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4.4.5. National policies on cases lodged by specific profiles and nationalities

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Ukrainian applicants

Following the Russian invasion of Ukraine in February 2022, many EU+ countries changed their policies with regard to applicants from Ukraine. In Bulgaria, the Administrative Court of Sofia City and the Administrative Court of Varna found in several cases that the termination of proceedings for international protection were unlawful for Ukrainian applicants who also applied for temporary protection.430 Belgium, the Netherlands and Sweden suspended decisions and returns of applicants from Ukraine.431

In Denmark, following a decision by the Refugee Appeals Boards' coordination committee on 24 February 2022, all asylum cases lodged by Ukrainian citizens were put on hold and the applicants were notified. It was further noted that foreign nationals displaced from Ukraine who did not have the criteria to obtain a temporary residence permit under the Special Act.

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Read more in the EUAA's: Providing Temporary Protection to Displaced Persons from Ukraine: A Year in Review

Afghan nationals

Since August 2021 when the Taliban took power in Afghanistan, some EU+ countries suspended the decision-making process for applicants from Afghanistan and gradually resumed the decision process in 2022.

In Belgium, the CGRS resumed the assessment of asylum claims lodged by Afghan applicants in March 2022,433 noting in several cases that, considering the situation in Afghanistan, there was no reason to grant subsidiary protection. On 31 March 2022, CALL annulled the decision of CGRS, noting that the situation did not seem to establish the need to grant subsidiary protection within the meaning of the recast QD, Article 15(c), but underlined that the situation remained unstable and changes in the dynamics of the conflict were very recent. It assessed that the situation in Afghanistan did not allow to make a correct and forward-looking assessment. On 12

and 13 October 2022, in a chamber of three judges, CALL issued five rulings, two granting refugee status, two denying refugee status and one annulling the CGRS' decision.[434],[435] In subsequent judgments, CALL ruled that sufficient and correct information was available to make an assessment, and since then, CALL mostly handed down judgments following the assessment of the CGRS.

In the Netherlands, the IND, which had applied a moratorium on decisions and departures for Afghan applicants since August 2021, resumed the decision process on 30 June 2022 on a case-by-case basis. It assessed the security and human rights situation, while considering specific groups who may fear persecution or a risk of inhuman treatment.[436]

In Sweden, a new legal position on the examination of protection needs for citizens from Afghanistan, in particular the situation of women and girls, was published on 6 December 2022. According to the legal position, the fundamental rights of women in Afghanistan are violated, therefore women and girls from Afghanistan seeking international protection should be recognised as refugees on the grounds of membership in a particular social group. The new legal position allowed for the re-examination of previous cases.[437]

In December 2022, the EUAA completed the Country Guidance report on Afghanistan,[438] and the recommendations were followed soon after by Germany who announced in early 2023 that it would change its policy on Afghan women, adapting its decision-making practice towards this profile of applicants.

Similarly, in Denmark, the Refugee Appeals Board eased evidentiary requirements for this profile of applicants in December 2022[439] and subsequently decided to change the Danish practice and provide refugee protection to Afghan women and girls solely because of their gender. This was applied to all pending cases, and cases which received a negative decision were reopened for this profile of applicants.[440] In February 2023, the Refugee Appeals Board granted international protection to an Afghan woman and her daughter following the change of practice in Denmark.

In addition, the Immigration Service in Finland announced in February 2023 that gender alone would constitute a sufficient reason to grant protection to Afghan women and girls.[441] In December 2022, the Immigration Service updated its guidelines on processing applications from Afghans of Hazara background, considering that their situation had deteriorated in Afghanistan. This aspect was highlighted in the overall assessment of protection needs and individual circumstances which increased the risk of persecution, including gender, participation in religious activities and living in an area where the Islamic State–Khorasan Province (ISKP) had operational capacity and carried out attacks. The Finnish Immigration Service also announced in March 2023 that it had gathered sufficient, updated country information from Afghanistan on the security situation of different provinces and had been able to start making decisions for all Afghan applicants, for some of whom decision-making had been suspended since July 2021.[442]

More recently, UNHCR updated its Guidance Note on the International Protection Needs of People Fleeing Afghanistan, in which it analysed the situation of women and girls and highlighted other profiles with increased protection needs, such as Afghans associated with the former government or with the international community, former members of the Afghan national

security forces and Afghans associated with the former international military forces, journalists and other media professionals, human rights defenders and their defence lawyers, members of minority religious or ethnic groups, and members of the LGBTIQ community.443

Further clarification on applications from Afghan nationals were provided in Latvia by the District Administrative Court of Riga, which ruled that the analysis for Afghan applicants should focus on a larger social group of persons with links with the former Afghan government and their family members, instead of the group of persons whose family members have been abducted by the Taliban. In the particular case, the court confirmed the provision of subsidiary protection.

Applicants from Ethiopia

After suspending the processing of cases by Ethiopian nationals on 16 December 2021,444 the Coordination Committee of the Refugee Appeals Board in Denmark lifted the suspension on 24 February 2022. The Appeals Board later stated that the general situation in Addis Ababa was not of such a nature that any person of Tigrayan ethnicity would be at risk of being arrested, mistreated or abused. Thus a concrete assessment would determine if an applicant's circumstances met the conditions for issuing a residence permit according to Section 7.445

New risk groups in Egypt

In the Netherlands, new risk groups of applicants from Egypt were defined in February 2022 based on a report from the Ministry of Foreign Affairs. The risk groups include journalists, human rights defenders, political opponents and activists who have voiced significant criticism against the authorities or government policy, and LGBTIQ persons.446

Risk groups in Iran

Following the crackdown of demonstrations in Iran through violent means, NOAS requested the Norwegian Immigration Service to reassess cases of applicants from Iran, particularly women who fled gender-related persecution, political opponents, activists for minority rights, converts and those who were politically active in Norway against the Iranian regime.447

Applicants from Iraq

The SMA in Sweden updated its legal position on Iraq on 1 July 2022, following closely the EUAA Country Guidance on Iraq, published in June 2022.448 The legal position refers to specific sections of the EUAA guidance, namely the actors of persecution, actors who inflict serious harm and guidance for special profiles. The SMA noted that there was a high level of indiscriminate violence in Diyala, Dohuk and Ninewa, lower levels in Anbar, Baghdad, Erbil, Kirkuk and Salah al-Din, and very low levels in Sulaymaniya, Babil, Basra, Kerbala, Missan, Muthanna, Najaf, Qadissiya, Thi-Qar and Wass.449

Applicants from specific regions of Mali

In Belgium, CALL changed the policy toward applicants from Mali due to major upheavals and a significantly-deteriorated security situation. CALL concluded that the indiscriminate violence in northern and central Mali caused any civilian applicant from the area to face a serious and individual threat to their lives. It added that other specific circumstances were not necessary.

The council also underlined that, given the situation in Mali, there was no internal flight alternative for applicants from northern or central Mali.

On 28 October 2022, CALL pronounced four judgments on the security situation prevailing in southern Mali. CALL noted that the security situation prevailing in the south of Mali was not uniform and that a distinction must be made depending on the region of origin of the applicant. For the district of Bamako and the region of Kayes, CALL ruled that they were not in the grip of indiscriminate violence as defined by the CJEU, despite a volatile security situation which must be closely monitored and which should encourage asylum authorities to show great caution in examining requests for international protection from Malian nationals from these regions. For the regions of Sikasso and Koulikoro, CALL concluded that there was a situation of indiscriminate violence but not of an intensity that any civilian ran a real risk of harm by mere presence in those regions. For these applicants, CALL noted that it was necessary to consider an applicant's individual circumstances. This analysis of the security situation is also applied at first instance by the CGRS.

In Italy, the Tribunal of Catanzaro granted subsidiary protection to a national of Mali due to the indiscriminate violence and general situation of insecurity in the country of origin and particularly in the region of Segou.

In the Netherlands, the State Secretary for Justice and Security informed the parliament in January 2023 about the results of the investigation into the general security situation in parts of Mali. The State Secretary noted that there was indiscriminate violence in the provinces of Gao, Menaka and Mopti, in many cases specifically aimed at civilians.450

Applicants from Myanmar

In 2023, the Refugee Appeals Board referred two cases back to the Danish Immigration Service for a new assessment based on updated country of origin information for Myanmar, following the military coup in February 2021. The Danish Refugee Council (DRC) reported that in one of these cases the first instance authority provided international protection.451

Applicants from Somalia

On 23 June 2022, the SMA in Sweden published a new legal position on the examination of protection needs of Somali nationals. The legal position emphasised that the EUAA's guidance 452 in its entirety should be the basis for the assessment of conditions in Somalia. The document noted that an individual assessment must be made of whether the applicant belongs to a vulnerable group or has a risk profile based on current country information. In addition, indiscriminate violence was not assessed to occur at such an exceptionally-high level in any part of Somalia.453

In July 2022, the National Court of Asylum (CNDA) in France updated its assessment of indiscriminate violence resulting from a situation of armed conflict which prevailed in 12 regions of Somalia. The CNDA referred particularly to the EUAA Country Guidance: Somalia from June 2022, the reports of the UN Secretary General of 8 February and 13 May 2022, and the EUAA COI Report – Somalia: Targeted profiles from September 2021. The court concluded that indiscriminate violence was taking place in the regions of Bay, Benadir and Lower Shabelle,

however the intensity of this violence was not such that there were serious and proven reasons to believe that every civilian would face a real risk of serious harm simply because of their presence in these regions.

Applicants from Sudan

Following a judgment of the Dutch Council of State pronounced on 15 December 2021, the Netherlands put in place a moratorium on decisions and returns of political opponents from Sudan between 24 February and 24 August 2022.This allowed the State Secretary for Justice and Security to investigate the developments that took place in Sudan after the military coup of 25 October 2021.454

Applicants from Syria

On 6 July 2022, the Dutch Council of State found in two judgments “obvious and fundamental differences” in asylum policies between Denmark and the Netherlands related to Syrian applicants. The Council of State held that the applicants met the burden of proof by providing evidence that the policy of the determining authority in Denmark was to return Syrian applicants, and this was endorsed by the Danish Refugees Appeals Board. The Council of State noted that the State Secretary did not conduct a further investigation to eliminate any doubts about a possible real risk of *refoulement*.455

In Germany, following a 2021 decision by the CJEU according to which there was a ‘strong presumption’ that a refusal to perform military service in the context of the Syrian civil war relates to one of the reasons to be granted refugee status, the Federal Administrative Court ruled in January 2023 that the risk of persecution must still be established in each individual case, based on a connection between the ground for persecution and the type of persecution feared.456

The legal position published by the Swedish SMA on 11 November 2022 noted the security situation in Syria, in particular in the provinces (Hassakah, Hama, Homs, Aleppo, Deir ez-Zourt, Idlib and Raqqa) and highlighted that the city of Damascus could be a reasonable internal protection alternative for those with sufficiently favourable social and economic conditions. The SMA concluded that substantial and permanent changes on the conditions in Syria had not occurred.457

Refusal to perform military service

In the context of several conflicts and wars, many EU+ countries placed moratoriums on decisions and the courts provided clarification on the assessment of these applications for international protection.

In the Netherlands, on 29 June 2022, the IND introduced a temporary 6-month suspension of decisions and departures for Russian conscripts (men aged 18 to 27) who had deserted or refused to perform service. The decision did not apply to professional Russian soldiers who deserted and other categories of Russian applicants, such as critics of the invasion of Ukraine. 458 The decision and departure moratorium was extended in December 2022 until 29 June 2023.459

The SMA in Sweden published on 11 November 2022 a new legal position on the assessment of applications for international protection lodged by Syrian nationals. The SMA considered that Syrians summoned for military service or who deserted ran a general risk of persecution.460

The Supreme Administrative Court in Czechia ruled that a refusal to perform military service, followed by criminal prosecution and punishment, may be considered an act of persecution.

In France, the CNDA confirmed OFPRA's decision to refuse international protection to an asylum applicant of Kurdish origin who refused to fulfil his military obligations in Türkiye. In this judgment, the CNDA defined conscientious objection to military service as "a real personal conviction, having a proven degree of force or importance, consistency and seriousness for the person concerned to oppose any fight, motivated by a serious and insurmountable conflict between the obligation of service in the army and its own conscience or its own sincere and profound convictions, in particular of a political, religious, moral or other nature".

Courts in Germany examined claims from applicants refusing to perform military service in Syria. The Higher Administrative Court of Bautzen found no indications of possible political persecution for a Syrian applicant who alleged a risk of conscription to military service. The court noted individual circumstances which led it to conclude that the applicant would not be obliged to perform military activities, including war crimes, within the meaning and requirements set up in the CJEU judgment of *EZ* v *Bundesrepublik Deutschland (Federal Republic of Germany)*.

In January 2023, the Federal Administrative Court in Germany ruled in several cases concerning military draft evasion and the benefit of refugee protection for beneficiaries of subsidiary protection from Syria. The Federal Administrative Court overturned the appealed judgments and referred the proceedings back to the Higher Administrative Court, holding that it is for the competent national authorities and courts to assesses the plausibility for the strong presumption that the refusal to perform military service was related to a reason for persecution in light of all the circumstances.

For Eritrea, Lower Saxony's Higher Administrative Court highlighted the necessity to distinguish the military and civilian components of national service when assessing the cases of married and pregnant women and mothers.

The UN Committee against Torture (UNCAT) found that the deportation by Switzerland of an Eritrean woman facing military service would violate Article 3 of the UN Convention against Torture.

Applicants with religious-based claims, including apostates or atheists

In February 2022, the IND in the Netherlands published revised work instructions on the assessment of applications from apostates and atheists.461 The need for the revision arose after two judgments of the Council of State pronounced on 19 January 2022 (202102293/1/V2 and 202005668/1/V2) ruled that the way in which the IND carried out the investigation and assessment of applications from apostates or atheists from Iran, but also in general, was not sufficiently clear and the IND should develop a working method to assess credibility. It should also sufficiently distinguish between asylum applications from apostates and those from

atheists, which it could later use for an assessment of applications from foreign nationals who claim to have converted to Christianity.462

The Dutch Gave Foundation noted that the IND's new instructions on the assessment of applications from apostates still lacked clarity and consistency. The concepts, such as 'forms of apostacy' and 'types of apostacy', are vague and not well defined.463

In addition, in September 2022, the Dutch Council of State overturned an inadmissibility decision in a subsequent application concerning converting to Christianity and found that the IND had insufficiently assessed the growth of faith since the first asylum application. The Council of State considered that statements about a growth in faith can generally be sufficient for a new substantive credibility assessment of the conversion. Thus, the Council of State ruled that the State Secretary must then assess the statements from the earlier application and those made in the subsequent asylum application jointly.

Applicants who claim persecution based on political opinion

In Ireland, the High Court provided guidance to the IPO and the IPAT on how to examine claims of persecution based on political opinion. The court held that the principles drawn by the UK Supreme Court in the judgment *HJ (Iran)* v *SSHD*, which concerned the concealment of sexual orientation upon a return to the country of origin, were applicable in situations where an applicant for international protection would be expected to conceal their political beliefs to avoid persecution.

Seeking guidance from the CJEU on CEAS provisions, the Dutch Council of State referred questions for a preliminary ruling on the recast QD, Article 10, for persecution based on political opinion. The council asked whether a political opinion was sufficient to be invoked as a motive for persecution and what weight should be given to the strength or the importance of that political opinion or thought in the assessment of an application for international protection. Moreover, the Council of State asked about the criterion to be applied and whether the political opinion must be deeply-rooted and the applicant would be expected to refrain from expressing it if returned to the country of origin in order not to trigger negative attention from an actor of persecution.

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