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The courts stand as the watchers of return procedures, assessing whether the relevant processes abide by the law. In this context, the ECtHR found violations of the ECHR, Article 8 (see for example here and here), and Article 3. For instance, the ECtHR ruled on the rapid removal of a rejected applicant to Turkey without an examination of individual circumstances and a proper assessment of the risk he allegedly faced in the event of a return and in the absence of an explicit application for protection to the relevant authorities.

In addition, the CJEU ruled that Article 5 of Directive 2008/115 in conjunction with the ECHR, Article 24 means that Member States must take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even when the person to whom that decision is addressed is not a minor but the father.

In line with the ECHR framework, the Constitutional Court in Malta noted that there is an obligation not to effectuate a return if the removal of a person would mean an infringement of Article 3 of the ECHR based on substantial grounds to believe that that person would risk being subject to torture or inhumane and degrading treatment.

The Council of State in the Netherlands ruled in a singular case that the State Secretary must pay compensation for damages suffered by a rejected asylum applicant who was subject to inhuman and degrading treatment after being deported to Russia.

The Federal Constitutional Court in Germany allowed a constitutional complaint, affirming that legal protection is not limited to the mere possibility of bringing a case before the court but it must provide a judicial review prior to enforcing a deportation order.

The Council of State in the Netherlands ruled that there were no reasonable prospects of deportations to Algeria or Morocco for persons without a laissez-passer, which led to the lifting of detention measures for people without a valid travel document. The same conclusion was held by the Federal Administrative Court in Austria in relation to Afghanistan.1302In contrast, the Court of Appeal of Timisoara in Romania extended the detention of an Afghan national by 3 months due to the impossibility of enforcing a return to Afghanistan and the risk of absconding.

- 1302The ECtHR indicated an interim measure to the Government of Austria not to return an Afghan national until 31 August 2021. Council of Europe, European Court of Human Rights [ECtHR], R.A. v Austria, No 38335/21, 02 August 2021. Link redirects to the English summary in the EUAA Case Law Database. The Constitutional Court's judgement in this case: Austria, Constitutional Court [Verfassungsgerichtshof Österreich], Applicant (Afghanistan), E 3115/2021-4, 18 August 2021. Link redirects to the English summary in the EUAA Case Law Database.

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