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# 4.4.4. New general guidelines to assess applications

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In Bulgaria, the State Agency for Refugees reviewed internal guidelines and rules and prepared an analysis of national jurisprudence for internal use. The aim was to improve procedures and reduce the number of cases that courts send back to the agency following an appeal.

In Germany, the Federal Ministry of the Interior issued new guidelines, according to which, as of 1 October 2022, for applicants who fear persecution on the basis of their sexual orientation or gender identity, the decision on the risk of return is to be based on the assumption that the applicant will openly express their sexual orientation or gender identity upon a return to the country of origin.424

In February 2022, it was reported that the Irish Department of Justice was omitting interviews for certain profiles (such as applicants from Afghanistan, Eritrea and Somalia) in order to speed up the asylum procedure.425 In July 2022, the UN Human Rights Committee published Concluding Observations on Ireland's Human Rights Record and urged Ireland to significantly reduce processing times for applications for international protection.

In Norway, the Ministry of Justice and Public Security issued a new instruction No 15/22, "Assessment of the conditions for asylum in the Immigration Act, Section 28(1) when the applicant already has a residence permit in Norway", for example as family immigrants or after family reunification with a beneficiary of international protection. The ministry noted that if the applicant has a permanent residence permit in Norway or a temporary residence permit based on which a permanent residence permit may be issued, in principle there will not be a well-founded fear of persecution or a real risk of ill treatment under Section 28(1) of the Immigration Act, but the UDI must make an individual assessment of whether the negative decision will in fact lead to the person having to return to their country of origin, taking into consideration for example whether revocation proceedings have already been instituted, whether the applicant has separated/divorced from their spouse or whether the applicant is a registered resident at a different address.426

Through judicial reviews, courts provided guidance to determination authorities on various complex issues that may arise during the first instance procedure. National courts examined

decisions to exclude applicants for whom there were serious reasons to believe that they had committed war crimes (see here and here), serious non-political crimes outside the country of refuge,427 including human trafficking, or where there were serious reasons for considering that they had been guilty of acts contrary to the purposes and principles of the UN.

In Belgium, CALL overturned a decision on the exclusion of an applicant on the basis that the Kurdistan Workers' Party (PKK) cannot be considered a terrorist organisation and the applicant should not be excluded under Article 1F(c) of the Geneva Convention. Considering different sources of information on the nature, structure, activities and methods of the PKK, CALL noted that the acts committed by the organisation cannot be qualified as terrorist acts contrary to the purposes and principles of the UN. CALL added, however, that another exclusion clause may be applicable in the particular case. Therefore, the case was referred back to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) for further assessment if the applicant was individually liable for any war crimes committed by the PKK, within the meaning of Article 1F(a) of the Geneva Convention.428

In Germany, the Federal Administrative Court pronounced a judgment in February 2023 on BAMF's use of mobile data carriers to determine the identity and nationality of an asylum applicant. The court held that the evaluation of digital data carriers to determine the identity and nationality of an asylum applicant was not lawful without considering other information and documents. It was only permitted if the purpose of the measure, based on the time it was ordered, cannot be achieved by less severe means. It noted that, according to the findings of the administrative court, more lenient means were available to BAMF, such as a marriage certificate or register comparisons and inquiries about linguistic abnormalities. In this particular case, the request to hand over the access data for the evaluation of the mobile phone was assessed to be unlawful.

In Ireland, in the case of a Georgian applicant who falsely claimed international protection based on sexual orientation, the IPAT rejected his credibility in a new claim as well, based on political opinion. The High Court found that the tribunal failed in not assessing the new claim at all. The admittedly false claim should have been an element in the general credibility assessment.

The Italian Supreme Court of Cassation highlighted the manner in which the determining authority must assess cases involving victims of torture who request international protection *(see Section 5)*. In addition, the Tribunal of Rome allowed an appeal lodged against a subsequent application decision and ruled that the procedure should be classified as ordinary due to the violation of the time limit for a decision in an accelerated procedure.

With regard to the use of medical reports in the examination of an asylum application, the Council of State in the Netherlands ruled (ECLI:NL:RVS:2022:3615) in December 2022 that the 'component requirement' was no longer tenable. The 'component requirement' means that, if in a forensic medico-legal report the examiner (for instance, the Dutch Institute for Human Rights and Medical Assessment (iMMO)) has come to the conclusion that the physical and psychological situation of the asylum seeker may have affected (heavily) their ability to tell their asylum story in a complete, consistent and coherent manner during the interviews with the IND, the examiner should be able to pinpoint directly which components of the asylum story were effected. The component rule was laid down by the Council of State in its landmark ruling of 27 June 2018.

However, those with relevant expertise (e.g. iMMO) pointed out that from a medical and scientific point of view the component requirement could not be met satisfactorily for the IND and the legal courts. Accordingly, in its judgment the Council of State abandoned the view it adopted in 2018.429

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- 425Rogan, A. (2022, February 6). Interviews with asylum seekers from certain countries to be dropped in bid to speed up process. Business Post. https://www.businesspost.ie/news/interviews-with-asylum-seekers-from-certain-countries-to-be-dropped-in-bid-to-speed-up-process/
- 426Ministry of Justice and Public Security | Justis- og beredskapsdepartementet. (2022, September 19). GI-15/2022 – Vurdering av vilkårene for asyl i utlendingsloven § 28 første ledd når søkeren allerede har oppholdstillatelse i Norge [GI-15/2022 – Assessment of the conditions for asylum in the Immigration Act section 28 first paragraph when the applicant already has a residence permit in Norway]. https://www.regjeringen.no/no/dokumenter/instruks-gi-152022-vurdering-av-vilkarene-for-asyl-i-utlendingsloven-28-forste-ledd-nar-sokeren-allerede-har-oppholdstillatelse-i-norge/id2928017/
- 427Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], X v Commissioner General for Refugees and Stateless Persons (CGRS), No 267 575, 31 January 2022; Denmark, Refugee Appeals Board [Flygtningenævnet], Applicant v Danish Immigration Service, 2022/11, 1 April 2022; Finland, Turku Regional Administrative Court [fi. hallinto-oikeus], Applicant v Finnish Immigration Service, H728 / 2022, 3 May 2022; France, Council of State [Conseil d'État], E.A.D. v French Office for the Protection of Refugees and Stateless Persons (OFPRA), No 453613, ECLI:ECLI:FR:CECHS:2022:453613.20220426, 26 April 2022; Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], State Secretary v M.A., 202003984/1/V2, ECLI:NL:RVS:2022:1703, 15 June 2022. Links redirect to the English summaries in the EUAA Case Law Database.
- 428Belgium, Council for Alien Law Litigation [Conseil du Contentieux des Étrangers - CALL], Applicant v Commissioner General for Refugees and Stateless Persons (CGRS), No 273 049 , 20 May 2022. Link redirects to the English summary in the EUAA Case Law Database.
- 429AIDA Netherlands. (2023). Country Report: Netherlands - 2022 Update. Edited by ECRE. Written by the Dutch Council for Refugees. https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-NL_2022update.pdf

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