stress and anxiety with particularly traumatic consequences, as the conditions would otherwise attain the threshold of severity required to come within the scope of art. 3.
Although certain indications had been given from the Italian authorities about the prospective accommodation of the applicants upon transfer to Italy under the Dublin Regulation, the Court held that, in the absence of detailed and reliable information concerning the specific facility, the physical reception conditions and the preservation of the family unit, the Swiss authorities did not possess sufficient assurances that the applicants would be taken charge of in a manner adapted to the age of the children.

3.3.4 CAT Views on Responsibility Sharing

* nothing to report

3.3.5 CCPR Views on Responsibility Sharing

☞ CCPR 2608/2015 ***R.A.A. & M. v. DK*** 15 Dec. 2016

* violation of **ICCPR** art. 7

* *Authors of the complaint are a Syrian couple. The authors allege that their deportation (under Dublin) from Denmark to Bulgaria will put them at risk of inhuman and degrading treatment, as they would face homelessness, destitution, lack of access to health care and to personal safety.*
The Committee considers, however, that the State party's conclusion did not adequately take into account the information provided by the authors, based on their own personal experience that, despite being granted a residence permit in Bulgaria, they faced intolerable living conditions there. In that connection, the Committee notes that the State party does not explain how, in case of a return to Bulgaria, the residence permits would protect them, in particular as regards the access to the medical treatments that the male author needs, and from the hardship and destitution which they have already experienced in Bulgaria, and would now also affect their baby. The Human Rights Committee considers that, in these particular circumstances, the removal from Denmark of the authors and their child to Bulgaria, without proper assurances, would amount to a violation of article 7 ICCPR.

☞ CCPR 2360/2014 ***W. v. DK*** 4 Sep. 2015

* violation of **ICCPR** art. 7

* *Author of the complaint is a single Somali mother with three small children. The author alleges that their deportation (under Dublin) from Denmark to Italy will put them at risk of inhuman and degrading treatment. The Committee recalls that States parties need to give sufficient weight to the real and personal risk a person might face if deported. The State party has failed to devote sufficient analysis to the personal experience and to the foreseeable consequences of her forcible return to Italy, and has failed to consider seeking from Italy a proper assurance that the author and her three minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the requirements of article 7 of the Covenant, by requesting from Italy to undertake that (i) the author and her children's residence permits would be renewed and that they would not be deported from Italy; and (ii) that they would be received in Italy in conditions adapted to their age and vulnerable status, which would enable them to remain in Italy. The Human Rights Committee is of the view that the deportation from Denmark of the Somali woman and her children to Italy would violate their rights under article 7 ICCPR.*

4 Reception Conditions

4.1 Reception Conditions: Adopted Measures

case law sorted in chronological order

Directive 2003/9 — **Reception Conditions I**

Laying down minimum standards for the reception of asylum seekers

* OJ 2003 L 31/18 — impl. date: 06-02-2005 — IRL opt out

* Revised by Dir. 2013/33

CJEU Judgments

☞	CJEU C-79/13 ***Saciri***	27 Feb.	2014	art. 13+14
☞	CJEU C-534/11 ***Arslan***	30 May	2013	
☞	CJEU C-179/11 ***CIMADE & GISTI***	27 Sep.	2012	

See further: § 4.3

Directive 2013/33 — **Reception Conditions II**

Laying down standards for the reception of applicants for international protection

* OJ 2013 L 180/96 — impl. date: 20-07-0015 — UK, IRL opt out

* Recast of Dir. 2003/9

New ☞	CJEU C-18/16 ***K.***	14 Sep.	2017	art. 8(3)
☞	CJEU C-601/15 ***J.N.***	15 Feb.	2016	art. 8

See further: § 4.3

Decision 281/2012 — **Refugee Fund**

Establishment of a European Refugee Fund (2008-2013)

* OJ 2012 L 92/1

* amendment of Dec. 573/2007 European Refugee Fund (2008-2013) OJ 2007 L 1441/1
and preceded by
Coun. Dec. 2004/904 European Refugee Fund (2005-2007) OJ 2004 L 381/52
Coun. Dec. 2000/596 European Refugee Fund (2000-2004) OJ 2000 L 252/12

Regulation 514/2014 — **Asylum and Migration Fund - general rules**

General provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management

* OJ 2014 L 150/112

Regulation 516/2014 — **Asylum and Migration Fund**

Establishing the Asylum, Migration and Integration Fund

* OJ 2014 L 150/168

ECHR — **Reception Conditions**

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

* ETS 005 — impl. date: 1953

* art. 3: Prohibition of degrading treatment by means of detention conditions

ECtHR Judgments

New ☞	ECtHR Ap.no. 79480/13 ***E.T. and N.T.***	30 May	2017	art. 3 (recp.)
New ☞	ECtHR Ap.no. 46558/12 ***S.G.***	18 May	2017	art. 3 (recp.)
☞	ECtHR Ap.no. 3869/07 ***Thuo***	4 Apr.	2017	art. 3 (recp.)
New ☞	ECtHR Ap.no. 61411/15 ***Z.A.***	21 Mar.	2017	art. 3 (recp.)
☞	ECtHR Ap.no. 16483/12 ***Khlaifia a.o.***	15 Dec.	2016(GC)	art. 3 (recp.)
☞	ECtHR Ap.no. 60125/11 ***V.M. a.o.***	7 Nov.	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 14344/13 ***Alimov***	6 Sep.	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 11593/12 ***A.B. a.o.***	12 July	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 15636/16 ***N.A. a.o.***	28 June	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 56796/13 ***Abdi Mahamud***	3 May	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 58387/11 ***H.A.***	21 Apr.	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 37991/11 ***Amadou***	4 Feb.	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 58424/11 ***H.A.***	21 Jan.	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 52160/13 ***Moxamed I.***	12 Jan.	2016	art. 3 (recp.)
☞	ECtHR Ap.no. 54000/11 ***A.T.H.***	17 Nov.	2015	art. 3 (recp.)
☞	ECtHR Ap.no. 21459/14 ***J.A. a.o.***	3 Nov.	2015	art. 3 (recp.)
☞	ECtHR Ap.no. 24239/09 ***Nasseri***	13 Oct.	2015	art. 3 (recp.)
☞	ECtHR Ap.no. 74308/10 ***E.A.***	30 July	2015	art. 3 (recp.)
☞	ECtHR Ap.no. 50165/14 ***T.A. a.o.***	7 July	2015	art. 3 (recp.)
☞	ECtHR Ap.no. 39350/13 ***A.S.***	30 June	2015	art. 3 (recp.)
☞	ECtHR Ap.no. 7149/12 ***K.O.J.***	2 June	2015	art. 3 (recp.)

☞ ECtHR Ap.no. 39766/09 ***Aarabi***	2 Apr.	2015	art. 3 (recp.)
☞ ECtHR Ap.no. 48352/12 ***Mahammad a.o.***	15 Jan.	2015	art. 3 (recp.)
☞ ECtHR Ap.no. 70586/11 ***Mohamad***	11 Dec.	2014	art. 3 (recp.)
☞ ECtHR Ap.no. 63542/11 ***Al.K.***	11 Dec.	2014	art. 3 (recp.)
☞ ECtHR Ap.no. 53608/11 ***B.M.***	19 Dec.	2013	art. 3 (recp.)
☞ ECtHR Ap.no. 33441/10 ***C.D. a.o.***	19 Dec.	2013	art. 3 (recp.)
☞ ECtHR Ap.no. 70427/11 ***Horshill***	1 Aug.	2013	art. 3 (recp.)
☞ ECtHR Ap.no. 55352/12 ***Aden Ahmed***	23 July	2013	art. 3 (recp.)
☞ ECtHR Ap.no. 53709/11 ***A.F.***	13 June	2013	art. 3 (recp.)
☞ ECtHR Ap.no. 30696/09 ***M.S.S.***	21 Jan.	2011	art. 3 (recp.)

See further: § 4.3

4.2 Reception Conditions: Proposed Measures

Directive — **Reception Conditions III**

Recasting Reception Directive

* COM (2016) 465, 13 July 2016

4.3 Reception Conditions: Jurisprudence

case law sorted in alphabetical order

4.3.1 CJEU Judgments on Reception Conditions

☞ CJEU C-534/11 — ***Arslan*** — 30 May 2013

* interpr. of Dir. 2003/9 — **Reception Conditions I**

* ref. from 'Nejvyšší správní soud' (czech Republic) 22-09-2011

* *Although this judgment is primarily about the interpretation of the Return Directive, the CJEU elaborates also on the meaning of the Reception Conditions Directive.*
The CJEU rules that do the Dir. does not preclude a TCN who has applied for international protection (after having been detained under Art. 15 Return Directive) from being kept in detention on the basis of a provision of national law, where it appears, after an assessment on a case-by-case basis of all the relevant circumstances, that the application was made **solely** *to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.*

☞ CJEU C-179/11 — ***CIMADE & GISTI*** — 27 Sep. 2012

* interpr. of Dir. 2003/9 — **Reception Conditions I**

* ref. from 'Conseil d'État' (France)

* *1. A MS in receipt of an application for asylum is obliged to grant the minimum conditions for reception of asylum seekers laid down in Directive 2003/9 even to an asylum seeker in respect of whom it decides, under Dublin II, to call upon another MS, as the MS responsible for examining his application for asylum, to take charge of or take back that applicant.*
2. The obligation on a MS in receipt of an application for asylum to grant the minimum reception conditions to an asylum seeker in respect of whom it decides, under Dublin II, to call upon another MS, as the MS responsible for examining his application for asylum, to take charge of or take back that applicant, ceases when that same applicant is actually transferred by the requesting MS, and the financial burden of granting those minimum conditions is to be assumed by that requesting MS, which is subject to that obligation.

☞ CJEU C-601/15 — ***J.N.*** — 15 Feb. 2016

* interpr. of Dir. 2013/33 — **Reception Conditions II** — art. 8

* *Art. 8(3) is in line with art. 6 and 52 of the Charter of the fundamental rights.*

New

☞ CJEU C-18/16 — ***K.*** — 14 Sep. 2017

* interpr. of Dir. 2013/33 — **Reception Conditions II** — art. 8(3)

* ref. from 'Rechtbank Den Haag' (Netherlands)

* *The examination of Article 8(3)(a) and (b) has disclosed nothing capable of affecting the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.*

☞ CJEU C-79/13 — ***Saciri*** — 27 Feb. 2014

* interpr. of Dir. 2003/9 — **Reception Conditions I** — art. 13+14

* ref. from 'Arbeidshof Brussel' (Belgium) 07-02-2013

* *Where a MS has opted to grant the material reception conditions in the form of financial allowances or vouchers, those allowances must be provided from the time the application for asylum is made, in accordance with Article 13(1) and 13(2). That MS must ensure that the total amount of the financial allowances covering the material reception*

conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17. The material reception conditions laid down in Article 14(1), (3), (5) and (8) do not apply to the MSs where they have opted to grant those conditions in the form of financial allowances only. Nevertheless, the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.
Further, the Directive does not preclude, where the accommodation facilities specifically for asylum seekers are overloaded, the MSs from referring the asylum seekers to bodies within the general public assistance system, provided that that system ensures that the minimum standards as regards the asylum seekers are met.

4.3.2 CJEU pending cases on Reception Conditions

4.3.3 ECtHR Judgments and decisions on Reception Conditions

☞ ECtHR Ap.no. 11593/12 ***A.B. a.o. v. FRA*** 12 July 2016

* violation of **ECHR** art. 3 (recp.)

* See also almost identical cases: #24587/12; #76491/14; #68264/14; #33201/11.

* *The cases concerned administrative detention of children accompanying their parents in the context of deportation procedures, similar to the case of Popov v. France [19 January 2012].*
The Court referred to its repeated findings of a violation of art. 3 regarding the administrative detention of foreign national children, and reiterated that the child's extreme vulnerability is the decisive factor taking precedence over considerations relating to status of irregular immigrant. In addition, asylum seeking children have specific needs relating in particular to their age, lack of independence and status. Although the material conditions in certain detention centres were appropriate, the conditions inherent in establishments of this type are a source of anxiety for young children. Only a short placement in an adapted administrative detention centre can be compatible with the Convention. Given the children's young age, the duration and conditions of detention, the French authorities had therefore subjected them to treatment in breach of art. 3. The Court acknowledged that the deprivation of liberty resulting from the parents' legitimate decision not to entrust their children to another person was not, in principle, contrary to domestic law. Nonetheless, insofar as children are concerned, the authorities must ensure that the placement in administrative detention is a measure of last resort and that no alternative measure is available. In three of the cases the French authorities had not verified that the placement of the family in administrative detention was a measure of last resort, and art. 5 (1) and (4) had therefore been violated in respect of these children.
In two of the cases, the Court found a violation of art. 8 because the interference with the right to respect for family life had been disproportionate, in that the French authorities had not taken all the necessary steps to enforce the removal measure as quickly as possible.

☞ ECtHR Ap.no. 53709/11 ***A.F. v. GRE*** 13 June 2013

* violation of **ECHR** art. 3 (recp.)

* *An Iranian entering Greece from Turkey had initially not been registered as an asylum seeker by the Greek authorities, which ordered his return to Turkey. However, the Turkish authorities refused to readmit him into Turkey, and he was then detained by the Greek police. Against the background of reports from Greek and international organisations, having visited the relevant police detention facilities either during the applicant's detention or shortly after his release – including the European Committee for the Prevention of Torture, the UN Special Rapporteur on Torture, the German NGO ProAsyl and the Greek National Human Rights Commission – the ECtHR found a violation of art. 3 due to the serious lack of space available to the applicant, also taking the duration of his detention into account. It was thus unnecessary for the Court to examine the applicant's other allegations concerning the detention conditions which the Government disputed. Yet, the Court noted that the Government's statements in this regard were not in accordance with the findings of the above mentioned organisations.*

☞ ECtHR Ap.no. 39350/13 ***A.S. v. SWI*** 30 June 2015

* no violation of **ECHR** art. 3 (recp.)

* *The applicant Syrian asylum seeker had entered Switzerland from Italy, and the Italian authorities had accepted a request that he be taken back under the Dublin Regulation. However, the applicant appealed against transfer to Italy, arguing that he had been diagnosed with severe post-traumatic stress disorder as a result of persecution and torture in Syria.*
The ECtHR distinguished the present case from the Grand Chamber judgment Ap.no. 29217/12, Tarakhel v. Switzerland [4 November 2014], noting that the applicant was not at present critically ill. The Court considered that there was no indication that he, if returned to Italy, would not receive appropriate psychological treatment and would not have access to anti-depressants of the kind he was currently receiving. Therefore, the case did not disclose such very exceptional circumstances as would be required for considering the removal to be in violation of art. 3. The Court further rejected the applicant's claim that his transfer to Italy would violate art. 8 by severing his relationship with his sisters living in Switzerland.

☞ ECtHR Ap.no. 54000/11 ***A.T.H. v. NL*** 17 Nov. 2015

* no violation of **ECHR** art. 3 (recp.)

* *The applicant was an Eritrean asylum seeker complaining that her transfer to Italy under the Dublin Regulation would violate arts. 2 and 3. She had a minor daughter and had previously been granted subsidiary protection in Italy, but due to destitution and lack of material assistance she had left for the Netherlands where she had been diagnosed*

with HIV. Given that the validity of her Italian residence permit had expired, the Court observed that the applicant was to be considered as an asylum seeker upon return to Italy. Reiterating its findings in Tarakhel v. Switzerland, and again referring to the Italian circular letter of 8 June 2015 (see case summary above), the Court also quoted a previous letter from the Italian Ministry of Interior assuring that this family group would be accommodated in a manner adapted to the child's age and detailing a reception project regarding the transfer of the applicant and her child.
Further noting that the applicant had not provided any detailed information about her current state of health, treatment or whether transfer to Italy would have consequences for her health, and that the Italian authorities had duly been informed about her individual circumstances, the Court did not find it established that she would have no access to the treatment required. In the light of these facts, the Court did not find it demonstrated that her future prospects, if returned to Italy with her child, were disclosing a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3. The Court also found no basis on which it could be assumed that the applicant would not have access to the available resources in Italy for an asylum seeking single mother with a minor child.

☞ ECtHR Ap.no. 58399/11 ***A.Y. v. GRE*** 5 Nov. 2015

* violation of **ECHR** art. 3 (recp.)+13

* *The applicant was an Iraqi national Iranian having attempted to claim asylum in Greece. However, the Greek authorities had not registered his application, and he was held in detention pending deportation to Turkey.*
Due to overcrowding, and taking the duration of detention into account, the ECtHR found the detention conditions to be in violation of art. 3. Due to failures in processing the asylum claim, and the consequent risk of the applicant's deportation to Turkey and onward to Iraq, there had been a violation of art. 13 in conjunction with art. 3. Art. 5 (1) (f) and (4) had not been violated as the detention period had not been excessively long, and the applicant had been able to challenge the legality and material conditions of detention.

☞ ECtHR Ap.no. 39766/09 ***Aarabi v. GRE*** 2 Apr. 2015

* no violation of **ECHR** art. 3 (recp.)

* The applicant was a stateless Palestinian child, having grown up in an UNRWA camp in Lebanon from where he fled to Greece where he had been arrested and detained with a view to expulsion for irregular entry. He had been placed in a detention centre with adults and claimed to have been transferred unaccompanied to the north of Greece, and that no attention had been paid to his asylum application.
The Court noted that the Greek authorities had been acting in good faith when considering the applicant an adult, and they had promptly released him upon notification of his minor age. Referring to the short periods of time in detention, the fact that the applicant had not presented specific allegations of inhuman detention conditions and that such finding was also not supported by any international reports on the relevant detention locations and periods, the Court did not consider the detention conditions to have been in violation of art. 3.

☞ ECtHR Ap.no. 56796/13 ***Abdi Mahamud v. MAL*** 3 May 2016

* violation of **ECHR** art. 3 (recp.)

* *Violation of ECHR arts. 3 and 5. The application concerned the detention of a Somali asylum seeker in Lyster Barracks detention centre from May 2012 to September 2013. Due to the applicant's vulnerability as a result of her health, the cumulative effect of her detention conditions, such as lacking access to and poor environment for outdoor exercise, lack of specific measures to counteract the cold, lack of female staff, little privacy, and the fact that these conditions persisted for over 16 months, the Court considered that the detention conditions amounted to degrading treatment within the meaning of art. 3.*
Art. 5(1) and (4) was also found to have been violated, the latter because it had not been shown that the applicant had had at her disposal an effective and speedy remedy under domestic law by which to challenge the lawfulness of her detention.

☞ ECtHR Ap.no. 55352/12 ***Aden Ahmed v. MAL*** 23 July 2013

* violation of **ECHR** art. 3 (recp.)

* The case concerns an asylum applicant who had entered Malta in an irregular manner by boat. The ECtHR found a violation of art. 5(1), mainly due to the failure of the Maltese authorities to pursue deportation or to do so with due diligence, and of art. 5(4) due to absence of an effective and speedy domestic remedy to challenge the lawfulness of their detention.
A similar case (42337/11 Suso Musa v Malta) was ruled also on 23 July 2013. Therefore, according to ECHR art. 46, the ECtHR requested the Maltese authorities to establish a mechanism allowing a determination of the lawfulness of immigration detention within a reasonable time-limit. In the *Aden Ahmed* case the Court for the first time found Malta in violation of art. 3 because of the immigration detention conditions. Those conditions in which the applicant had been living for 14½ months were, taken as a whole, amounted to degrading treatment.

☞ ECtHR Ap.no. 63542/11 ***Al.K. v. GRE*** 11 Dec. 2014

* violation of **ECHR** art. 3 (recp.)

* *Violation of ECHR art. 3 due to conditions of detention of an Iranian asylum seeker at border posts. Violation of art. 3 due to the applicant's living conditions after his release, pending examination of his asylum case. Referring to previous caselaw concerning particular vulnerability of asylum seekers, the Court held the lack of provision for essential reception conditions to have been degrading and humiliating.*

☞ ECtHR Ap.no. 14344/13 ***Alimov v. TUR*** 6 Sep. 2016

* violation of **ECHR** art. 3 (recp.)

* *The applicant was a national of Uzbekistan, seeking asylum in Turkey, who complained about his detention pending removal for 104 days. The Court found a violation of art. 3 on account of the conditions of detention, such as*

insufficient living space and no access to outdoor exercise, in which the applicant had been detained in the airport detention facility as well as in the removal centre.
Due to the absence of clear legal provisions in Turkish law on the procedure for ordering detention with a view to deportation, the applicant's detention had not been lawful for the purposes of art. 5 (1). Notification of the reasons for detention had not been made sufficiently promptly to satisfy art. 5 (2). Art. 5 (4) and (5) had also been violated due to the absence under Turkish law of a remedy by which to obtain judicial review of the lawfulness of detention in the applicant's situation, and to receive compensation for unlawful detention. Art. 13 in conjunction with art. 3 had been violated on account of the absence of effective remedies to complain about the material conditions of detention at the airport detention facility and the removal centre.

☞ ECtHR Ap.no. 37991/11 ***Amadou v. GRE*** 4 Feb. 2016
* violation of **ECHR** art. 3 (recp.)
* *The applicant was a Gambian national who had been held in detention pending adoption of an expulsion decision. Referring to its previous case law concerning Fylakio and Aspropyrgos detention centres as well as reports by international institutions, the ECtHR considered the detention conditions during the period in question to have been contrary to art. 3.*
Given the obligations incumbent on Greece under the EU Reception Conditions Directive, and since only a diligent examination of the applicant's claim for asylum could bring his situation of extreme poverty to an end, yet the claim was still pending after three years, he had been in a degrading situation contrary to art. 3. Art. 5(4) had been violated due to shortcomings in Greek law with regard to the effectiveness of judicial review of detention pending deportation.

☞ ECtHR Ap.no. 53608/11 ***B.M. v. GRE*** 19 Dec. 2013
* violation of **ECHR** art. 3 (recp.)
* *The applicant was an Iranian journalist who alleged to have been arrested and tortured due to his involvement in protests against the government. After his arrival in Greece a decision had been taken to return him to Turkey, and he had been held in custody in a police station and in various detention centres. His application for asylum was first not registered by the Greek authorities, and later they dismissed the application.*
The application mainly concerned the conditions of detention, in particular overcrowding, unhygienic conditions, lack of external contact, and lack of access to telephone, translators and any kind of information. Referring to its previous case law, the ECtHR held these conditions to be in violation of art. 3. As there had been no effective domestic remedy against that situation, art. 13 in combination with art. 3 had also been violated.

☞ ECtHR Ap.no. 33441/10 ***C.D. a.o. v. GRE*** 19 Dec. 2013
* violation of **ECHR** art. 3 (recp.)
* *The 12 applicants were asylum seekers who had been detained for several months awaiting deportation. While the detention conditions were found to have constituted degrading treatment in violation of art. 3, the detention as such had not been unlawful under art. 5(1). However, there had been a violation of art. 5(4) on speedy review of the lawfulness of detention.*

☞ ECtHR Ap.no. 74308/10 ***E.A. v. GRE*** 30 July 2015
* violation of **ECHR** art. 3 (recp.)
* *The applicant was an Iranian claiming to have applied for asylum in Greece. However, the Greek authorities had not registered his application, and he was held in detention for two months pending deportation. Due to overcrowding, poor hygiene and lack of access to natural light, the ECtHR found the detention conditions to be in violation of art. 3*
The applicant had not had an effective remedy against the treatment suffered due to detention conditions, and there had been procedural deficiencies in processing his asylum claim. Thus, art. 13 had been violated. Art. 5(4) had been violated due to shortcomings in domestic law in terms of the limited grounds to review detention pending deportation.

New ☞ ECtHR Ap.no. 79480/13 ***E.T. and N.T. v. CH*** 30 May 2017
* no violation of **ECHR** art. 3 (recp.)
* Also v. Italy
* *The applicants were an Eritrean woman and her son. The woman had been recognised as a refugee in Italy in 2007, but due to unemployment and lack of housing moved on to Switzerland in 2009. Here she gave birth to her son, and they were both removed to Italy. Having applied for asylum in Norway, they were returned to Italy in 2011, and later that year she again traveled to Switzerland where her asylum request was dismissed in 2013.*
The applicant complained that she would be subjected to inhuman and degrading treatment if returned to Italy. The Court, however, referred to a note from the Italian Ministry of the Interior, confirming that the applicants would be accommodated as a single-parent family in a reception facility belonging to the SPRAR network, and to the entitlements for recognised refugees under Italian domestic law. It found that the applicants had not demonstrated that their prospects on return to Italy, whether from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3. The complaint was therefore rejected as manifestly ill-founded.

☞ ECtHR Ap.no. 58424/11 ***H.A. v. GRE*** 21 Jan. 2016
* violation of **ECHR** art. 3 (recp.)
* *The applicant was an Iranian national who had been held in detention for five months pending deportation to Turkey. Referring to its previous case law, the ECtHR considered the conditions at Soufli detention centre to be contrary to art. 3 due to overcrowding and poor hygiene.*
While the initial period of detention had been justified under art. 5(1)(f), this provision had been violated in that the Greek authorities had failed to act with due diligence, not taking steps to carry out the expulsion following Turkey's refusal to admit the applicant. Art. 5(4) had been violated as the applicant had no effective judicial remedy to challenge his detention because the administrative court did not review the legality of the removal decision forming

the grounds for detention, nor the conditions of detention.

☞ ECtHR Ap.no. 58387/11 ***H.A. v. GRE*** 21 Apr. 2016

* violation of **ECHR** art. 3 (recp.)

* *The applicant Iraqi national was arrested for unlawfully entering Greece in August 2010 and was held in the Tychero detention centre. He filed an unsuccessful asylum application. His objections against the detention were overruled by the administrative court, while a subsequent case was allowed in January 2011.*
The Court found a violation of art. 3 as a result of lack of space in the detention centre. Due to this finding, the Court did not consider it necessary to examine the other complaints concerning the detention conditions at the Tychero border post. While the detention could not be considered arbitrary and thus not in violation of Art. 5(1), the Court found art. 5(4) to have been violated due to the insufficient judicial control of detention with a view to deportation under Greek legislation at the time of the applicant's case. As art. 5(4) was the lex specialis in this regard, the Court did not examine this complaint under art. 13.

☞ ECtHR Ap.no. 70427/11 ***Horshill v. GRE*** 1 Aug. 2013

* violation of **ECHR** art. 3 (recp.)

* *The applicant had entered Greece irregularly and later applied for asylum, following which he was arrested and placed in detention for 15 days. The Court found that he had been subjected to degrading treatment in violation of art. 3, due to the detention conditions in two police stations. Referring to the Greek decree transposing EU Directive 2005/85 on Asylum Procedures, the decision from the administrative court from which it was clear that the applicant's detention had not been automatic, as well as the short period of detention and the fact that he had been immediately released when assuring that he would be accommodated in a hostel run by an NGO, the Court considered the detention lawful within the meaning of art. 5(1).*

☞ ECtHR Ap.no. 21459/14 ***J.A. a.o. v. NL*** 3 Nov. 2015

* no violation of **ECHR** art. 3 (recp.)

* *The application concerned transfer of an Iranian woman and her two daughters, born in 1996 and 1998, to Italy under the Dublin Regulation. They complained that the transfer would be contrary to art. 3, due to bad living conditions in Italy as well as the mental health condition of the mother and the interests of her children.*
The ECtHR reiterated its findings in Tarakhel v. Switzerland (4 November 2014, summarised in NEAIS 2014/4) and considered the applicants' situation as a single mother with two daughters of 16 and 18 years of age as one of the relevant factors to be taken into account under art. 3.
The Court noted that the Italian authorities had been duly informed about the applicants' family situation as well as the fact that the mother would be escorted in order to avert the risk of suicide. It further noted a circular letter of 8 June 2015 from the Dublin Unit of the Italian Ministry of Interior according to which families with small children upon transfer would be placed in 161 earmarked places in 29 specific SPRAR projects. The Court did not find it demonstrated that the applicants would be unable to benefit from such a place upon arrival in Italy. The applicants were further held not to have demonstrated that their future prospects, if returned to Italy as a family, were disclosing a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3.

☞ ECtHR Ap.no. 7149/12 ***K.O.J. v. NL*** 2 June 2015

* interpr. of **ECHR** art. 3 (recp.)

* *The application concerned transfer of an asylum seeker to Italy under the Dublin Regulation. As she had been granted an asylum-based residence permit, the Court decided to strike the application out of the list of cases.*

New

☞ ECtHR Ap.no. 23619/11 ***Khaldarov v. TUR*** 5 Sep. 2017

* violation of **ECHR** art. 3 (recp.)+5

* *Violation of art. 3 due to the material conditions of detention of an asylum seeker in the Kumkapi Removal Centre, in particular because of the clear evidence of overcrowding and lack of access to outdoor exercise.*
Art. 5 had also been violated due to absence of clear legal provisions in Turkish law on procedures for ordering the detention of foreigners and providing remedies, as well as the failure to inform the applicant of the grounds for his continued detention, with the effect of depriving the applicant's right of appeal against detention of all substance.

☞ ECtHR Ap.no. 16483/12 ***Khlaifia a.o. v. ITA*** (GC) 15 Dec. 2016

* no violation of **ECHR** art. 3 (recp.)

* violation of art. 5+13

* *In contrast to the Chamber (judgment of 1 September 2015) the GC found no violation of ECHR art. 3 and Protocol no. 4 art. 4. The GC still found violation of arts. 5 and 13.*
The applicants were Tunisian migrants who landed clandestinely on the Italian coast in 2011 during the 'Arab Spring' events. They had been detained in a reception centre on Lampedusa and later, following a riot that resulted in fires at the centre, on board ships in Palermo harbour. The conditions in the reception centre had not exceeded the level of severity required to fall within art. 3. As regards the conditions on the ships, the applicants' allegations had not been based on any objective elements, and the Court did not find it established that the conditions had constituted inhuman or degrading treatment in violation of art. 3. Due to the absence of remedies relating to the conditions of detention, there had been a violation of art. 13 taken together with art. 3. The Court restated that the fact that a number of aliens were subject to similar decisions did not in itself lead to the conclusion that there had been a collective expulsion. Also, Protocol no. 4 art. 4 did not guarantee the right to an individual interview in all circumstances. The requirements of art. 4 were satisfied where each alien had the possibility of raising arguments against his expulsion and where those arguments had been examined by the authorities. Given that the applicants had undergone identification on two occasions and their nationality had been established, they had been afforded a genuine and effective possibility of submitting arguments against their expulsion, and they had not alleged that they feared ill-treatment or that there were any other legal impediments to their expulsion. There had therefore been no

violation of Protocol no. 4 art. 4.
The lack of suspensive effect of the remedy against the Italian authorities' removal decision did not in itself constitute a violation of art. 13 where the applicants did not allege a risk of violation of arts. 2 or 3 in the destination country, and the removal would thus not expose them to harm of a potentially irreversible nature. There had therefore not been a violation of art. 13 taken together with Protocol no. 4 art. 4
As the applicants had been deprived of their liberty, and there had been no clear and accessible legal basis for that deprivation, they had not been informed about the legal and factual reasons for their detention, and they had not been provided with a remedy to obtain a court decision on the lawfulness of their detention, art. 5 (1), (2) and (4) had been violated.

☞ ECtHR Ap.no. 30696/09 ***M.S.S. v. BEL & GRE*** 21 Jan. 2011
* violation of **ECHR** art. 3 (recp.)
* *A deporting State is responsible under ECHR Art. 3 for the foreseeable consequences of the deportation of an asylum seeker to another EU Member State, even if the deportation is being decided in accordance with the Dublin Regulation; the responsibility of the deporting State comprises not only the risk of indirect refoulement by way of further deportation to risk of ill-treatment in the country of origin, but also the conditions in the receiving Member State if it is foreseeable that the asylum seeker may there be exposed to treatment contrary to Art. 3.*

☞ ECtHR Ap.no. 10290/13 ***Mahamed Jama v. MAL*** 26 Nov. 2015
* violation of **ECHR** art. 5
* *The applicant Somali asylum seeker had been detained in Lyster Barracks. Considering that the size of her living space did not go below the acceptable minimum standard, and observing that the detention had undergone various improvements, that there were no concerns about hygiene facilities and that the applicant's basic needs regarding food and clothing were met, the Court held that the cumulative effects of the conditions did not meet the threshold of degrading treatment under art. 3.*
Art. 5 (4) had been violated due to the lack of a remedy to challenge the lawfulness of the applicant's detention. Art. 5 (1) was violated by upholding detention of the applicant for 5 days after she had been granted subsidiary protection.
Request for referral to Grand Chamber was rejected on 6 June 2016.

☞ ECtHR Ap.no. 48352/12 ***Mahammad a.o. v. GRE*** 15 Jan. 2015
* violation of **ECHR** art. 3 (recp.)
* *Violation of ECHR art. 3 due to conditions of overpopulation and deplorable hygiene during the detention of 14 foreign nationals, pending removal.*
Violation of ECHR art. 5(4) as the applicants had not received an examination of the legality of their detention meeting the standard required by this provision.

☞ ECtHR Ap.no. 70586/11 ***Mohamad v. GRE*** 11 Dec. 2014
* violation of **ECHR** art. 3 (recp.)
* *Violation of ECHR art. 3 due to conditions of detention of an unaccompanied Iraqi minor at border post. The applicant had been detained for over 5 months with adults, and he had been exposed to unsanitary and overcrowded conditions leading to psychological distress and physical harm.*
Violation of ECHR art. 13 in conjunction with art. 3 due to lack of thorough and effective judicial review of the legality and conditions of detention.
Violation of ECHR art. 5(1) due to placement of minor in detention with adults, and continued detention despite no efforts had been taken to deport the applicant.

☞ ECtHR Ap.no. 52160/13 ***Moxamed I. v. MAL*** 12 Jan. 2016
* no violation of **ECHR** art. 3 (recp.)
* Joined with: 52165/13
* *The applicants were Somali nationals having entered Malta irregularly and applied for asylum. They had been held in detention in Lyster Barracks for almost 12 months.*
The Court accepted that applicants in cases concerning conditions of detention may have certain difficulties in procuring evidence to substantiate their complaint. However, based on a detailed examination of the physical conditions at the detention centre, including the extent of personal space, access to outdoor exercise, alleged suffering from cold and heat, as well as staffing and medical assistance, the Court held that the cumulative effects of the conditions complained of did not reach the threshold of degrading treatment under art. 3. Notably, in various respects the Court expressed its concerns and noted improvements that had been put in place or were still called for.
As it had not been shown that the applicants had at their disposal an effective and speedy remedy to challenge the lawfulness of their detention, art. 5(4) had been violated.
Detention during the relevant period was held to be in compliance with art. 5(1)(f). The Court referred to the absence of inappropriate conditions of detention, but expressed reservations about the duration of detention and the general nature of the detention policy.

☞ ECtHR Ap.no. 15636/16 ***N.A. a.o. v. DK*** 28 June 2016
* no violation of **ECHR** art. 3 (recp.)
* *A case concerning the transfer to Italy under the Dublin Regulation was inadmissible as the complaint under ECHR art. 3 was considered manifestly ill-founded.*
The Danish asylum authorities had decided to transfer an asylum seeking Somali woman and her two children, born in 2014 and 2015, to Italy. The decision had been taken without having obtained in advance an individual guarantee in accordance with the criteria set out by the ECtHR in Tarakhel v. Switzerland [4 November 2014], and with reference to the circular letter of 8 June 2015 from the Dublin Unit of the Italian Ministry of Interior setting out the new policy on transfers to Italy of families with small children, earmarking a total of 161 places in centres under the

SPRAR system for such families.
The Court accepted that for efficiency reasons the Italian authorities cannot be expected to keep open and unoccupied for an extended period of time places in specific reception and accommodation centres reserved for asylum seekers awaiting transfer to Italy and that, for this reason, once a guarantee of placement in a reception centre has been received by the Member State requesting transfer, the transfer should take place as quickly as practically possible. The Court noted that the transfer decision was based on the circular letter of 8 June 2015 and Italy's subsequent assurances on the appropriate standard of its reception capacity at a meeting of the EU Dublin Contact Committee. It was thus a prerequisite for the applicants' removal to Italy that they would be accommodated in one of the said reception facilities earmarked for families with minor children, that those facilities satisfied the requirements of suitable accommodation that could be inferred from Tarakhel and that the Italian government would be notified of the applicants' particular needs before the removal.
Against this background, the Court did not find that the applicant had demonstrated that her future prospects, if returned to Italy with her children, whether from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of art. 3

☞ ECtHR Ap.no. 24239/09 ***Nasseri v. UK*** 13 Oct. 2015
* deleted **ECHR** art. 3 (recp.)
* *The application concerned transfer of an asylum seeker to Greece under the Dublin Regulation. The UK authorities had subsequently granted the applicant asylum. As the alleged procedural violations of arts. 3 and 13 were inextricably linked to his proposed expulsion and this was no longer faced by the applicant, the Court decided to strike the application out of the list of cases.*

New ☞ ECtHR Ap.no. 46558/12 ***S.G. v. GRE*** 18 May 2017
* violation of **ECHR** art. 3 (recp.)
* *Failure of the Greek authorities to provide the applicant Iranian asylum seeker with adequate living conditions after his release from detention.*

☞ ECtHR Ap.no. 50165/14 ***T.A. a.o. v. SWI*** 7 July 2015
* interpr. of **ECHR** art. 3 (recp.)
* *The application concerned transfer of asylum seekers to Italy under the Dublin Regulation. As the Swiss authorities had decided to examine the applications themselves, the Court decided to strike the application out of the list of cases.*

☞ ECtHR Ap.no. 3869/07 ***Thuo v. CYP*** 4 Apr. 2017
* violation of **ECHR** art. 3 (recp.)
* *The applicant claimed to have been ill-treated during his deportation from Cyprus to Kenya upon rejection of his application for asylum. The Court could not establish that there had been a substantive violation of art. 3 as it was unable to find beyond all reasonable doubt that the applicant had been subjected to ill-treatment during the deportation process.*
Violation of art. 3 under its procedural limb because of the failure to carry out an effective investigation into the applicant's complaint. Based on a number of deficiencies in the investigation, the Court found that the authorities did not make a serious attempt to find out what had happened. Violation of art. 3 due to the degrading conditions of immigration detention for a period of nearly 16 months, pending deportation.

☞ ECtHR Ap.no. 60125/11 ***V.M. a.o. v. BEL*** 7 Nov. 2016
* violation of **ECHR** art. 3 (recp.)
* case is struck
* *The applicants, Serbian Roma, applied for asylum in France in 2010 and in Belgium in 2011. The Belgian authorities requested France to take back the applicants, and France accepted under the Dublin Regulation. In the meantime, the applicants requested the Aliens Appeals Board to suspend and set aside the decision ordering them to leave Belgium. On expiry of the time-limit for enforcement of the order to leave the country, the applicants were expelled from the reception centre as they were no longer eligible for material support. Following that, they spent nine days on a public square in Brussels, two nights in a transit centre, and a further three weeks in a Brussels train station until their return to Serbia was arranged by a charity.*
The ECtHR, by a majority, held Belgium to have violated art. 3 as this situation could have been avoided or made shorter if the proceedings to suspend and set aside the decision ordering the applicants to leave the country had been conducted more speedily. However overstretched the reception network for asylum seekers may have been, the Court considered that the Belgian authorities had not given due consideration to the applicants' vulnerability and had failed in their obligation not to expose the applicants to conditions of extreme poverty for four weeks with no access to sanitary facilities, no means of meeting their basic needs, and lacking any prospect of improvement of their situation.
The lack of suspensive effect of their request to set aside the decision ordering them to leave the country had resulted in the material support granted to them being withdrawn and had forced them to return to Serbia without their fears of a possible violation of art. 3 having been examined.
The case was referred to Grand Chamber in December 2015. A year later, the Court states that there is no contact any more with their lawyer and therefor has to conclude that the applicants do not intend to pursue their application; thus, the case is struck out of the list. Restoring the case to the list is only possible under Art. 37(2).
According to the dissenting opinion of judge Ranzoni (joined by Lopez Guerra, Sicilianos and Lemmens) the Court should have ruled the case.

New ☞ ECtHR Ap.no. 61411/15 ***Z.A. v. RUS*** 21 Mar. 2017
* violation of **ECHR** art. 3 (recp.)
* Referral to Grand Chamber on 18 Sep 2017
* *4 joint cases. The applicants were asylum seekers from Iraq, the Palestinian Territories, Somalia and Syria. While*

travelling independently of each other via Moscow's Sheremetyevo Airport, they had been denied entry into Russia and had ended up spending between 5 and 23 months in the transit zone of the airport.
Contrary to the Russian Government's claim that the applicants had not been on Russian territory, the Court considered them to have been subject to Russian law. The applicants were asylum seekers whose applications had not yet been considered, and their confinement in the transit zone therefore amounted to a de facto deprivation of liberty. As the Government had only referred to Annex 9 to the Chicago Convention on International Civil Aviation that did not set any rules on detention, the Court considered that the deprivation of liberty did not have any legal basis in domestic law and was therefore in breach of art. 5(1).
Referring to the applicants' credible and reasonably detailed description of the conditions of detention in the transit zone, and the absence of any evidence to the contrary advanced by the Government, the Court found it established that the applicants did not have individual beds and did not have access to shower and cooking facilities. The complete failure to take care of these essential needs during detention for extended periods of time was considered to amount to inhuman and degrading treatment within the meaning of art. 3