

4.15.8. Judicial review of procedural guarantees and human rights standards

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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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