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4.5.3. Processing of cases lodged by specific nationalities

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icon for second instance procedures for specific nationalities

Country of origin information is one of the key aspects analysed during the asylum procedure to assess protection needs. Due to rapid changes and a lack of updated information on the situation in certain countries of origin – such as Afghanistan, the Democratic Republic of the Congo and Ethiopia – courts suspended cases pending at the appeal stage lodged by nationals of these countries.

When assessing requests for international protection, national courts still noted differences in July 2021 in the level of violence between regions in Afghanistan, with some still considered to be safe upon return.608 However, considering the Taliban offensive nationwide after the withdrawal of international troops, national courts in EU+ countries began to gradually change their assessments.

In Austria, the decision-making practice has gradually changed after the ECtHR granted interim measure to prevent the deportation of an Afghan national on 2 August 2021 and because the security situation in Afghanistan changed in the summer of 2021. In December 2021, the Constitutional Court examined the international protection needs of an Afghan man and concluded that his return would violate the ECHR, Articles 2 and 3.

In Switzerland, courts ordered a national form of protection. Since August 2021, appeals from Afghan nationals to the French National Court of Asylum were examined with regard to protection grounds under the Geneva Convention, as this could lead to obtaining refugee status which is valid for 10 years.609

Since August 2021, some countries fully or partially suspended the processing of appeals lodged by Afghan nationals. In Denmark, the Refugee Appeals Board suspended appeals due to the uncertainty about the security situation in Afghanistan but continued to address cases regarding other aspects, such as age assessments and Dublin transfers.610 The processing of asylum cases lodged by Afghan citizens was resumed in December 2021 by the Danish Refugee Appeals Board. Despite the fact that the situation in Afghanistan remained quite serious and uncertain, the Executive Committee of the Refugee Appeals Board found that background information had become available to allow the Refugee Appeals Board to resume the proceedings of the cases.

611

In Luxembourg, cases lodged by Afghan nationals were not fully suspended, as applications were processed where the need for protection was obvious, so only positive decisions (as well as inadmissible and Dublin decisions) were issued while negative ones were not issued. From the end of January 2022, the examination of cases pending in second instance were resumed and applicants were provided the possibility to submit new evidence.612

In October 2021, the Finnish Supreme Administrative Court stated that the conditions in Afghanistan had changed significantly since the decisions of the Finnish Immigration Service and the Administrative Court had been pronounced and that international protection applications must be completely reassessed on the basis of up-to-date country information. Based on that, the Supreme Court granted leave to appeal to nearly 80 Afghan asylum seekers, overturned first instance decisions of the Finnish Immigration Service and judgments pronounced on appeal by the Administrative Court, and referred the cases back for re-examination to the Finnish Immigration Service.613

Similar approaches were followed by courts for asylum applicants from Ethiopia. In Denmark, the Refugee Appeals Board decided in December 2021 to suspend the processing of cases for Ethiopian nationals. The board considered that it was not possible to access sufficient background information on the conditions in Ethiopia due to the rapid developments, fluctuating nature of the situation and the limited access for journalists and NGOs to the affected areas. The suspension included asylum cases, cases of revocation and refusals of the extension of residence permits pursuant to the Aliens Act, Section 7, deportation cases pursuant to the Aliens Act, Section 49(a) and certain cases concerning the lapse of residence permits.614

Lastly, in October 2021 the Danish Refugee Appeals Board decided to review the cases for citizens of the Democratic Republic of the Congo who were about to be deported, in light of a report of the Swedish Migration Agency of 24 June 2021 (“Rättsligt Ställningstagande. Säkerhetssituationen i vissa delar av Demokratiske republiken Kongo (DRK)”) which assessed the situation in the provinces of North Kivu, South Kivu and Ituri. The report concluded that anyone would be at risk of being subjected to ill treatment in violation of the ECHR, Article 3 solely due to mere presence in the area.

- 608See for example: France, Council of State [Conseil d'État], M. v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 448707, 9 July 2021; Luxembourg, Administrative Tribunal [Tribunal administratif], Applicants v Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile), No 44940, 28 July 2021; Luxembourg, Administrative Tribunal [Tribunal administratif], Applicant v Minister of Immigration and Asylum (Ministre de l'Immigration et de l'Asile), No 44884, 12 July 2021; Sweden, Migration Court of Appeal [Migrationsöverdomstolen], A. v Swedish Migration Agency (Migrationsverket), No UM2839-20, 8 July 2021.
- 609National Court of Asylum | Cour Nationale du Droit d'Asile. (2021, August 30). Communiqué de presse: Evolution de la situation sécuritaire en Afghanistan [Press release: Evolution of the situation in Afghanistan]. http://www.cnda.fr/La-CNDA/Actualites/Communique-de-presse5

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- 612Ministry of Foreign and European Affairs | Ministère des Affaires étrangères et européennes. (2021, October 1). Communiqué de presse au sujet de la crédibilité du ministre de l'Immigration et de l'Asile, Jean Asselborn, dans le contexte de la prise de décision actuelle en matière de protection internationale des demandeurs afghans [Press release on the credibility of the Minister for Immigration and Asylum, Jean Asselborn, in the context of the current decision making on international protection of Afghan applicants]. https://maee.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualit octobre%2B01-asselborn-dpi-afghan.html; Ministry of Foreign and European Affairs | Ministère des Affaires étrangères et européennes. (2021, November 3). Communiqué de presse au sujet de la prise de décision actuelle en matière de protection internationale des demandeurs afghans [Press release concerning the current decision-making on international protection for Afghan applicants]. https://gouvernement.lu/fr/actualites/toutes_actualites/communiques/2021/11-novembre/03-dpi-afghan.html
- 613Supreme Administrative Court | Korkein hallinto-oikeus. (2021, October 29). KHO on palauttanut afganistanilaisten turvapaikanhakijoiden kansainvälistä suojelua koskevia hakemuksia Maahanmuuttovirastolle uudelleen käsiteltäväksi [The Supreme Administrative Court send back for re-examination Afghan asylum seekers' applications for international protection to the Finnish Immigration Service]. https://www.kho.fi/fi/index/ajankohtaista/tiedotteet/2021/khoonpalauttanutafganistanilaistenturva
- 614Danish Refugee Appeals Board | Flygtningenævnet. (2021, December 16). Flygtningenævnet berostiller behandlingen af sager vedrørende etiopiske statsborgere [The Refugee Appeals Board postpones processing cases of Ethiopian citiznes]. https://fln.dk/da/Nyheder/Nyhedsarkiv/2021/161220211

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