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Determining authorities, as well as the CJEU and national courts, provided guidance on how to assess various aspects of first instance proceedings, claims from specific nationalities and profiles of applicants (for example westernised applicants, religious persecution cases and claims of forced conscription).

The CJEU ruled on the interpretation of Articles 4(1) and (5e) of the recast QD on an applicant's duty to cooperate with the authorities, the burden of proof and the general credibility of the applicant (*see Section 2.5*).

The CJEU also interpreted Article 15(c) and (b) of the recast QD and ruled in November 2023 that, when examining the conditions for granting subsidiary protection, national asylum authorities must take into account all relevant factors relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, before identifying the type of serious harm that those factors may substantiate (*see Section 2.5*).

Applicants from Afghanistan

Several EU+ countries had updated their guidelines on Afghan women and girls in 2022, while others, such as Denmark (following a change in the legal practice of the Refugee Appeals Board) and Switzerland (as a matter of policy) decided in 2023 that women and girls from Afghanistan can be generally granted asylum on the basis of their gender as they are victims of discriminatory legislation. Nonetheless, an individual examination of an applicant's case still takes place in these countries, without an automatic application of the policy.

In Norway, a new instruction to the UDI from the Ministry of Justice and Emergency Preparedness in May 2023 provided further guidance for the processing of applications for women and girls from Afghanistan. It stressed the need for an individual assessment of cases, while continuing to monitor developments in Afghanistan to assess if changes in practice are needed. The instruction also noted that in the current situation women and girls from Afghanistan can be recognised as belonging to a 'special social group'.420

On gender-based persecution of Afghan women and girls, the CJEU ruled in January 2024 that women, as a whole, may be regarded as a particular social group within the meaning of the recast QD and they may qualify for refugee protection if, in their country of origin, they are exposed to physical or mental violence due to their gender. The court also added that if the conditions for providing refugee status are not met, “women may qualify for subsidiary protection, including when there is a real risk of being killed or subjected to acts of violence inflicted by a member of their family or community due to the alleged transgression of cultural, religious or traditional norms”.

In Slovenia, the Administrative Court ruled in February 2023 that very precise, non-selective and objective consideration of relevant information on the situation in the country of origin is necessary for applicants from Afghanistan and that the circumstance that the applicant's wife was employed in the army was a legally-relevant circumstance to establish a well-founded fear of persecution of the applicant, because he could be more easily discovered by the Taliban.

In the “Factsheet concerning the State Secretariat for Migration (SEM) policy change for female Afghan asylum seekers” of December 2023, UNHCR noted that short-term increases in asylum requests from Afghan women were mainly for subsequent applications from applicants who were already in Switzerland and the number of positive decisions had not significantly changed after the SEM policy change in July 2023.421

ECRE published an analysis of policies on subsidiary protection for Afghan applicants across the EU.422

Applicants from Iran

In Belgium, CALL allowed the appeal of an Iranian woman who claimed international protection based on the situation of women and girls in Iran and the national protests against the regime following the death of Mahsa Amini.

In Cyprus, the International Protection Administrative Court (IPAC) granted refugee protection *sur place* to an Iranian woman based on her growing political engagement and opposition to the Iranian government.

Applicants from Niger and Mali

The CNDA in France noted that the security crisis affecting the Sahel had escalated on account of attacks led by the Islamic State in the Greater Sahara (ISGS) and insecurity due to non-state armed groups and organised crime at the Nigerian borders. It cited reports of incidents and civilian casualties on the rise, causing hundreds of thousands of people to be internally displaced. The court thus concluded that the level of indiscriminate violence in the region of Diffa was such that the applicant, by his mere presence there, faced a serious and individual threat to his life or person, thus triggering the application of Article 15(c) of the recast QD. The CNDA examined in July 2023 the situation in the region of Diffa in Niger and in May 2023 it examined the situation in the Tillabéri region in Niger and in the Ménaka region of Mali.

Palestinian applicants

In Belgium, the CGRS suspended the examination of cases and notification of decisions for applicants from Gaza and the West Bank between October 2023 and January 2024, until sufficient information is available to accurately assess the situation in the Palestinian territories. Exceptionally, positive decisions for refugee protection and inadmissibility decisions for people with a protection status in another Member State continued to be pronounced.423

In Denmark, the Immigration Service temporarily suspended the processing of asylum applications by stateless Palestinians from Gaza, after the Refugee Appeals Board suspended the cases on 12 October 2023. Following the decision of the Refugee Appeals Board on 9 February 2024, the suspension on the processing of these asylum applications was lifted.

A decision and departure moratorium was introduced in December 2023 in the Netherlands for applicants from Palestine.424

Applicants from Somalia

The CGRS in Belgium published in January 2024 a new policy on the security situation in Somalia to guide the assessment of asylum applications. The CGRS noted that “the available country information shows that no region in Somalia is characterised by an exceptional situation in which the degree of indiscriminate violence is so high that there are substantial reasons to believe that a citizen, merely by his/her presence, runs an actual risk of being exposed to a serious threat to life or person as stipulated by Article 48/4(2c) of the Aliens Law. However, this does not exclude applicants from certain regions of Somalia from being granted subsidiary protection if they can prove a need for it because of their personal circumstances”.425

The CNDA in France applied the EUAA’s Country Guidance: Somalia from August 2023 and noted in several judgments that, although the security situation in Benadir, Middle Shabelle and Lower Shabelle did not reach the level of indiscriminate violence prescribed by Article 15(c) of the recast QD to establish that a person faces a serious and individual threat to their life or person from their mere presence there, it is still such that a lower threshold of elements of individualisation is required for subsidiary protection to be granted.426Furthermore, the CNDA applied the Country of Origin Information Report Somalia: Security Situation from February 2023 and ruled in April 2023 that the Somali region of Hiran was experiencing a situation of indiscriminate violence of exceptional intensity.

Persons displaced from Ukraine

The Danish Immigration Service ended the suspension of the processing of asylum applications from persons displaced from Ukraine, which was in place from 24 February 2022 to 12 October 2023. In the Netherlands, the decision and departure moratorium for applicants from Ukraine ended on 28 November 2023.

The CNDA examined the situation in the cities/regions of Jytomyr, Khmelnytskyï, Kyiv, Odesa, Poltava, Soumy, Tchernihiv, Vinnytsia and Volhynia to determine the level of indiscriminate violence.

Russian applicants

Russian applicants who feared military drafting requested international protection in some EU+ countries. In the Netherlands, the decision moratorium for conscripted Russian applicants was ended in 2023. CALL in Belgium considered that more information was needed on military mobilisation in Russia to decide on a Russian national's request for international protection fearing general mobilisation.

In May 2023 in Bulgaria, the Supreme Administrative Court refused a request for international protection lodged by a Russian national who fled to avoid conscription in the war in Ukraine. The court considered that the applicant did not prove that he had participated in anti-government protests and argued that there was no reason to believe that the Russian authorities were carrying out massive repression against citizens who protested against the president's policy and that there was no particular danger of being detained and repressed if returned to the country of origin. The court also added that there were no grounds for application of the principle of refugee *sur place*. After this refusal by the Supreme Administrative Court, the applicant, who is a well-known critic of the Russian war in Ukraine, lodged another application with SAR. A media source reported that SAR allowed the application and provided international protection.427

In France, the Grand Chamber formation of the CNDA ruled in July 2023 that Russian nationals who flee conscription for the war in Ukraine or those who deserted may obtain refugee status, as a Russian national called up as part of this mobilisation must be regarded as being led to commit, directly or indirectly, war crimes given the very purpose of the mobilisation, the impossibility of refusing a mobilisation order and taking into account the conditions in which the armed conflict unfolded, marked by the large-scale commission of war crimes by the various units of the Russian armed forces, whether in the territories controlled by Ukraine or in the territories currently under the control of the Russian authorities. Relying on the EUAA's Country of Origin Information Reports, The Russian Federation - Military service and The Russian Federation - Political opposition, published on 16 December 2022, the court held that it was not possible to avoid military service during partial mobilisation by performing alternative civilian service and that the implementation and procedures of the mobilisation had numerous irregularities. It also noted that partial mobilisation remained in force even if the authorities had announced that the mobilisation objective had been reached in 2022. It also noted that those resisting mobilisation were exposed to prosecution and criminal penalties, which were recently strengthened by Russian law. The court further noted that applicants must provide all relevant elements to establish that they are actually subject to a military obligation, as mere membership in the reserve is not sufficient to demonstrate that they would actually be led to participate directly or indirectly in the commission of war crimes.

In Germany, the Higher Administrative Court of Saxony ruled in January 2024 that a 37-year-old Russian national from Chechnya was not facing conscription for military service as he was not a reservist and had already exceeded the age of 30. Only reservists, professional soldiers and volunteers would face conscription into the military. Moreover, the partial mobilisation, which had not been carried out in Chechnya, had been completed according to a notification from the Ministry of Defence in October 2022. By moving to another part of Russia, the plaintiff could avoid the risk of a forced conscription in Chechnya.

While rulings of the lower courts have been inconsistent, Higher Administrative Courts have admitted the appeal for a higher court clarification.

In April 2023 in Latvia, the District Administrative Court of Riga upheld an appeal by a Russian national who fled Russia to evade military conscription as he opposed the war in Ukraine. The court examined the EUAA country of origin report from December 2022, The Russian Federation - Military Service, and determined that the renunciation of military service in Russia was a criminal act punishable by imprisonment and there were no chances for the applicant to obtain a decision replacing military service with alternative civil service. The court also held that the authorities would consider the reluctance to complete military service as an expression of political resistance.

Besides claims of military drafting, Russian applicants also invoked a risk of persecution in their country of origin based on political opinion. The Circuit Court of Tallinn in Estonia ruled in May 2023 in favour of a Russian national, ordering the re-assessment of his case. He had moved to Ukraine as a child and had applied for Ukrainian citizenship. He argued that he would be at risk of persecution in Russia due to his support to the Ukrainian army and relief organisations and also due to the opinions that he expressed on Instagram, which criticised the Russian authorities. The court held that the applicant cannot be expected to conceal or change his political views if returned to Russia. The court indicated to the determining authority that it had to assess the consequences for the applicant if he continued to carry out the same activities in Russia, including by expressing on social media positions supporting Ukraine and criticising Russia, and continuing to provide financial assistance to the Ukrainian army and relief organisations. The Circuit Court noted that in December 2022 Russia enacted a law according to which anyone who is under external influence or receives financial support from a foreign country may be considered a foreign agent. The Circuit Court consulted the EUAA Practical Guide on Political Opinion which was published on 16 December 2022.

Sudanese nationals

Several EU+ countries suspended the examination of applications lodged by Sudanese national in the aftermath of the war in Sudan. The Danish Immigration Service suspended the processing of asylum applications by Sudanese nationals after the Refugee Appeals Board suspended the cases on 27 April 2023. The suspension was lifted following the decision of the Refugee Appeals Board on 9 February 2024. The Dutch Minister for Migration introduced a decision and departure moratorium for applicants from Sudan in July 2023 and extended this decision in December 2023 for an additional 6 months.[428]

In Malta, the International Protection Agency suspended the assessment of applications lodged by Sudanese nationals in May 2023. The suspension was partially lifted in December 2023 as the agency resumed the examination of applications by Sudanese nationals whose home area is outside of Khartoum and Darfur. The examination of applications by Sudanese nationals originating from these two areas is still on hold.

In Norway, the UDI suspended the examination of applications lodged by Sudanese applicants.[429]

The Swedish Migration Agency suspended enforcements to Sudan due to the situation in the country.430UNHCR expressed concern about the forced displacement in Al Jazirah State, southeast of Khartoum and about an escalation of the conflict in the Darfur Region.431

The CNDA in France ruled in several judgments pronounced between July and December 2023 that the regions of West Darfur and Khartoum in Sudan were experiencing a situation of indiscriminate violence which was such that the applicants, by mere presence there, faced a serious and individual threat to life or person. The CNDA highlighted that the conflict taking place since April 2023 caused the security situation to deteriorate further. It also noted that around one-fourth of the population of West Darfour were internally displaced persons, with many living in camps where the humanitarian situation was deteriorating. Finally, it underlined the lack of infrastructure, police, justice and humanitarian aid, which prevented sustainable peace and the return of inhabitants.432

Applicants with a 'westernised' profile

In Belgium, CALL ruled in April 2023 that, despite not constituting a particular social group, westernised Afghans may be granted international protection on the grounds of religion and political conviction. In July 2023, CALL granted refugee protection to a westernised Afghan applicant of Tajik ethnicity on the grounds of an imputed religious opinion. The cumulative factors taken into account included the length of the applicant's stay in Europe, his behaviour, his lack of religious practice, the conversion to Christianity that could be attributed to him in view of his tattoo and his Tajik ethnic origin. In October 2023, CALL granted refugee protection to an Afghan accompanied minor on the ground of his political opinion, highlighting the reasonable likelihood that he would be perceived as westernised upon a return, as he spent his formative years in Europe.

In contrast, in November 2023, CALL dismissed a request for international protection based on alleged persecution due to having lived in Belgium and ruled that Afghan applicants who stayed in Europe but cannot demonstrate that they would be perceived as westernised or transgressing or violating religious, moral and social norms cannot justify a well-founded fear of persecution based on these grounds.

In France, the CNDA ruled in July 2023 that the mere fact of travelling and staying in Europe was insufficient to establish that an Afghan applicant had a westernised profile that would expose him to persecution by the Taliban upon a return to his country of origin.

With regard to applicants from Iraq, the Regional Administrative Court of Hannover held in June 2023 that the 'western lifestyle' had to significantly characterise the identity of the applicant in the form of a serious and lasting inner conviction. In the case of the applicant, the court provided refugee protection as it concluded that she had developed a 'westernised identity' over the past few years, which was of central importance to her and which she would not be able to discard upon a return to Iraq.

Applicants who claim religious conversion

In Austria, the Supreme Administrative Court overruled in September 2023 two judgments of the Federal Administrative Court in the cases of Iranian applicants who claimed to have converted to

Christianity and would risk persecution upon a return to the country of origin. The court ruled that the Federal Administrative Court had erred when it had repeatedly defined expectations about the behaviour and knowledge of a (newly) converted believer without explaining how it had developed these principles and had assessed the evidence in an unjustifiable manner that impaired legal certainty. According to the Supreme Administrative Court, the Federal Administrative Court had failed to consider the very personal and therefore different approaches of people to their religious beliefs.433

Applicants who claim persecution due to the risk of forced military recruitment

The Federal Administrative Court in Austria decided in August 2023 that forced recruitment for military service in Syria was not an asylum-relevant persecution in the case of an applicant who could avoid conscription by paying an exemption fee and who had the legal and factual means to pay the exemption fee. The court highlighted that the "moral or political reasons of objection to payment did not have any asylum-relevant significance." The Federal Administrative Court concluded that the applicant was neither forced to commit war crimes, nor to refuse military service which would lead to subsequent asylum-relevant detention conditions. While the Supreme Administrative Court has rejected some cases appealing similar decisions,434 it has not yet dealt with the issue on the merits and the nexus to convention grounds. The Constitutional Court briefly dealt with this issue and held that the lower court should have assessed if the applicant could pay the exemption fee upon a return to Syria.435

Also in Austria, the Constitutional Court decided in June 2023 that there was a risk for a stateless Kurdish applicant to be recruited for military service by the Syrian authorities in the government enclaves in Qamishli in the province of Al-Hasakah. Based on COI, the court ruled that there were Syrian authorities in the government enclaves in Qamishli who were responsible for arrests and recruitment of conscientious objectors and that the practice of filtering out conscripts during road checks or at one of the numerous checkpoints was widespread.

After the Federal Administrative Court in Germany overturned several judgments on military draft evasion in January 2023 and ruled that the authorities must assess the plausibility of a strong presumption that refusing to perform military service is related to persecution in light of all circumstances of the case, the Higher Administrative Court of Mecklenburg-Western Pomerania confirmed a negative decision for an applicant from western Ukraine who refused to perform military service. The court stated that there was no indication that he would be forced to commit a war crime during military service in Ukraine as no systematic violation of international law of war by the Ukrainian armed forces could be identified.

The ECtHR rejected interim measures twice for a Russian applicant who applied for international protection in Hungary on grounds of his political opinion and fear of being drafted into the military against his will. The Hungarian Helsinki Committee commented on this practice, highlighting the need for more clarity on the elements that the applicant should have substantiated to be granted interim measures.436

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