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Analysis of jurisprudence on the implementation of the Dublin procedure

The information presented in this fact sheet is extracted from the EUAA Case Law Database and covers judgments delivered between January 2024–May 2025. For more information on legislative, policy and practical developments related to asylum in 2024, please consult the Asylum Report 2025 (forthcoming on 12 June 2025) and related outputs (including the National Asylum Developments Database). Previous edition: Asylum Report 2024

The objective of the Dublin III Regulation is to guarantee that each person has effective access to the asylum procedure and each application is examined by one Member State only. To this end, the regulation establishes a set of hierarchical criteria under Chapter III to determine the Member State which is responsible for the examination of an asylum application.

The Asylum and Migration Management Regulation (AMMR), replacing the Dublin III Regulation entered into force in June 2024 and enters into application on 1 July 2026.It strengthens and extends upon the responsibility criteria and streamlines the timelines for the determination of responsibility for an application for international protection. The Regulation still emphasises the criterion of the presence of family members in determining responsibility and prioritises family cases while providing applicants with more information and legal support. The regulation also introduces provisions to foster solidarity with Member States that are under a disproportionate migratory pressure. The new Solidarity Mechanism foresees mandatory expressions of solidarity to support Member States while offering flexibility in contributions.

In crisis or force majeure situations, the Crisis and Force Majeure Regulation allows for deviations from the rules of the AMMR.

Key cases related to the Dublin procedure

Between January 2024-May 2025, European and national courts interpreted several aspects related to the implementation of the Dublin III Regulation, in particular:

- The meaning of systemic flaws in the context of migratory pressure in the responsible Member State;
- Discretionary clause: the suspensive effect of an appeal against a refusal to apply it;
- Judicial review of the discretionary clause and national forms of protection;
- The right to information specifically on the Dublin procedure;
- Determination of responsibility under the Dublin III Regulation;
- The scope of a judicial review under the Dublin procedure;
- Limitation on the right to material reception conditions;
- Safeguards related to detention pending the implementation of a transfer;
- Examination of systemic deficiencies in accessing the asylum procedure and material reception conditions in the responsible Member State;
- Assessing differences in protection policies among Member States;
- The impact of medical conditions on the implementation of a Dublin transfer;
- The weight given to the best interests of the child when assessing the lawfulness of a decision on a Dublin transfer.

The principle of mutual trust is a structural principle underscoring that all Member States are compliant with their obligations under the Common European Asylum System (CEAS) and the EU Charter of Fundamental Rights (EU Charter). This principle has been interpreted from various angles in the context of decisions on Dublin transfers, with the CJEU handing down two standard-setting rulings in 2024 concerning the concept of systemic flaws when the responsible Member State is confronted with a high

influx of migrants, resulting in the suspension of incoming transfers, as well as cases when national authorities must weigh allegations of pushbacks and unlawful detention when assessing the existence of systemic deficiencies and a potential risk of inhuman or degrading treatment upon a transfer.

- The application of the discretionary clause was highlighted both at the European and national levels. The CJEU clarified that EU law does not require the suspensive effect of an appeal against the refusal to apply the discretionary clause by the relevant authority. As such, Member States are free to provide a judicial review but, according to EU law, it does not have any impact on the time limits for the implementation of a Dublin transfer. At the national level, judicial authorities in Ireland dealt with cases related to the impact of a judicial review of the discretionary clause and a failure to submit a clear request for application of the discretionary clause.

- As a result of recent CJEU jurisprudence, the Supreme Court of Cassation in Italy clarified that the possibility to challenge the use of the discretionary clause by a national authority, and the scope of the remedy, are governed by national legislation, except when judicial control aims to circumvent the principle of mutual trust or to impose a certain assessment on indirect *refoulement*. The court also clarified that, upon a specific request by the applicant, a judicial review of the discretionary clause can look into the possibility of national forms of protection and a comparison with EU law on protection by taking into account the particular circumstances of a case.

- On procedural safeguards in the Dublin procedure, the Supreme Court of Cassation in Italy emphasised the obligation of Member States to provide specific information on the Dublin procedure to comply with the requirements of Articles 4 and 5 of the Dublin III Regulation. National courts in the Netherlands and Switzerland also addressed the expiry of time limits under Article 29(2) and its consequences for the determination of responsibility in the context of successive take back requests.

- With respect to remedies under the Dublin procedure, national courts in the Netherlands clarified the scope of a judicial review for independent transfer decisions and reiterated that the assessment of indirect *refoulement* falls outside the scope of an appeal. Also, in Malta, constitutional review was considered as having a suspensive effect.

- Some rulings in 2024 already anticipated clarifications that will be needed for the implementation of the Asylum and Migration Management Regulation (AMMR). For example, while the AMMR introduces limitations on material reception conditions in any Member State when the applicant is not present in the responsible Member State, a German court asked the CJEU whether national legislation which allows a reduction of benefits in the context of the right to reception pending a Dublin transfer is in compliance with EU law.

- On the assessment of deficiencies in the asylum procedure in the responsible Member State, national courts in Austria, Germany and Luxembourg reached different

conclusions about the existence of systemic flaws in Hungary due to the implementation of the so-called 'embassy procedure'[1].

- Decisions on Dublin transfers to Austria, Belgium, Bulgaria, Cyprus, France, Greece, Lithuania, Poland, Romania and Spain were upheld by national court rulings based on findings that there were no systemic deficiencies in the asylum procedure and reception conditions in these countries. However, transfers to Italy were annulled by Belgium, Denmark and the Netherlands on account of issues related to access to the asylum procedure, reception conditions, availability of healthcare and safeguards to protect the best interests of the child.

1. The principle of mutual trust between Member States

The principle of mutual trust is at the core of the Dublin procedure, and it is understood as meaning that all EU+ countries respect fundamental rights, pursuant to Article 4 of the EU Charter. However, the presumption is not absolute and can be rebutted if "there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions", resulting in a risk of breaching the standards of Article 4 of the EU Charter, corresponding to Article 3 of the European Convention on Human Rights (ECHR). Thus, the risk of inhuman and degrading treatment can be a barrier for implementing a Dublin transfer to the responsible Member State.

In 2024, the CJEU examined the application of this principle by clarifying the concept of systemic flaws in the asylum procedure and reception conditions when the responsible Member State experiences a high influx of arrivals which affects the reception capacity of a Member State and leads to a unilateral suspension of Dublin transfers. The court also provided guidance when there were allegations of pushbacks to the external borders of the EU, precluding access to the asylum procedure. Other questions are currently pending with the CJEU to interpret the principle of mutual trust when the responsible Member State is unwilling to accept the Dublin transfer and the consequences of such a refusal from the responsible Member State to receive Dublin returnees, including on the right to an effective remedy. The CJEU standard-setting case law will serve as a basis for future implementation of the AMMR.

In addition, the principle of mutual trust has been interpreted by the CJEU in a case concerning the secondary movements of beneficiaries of international protection to clarify the grounds for rejecting an application as inadmissible, pursuant to Article 33 of the recast Asylum Procedures Directive (APD) and the weight to be given to a status obtained in the other Member State when assessing the application in a new international protection procedure.

Lastly, the Dutch Council of State disapplied the principle of mutual trust for registering information on age assessments, by considering that the principle of mutual trust cannot be applied and relied upon beyond its scope, namely, to ensure that Dublin transfers are implemented in full compliance with respect for fundamental rights.

[1] Introduced by Government Decree 233/2020. (V. 26.) on the rules of the asylum procedure during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens.

1.1. CJEU standard-setting rulings on systemic flaws

The concept of systemic flaws

Following two referrals, C-185/24 and C-189/24,[1] submitted by the German Higher Administrative Court of Nordrhein-Westfalen, the CJEU clarified in *RL, QS v Bundesrepublik Deutschland*[2] (19 December 2024)[2] the concept of systemic flaws in view of the principle of mutual trust and the conditions for considering that a transfer cannot be made to another Member State. Two Syrian applicants appealed against a decision on a Dublin transfer from Germany to Italy as Italy was identified as the responsible Member State. Because the Italian Dublin Unit issued two circulars to unilaterally and temporarily suspend incoming Dublin transfers for technical reasons and a lack of sufficient accommodation due to a high number of arrivals, the German court decided to address questions to the CJEU for a preliminary ruling seeking clarification on the existence of systemic flaws in the responsible Member State.

The two questions, examined together by the CJEU, concerned whether the second subparagraph of Article 3(2) of the Dublin III Regulation must be interpreted as meaning that it may be found that there are, in the Member State designated as responsible under the criteria set out in Chapter III of the regulation, systemic flaws in the asylum procedure and reception conditions for applicants for international protection, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter, on the sole ground that that Member State has unilaterally suspended the taking charge and taking back of applicants. In case of a negative answer, the referring court questioned the basis and the information which allow to establish the existence of systemic flaws.

The CJEU reiterated the presumption of an adequate treatment of applicants in all Member States, as derived from the principle of mutual trust, and underlined that the second paragraph of Article 3(2) of the Dublin III Regulation provides that, if there are substantial grounds for believing that there is a risk of inhuman or degrading treatment, contrary to Article 4 of the EU Charter due to systemic flaws in the asylum and reception systems for applicants for international protection, the latter cannot be transferred to the responsible Member State (judgment of 29 February 2024, *X v State Secretary for Justice and Security* (C-392/22, 29 February 2024, paragraph 47).[3]

The court highlighted that only systemic flaws that result in a risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter would preclude a transfer, provided that two cumulative conditions are met: i) systemic flaws, meaning the existence of flaws that remain in place and concern the asylum procedure and the reception conditions applicable to all applicants or to certain groups of applicants for international protection and that attain a particularly high level of severity, which depend on the circumstances of the case; and ii) flaws which result in a risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter. The court stressed that the judicial authority must base the assessment of the two conditions on information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law.

By answering the questions, the CJEU ruled that the existence of systemic flaws in the asylum procedure and reception conditions, resulting in applicants being subjected to a serious risk of inhuman or degrading treatment, cannot be assumed on account of the mere fact that the

[2] See EUAA (2024). *Jurisprudence Related to Asylum Pronounced by the Court of Justice of the EUAA in 2024*.

Member State responsible unilaterally announced the suspension of all Dublin transfers of applicants for international protection to its territory and, accordingly, related procedures for taking charge and taking back those applicants.

Situations of unilateral suspension of transfers by Member States for technical reasons, for issues with reception capacity or a high influx of migrants, already not permitted under the current Dublin III Regulation, will not occur under the AMMR.

The AMMR provides for an enhanced solidarity mechanism and a strengthened role of the European Commission to safeguard the functioning of the asylum system, especially when determining whether a Member State is under migratory pressure, at risk of migratory pressure or facing a significant migratory situation (see Recitals 31 and 83, Articles 9, 10, 11 and 59).

Assessing pushbacks and detention as systemic flaws

In the ruling *X v State Secretary for Justice and Security* (C-392/22, 29 February 2024)[4], the CJEU analysed the practice of pushbacks as systemic flaws that would preclude a Dublin transfer to the responsible Member State. In the case, a Syrian national contested a decision on a Dublin transfer from the Netherlands to Poland on grounds that he already experienced pushbacks to Belarus on three occasions and stayed in the woods in poor living conditions and was detained for 1 week in the border guard centre, without food and medical checks.

The CJEU ruled that the fact that the Member State responsible for examining an asylum application under the Dublin III Regulation has carried out pushbacks of third-country nationals seeking to make applications at its border and has detained them at its border check posts does not in itself preclude a Dublin transfer to that Member State. At the same time, the Dublin transfer cannot be implemented if there are substantial reasons to believe that the applicant would, during or after the transfer, face a real risk of being subjected to pushbacks or detention which place the person in a situation of extreme material poverty, amounting to inhuman or degrading treatment, as prohibited by Article 4 of the EU Charter.

The court indicated that the Member State which sends a take back request to the responsible Member State must ensure, before carrying out the transfer and in view of Article 3(2) of the Dublin III Regulation, read in the light of Article 4 of the EU Charter, that: i) the information provided by the applicant is duly considered, in particular elements that could indicate a possible existence of a real risk of inhuman or degrading treatment at the time of or after that transfer; ii) it cooperates in establishing the facts and verifies the truth of those facts; iii) it refrains from implementing the transfer in case there are substantive grounds to believe that there is a real risk of such treatment in case of a transfer; iv) the Member State seeks individual guarantees from the responsible Member State and the transfer can be carried out if the guarantees are provided and appear to be credible and sufficient to rule out any real risk of inhuman or degrading treatment.

Following the CJEU ruling, the Court of the Hague seated in 's-Hertogenbosch ruled in the reopening of the case in *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (27 March 2024)[5] that the principle of mutual trust can be considered as divisible in the sense that the assessment relates to facts occurring before the

transfer and after the transfer. As such, pushbacks and detention practices that happened before the transfer do not automatically prevent a Dublin transfer, but national authorities must examine *ex officio* whether publicly available information give indications that the applicant will be at risk, after the transfer, of a situation entailing a violation of Article 4 of the EU Charter, due to systemic deficiencies in the asylum or reception system in the responsible Member State. Therefore, based on the CJEU judgment, the Dutch court concluded that it can no longer consider that the presumption deriving from the principle of mutual trust can only be refuted by the applicant. It also added that whereas the information compiled about the asylum and reception systems prior to the transfer do not preclude it and do not constitute by themselves a risk of a breach of Article 4 of the EU Charter, in case such information or the applicant's statements indicate potential shortcomings, then the Member State must assess, even *ex officio*, whether such shortcomings might occur after the transfer and whether these systemic deficiencies may result in treatment contrary to Article 4 of the EU Charter.

The Court of the Hague emphasised the importance of the personal interview as a procedural guarantee, by referencing the CJEU judgment *Ministero dell'Interno and Others* (joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, 30 November 2023), but noted that the applicant only provided information on pushbacks and detention which happened before the transfer and his statements did not indicate systemic deficiencies preventing the transfer. However, the court found that the State Secretary cannot rely only on the applicant's statements in the assessment but must investigate publicly available information *ex officio* to carefully decide on the transfer. The decision on a Dublin transfer to Poland was annulled and the case referred for a re-examination.

Referral pending before the CJEU on the principle of mutual trust

In *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)* (7 May 2024)[6], the German Regional Administrative Court of Sigmaringen referred several questions before the CJEU for interpretation of Article 3(2) of the Dublin III Regulation in the context of an appeal lodged against a decision on a Dublin transfer to Italy. The court asked whether Article 3(2) of the Dublin III Regulation must be interpreted as meaning that the determining Member State must continue to examine the criteria for establishing the responsible Member State and become responsible itself if the responsible Member State based on those criteria is not willing to accept Dublin returnees.

The second question was whether this obligation to continue the examination of the criteria under the Dublin procedure still applies if there are no systemic flaws within the meaning of the second subparagraph of Article 3(2) of the Dublin III Regulation in the Member State that is not willing to receive Dublin returnees, thus resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter. On procedural aspects, the referring court asked whether Article 33(1) of the recast APD must be interpreted as precluding national legislation under which an asylum application must be rejected as inadmissible where the Member State responsible under the Dublin III Regulation is not willing to receive Dublin returnees.

The third question was whether the determining Member State must assume that the responsible Member State is not willing to receive applicants transferred under Dublin procedure on the basis of a written declaration issued by the Ministry of the Interior of the responsible Member State according to which no Dublin returnees are being received for the time being and the Member State responsible subsequently prevents the reception of Dublin returnees. The last two questions concerned the consequences deriving from a refusal from

the responsible Member State to receive Dublin returnees, specifically whether a refusal in itself, irrespective of a potential breach of Article 4 of the EU Charter, can infringe the person's subjective rights and whether Article 27(1) of the Dublin III Regulation provides for an effective remedy for such an infringement of subjective rights. According to the CJEU order of 9 September 2024, the case will be examined in the expedited procedure.

1.2. CJEU ruling on secondary movements and the principle of mutual trust

In a Grand Chamber formation, in *QY* v *Bundesrepublik Deutschland* (C-753/22, 18 June 2024)[7], the CJEU clarified the principle set out under Article 3(1) of the Dublin III Regulation (namely that the application shall be examined by a single Member State), interpreted in conjunction with Articles 4(1) and 13 of Directive 2011/95, and Article 10(2) and (3) and Article 33(1) and (2)(a) of the recast APD. When the competent authority of a Member State cannot reject an application as inadmissible for an applicant who was previously granted international protection by another Member State, the authority may carry out a new, independent examination of the substance of the application when there is a serious risk that that applicant will be subjected to inhuman or degrading treatment in the other Member State.

The case concerned a Syrian applicant who was previously granted international protection in Greece, but he applied again in Germany and claimed that he would face a risk of inhuman or degrading treatment contrary to Article 4 of the EU Charter if returned to Greece. The German referring court asked, whether, when the competent authority of a Member State cannot exercise the option to reject an application as inadmissible when a beneficiary of international protection in another Member State would be at serious risk of being subjected inhuman or degrading treatment in that other Member State, if transferred, is the authority required to grant refugee status on the sole ground that the applicant has already been granted refugee status by another Member State or may it carry out a new, independent examination of the substance of that application.

The CJEU emphasised that the option to reject an application as inadmissible pursuant to Article 33(2)(a) of the recast APD is based on the principle of mutual trust, precisely on a presumption that the treatment of applicants for international protection in each Member State complies with the requirements of the Charter. That presumption cannot be justified and the abovementioned option shall not be used when the deficiencies in a Member State reach a particularly high level of severity (see Ibrahim).

The determining authority is not required to grant refugee status solely on the ground that that status was previously granted to an applicant by another Member State, but the court clarified that it must take full account of the decision and the supporting elements since the authority must carry out a new, individual, full and up-to-date examination of the application in a new international protection procedure, conducted in line with the recast QD and recast APD.

1.3. Exchange of information on age assessments

In the case *Applicant* v *The Minister for Asylum and Migration (de Minister van Asiel en Migratie)* (9 October 2024)[8], the Dutch Council of State ruled that the principle of mutual trust as provided under the Dublin III Regulation is not applicable to age assessments, as EU law does not stipulate specific methods or safeguards for age assessments, nor does it regulate the value assigned to age registrations from other Member States. A Malian applicant applied for asylum in December 2019 in the Netherlands, but the Minister for Asylum did not consider it credible that he was a minor at the time of the application and investigated his date of birth.

Based on the principle of mutual trust, the minister concluded that the age assessment conducted by Belgium, which found that he was an adult, and the fact that the applicant was registered as an adult in Italy and Switzerland were sufficient to render unplausible his alleged minority.

Upon an onward appeal before the Council of State, the court clarified the legal value to be given to age registrations in an asylum procedure conducted in another Member State by noting that, while age is not registered in Eurodac, a 'Eurodac hit' allows the minister to access data on an ongoing asylum procedure. Pursuant to Article 34 of the Dublin III Regulation, an exchange of information is possible between Member States on relevant, adequate and non-excessive personal data, including the date of birth and thus the age of the applicant. However, the exchange of information has the sole purpose of facilitating administrative cooperation between Member States without a Member State attaching a legal value to the information. By referencing the CJEU judgment *C.K. and Others* v *Republic of Slovenia (Republika Slovenija)* (C-578/16, 16 February 2017), the Council of State noted that an analogy cannot be derived from that ruling for the current case because the principle of mutual trust is only applied to the question of whether a third-country national can be transferred to another Member State based on the presumption that that Member State will provide asylum seekers with the necessary healthcare and medical assistance, in accordance with Articles 17 to 19 of the recast Reception Conditions Directive (RCD).

The Council of State ruled that the applicant correctly claimed that the principle of interstate mutual trust cannot be relied upon for an age assessment in another Member State. While it can take into consideration the age registration in another Member State, it must nonetheless thoroughly investigate and clearly justify the importance attached to the information. The council elaborated that the minister should carry out certain actions to determine the reliability of age registrations, including i) clarification of the basis for the registration, whether from source documents or a medical age assessment; and ii) consultation with the Member State for further details. When the registration is solely based on the applicant's own statement, the council indicated that the minister should investigate the circumstances of the declaration and assess and reason its evaluation in case of conflicting explanations and discrepancies that could impact credibility. For the present case, the council annulled the contested decision and instructed the minister to review all relevant evidence.

For age assessments, the AMMR relies on Article 25 of the Asylum Procedures Regulation which provides that an age assessment is conducted through a multi-disciplinary assessment, where medical examinations may be used as a last resort measure and where the results are not conclusive, Member States must assume that the applicant is a minor. The EUAA has published a Practical guide on age assessment, second edition, 2018.

2. The discretionary clause under Article 17

The use of the discretionary clause pursuant to Article 17 of the Dublin III Regulation has been widely disputed before European and national courts from various angles, with an emphasis on judicial review. The CJEU ruled that an appeal against a refusal to apply the discretionary clause does not have a suspensive effect on the implementation of a Dublin transfer decision,

thus neither suspending not interrupting the deadlines provided for under Article 27 of the Dublin III Regulation. National courts in Ireland took into consideration the CJEU ruling when deciding that EU law does not oblige Member States to implement a second review, including a suspensive effect, against a decision on a Dublin transfer and discretionary clause.

Noteworthy on judicial review on the application of the discretionary clause is the case law of the Italian Supreme Court of Cassation, sitting in United Sections, which clarifies, based on the CJEU jurisprudence, that a judicial review on the discretionary clause can exceptionally be exercised in cases where there are claims of systemic deficiencies in the responsible Member State. It also ruled that the judicial review of a decision on a Dublin transfer can be based, upon specific request before national authorities, on the right to complementary national protection.

Regarding a substantive assessment of requests under Article 17 of the Dublin III Regulation, the Danish Refugee Appeals Board allowed such a request based on exceptional circumstances related to family considerations, whereas the Czech Regional Court in Bron dismissed a case because the applicant did not prove a compelling reason based on family life and the dependency with his partner and the unborn child.

2.1. CJEU ruling on the suspensive effect of a judicial review against a refusal to apply Article 17

In *AHY* v *Minister for Justice* (C-359/22, 18 April 2024)[9], the CJEU answered questions submitted by the High Court of Ireland on the application of the discretionary clause of Article 17(1) of the Dublin III Regulation and the suspensive effect of an appeal lodged against a decision refusing to apply this clause. Following the rejection of his asylum application in Sweden, a Somali applicant unsuccessfully requested asylum in Ireland before the International Protection Office (IPO) and unsuccessfully challenged the negative decision before the International Protection Appeals Tribunal (IPAT), where his request to apply Article 17(1) on grounds that he suffered from depression was rejected. The applicant further requested the Minister of Justice to apply the discretionary clause, but the latter rejected it and the applicant challenged the decision before the High Court.

The High Court noted the specificity of the Irish system, namely that: i) the decision on the Dublin transfer lies within the competence of the IPO, with an appeal before the IPAT; and ii) a request to apply the discretionary clause is within the Minister of Justice's competence, with a judicial review of the lawfulness of the administrative action before the High Court. As such, a decision made on the Dublin transfer may become final by the time a request for the application of the discretionary clause is made and decided upon (with a judicial review).

The CJEU clarified that Article 27(1) of the Dublin III Regulation does not require Member States to make an effective remedy available against a decision adopted under the discretionary clause and Article 47 of the EU Charter does not preclude a Member State from implementing a decision on a Dublin transfer before the request or a judicial review of the application of the discretionary clause has become final. As such, Member States retain the discretion to establish under their national framework the conditions under which requests to apply the discretionary clause may be implemented and whether they provide a right to suspend or appeal against a negative decision refusing to apply the clause.

The CJEU also ruled that the 6-month time limit provided for the transfer of an applicant for international protection under Article 29 of the Dublin III Regulation "starts to run from

acceptance of the request by another Member State to take charge or to take back the person concerned or from the final decision on an appeal against or review of a transfer decision where there is a suspensive effect in accordance with Article 27(3) of that regulation, and not from the date of the final decision on an action challenging the decision of the requesting Member State, taken after the adoption of the transfer decision, not to make use of the discretionary clause under Article 17(1) of that regulation to examine the application for international protection".

The AMMR provides similar provisions on the application of the discretionary clause under Article 35, except the wording in the first paragraph which has changed from 'lodged' to 'registered', so Member States can use the discretionary clause at an earlier stage. However, the AMMR does not include a right to appeal against a decision refusing to apply this clause as a ground for remedies under Article 43 of the regulation.

Nevertheless, in practice applicants could raise issues before national courts, and subsequently before the CJEU, on the interpretation of Article 43 in view of Recital 62 of the AMMR, which stipulates that applicants must enjoy a right to an effective remedy in order to benefit from effective protection of their right for family and private life, rights of the child and protection against inhuman or degrading treatment.

2.2. National approach: Procedural and merits assessments

Suspensive effect of a judicial review

In *S.P. v Minister for Justice & Ors* (29 July 2024)[10], the High Court in Ireland granted a Somali applicant leave to challenge two decisions: i) the Minister of Justice's refusal to apply Article 17(1) of the Dublin III Regulation; and ii) IPAT's negative decision on the appeal against the implementation of her transfer to Sweden. Although the medical grounds invoked by the applicant were less serious than those in *C.K. and Others v Republic of Slovenia* (C-578/16, 16 February 2017) and *R.G v International Protection Appeals Tribunal & Anor* (19 December 2023) when Article 17(1) was invoked (suicidal risks) and there was evidence that the applicant received adequate medical assistance in Sweden, the High Court considered that the case was arguable and that IPAT and the minister have the power of re-hearing the case.

The High Court rejected the request for a suspensive effect of the judicial review, noting that the principle of mutual trust can be relied upon for the transfer. It found that IPAT and the minister argued that the applicant did not submit any evidence to substantiate that the alleged medical condition could not be treated in Sweden or that her conditions would pose an imminent danger to her health.

The High Court assessed that the present case can be contrasted with the High Court case in *AHY v Minister for Justice* (referral) where the applicant presented recent and strong evidence of suicidal ideation stemming from the impact of the proposed transfer to Sweden.[11] It noted similarities with the High Court case in *R.G v International Protection Appeals Tribunal & Anor* (19 December 2023), where a similar injunction was sought for the suspension of a Dublin transfer and the High Court ruled that the proceedings did not constitute a review within the meaning of Article 29(1) of the Dublin III Regulation because Ireland had already identified the

body that carries out the appeal or review referred to in Article 27, namely IPAT. The assessment was found to be in line with the opinion of the Advocate General Pikamäe and the CJEU in AHY, according to which there was no obligation under the EU Charter to provide for a second review and a suspensive effect.

In contrast, in *AC v International Protection Appeals Tribunal & Ors* (12 February 2024)[12], the High Court allowed an injunction prohibiting the implementation of a decision on a Dublin transfer to Spain pending the decision of the Minister of Justice on Article 17 on the discretionary clause. The High Court relied on the CJEU judgments in *C.K. and Others v Republic of Slovenia (Republika Slovenija)*, (C-578/16, 16 February 2017) and *M.A., S.A., and A.Z. v International Protection Appeals Tribunal and Others*, (C-661/17, 23 January 2019) to rule that the discretionary clause of Article 17 is an essential part of the mechanism for determining Member State responsibility under the Dublin III Regulation. It also held that, although the CJEU judgment in AHY may provide clarity for interpreting Articles 27 and 29, the applicant had the right to appeal a decision made under Article 17 pending the CJEU ruling but he was prevented from acting due to the minister's inaction. The High Court considered that a different outcome would be unfair for the applicant, since the minister unreasonably failed to decide on the request to apply Article 17 for more than 18 months and the scope of the discretionary clause would be undermined if the minister was free to transfer an applicant before providing a response. Based on the CJEU judgment in *M.A.*, the court emphasised that an application under Article 17 is an integral part of the mechanism for determining Member State responsibility for an application for international protection under the Dublin procedure.

Judicial review of the discretionary clause and the interplay with national protection status

In Italy, the Supreme Court of Cassation ruled in two cases[13] concerning the application of the discretionary clause for Dublin transfer decisions of nationals of Pakistan from Italy to Austria when there is a genuine risk of the applicants suffering inhuman or degrading treatment, specifically a risk of *refoulement*, if the take back request was to be implemented. The Supreme Court of Cassation cited the CJEU judgment in *Ministero dell'Interno and Others* (joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, 30 November 2023), to affirm that the court cannot oblige the requesting Member State to apply the discretionary clause if it considers that the Dublin transfer entails a risk of breaching the principle of *non-refoulement*. Since the discretionary clauses are optional and entrusted to the national administration based on humanitarian considerations, they cannot be directly applied by the court, but the refusal to apply these clauses may be subject to a judicial review.

By reference to the CJEU judgment in *C.K. and Others v Republic of Slovenia* (Case C-578/16 PPU, 16 February 2017), the court determined that even in the absence of established systemic deficiencies, Article 4 of the EU Charter may be invoked if there is a possibility that, in a specific case, the transfer of an applicant entails a genuine and substantiated risk of inhuman or degrading treatment.

Due to the importance of the cases, the court referred to its United Sections to clarify the following questions: i) whether it is possible to refrain from transferring an applicant to the requested Member State following a take back request, when an examination of the conditions for recognising national forms of protection must be conducted *ex officio* and ii) whether the national system of protection could be regarded as a means of exercising the discretionary clauses, thus potentially indicating a tacit refusal to utilise them and enabling their scrutiny.

By relying on the CJEU case *Ministero dell'Interno and Others* (joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, 30 November 2023), the Italian Supreme Court of Cassation ruled in United Sections in *Ministry of the Interior (Ministero dell'interno) - Department for civil liberties and immigration - Dublin Unit v H.A.*, (15 January 2025)[14] that the exercise of the discretionary clause under the Dublin III Regulation can fall under the scope of a judicial review only in exceptional cases when there are claims of systemic deficiencies in the responsible Member State. The court clarified that applicants may challenge Dublin transfer decisions on grounds of an alleged violation of their right to complementary protection under national law, provided that they specifically raised this possibility before the relevant authorities.

The Supreme Court of Cassation noted that the CJEU clarified that, in the absence of systemic deficiencies in the asylum procedure and reception conditions in the responsible Member State, national courts do not have the competence to review the exercise of the discretionary clause by their competent authorities based solely on a different assessment of the risks associated with returning the applicant to their country of origin, aiming to prevent indirect *refoulement*. Following the interpretation, the Court of Cassation highlighted that the CJEU judgment does not rule out the power of national courts to review the decision not to use the discretionary clause for other reasons, in the context of an appeal against the transfer decision under Article 27 of the Dublin III Regulation. The Court of Cassation further considered that the other reasons for challenging the non-use of the discretionary clause may include the alleged violation of the applicant's right to complementary protection under national law. However, this scenario was not applicable in the particular case because a court cannot, when hearing an appeal against a decision on a Dublin transfer, automatically consider national forms of protection unless the issue is specifically raised by the applicant. According to the Court of Cassation, such an *ex officio* examination would conflict with EU law, which requires the use of ordinary jurisdictional criteria and limits the use of the discretionary clause to exceptional cases. The court further explained that the assessment of whether there is a situation when EU law does not provide the same protection as the Italian complementary protection must be case-specific and requires a comparison of protection levels by taking into account the particular circumstances of the applicant challenging the Dublin transfer.

In view of recent case law from the CJEU and interpretations from national supreme courts, it follows that EU law does not govern the existence, nature and scope of a judicial review over the exercise of the discretionary clause. However, EU law only prohibits national courts from reviewing the discretionary clause in order to circumvent mutual trust or to impose their own assessment of indirect *refoulement*.

The scope of the remedies allowed under Article 43 of the AMMR against a Dublin transfer decision is more limited than under the current Dublin III Regulation *(see Section 3.3),* but since there is no explicit mention of judicial review on the application of the discretionary clause, this aspect will remain governed by national legislation, within the above interpretation by the CJEU.

Failure to submit an application under Article 17

The High Court in Ireland ruled in *PZ v The International Protection Appeals Tribunal & Ors* (31 January 2024) that a Somali applicant failed to submit a clear application for the discretionary clause under Article 17 of the Dublin III Regulation in 2022 and failed to explain the delay in

the application which was sent last minute prior to the implementation of a decision to transfer to France.

The High Court noted that previous proceedings before IPAT and subsequently against the Dublin transfer did not contain any submission under Article 17. The High Court noted that the applicant submitted an application for Article 17 on 24 January 2024 and only initiated new proceedings before the High Court on 29 January 2024 with an injunction a few days before his obligation to report to the airport for the transfer. The High Court noted that the applicant invoked the pending case in *AHY v the Minister for Justice*, claiming that the CJEU would rule that a judicial review challenging a refusal to apply Article 17 has a suspensive effect on the implementation of the Dublin transfer. However, the High Court gave more weight to the fact that the applicant could have sought an application of Article 17 in 2022 but did not do so and there was no refusal under Article 17. As such, the injunction against the implementation of the transfer was rejected.

Substantive assessment of grounds for applying Article 17

In *Dub-Kroa/2024/2/Ieuds* (2 December 2024), the Danish Refugee Appeals Board found that there were exceptional circumstances that triggered the application of the discretionary clause of Article 17(1) of the Dublin III Regulation concerning an applicant born in Denmark who was taken outside of the country by one of the parents without the consent of the second parent. The Refugee Appeals Board noted that Croatia, where the first application for international protection was lodged, was in principle the Member State responsible to process the application, thus obliged to take back the applicant. It also found that Croatia agreed to take back the applicant.

However, the Board found that the applicant was born in Denmark and was under the joint custody of his parents, A and B. The applicant was taken away to another country by parent A without consent or the knowledge of parent B. Parent B's request for a police investigation under the Criminal Code remained unsuccessful. The applicant kept continuous contact with parent B, they communicated one to two times per week, including by remote communication, but without seeing each other physically, partly because A would not allow B to enter the country on a visitor's visa and partly because A did not allow the applicant to go to Denmark. The applicant's attempts to obtain a visa for Denmark were unsuccessful, and later as an adult he lacked the financial means and parent A refused to help. Since entering Denmark in 2023 and requesting international protection, the applicant stayed with B and his siblings over weekends. Therefore, the board noted the connection of the applicant with parent B and the siblings still living in Denmark, and it considered that the very special circumstances of the case justified the exceptional processing of the application in Denmark by applying the discretionary clause.

3. Safeguards under the Dublin procedure

In 2024, national courts addressed issues pertaining to procedural safeguards under the Dublin procedure and concluded that: i) the right to information specifically on the Dublin procedure is a requirement for compliance with Articles 4 and 5 of the Dublin III Regulation; ii) failure to observe time limits for the implementation of a Dublin transfer results in a shift of responsibility when the deadline expires; and iii) in successive take back requests, when the time limit expires for a transfer from requesting country A to requested country B, the first, country A, becomes responsible for examining the application irrespective of whether the applicant moved to a third country and requested asylum. In addition, they clarified the scope

of a judicial review and suspensive effect, limitation of reception conditions and the lawfulness of detention pending a transfer.

3.1. The right to information

Duty to provide information on the Dublin procedure

In two cases,[15] the Italian Supreme Court of Cassation ruled in an appeal submitted by applicants from Algeria and Pakistan against a decision on a Dublin transfer that Member States must provide information separately and specifically on asylum and the Dublin procedure in order to comply with Articles 4 and 5 of the Dublin III Regulation. The Court of Cassation found that a failure to provide such information justified the annulment of the decision on a Dublin transfer because it lead to a breach of the procedural safeguard of ensuring that an applicant has the right to an effective remedy against the decision on a Dublin transfer, as provided in Article 27 of the Dublin III Regulation.

The court referenced the CJEU case *Ministero dell'Interno and Others* (joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, 30 November 2023) to rule that the obligation to provide information on the Dublin procedure is not complied with if the applicant received information only related to the asylum procedure, as referred to in Article 10 of Legislative Decree 25/2008 (transposing the recast APD). As such, the Court of Cassation emphasised that pursuant to Article 4 of the Dublin III Regulation applicants must receive the common brochure as soon as the application is lodged, because the brochure contains information on the Dublin procedure and Eurodac. In view of the CJEU ruling, it emphasised also the key role of the personal interview within the Dublin procedure.

The right to be provided with information related to responsibility is further strengthened in the AMMR under Articles 19 and 20 which include three categories of information: the rights of the applicant, obligations and consequences for non-compliance. As such, the applicant must be provided, as soon as possible and latest when the application is registered, with information on the application of the AMMR, in clear and plain language, available online and in an easily accessible platform and where necessary orally. The AMMR provides also for the possibility for an applicant to request information on the progress of the procedure and the authorities must inform about this possibility.

More emphasis is added on the role of the EUAA to draw common information material and specific information for unaccompanied minors and vulnerable applicants in cooperation with Member States. For minors, the AMMR specifies that the information is to be delivered in a child-friendly manner by appropriately trained staff and in the presence of the minor's legal representative.

As such, the right to information is more comprehensively defined under the AMMR to encompass all procedural guarantees that were not sufficiently evident in the previous regulation and requires Member States to fully implement them.

In addition, the AMMR introduces under Article 21 the applicant's right to free legal counselling, specifically on their rights and obligations in the procedure. Free legal counselling is strengthened by the provision of guidance on: i) the criteria and procedure to determine the Member Stare responsible; ii) provision of information by the applicant for helping in the determination process; and iii) templates related to the personal interview.

Incorrect information on marital status in a take back request

The Czech Supreme Administrative Court ruled in *V. K.* v *Ministry of Interior (Ministerstvo vnitra)*[16] (1 February 2024) on the right of an applicant to have misrepresented information corrected for the purposes of a correct determination of the responsible Member State under the Dublin procedure. A Russian citizen, subject to a take charge request to Italy because he had a valid visa for Italy, contested the inadmissibility decision on grounds that the ministry incorrectly recorded that the applicant was not married although he had a wife in Czechia. The applicant's request to correct the information on his marital status was rejected, and the applicant claimed that it had led to an insufficient examination of the case in view of the potential application of Article 17(1) by Czechia.

The Supreme Administrative Court clarified that incorrect information constitutes an interference with an applicant's procedural rights, especially the right to a fair asylum procedure. As such, incorrect information must be rectified, irrespective of whether such information would trigger the application of Article 17(1) which is at the discretion of administrative authorities. The need to have correct information is essential for a correct assessment of all elements in view of a take charge request, pursuant to Article 21(1) of the Dublin III Regulation.

3.2. Determination of responsibility and compliance with time limits

Competent authority to review a decision on a Dublin transfer

The Irish High Court clarified in the case *T.T.* v *International Protection Appeals Tribunal*[17] (31 July 2024) that a delayed notification of the designation of IPAT as the competent authority to the European Commission does not affect the validity of its decisions. The applicant lodged an appeal on 25 May 2023 against a Dublin decision to transfer him from Ireland to Sweden, and on 4 December 2023, the Irish State first notified the European Commission of IPAT's designation as a competent authority for the purpose of the Dublin III Regulation. The European Commission published a consolidated list of competent authorities in the Official Journal on 14 March 2024. By ruling of 21 February 2024, IPAT confirmed the Dublin transfer decision to Sweden, but the applicant contested it again before the High Court on grounds that the delayed notification to the European Commission rendered the Dublin III Regulation inapplicable.

The High Court noted that the IPAT contested decision on appeal was adopted in February 2024, while the notification to the European Commission was sent in December 2023, thus the duty to notify was complied with at the time of taking the contested decision. The High Court found that the fact that the European Commission did not publish a consolidated list of competent authorities until March 2024 did not change the assessment, since Article 35 of the Dublin III Regulation does not require publication in the Official Journal as a pre-requisite for an effective designation. The High Court found no procedural irregularity since it noted that the applicant was well aware of the competent authority as he exercised his right to appeal before IPAT and had a suspensive effect during the appeal, thus it did not result that his rights were affected by the delayed notification.

The main obligations of Member States pursuant to Article 35 of the Dublin III Regulation on competent authorities and resources are retained in Article 52 of the AMMR, with more emphasis under the first paragraph on the "necessary human, material and financial resources for carrying out their tasks relating to the application of the procedures for determining the Member State responsible for examining an application for international protection in a rapid and efficient manner, and in particular for safeguarding procedural and fundamental rights, ensuring a swift procedure for reuniting family members and relatives present in different Member States".

Impact of a failure to observe time limits under Article 29(2)

When the period for a Dublin transfer to Germany expired and the Netherlands became responsible for processing the asylum application, the Dutch Council of State clarified in *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*[18] (4 March 2024) that the State Secretary cannot consider the proceedings for the first application to be terminated and request the applicant to submit a new one. In this case, the State Secretary rejected the asylum application as inadmissible and did not process it because Germany was deemed responsible under the Dublin III Regulation, but since the time limit for the transfer under Article 29(2) had expired, the Netherlands became responsible to process the application. When the applicant asked the State Secretary about the next steps of the procedure, the latter informed that the first asylum proceedings ended and he had to submit a new application, which the applicant did with the same information. Refugee status was granted with a residence permit starting on the date of the second application.

In the onward appeal, the Council of State noted that this situation is contrary to the Dublin III Regulation and the recast APD because it can result in a temporary situation where no Member State would be responsible for examining the application, rendering Articles 3(1) and 29(2) of the Dublin III Regulation ineffective. It concluded that Member States cannot waive their obligation to examine the case, therefore the State Secretary had to examine the application based on the initial file, after the Netherlands became responsible to examine it. In addition, the Council of State ruled that the effective date of the residence permit is the date of the submission of the first application and not the second application.

Determining responsibility in successive take back requests

In *A,B,C,D* v *State Secretariat for Migration (Staatssekretariat für Migration, SEM)*[19] (23 February 2024), Afghan nationals applied for international protection in Switzerland in February 2022 after having applied in Bulgaria and Austria. Austria rejected the first take back request because Bulgaria already accepted responsibility in January 2022, but the latter did not reply to SEM's take back request within the time limit pursuant to Article 25(1) of the Dublin III Regulation. SEM ordered the transfer to Bulgaria, but the Federal Administrative Court (FAC) annulled it.

In subsequent proceedings and taking into account the CJEU judgment in *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* v *B., F. and K.*[20] (joined Cases C-323/21, C-324/21 and C-325/21, 12 February 2023), SEM sent a take back request to Austria which expressly accepted it under Article 18(1b) of the Dublin III Regulation and a decision on the transfer was adopted in December 2023. In the appeal against the decision on a Dublin

transfer, the applicant alleged several shortcomings in the procedure: i) insufficient investigation into his medical situation and the possibility to apply Article 17(1) of the Dublin III Regulation; and ii) failure to exchange information with the Austrian authorities on his situation. FAC found that these claims were not substantiated since SEM duly investigated the medical file of the applicant, noting that the latter received psychotherapeutic follow-up and drug treatment and there was no justification to apply the discretionary clause. Also, FAC found that SEM correctly used the standard form and shared all the relevant information with the Austrian authorities, including on the duration of the procedure in Switzerland.

On the correctness of the application of the criteria to determine the responsible Member State under the Dublin III Regulation, FAC looked into the question of time limits in successive take back requests and their impact, by taking into account the CJEU judgment *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v B., F. and K.*[21] (joined Cases C-323/21, C-324/21 and C-325/21, 12 February 2023). While reviewing the chronology of events, FAC noted that the initial refusal of the Austrian authorities to take back the applicant was based on Bulgaria's previous acceptance of the take back request on 3 February 2022, for which the transfer period was extended to 18 months because the applicant absconded before the Dublin transfer was carried out. This transfer period expired on 3 August 2023, in view of Article 42 of the Dublin III Regulation, because the applicant left Austria before filing an asylum application in Switzerland on 9 February 2022. In view of the CJEU case and Article 29(1) of the Dublin III Regulation, FAC ruled that in successive take back requests, the expiry of the transfer period, by virtue of Article 29(2), between the first requesting Member State (Austria) and the requested Member State (Bulgaria) means that the first becomes responsible for examining the asylum application, even when the applicant has meanwhile lodged an application in a third Member State (Switzerland). FAC referenced the CJEU judgment to conclude that the material impossibility to implement of the (first) transfer decision - due to the absconding of the applicant - could not justify the interruption or suspension of the period set out in Article 29(1), but only its extension pursuant to Article 29(2). Therefore, when the period for transferring the applicant from Austria to Bulgaria expired, Austria automatically became the responsible Member State for examining his asylum application, notwithstanding that the applicant absconded (or left Austria) before his Dublin transfer to Bulgaria could be carried out, and SEM correctly submitted the request to Austria, which rightly assumed responsibility.

Article 46(2) of the AMMR provides for a 3-year extension of the time limit for a transfer when the applicant absconds and other situations that may require an extension. For detained applicants, the extension is up to 1 year.

In addition, when an absconded applicant becomes available to the authorities, the AMMR introduces the possibility for a Member State to carry out a transfer within 3 months even if the time left for such transfer is less than 3 months.

3.3. Effective remedy to review a decision on a Dublin transfer

Scope of a judicial review for independent transfer decisions

In *Applicant* v *The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*[22] (23 October 2024), a Nigerian national who withdrew his asylum application appealed a decision on a Dublin transfer to Italy. The Dutch Council of State ruled that the Minister for Asylum and Migration must still assess whether the transfer may result in an infringement of Article 4 of the EU Charter by the responsible Member State. The council highlighted that the minister has the duty to comply with the EU Charter when issuing a decision on a Dublin transfer decision, especially with Article 4 which has an absolute nature, and that the right to an effective remedy, as enshrined under Article 27(1) of the Dublin III Regulation, is guaranteed, irrespective of whether the decision on a transfer is independent or linked to an asylum application.

The minister's argument derived from the CJEU judgment *H.A.* v *Belgium* (C-194/19) that the principle of effective judicial protection does not require that decisive circumstances subsequent to the adoption of the transfer decision be taken into account, as long as there is another effective remedy available in which those circumstances can be assessed. The Council of State disagreed because the applicant invoked circumstances experienced in Italy prior to arriving in the Netherlands, thus not subsequent to the transfer decision. The Council of State concluded that the scope of the remedy provided for in Article 27(1) of the Dublin III Regulation leaves no discretion for national authorities to exclude direct reliance on Article 4 of the EU Charter for independent transfer decisions.

Moreover, by referencing the CJEU case *Abubacarr Jawo* v *Bundesrepublik Deutschland* (C-163/17), the council emphasised that Article 4 of the EU Charter applies regardless of when the risk of violation may arise—at the time of the transfer, during the asylum process or afterward, and the minister and the administrative courts must carry out an individual assessment on whether transferring the individual may place them in a situation that breaches Article 4 of the EU Charter in the other Member State, in the absence or withdrawal of an asylum application in the Netherlands.

Also, the council relied on the CJEU case *Ministero dell'Interno and Others* (joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, 30 November 2023) to underline that Member States must take into account information provided by the applicant which may have an impact on submitting a take back request or carrying out a transfer, including evidence on systemic flaws or serious risk of inhuman or degrading treatment, which may lead to a change of the responsible Member State.

Risk of indirect refoulement outside the scope of a judicial review

By referring to the CJEU interpretation of Articles 3(1) and the second paragraph of Article 3(2) of the Dublin III Regulation in the judgment *Ministero dell'Interno and Others* (joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, 30 November 2023), the Dutch Council of State ruled in *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* v *Applicant*[23] (12 June 2024) that the scope of a judicial review of a decision on a Dublin transfer does not include an assessment of the risk of indirect *refoulement* resulting from different protection policies between Member States. A Pakistani applicant submitted an appeal against a decision on a Dublin transfer to Austria, invoking a risk of indirect *refoulement* if transferred due to a difference in policies between the two Member States.

Based on the CJEU judgment, the Council of State changed its previous case law by noting that the principle of mutual trust must be relied upon, specifically presuming that the risk of *refoulement* is properly assessed by the responsible Member State and that the applicant will also have access to effective remedies to challenge the decision of that Member State. Moreover, the council noted that the CJEU mentioned that a different interpretation of substantive conditions for international protection between Member States, thus a difference in policies, does not constitute a systemic flaw, and when a court does not find systemic flaws in the asylum and reception systems, it cannot assess whether there is a risk of *refoulement* after or due to the transfer under the Dublin III Regulation.

The Dutch Council of State published a press release on the impact of this ruling, noting that the minister no longer needs to assess whether a transfer to another Member State could result in indirect *refoulement* because a comparison of protection policies and an assessment of a risk of indirect *refoulement* falls outside of the scope of a judicial review of a Dublin transfer when no systemic flaws have been identified. As such, an applicant must raise a fear of *refoulement* in the responsible Member State or demonstrate that the asylum procedure is not functioning properly.

Similarly, the Italian Supreme Court of Cassation, Civil Section ruled in *Ministry of the Interior (Ministero dell'Interno) v H. A.*[24] (10 December 2024) that, in the context of an appeal against a decision on a Dublin transfer, a court does not have the power to examine whether there is a risk of violating the *non-refoulement* principle in the responsible Member State due to differences in the interpretation of the substantive requirements for international protection, unless there are systemic deficiencies in the asylum procedure or reception conditions in that Member State. The court ruled that the Tribunal of Firenze, without identifying any systemic deficiencies in Austria's asylum and reception systems, incorrectly used the discretionary clause to decide on the risk of indirect *refoulement* based on a different evaluation of the level of protection the applicant may receive, thus disregarding the principle of mutual trust and the obligation of all Member States to adhere to the principle of *non-refoulement*.

Conversely in Norway, the Oslo District Court in *Applicant v Immigration Appeals Board*[25] (5 July 2024) continued to take into account differences in protection policies to assess the risk of indirect *refoulement* resulting from a Dublin transfer. In this case, the Norwegian authorities considered that Denmark was the responsible Member State for a Syrian applicant under the Dublin III Regulation and ordered her transfer. The applicant challenged the decision before the Immigration Appeals Board; however, the board declared the appeal unfounded. The case was brought before the Oslo District Court, which ruled that the board's decision was invalid. The court found that the board failed to assess the asylum application on its merits, which was necessary in view of the difference in protection policies between Norway and Denmark for Syrian applicants. It held that the transfer could lead to indirect *refoulement* as Denmark considered that the situation in the applicant's province in Syria did not give rise to protection needs and had issued the applicant with a deportation order. The court referred to the *Ministero dell'Interno and Others* ruling of the CJEU, however the court considered that Norwegian law can offer greater protection against a return than the minimum protection under the Dublin III Regulation and that the CJEU had not clarified how to proceed in such cases. Furthermore, in contrast to the case from Italy, the court considered that discretionary clauses, particularly Article 17(1), could be applied on the basis of a difference in protection policies.

Article 27 of the current Dublin III Regulation leaves a wide margin for Member States to provide for an appeal or a review of a transfer decision, in fact and in law. The remedies provided under Article 43(1) of the new AMMR will have a limited scope of assessment, covering the following aspects: i) whether the transfer would result in a real risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter; ii) whether there are subsequent circumstances to the decision on a transfer which are deemed to be decisive for the correct application of the AMMR; and iii) whether the criteria for determining the responsible Member State to take charge of applicants under Article 36(1a) has been infringed, specifically Articles 25 to 28 and 34 of the regulation.

For the second ground for an effective remedy, the CJEU has already ruled in *H.A. v Belgium* (C-194/19, 15 April 2021) that Article 27(1) of the Dublin III Regulation is to be interpreted as precluding national legislation which provides that the judicial authority examining "an action for annulment of a decision on a transfer decision may not, in the context of the examination of that action, take account of circumstances subsequent to the adoption of that decision which are decisive for the correct application of that regulation, unless that legislation provides for a specific remedy entailing an *ex nunc* examination of the situation of the person concerned, the results of which are binding on the competent authorities, a remedy which may be exercised after such circumstances have arisen and which, in particular, is not made conditional on the deprivation of that person's liberty or on the fact that implementation of that decision is imminent".

Suspensive effect of a constitutional appeal

In *Applicants v International Protection Agency (Aġenzija għall-Protezzjoni Internazzjonali, IPA),International Protection Appeals Tribunal*[26] (9 January 2024), the First Hall Civil Court in Malta ruled on 9 January 2024 that the International Protection Appeals Tribunal (IPAT)'s decisions are not deemed final for the implementation of a Dublin transfer when the applicants have submitted a request for a constitutional review of the proceedings on international protection.

The applicants were subject to a decision of Dublin transfers to Austria, and they challenged the transfer decisions with a constitutional appeal on grounds that their international protection proceedings infringed Articles 4, 5 and 17 of the Dublin III Regulation. The International Protection Agency (IPA) and IPAT argued on the contrary that a constitutional appeal cannot have a suspensive effect because the 6-month time limit to implement the transfer starts from the IPAT's final decision. The civil court ruled that, since the scope of the appeal was to verify conformity of the Dublin procedure with Maltese law and the ECHR, it was allowed, and it did not constitute an unpermitted onward appeal against an IPAT decision.

The civil court interpreted Article 27(3) in conjunction with Article 29(1) of the Dublin III Regulation as meaning that the 6-month period for a Dublin transfer starts only after a final decision was adopted in the constitutional proceedings and that the appeal had a suspensive effect *ex officio,* and the applicants retained the right to remain pending the constitutional proceedings.

Currently, Article 27(4) of the Dublin III Regulation allows judicial authorities of a Member State to decide *ex officio* to suspend the implementation of the transfer decision pending the outcome of an appeal or a review. However, under Article 43(3) of the new AMMR, an applicant must request a suspensive effect in all cases, otherwise the appeal against or review of the transfer decision will not suspend its implementation. Nonetheless, a negative decision on the request for a suspensive effect of an appeal or a review must be reasoned.

In that sense, the Advocate General mentioned in the opinion provided in the case of *AHY* v *Minister for Justice* (Case C-359/22, paragraph 92) that a remedy is effective if a suspensive effect is granted in exceptional situations, referring mostly to situations when there are real reasons to consider that the transfer could result in an applicant being subject to inhuman or degrading treatment (for example a suspension of the transfer of an applicant with severe health conditions - see *C.K. and Others* v *Republic of Slovenia (Republika Slovenija)*, C-578/16 PPU, 16 February 2017).

3.4. Limiting reception conditions pending a transfer

In *Applicant* v *District A*[27] (25 July 2024), an Afghan national, subject to a decision on a Dublin transfer to Romania, contested the revocation of his cash benefits and reduction of his material reception conditions, which was adopted based on Section 1a(7) of the Asylum Seekers Benefits Act (AsylbLG) as applicable to foreigners required to leave Germany. The applicant complained before the German social courts that the failure to implement the Dublin transfer was not attributed to him, because Romania suspended transfers due to the consequences of the war in Ukraine in 2022. In an onward appeal, the German Federal Social Court considered that the applicant was not entitled to higher benefits but to benefits for foreigners pending the implementation of the transfer.

The Federal Social Court decided to refer questions to the CJEU for a preliminary ruling on whether national provisions to reduce benefits to asylum applicants pending the implementation of a decision on a Dublin transfer are compatible with Article 17(2) and (5) of the recast RCD, which stipulates that asylum applicants under the Dublin procedure must receive adequate living conditions to ensure subsistence and the protection of physical and mental health, including provisions for accommodation, food and clothing. The referring court inquired whether these provisions allow for a differentiation between applicants based on a shorter stay and whether limiting material reception conditions can be justified under Article 20(1)(c) of the recast RCD if the national benefit level is below the standards set by Articles 17(2) and 17(5) of the recast RCD.

The referred questions were:

> *1. Does a provision of a Member State which grants applicants for international protection, depending on their status as persons required to leave the country within the transfer period under the Dublin III regulation, only a right to accommodation, food, personal and health care and treatment in the event of illness and, depending on the circumstances of the individual case, clothing and household durables and consumer goods, cover the minimum level described in Article 17(2) and (5) of the recast RCD?*

Should Question 1 be answered in the negative:

2. a) Is Article 20(1)(c) of the recast RCD in conjunction with Article 2(q) of the APD to be interpreted as meaning that a subsequent application also covers situations in which the applicant has previously lodged an application for international protection in another Member State and, on that basis, the BAMF has rejected the application as inadmissible under the Dublin III Regulation and ordered deportation?

(b) In determining whether this situation constitutes a subsequent application within the meaning of Article 2(q) of the recast APD, does the date of withdrawal or the date of a decision by the other Member State pursuant to Article 27 or Article 28 of the recast APD matter?

(c) Is the first sentence of Article 20(1)(c) in conjunction with Article 20(5) and (6) of the recast RCD in conjunction with the EU Charter to be interpreted as meaning that a restriction of the benefits granted as part of the reception to benefits to cover the need for food and accommodation, including heating, as well as personal and healthcare care and benefits in the event of illness and - depending on the individual case - for clothing and household consumer goods is permissible?

The answers to these questions are relevant in view of the changes envisaged in the AMMR and the duty of Member States to take due consideration of the obligation to ensure a minimum standard of living when deciding to restrict reception conditions. Already, the CJEU pointed out in the case of Haqbin (C-233/18, 12 November 2019) that in the context of providing a dignified standard of living, the verb "ensure" means to guarantee a dignified standard of living "continuously and without interruption" and that human dignity means that the person will not finding him/herself "in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity".

Also, in the case Ministero dell'Interno v TO (C-422/21, 1 August 2022), the CJEU added that the standard set up in Habqin applies to any applicant for international protection and not only vulnerable applicants. For the first time, Article 18 of the AMMR introduces explicit sanctions if applicants do not comply with the obligation to cooperate, as enshrined under Article 17 of the AMMR. This means that an applicant may lose, from the moment that they receive notification of a decision on a transfer and provided they have been informed of the consequences of moving to another Member State without authorisation, the right to material reception conditions in any Member State other than the one in which they are required to be present. The exclusion of asylum seekers from reception conditions pursuant to Articles 17-20 of the recast RCD 2024 if they are not present in the Member State in which they are required to be present is in line with the provisions of Article 21 of this directive.

The applicant must be informed about the withdrawal either in the transfer decision or in a separate decision. Both the AMMR and the recast RCD 2024 reiterate that Member States must ensure a minimum standard of living in line with the EU Charter and international obligations and a decision to withdraw material reception conditions can be taken following an individual assessment of all circumstances and a potential risk of violation of fundamental rights in the Member State where the applicant is required to be present, and with due consideration of the principle of proportionality. The only exception to applying this sanction are cases of victims of trafficking in human beings, as mentioned in Article 18(3).

3.5. Detention of applicants pending a Dublin transfer

In the case *Applicant* v *Minister for Asylum and Migration (de Minister van Asiel en Migratie)*[28] (19 September 2024), the Dutch District Court of the Hague seated in Roermond annulled a detention measure adopted against a Russian applicant who was subject to a decision on a Dublin transfer to Belgium. The court conducted an *ex officio* review of the lawfulness of the detention measure by taking into account the CJEU findings in the judgment *C, B and X* v *State Secretary for Justice and Security* (Joined Cases C-704/20 and C-39/21, 8 November 2022). The Court of the Hague found that the applicant was not provided procedural safeguards with regards to interpretation and the right to legal assistance. It noted that despite efforts, the hearing was held without the presence of a lawyer and a certified interpreter for Chechen, and the authority did not fulfil its duty to provide information to the applicant on the detention measure and the reasons for its adoption. The court considered that there were significant procedural shortcomings with regard to the applicant's rights.

However, the court noted that despite the seriousness of the procedural issues, the Minister of Asylum and Migration had compelling reasons to detain the applicant due to a report showing that the French authorities imposed an entry ban on the applicant on grounds of threat to national security due to close ties with a terrorist organisation. The court further noted that the minister had insufficiently justified the measure because the two minor grounds invoked, namely the multiple failed applications for a residence permit in Belgium and a lack of domicile or residence in the Netherlands, did not constitute a serious indication of a risk of absconding to justify the detention measure. The court noted that these grounds were even factually incorrect and insufficiently motivated since the procedure conducted in Belgium for two asylum applications submitted by the applicant did not show that the applicant would intend to disrupt the implementation of the Dublin transfer.

4. Assessing the lawfulness of decisions on Dublin transfers against claims related to deficiencies in the asylum and reception systems in the responsible Member State

National courts ruled on various cases concerning the assessment of systemic deficiencies in asylum procedures or reception conditions. Dublin transfers were prevented only in exceptional circumstances, where there were risks that Dublin returnees would be unable to access the asylum procedure or reception system, or where they would face inadequate reception conditions. Such claims were examined with reference to Dublin transfers to Hungary, where the so-called 'embassy procedure' is being used and to Croatia, Lithuania and Poland, where allegations of pushbacks and systemic deficiencies in the asylum procedure were raised. In addition, allegations of a lack of an effective remedy were made concerning Poland and a lack of effective legal aid in the appeal system in Cyprus. Regarding reception conditions, courts examined allegations of inadequate conditions in Belgium, Bulgaria, Cyprus, Italy and Romania.

Additionally, several courts considered the applicant's medical condition and the potential impact of the transfer on their health. Transfer decisions were overturned or returned for a re-assessment when the national authority failed to take into account medical evidence related to serious psychological issues and the lack of access to adequate healthcare in the responsible Member State.

4.1. Assessing systemic deficiencies in the asylum procedure

Access to the asylum procedure

National courts reached different conclusions regarding the existence of systemic deficiencies in Hungary resulting from the implementation of the 'embassy procedure'. This procedure was criticised by the CJEU in the judgment *European Commission v Hungary*[29] (C-823/21, 22 June 2023), whereby the CJEU ruled that Hungary had breached its obligations under Article 6 of the recast APD by making access to international protection for certain third-country nationals or stateless individuals, who were already on its territory or at its borders, dependent on first submitting a declaration of intent at a Hungarian embassy in a third country and obtaining a travel document to enter Hungary.

In the context of Dublin transfers to Hungary, the so-called 'embassy procedure' was considered, at times, in the absence of individual guarantees, either as an obstacle to the effective exercise of an applicant's access to the asylum procedure and as possibly leading to a risk of *refoulement*, or on the contrary, as an aspect that is not relevant for Dublin returnees when courts considered that the asylum procedure applicable to Dublin returnees does not include the lodging of a new application through the so-called 'embassy procedure'.

In *Applicant v Ministry of Home Affairs*[30] (30 August 2024) and *Applicant v Ministry of Home Affairs*[31] (20 September 2024), the Administrative Tribunal in Luxembourg found that the determining authority had erred in considering that there were no systemic deficiencies in Hungary's asylum procedure and reception conditions as the Hungarian authorities could not guarantee that applicants transferred under the Dublin procedure would be able to access the asylum procedure. The tribunal highlighted that a transfer acceptance letter, without concrete individual assurance, was insufficient to guarantee that their right to apply for international protection would be respected. In Latvia, the District Administrative Court ruled in *Applicant v Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)* (8 April 2025) that a Dublin transfer to Hungary was not permitted due to systemic deficiencies in the asylum procedure. It noted that asylum applicants transferred under the Dublin procedure lacked a legal guarantee that they would have access to the asylum procedure.

In contrast, the Austrian Federal Administrative Court in *BF v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*[32] (18 January 2024) confirmed the transfer of a Russian applicant to Hungary, finding no systemic deficiencies in the Hungarian asylum and reception systems. Based on country information and additional investigations carried out by the court, it was held that Dublin returnees fall outside of the scope of the so-called 'embassy procedure' as they do not need to submit a separate or new application at the embassy but can maintain the asylum application which they submitted in Austria, to be processed in Hungary. Furthermore, the court ruled that the reception and healthcare of Dublin returnees are ensured by Hungarian authorities.

In Germany, administrative courts took divergent approaches on Dubin transfer decisions to Hungary. In *Applicant v BAMF*[33] (10 October 2024), the Administrative Court of Minden annulled the decision to transfer an Uzbek applicant to Hungary as it found that Hungary's asylum procedure posed a risk of subjecting the applicant to inhuman and degrading treatment or violating the principle of *non-refoulement*. The court observed that the applicant had not yet applied for asylum in Hungary and, if returned, would be unable to do so within

Hungarian territory due to the so-called embassy procedure. Consequently, the court concluded that the applicant would face a risk of deportation if returned to Hungary.

In contrast, following the same line of reasoning as the Austrian Federal Administrative Court mentioned above, the Administrative Court of Dusseldorf confirmed the transfer of a mother and her minor son to Hungary in *Applicants v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*[34] (15 May 2024), finding that in practice, the so-called embassy procedure is not applied to applicants transferred under the Dublin procedure as once they arrive in Hungary, they are granted access to the asylum procedure after indicating to the authorities that they wish to maintain their original application filed in another Member State. The court found that this procedure had been confirmed by Hungarian authorities and referenced in several official sources, including reports from the Austrian Federal Office for Immigration and Asylum, the 2022 Update AIDA Country Report: Hungary and the EUAA 2023 factsheet Information on procedural elements and rights of applicants subject to a Dublin transfer to Hungary.

Regarding Dublin transfers to Croatia, the Supreme Court in Slovenia examined the issue of access to the asylum procedure in that Member State in light of allegations of pushbacks at its borders and reiterated in several judgments[35] that there were no circumstances, personal or pertaining to the situation in Croatia, to prevent a transfer. The court distinguished between the treatment of irregular border crossers and that of Dublin returnees who seek asylum, concluding that the alleged pushbacks do not, in themselves, demonstrate systemic deficiencies in Croatia's asylum system. The Slovenian Supreme Court held that, while the conduct of the police in relation to the lodging of an asylum application cannot be completely separated from the broader asylum procedure, this does not imply that such conduct continues in the same manner once an application has been formally lodged, nor does it suggest that a person returned to Croatia under the Dublin III Regulation would be prevented from submitting an application for international protection. Accordingly, the court found that allegations of pushbacks in cases of irregular entry were not relevant to the assessment of systemic deficiencies in the context of Dublin returnees, who are treated as asylum seekers.

Similarly, the Council of State in the Netherlands in *Applicant v The Minister for Asylum and Migration*[36] (9 October 2024) reached the same conclusion, ruling that there was insufficient evidence to conclude that applicants transferred under the Dublin procedure face a real risk of being subjected to pushbacks at the Croatian border, and that according to available country information, Dublin claimants are admitted to the asylum procedure without any known obstacles following a transfer. Furthermore, the council noted that the mere theoretical possibility of a pushback because Dublin claimants cannot be distinguished from other asylum applicants as they receive the same asylum applicant identification card was not enough to establish a real risk as required by Dutch courts. In Germany, in Applicant v Federal Office for Migration and Refugees[37] (17 June 2024), the Regional Administrative Court of Ansbach also upheld the transfer of an applicant to Croatia, finding that there had hardly been any reports of pushbacks since Croatia's accession to the Schengen area, and no evidence of systemic deficiencies in the asylum procedure and reception system in Croatia.

With regard to pushbacks and access to the asylum procedure in Lithuania, in *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*[38] (1 May 2024) the Dutch Council of State acknowledged that pushbacks are occurring at Lithuania's external border. However, it upheld the transfer decision, noting that the applicant would be entering the country legally through a Dublin transfer and therefore was not at real risk of becoming a victim of pushbacks. The council emphasised that Dublin transferees do not arrive

through the border area and can remain outside of it. Additionally, the council examined other aspects of the asylum procedure and reception system in Lithuania. It found no evidence that Dublin applicants are unlawfully or automatically detained, except when there is a risk of absconding. It also noted that effective remedies are available in Lithuania, including access to legal aid. Furthermore, the council found that protection is available for individuals belonging to the LGBTIQ community, citing the number of prosecutions for hate crimes. It also highlighted a notable improvement in reception conditions.

Regarding Dublin transfers to Poland and allegations of pushbacks to Belarus, the Dutch Council of State in Applicant v The Minister for Asylum and Migration[39] (4 September 2024) found that the principle of mutual trust can be relied upon. While it ultimately agreed that there were no systemic deficiencies in the asylum procedure to prevent the transfer, it ruled that the Minister for Asylum and Migration failed to provide a proper reasoning to justify this finding. The council highlighted that the minister failed to properly assess the applicant's statements about systemic issues in Poland, including the fact that in his registration interview he stated that he was sent back to Belarus three times after entering Poland. The council emphasised that, while the minister is not required to assess the credibility of an applicant's personal statements in the same way as in a substantive asylum claim, there is an obligation to consider whether those statements plausibly indicate systemic deficiencies in the responsible Member State. Thus, the council ruled that the minister should have considered the applicant's statements against relevant and available country information when assessing whether the principle of mutual trust can be relied upon.

However, in *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)* (15 May 2025), the District Court of the Hague seated in Haarlem annulled a decision on a Dublin transfer of a Tajik national due to systemic deficiencies in the asylum procedure in Poland and a risk of a return to Tajikistan despite Polish court rulings prohibiting such a return. The court noted that the applicant's Dublin transfer took place after guarantees were received from the Polish authorities, in the context of an interim measure adopted by the ECtHR, that the applicant would not be returned to his country of origin after the transfer and that he would have access to the asylum procedure. The District Court of the Hague noted that despite rulings from the Polish Court of Appeal on the prohibition of return of the applicant to Tajikistan, due to a risk of *refoulement*, the Polish authorities attempted on two occasions to deport the applicant, the latest attempt being less than 1 day after the Dublin transfer. Thus, the court considered that systemic errors were demonstrated in the asylum procedure for the applicant, and since the Polish court was unable to protect the applicant, the Dublin transfer was annulled and the applicant was transferred back to the Netherlands for the examination of his asylum application.

Access to an effective remedy

In the Netherlands, in *Applicant v The Minister for Asylum and* Migration[40] (4 September 2024), the Council of State upheld the decision to transfer an applicant to Poland, finding that Dublin claimants can seek legal remedies in Poland, despite the existence of reports criticising the independence of the Polish judiciary. In its assessment, the council concluded that asylum seekers in Poland can appeal a negative decision through various legal channels, including the Refugee Board and higher administrative courts. It ruled further that the applicant had not provided sufficient evidence to prove that the judiciary in Poland lacked independence. While the applicant's submitted evidence raised concerns about the assignment of cases to one or more judges who cannot be considered a 'tribunal established by law', meaning that they may not be independent or impartial, the council considered that this possibility alone was not

enough to discredit the independence of the entire judicial process. Furthermore, the council did not find convincing evidence that the Refugee Board, which reviews asylum appeals, was inclined to automatically affirm decisions by the Office of Foreigners. It ruled that although there was a low success rate of asylum appeals, this does not mean that an asylum seeker could not access effective legal remedies.

In another Dutch case, *Minister for Asylum and Migration (de Minister van Asiel en Migratie) v Applicant*[41] (26 March 2025), the council ruled that access to an affective remedy was guaranteed in Cyprus. On appeal, the applicant argued that there was no right to absolute free legal aid for an appeal of a negative asylum decision, as this right is subject to a 'means and merits' test which, according to the 2024 AIDA report, has a limited pass rate in practice. However, the council ruled that this system is in line with the requirements of the recast APD. It elaborated that, although employees of NGOs are not permitted to represent asylum seekers in court proceedings in Cyprus, this does not imply that access to an effective remedy is not available.

4.2. Assessing systemic deficiencies in reception systems

The Dutch Council of State ruled in *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant*[42] (13 March 2024) that while Belgium's temporary implementation of a prioritisation policy, whereby regular accommodation was not immediately available for every applicant, did not undermine the principle of mutual trust. The council noted that in Belgium single, non-vulnerable male applicants were not granted immediate access to reception facilities and were placed on a waiting list, which was temporarily frozen, while vulnerable applicants were given priority. However, the council did not find systemic deficiencies in this arrangement. It ruled that reception was not completely halted, as applicants on the waiting list were accommodated in emergency shelters and gradually moved into regular shelters. Furthermore, it observed that the applicants remained entitled to medical, psychological and legal support, with various NGOs also providing different forms of assistance. The council also highlighted the ongoing efforts of the Belgian authorities to locate and open new reception centres and temporary shelters. It concluded that, despite shortcomings in the reception facilities, this was not sufficient to conclude that the principle of inter-state mutual trust cannot be relied upon in respect of Belgium. Similarly in *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*[43] (23 September 2024), the Constitutional Court in Austria did not find an infringement of Article 3 of the ECHR for the implementation of a decision on a Dublin transfer to Belgium.

On the contrary, in *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)* (11 April 2025), the District Court of the Hague seated in Groningen found that the applicant, a Georgian national, would be at risk of treatment contrary to Article 4 of the EU Charter transferred to Belgium because he substantiated that there were serious issues in the reception system and the minister did not adduce any evidence to the contrary or provide individual guarantees for the applicant.

The Dutch Council of State assessed the reception system in Bulgaria and confirmed the transfer, finding no evidence of systemic deficiencies. In *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*[44] (29 February 2024), the council noted that while there were pressures on the reception system in Bulgaria due to overdue maintenance and poor hygienic conditions, these conditions did not lead to applicants being in a state of extreme material deprivation. In this regard, the council noted

that the Bulgarian authorities provide accommodation in various open reception centres and the centres had not reached their maximum capacity. Additionally, the council noted that three meals a day and free access to basic healthcare were offered, while essential products were provided through donations. Moreover, the council remarked that applicants could report to the Bulgarian authorities if they experience problems in the reception centre, because it had not been demonstrated that the authorities were unable or unwilling to help. The council also did not find systemic deficiencies related to conditions in detention centres and access to legal aid in Bulgaria.

As regards the situation in Cyprus, the administrative courts in the Netherlands took divergent views on the reception conditions in Cyprus[45]. However, a ruling by the Dutch Council of State in *The Minister for Asylum and Migration (de Minister van Asiel en Migratie) v Applicant*[46] (26 March 2025), settled the case law on the topic, finding that the principle of mutual trust can be relied upon, finding that there are no structural shortcomings in the reception facilities in Cyprus that would amount to a real risk of ill-treatment contrary to Article 3 of the ECHR and Article 4 of the EU Charter.

In November 2024, the Danish Refugee Appeals Board, in case Dub-Ital/2024/28/Ieuds[47], overturned the decision of the Danish Immigration Service to transfer an applicant to Italy under the Dublin III Regulation. The decision was made because Italy had accepted very few Dublin transfers since December 2022 due to a continued state of emergency declared in April 2023, which had been repeatedly extended due to high numbers of arrivals. Based on available background information, the board concluded that the Italian asylum and reception systems had suffered from serious deficiencies for several years, particularly with access to the asylum procedure and reception services, as well as a deterioration in reception conditions since late October 2023. The board also noted that, although Italy has not accepted Dublin transfers for an extended period due to the state of emergency, the issues related to accessing the asylum system and adequate accommodation likely affect transferees as well.

Given these circumstances, the board determined that asylum seekers should only be transferred to Italy if the Italian authorities first provide individual guarantees. These guarantees must confirm that transferees will be received and accommodated in accordance with Italy's national legislation, EU obligations and other international commitments. This includes timely registration as asylum seekers and access to basic rights. However, the board found it unlikely that such guarantees would be issued under the current conditions. It further noted that there is no indication that the situation will improve in the near future. Consequently, the board annulled the transfer decision.

In contrast, in *Applicants v Federal Office for Migration and Refugees*[48] (29 May 2024), the German Regional Administrative Court of Berlin found that Dublin transferees had access to the asylum procedure, as well as to accommodation, healthcare, and employment in Italy, and that the existence of significant practical challenges at the early stages of the process did not amount to a violation of Article 4 of the EU Charter. On the state of emergency in Italy, the court acknowledged that despite concrete doubts about the feasibility of transfers in light of the refusal of the Italian authorities to accept Dublin transfers since 2022, the practical impossibility of transferring applicants should not automatically shift responsibility to Germany when the time frame under Article 29 of the Dublin III Regulation had not yet elapsed.

In *BGS v Ministry of the Interior (Ministerstvo vnitra České republiky)*[49] (5 March 2024), the Regional Court in Ostrava, Czechia rejected an appeal against a decision on a Dublin transfer to Romania, finding no systemic deficiencies in the Romanian reception system. A Nepalese applicant had raised concerns about inhumane conditions in Romanian asylum facilities, citing issues such as poor hygiene, the spread of diseases, overcrowding, insufficient food, lack of interpreters, forced labour and mistreatment by police. However, the Regional Court agreed with the Asylum Department that, although the standard of living in Romanian reception facilities may be lower than in more economically advanced countries, the conditions did not justify preventing the applicant's transfer. Regarding the allegations of forced labour, specifically that the applicant had to clean the facility or remove snow, the court found, based on available country information, that routine cleaning is partly the responsibility of residents. It held that performing such tasks does not violate the Dublin III Regulation, provided they are not carried out under coercion intended to cause harm or humiliation. Furthermore, the court determined that food conditions in Romanian facilities were adequate according to official reports and asylum seekers receive financial support for meals. It also noted that while the availability of interpreters may vary by language, the applicant himself confirmed that a Nepali interpreter was present during his brief 4-day stay in a Romanian reception facility. Finally, the court found that the applicant's claim of being assaulted by police lacked sufficient detail or supporting evidence and therefore could not be considered indicative of systemic abuse.

4.3. Medical grounds

Insufficient assessment of medical evidence

In the Netherlands, in *Applicant v The Minister for Asylum and Migration*[50] (17 March 2025), the Council of State ruled that a Dublin decision to transfer an applicant to Italy, where he had previously been granted international protection, could lead to a situation of extreme material deprivation due the applicant's medical problems. The council held that the District Court of the Hague failed to take into account a medical opinion issued by the Dutch Medical Advice Bureau (BMA) which confirmed that the applicant suffered from psychological issues and had attempted suicide multiple times. Furthermore, the medical opinion warned that without treatment the applicant's medical condition could deteriorate into a life-threatening situation within 3 to 6 months. Based on the CJEU judgment in *Ibrahim*[51] (Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, 19 March 2019), the council found that the applicant's medical problems constituted a particular vulnerability, the severity of which could lead to a situation of extreme material deprivation. Additionally, it considered the situation of status holders in Italy, highlighting that they faced significant difficulties, including the loss of entitlement to reception and other basic needs after 6 months. Furthermore, it considered that access to social housing, income support and medical care in Italy is dependent on a lengthy period of residence, thus potentially precluding the applicant from receiving medical care in the short term, which the BMA identified as necessary to prevent a medical emergency. Based on the applicant's medical situation and considering the *Ibrahim* judgment, the council determined that the minister needed to provide further justification as to why the applicant would not suffer extreme material deprivation in Italy. The appeal was declared well-founded, and the minister was instructed to make a new decision, taking into account additional medical evidence showing that the applicant had attempted suicide again in January 2025.

In Slovenia in *Applicant v Ministry of the Interior*[52] (22 April 2024), the Supreme Court upheld the appeal of an applicant who claimed that he suffered from chronic hallucinatory psychosis, an undefined inorganic psychosis and ongoing complications following abdominal surgery. The applicant challenged the decision of the Ministry of Internal Affairs to transfer him to

Croatia under the Dublin III Regulation. The Court of First Instance dismissed both the applicant's claim and request for an interim injunction, stating that Croatia's asylum and reception systems did not have systemic deficiencies and the applicant's medical condition did not warrant special consideration. In addition to the health conditions noted above, the applicant argued that his psychological condition included distress from social interactions, nightmares and severe anxiety, which could be exacerbated by the transfer. Additionally, he was prescribed Abilify, an antipsychotic medication, and required ongoing medical follow-up, though no immediate hospitalisation was deemed necessary. The applicant contended that a transfer to Croatia could cause a real and significant risk of irreversible deterioration of his health, potentially leading to inhumane and degrading treatment.

On appeal, the Supreme Court found that the lower court had committed a significant procedural error by failing to consider medical expert evidence on the applicant's mental and physical health. The court emphasised that, in accordance with jurisprudence from the CJEU and the ECtHR, a transfer could constitute inhumane treatment if it posed a real risk of serious health deterioration. It ruled that the lower court failed to properly assess this risk and did not justify its refusal to consider the applicant's proposed medical evidence, which included a request for an expert opinion from specialists in psychiatry and general medicine.

No real risk of a significant and irreversible deterioration of health

In contrast to the judgments provided above, in a judgment pronounced in the Netherlands, the Council of State upheld the Dublin transfer of a woman to Czechia who appealed the decision on medical grounds, arguing that the transfer would pose a significant and irreversible risk to her health, citing Article 3 of the ECHR. In this regard, in *Applicants v The Minister for Asylum and Migration*[53] (30 October 2024), the applicant submitted a psychiatric report from PsyValens dated 12 April 2024, indicating a high risk of suicide upon a transfer. Even though the medical concerns were not raised before the lower court, the council considered the argument due to the risk of a violation of Article 3 of the ECHR on the basis of the ECtHR's *Bahaddar* judgment. It noted that the Minister of Asylum and Migration had fulfilled the duty to verify (in accordance with the CJEU judgment *of C.K. and Others v Republic of Slovenia*,[54] C-578/16 PPU, 16 February 2017) by addressing the concerns related to the woman's health and verifying the adequacy of the arrangements for her transfer. It observed that, prior to the transfer, the minister would share the applicant's medical information with Czechia if the applicant provided her consent and the transfer would be suspended if the Czech authorities would not be able to guarantee her medical needs, in particular the physical transfer to a medical institution or practitioner at the time of transfer.

Finally, in Ireland in *RG v The International Protection Appeals Tribunal, The Chief International Protection Officer, The Minister for Justice and the Attorney General*[55] (20 September 2024), the High Court confirmed a transfer to France, noting that, despite the medical and psychological reports detailing the applicant's post-traumatic stress disorder (PTSD), anxiety and suicidal ideation, there was no indication of a real risk of significant harm upon a transfer. Moreover, the court did not find evidence that the necessary healthcare would be unavailable in France.

The same conclusion was reached by the District Court of the Hague in two separate judgments[56] concerning a husband and wife who appealed against a transfer decision to France based on the wife's psychological condition. It considered the medical information available in the applicant's file, including that she suffered from anxiety, panic attacks and dejections, and on a previous occasion had requested tranquilizers. However, it ruled that

these complaints did not make it plausible that her transfer to France would lead to a real risk of a significant and irreversible deterioration of her state of health. The court noted that in such cases, the national authority is not obliged by its own policy to obtain a medical opinion of the consequences of the transfer.

Courts in Iceland and Slovenia upheld decisions to transfer applicants to Spain, despite appeals based on medical grounds. In *A, K, M* v *Directorate of Immigration (Útlendingastofnun)*[57] (21 March 2024), the Immigration Appeals Board in Iceland ruled on a case involving a Palestinian family whose minor son suffered from Duchenne muscular dystrophy. The court found that Spain provided access to both standard and specialised health services, as well as education, under the same conditions as those applicable to Spanish nationals. Additionally, it noted that applicants in Spain have access to monthly allowances, accommodation services, work permits and support from private entities and civil society organisations engaged in integration activities for vulnerable asylum seekers. The court also highlighted the effectiveness of Spain's law enforcement and noted that families applying for international protection are generally kept together. Reports referenced in the ruling indicated that Spain had made significant efforts to treat Duchenne disease, including the Children's Hospital in Barcelona being the first in Europe to conduct a clinical trial for a new gene therapy. The court further observed that, although the child was receiving medication, he was not under any specialised supervision or treatment in Iceland. As such, it found that adequate healthcare was available in Spain and concluded that the health circumstances of the applicants did not warrant application of Article 17 of the Dublin III Regulation.

4.4. Best interests of the child

In *Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)* v *Applicant*[58] (28 June 2024), the Slovenian Supreme Court considered the lawfulness of a Dublin transfer to Croatia involving a family with a 6-month-old infant. The applicants contested the transfer, citing poor hygienic conditions, including the presence of cockroaches in their previous Croatian accommodation. The Court of First Instance upheld the appeal, finding that the Ministry of the Interior failed to sufficiently assess the best interests of the child and the accommodation conditions, given the infant's age, reached a particularly high threshold of seriousness, thereby posing a risk of inhuman or degrading treatment.

On appeal, the Supreme Court set aside the lower court's decision. It held that not all infringements of the recast RCD or the recast APD constitute systemic deficiencies precluding Dublin transfers. Furthermore, it found that the lower court had erred in suggesting that a Dublin transfer can only occur if the reception conditions in the receiving state are equivalent to those in Slovenia. The court emphasised that this interpretation undermines the principle of mutual trust and imposes excessive requirements on reception conditions. The Supreme Court clarified that the recast RCD sets out minimum standards but differences between provisions in Member States do not justify preventing transfers under the Dublin III Regulation.

Moreover, the court stated that the mere fact that one of the applicants was an infant does not lead to a special circumstance for which it could be concluded that the family's transfer would violate Article 4 of the Charter, nor does this fact override the principle of mutual trust. In this context, the court noted that both subjective and objective circumstances of each case must be taken into account. While the presence of cockroaches in the accommodation was not disputed, the claim that this violated EU minimum accommodation standards was contested. The Supreme Court found that the lower court failed to assess the factual scope and duration

of the alleged deficiencies or the response of Croatian authorities, thus overlooking the requirements of Article 31 of the Dublin III Regulation to exchange essential information between Member States prior to a transfer to ensure that special needs of persons are taken into account.

The Supreme Court found that the lower court's decision was based solely on the infant's age and poor hygiene conditions in Croatia, without considering other relevant factors. It noted that the adult applicants had access to everything needed to care for the child, had no health issues, and did not claim denial of other rights such as employment or training. As a result, the court concluded that the lower court's reasoning was based on incomplete facts and misapplication of substantive law and ordered the case to be sent back for a retrial.

An assessment of the best interests of the child for accompanied and unaccompanied minors remains a primary consideration under the AMMR. Several changes have been introduced to the rules governing minors applying for international protection in the EU. One of the most significant developments is a shift in how the responsible Member State is determined for unaccompanied minors in the absence of family members. Under Article 6(4) of the Dublin III Regulation, the responsible Member State is the one in which the unaccompanied minor lodged their application for international protection, provided it is in the best interests of the child. In *MA, BT, DA v Secretary of State for the Home Department* (C-648/11, 6 June 2013), the CJEU emphasised that the Member State where the minor is present after lodging an application should be responsible. The AMMR departs from the previous jurisprudence regarding the default responsibility of the Member State where the unaccompanied minor is present. The AMMR stipulates that the Member State where an application was first registered will be responsible for the examination of the application, provided that the transfer to that Member State would be in the best interests of the child.

In addition to altering the responsibility criteria, the AMMR expands the framework for assessing the best interests of the child. While Article 6(3) of the Dublin III Regulation requires Member States to consider factors such as family reunification possibilities, the minor's well-being, safety and security, and the views of the child, the AMMR adds significant detail to these considerations. Article 23(4) of the AMMR introduces new elements to consider, such as the minor's short-, medium- and long-term well-being; vulnerabilities like trauma, specific health needs or disabilities; cultural, ethnic, religious and linguistic background; and the need for continuity in social and educational care.

Additionally, while the Dublin III Regulation makes reference solely to the risk of human trafficking as a security and safety concern, the AMMR broadens this scope significantly by requiring consideration of whether the minor is at risk of "any form of violence or exploitation, including trafficking in human beings". It also adds two additional clauses, including the requirement to take into account information provided by the child's representative in the Member State where the minor is present, as well as a final open-ended clause allowing for any other relevant factors to be considered related to the best interests of the child. The AMMR establishes as a requirement that "any decision to transfer an unaccompanied minor shall be preceded by an individual assessment of the best interests of the child" based on the above factors and carried out by trained and qualified staff (Article 23(5)).

Another novelty of the AMMR laid out in Article 46(1) is the obligation for Member States to prioritise transfers for certain profiles of applicants, including for unaccompanied minors. The AMMR also expands the scope of information to be exchanged between Member States prior to a transfer, to include any arrangements needed to protect the best interests of the child (see Article 48(2)(a)), and information on the assessment of the best interests of the child (see Article 48(2)(c)).

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Sources

[1] Germany, Higher Administrative Court (Oberverwaltungsgericht/Verwaltungsgerichtshöf), 14 February 2024:
- RL v Bundesrepublik Deutschland,
- QS v Bundesrepublik Deutschland.

[2] European Union, Court of Justice of the European Union [CJEU], RL, QS [Tudmur] v Bundesrepublik Deutschland, C-185/24 and C-189/24, ECLI:EU:C:2024:1036, 19 December 2024.

[3] European Union, Court of Justice of the European Union [CJEU], X v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), C-392/22, ECLI:EU:C:2024:195, 29 February 2024.

[4] Idem.

[5] Netherlands, Court of The Hague [Rechtbank Den Haag], Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), NL22.6989, ECLI:NL:RBDHA:2024:4267, 27 March 2024.

[6] Germany, Regional Administrative Court [Verwaltungsgericht], Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF), A 4 K 1979/23, ECLI:DE:VGSIGMA:2024:0507.A4K1979.23.00, 7 May 2024.

[7] European Union, Court of Justice of the European Union [CJEU], QY v Bundesrepublik Deutschland, C-753/22, ECLI:EU:C:2024:524, 18 June 2024.

[8] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie), 202201742/1/V2, ECLI:NL:RVS:2024:3992, 9 October 2024.

[9] European Union, Court of Justice of the European Union [CJEU], AHY v Minister for Justice, C-359/22, ECLI:EU:C:2024:334, 18 April 2024.

[10] Ireland, High Court, S.P. v Minister for Justice & Ors, [2024] IEHC 479, 29 July 2024.

[11] Referral in the case of AHY v. Minister of Justice, 31 March 2022.

[12] Ireland, High Court, AC v International Protection Appeals Tribunal & Ors, [2024] IEHC 77, 12 February 2024.

[13] Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], 5 April 2024:
- Ministry of the Interior (Ministero dell'Interno) v H.A., R.G 10903/2024,
- Ministry of the Interior (Ministero dell'Interno) v A.S., R.G 10898/2024.

[14] Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], Ministry of the Interior (Ministero dell'interno) - Department for civil liberties and immigration - Dublin Unit v H.A., 935 , 15 January 2025.

[15] Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], 3 April 2024:
- Applicant v Ministry of the Interior (Ministero dell'Interno), R.G. 10331/2024,
- Applicant v Ministry of the Interior (Ministero dell'Interno), R.G. 11000/2024.

[16] Czech Republic, Supreme Administrative Court [Nejvyšší správní soud], V. K. v Ministry of Interior (Ministerstvo vnitra), 6 Azs 331/2023-40, ECLI:CZ:NSS:2024:6.Azs.331.2023.40, 1 February 2024.

[17] Ireland, High Court, T.T. v International Protection Appeals Tribunal, [2024] IEHC 470, 31 July 2024.

[18] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), 202107377/1/V1, ECLI:NL:RVS:2024:881, 4 March 2024.

[19] Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], A,B,C,D v State Secretariat for Migration (Staatssekretariat für Migration, SEM), F-221/2024, 23 February 2024.

[20] European Union, Court of Justice of the European Union [CJEU], State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v B., F. and K., Joined Cases C-323/21, C-324/21 and C-325/21, ECLI:EU:C:2023:4, 12 January 2023.

[21] European Union, Court of Justice of the European Union [CJEU], State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v B., F. and K., Joined Cases C-323/21, C-324/21 and C-325/21, ECLI:EU:C:2023:4, 12 January 2023.

[22] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie), 202107920/1/Q3, ECLI:NL:RVS:2024:4244, 23 October 2024.

[23] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant, 202304791/1/V2, ECLI:NL:RVS:2024:2359, 12 June 2024.

[24] Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], Ministry of the Interior (Ministero dell'Interno) v H. A., RG 935/2025, 10 December 2024.

[25] Norway, District Court [Noreg Domstolar], Applicant v Immigration Appeals Board (Utlendingsnemnda, UNE), TOSL-2024-41013, 5 July 2024.

[26] Malta, First Hall Civil Court, Applicants v International Protection Agency (Aġenzija għall-Protezzjoni Internazzjonali, IPA),International Protection Appeals Tribunal, No 321/2023, 9 January 2024.

[27] Germany, Federal Social Court [Bundessozialgericht - BSG], *Applicant v District A.*, B 8 AY 6/23 R, 25 July 2024.
[28] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 24.35197, ECLI:NL:RBDHA:2024:14821, 19 September 2024.
[29] European Union, Court of Justice of the European Union [CJEU], *European Commission v Hungary*, C-823/21, ECLI:EU:C:2023:504, 22 June 2023.
[30] Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v Ministry of Home Affairs (Ministère des Affaires Intérieures)*, No 50847, ECLI:LU:TADM:2024:50847, 30 August 2024.
[31] Luxembourg, Administrative Tribunal [Tribunal administratif], *Applicant v Ministry of Home Affairs (Ministère des Affaires Intérieures)*, No 50977, ECLI:LU:TADM:2024:50977, 20 September 2024.
[32] Austria, Federal Administrative Court [Bundesverwaltungsgericht - BVwG], *BF v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, W144 2284434-1, ECLI:AT:BVWG:2024, 18 January 2024.
[33] Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v BAMF*, No 12 K 2146/24.A, 10 October 2024.
[34] Germany, Regional Administrative Court [Verwaltungsgericht], *Applicants v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 22 L 764/24.A, 15 May 2024.
[35] Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00077669, ECLI:SI:VSRS:2024:I.UP.165.2024, 10 July 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia) v Applicant*, VS00076907, ECLI:SI:VSRS:2024:I.UP.146.2024, 28 June 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00076914, ECLI:SI:VSRS:2024:I.UP.109.2024, 11 June 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00076161, ECLI:SI:VSRS:2024:I.UP.109.2024, 3 June 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00076126, ECLI:SI:VSRS:2024:I.UP.131.2024, 22 May 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00075590, ECLI:SI:VSRS:2024:I.UP.97.2024, 10 May 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00075208, ECLI:SI:VSRS:2024:I.UP.74.2024, 30 April 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00074507, ECLI:SI:VSRS:2024:I.UP.82.2024, 10 April 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00073211, 12 March 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00073193, ECLI:SI:VSRS:2024:I.UP.53.2024, 11 March 2024.
Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00073106, ECLI:SI:VSRS:2024:I.UP.235.2023, 17 January 2024.
[36] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202404639/1/V3, ECLI:NL:RVS:2024:4037, 9 October 2024.
[37] Germany, Regional Administrative Court [Verwaltungsgericht], *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, AN 17 S 24.50381, 17 June 2024.
[38] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202401007/1/V3, ECLI:NL:RVS:2024:1806, 1 May 2024.
[39] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202402084/1/V3, ECLI:NL:RVS:2024:3455, 4 September 2024.
[40] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202402763/1/V3, ECLI:NL:RVS:2024:3456, 4 September 2024.
[41] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *The Minister for Asylum and Migration (de Minister van Asiel en Migratie) v Applicant*, No 202403478/1/V3, ECLI:NL:RVS:2025:1109, 26 March 2025.
[42] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant*, 202304212/1/V3, ECLI:NL:RVS:2024:896, 13 March 2024.
[43] Austria, Constitutional Court [Verfassungsgerichtshof Österreich], *Applicant v Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)*, E 2913/2023-14, 23 September 2024.

[44] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, 202308013/1/V3, ECLI:NL:RVS:2024:870, 29 February 2024.
[45] Netherlands, Court of The Hague [Rechtbank Den Haag], *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid) v Applicant*, NL24.17079, ECLI:NL:RBDHA:2024:8634, 29 May 2024.
Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL24.14231, ECLI:NL:RBDHA:2024:10435, 4 July 2024.
[46] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *The Minister for Asylum and Migration (de Minister van Asiel en Migratie) v Applicant*, No 202403478/1/V3, ECLI:NL:RVS:2025:1109, 26 March 2025.
[47]Denmark, Refugee Appeals Board [Flygtningenævnet], Dub-Ital/2024/28/leuds, Dub-Ital/2024/28/leuds, 1 November 2024.
[48] Germany, Regional Administrative Court [Verwaltungsgericht], *Applicants v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 9 K 668/23 A, ECLI:DE:VGBE:2024:0529.9K668.23A.00, 29 May 2024.
[49] Czech Republic, Regional Court [Krajský soud], *BGS v Ministry of the Interior (Ministerstvo vnitra České republiky)*, 20 Az 1/2024 - 31, 5 March 2024.
[50] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202407853/1/V2, ECLI:NL:RVS:2025:1069, 17 March 2025.
[51] European Union, Court of Justice of the European Union [CJEU], Bashar Ibrahim (C-297/17), Mahmud Ibrahim, Fadwa Ibrahim, Bushra Ibrahim, Mohammad Ibrahim, Ahmad Ibrahim (C-318/17), Nisreen Shargawi, Yazan Fattayrji, Hosam Fattayrji v Bundesrepublik Deutschland, and Bundesrepublik Deutschland v Taus Magamadov, Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, ECLI:EU:C:2019:219, 19 March 2019.
[52] Slovenia, Supreme Court [Vrhovno sodišče], *Applicant v Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia)*, VS00075109, ECLI:SI:VSRS:2024:I.UP.86.2024, 22 April 2024.
[53] Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], *Applicants v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202402220/1/V3, ECLI:NL:RVS:2024:4353, 30 October 2024.
[54] European Union, Court of Justice of the European Union [CJEU], *C.K. and Others v Republic of Slovenia (Republika Slovenija)*, Case C-578/16 PPU , ECLI:EU:C:2017:127, 16 February 2017.
[55] Ireland, High Court, *RG v The International Protection Appeals Tribunal, The Chief International Protection Officer, The Minister for Justice and the Attorney General*, [2024] IEHC 579, 20 September 2024.
[56] Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, No: NL23.40065 V, ECLI:NL:RBDHA:2024:4799, 4 April 2024.
Netherlands, Court of The Hague [Rechtbank Den Haag], *Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)*, NL23.40068 V, ECLI:NL:RBDHA:2024:4800, 4 April 2024.
[57] Iceland, Immigration Appeals Board (Kærunefnd útlendingamála), *A,K, M v Directorate of Immigration (Útlendingastofnun)*, No 287/2024, 21 March 2024.
[58] Slovenia, Supreme Court [Vrhovno sodišče], *Ministry of the Interior (Ministrstvo za notranje zadeve, Slovenia) v Applicant*, VS00076907, ECLI:SI:VSRS:2024:I.UP.146.2024, 28 June 2024.