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As the guardian of EU law, the CJEU ensures that “in the interpretation and application of the Treaties, the law is observed” (TEU, Article 19(1)). As part of its mission, the CJEU ensures the correct interpretation and application of primary and secondary EU laws; reviews the legality of acts of EU institutions; and decides whether Member States have fulfilled their obligations under primary and secondary laws. The CJEU also provides interpretations of EU law when requested by national judges. The court, thus, constitutes the judicial authority of the EU and, in cooperation with the courts and tribunals of Member States, ensures the uniform application and interpretation of EU law.224

In 2022, the CJEU issued more than 20 judgments interpreting various provisions of CEAS. The judgments covered topics related to:

- effective access to the asylum procedure;
- the Dublin procedure;
- the concept of a subsequent application;
- the admissibility of applications for international protection;
- the right of access to an administrative file and the meaning of communication of the decision ‘in writing’;
- the withdrawal of material reception conditions;
- the scope of detention and judicial review of the lawfulness of detention;
- family reunification involving minors; and
- the withdrawal of international protection on grounds of national security.

Effective access to the asylum procedure

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In *M.A.* v *State Border Protection Service at the Ministry of the Interior of the Republic of Lithuania* (C-72/22 PPU), the CJEU ruled under an urgent preliminary ruling procedure that the

recast Asylum Procedures Directive (APD) precludes legislation that prevents access to the asylum procedure for illegally-staying, third-country nationals or stateless persons in the event of a declared state of war, a state of emergency or an emergency situation due to a mass influx of third-country nationals. Focusing on the mass influx in particular, the CJEU noted that the assumption of breaches of public policy or internal security does not justify such legislation. The court observed that EU law precludes legislation under which an asylum applicant is detained on the ground that he/she is staying illegally, because in principle, an applicant for international protection cannot constitute a threat to national security or public order solely for staying illegally.

Dublin procedure

Dublin procedure

In 2022, the CJEU continued to examine the effects of the COVID-19 pandemic on asylum procedures. In *Federal Republic of Germany* v *MA, PB, LE* (C-245/21 and C-248/21), the CJEU clarified that the suspension of a Dublin transfer due to the COVID-19 pandemic does not interrupt the 6-month time limit for the transfer. The time limit can only be suspended when an applicant must be authorised to remain in the Member State until a final decision on an appeal is pronounced. The CJEU further noted that, under the Dublin III Regulation, the impossibility of implementing a Dublin transfer decision should not be regarded as justifying the interruption or suspension of the time limit for a transfer.

The CJEU clarified the conditions in which Dublin transfers of victims of human trafficking may be enforced. In *O.T.E.* v *State Secretary for Justice and Security (NL)* (C-66/21), the court noted that the concept of a removal order under Article 6(2) of Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities covers Dublin transfers between Member States. The CJEU confirmed that a Dublin transfer of a victim of human trafficking cannot be implemented during the reflection period, the purpose of which is to allow the person to recover and escape the influence of the perpetrators so that the person can take an informed decision on whether to cooperate with the competent authorities. However, the court noted that a Dublin transfer decision may be adopted and preparatory measures may be undertaken during this reflection period.

Following a referral by the Dutch Court of The Hague, in *I, S* v *State Secretary for Justice and Security (NL)*, (C-19/21), the CJEU ruled that the Dublin III Regulation, read in conjunction with the EU Charter, provides the unaccompanied minor the right to appeal against a decision to take charge by a Member State in which relatives reside. The court highlighted that the judicial protection of an unaccompanied minor applicant cannot vary according to whether this applicant is the subject of a transfer decision by the requesting Member State or a decision by which the requested Member State rejects the request to take charge of the applicant. With regard to the relative of the minor, the CJEU held that the regulation does not confer rights which could be claimed in court against a decision not to take charge, and the relative cannot derive a right of appeal against such a decision solely based on Article 47 of the EU Charter.

Interpretation of the concept of a subsequent application

Interpretation of the concept of a subsequent application

In *SI, TL, ND, VH, YT, HN* v *Bundesrepublik Deutschland* (C-497/21), the CJEU clarified that, within the meaning of Article 2(q) of the recast QD, an application for international protection cannot be regarded as a subsequent application by another Member State after a first application is rejected by Denmark, a country which applies certain provisions of the Dublin III Regulation but does not implement the recast QD and the recast APD. The court referred to its previous judgment in *LR* v *Bundesrepublik Deutschland* (C-8/20) which concluded that, after a rejection by Denmark, an application made by the same individual in another Member State cannot be considered as a subsequent application and thus be rejected as inadmissible.

Family reunification involving minors

Family reunification involving minors

In 2022, the CJEU examined three cases concerning the conditions in which minors, whether beneficiaries of international protection or children of sponsors, may benefit from family reunification.

In *X* v *Belgium* (C-230/21), the CJEU interpreted Articles 2(f) and 10(3a) of the Family Reunification Directive and ruled that unaccompanied minors do not have to be unmarried in order to be sponsors for their parents in a family reunification procedure. In agreement with the opinion of the Advocate General, the court noted that the vulnerability of minors is not mitigated because of marriage and may, on the contrary, point to an exposure to a child marriage or a forced marriage.

In *SW, BL, BC* v *Stadt Darmstadt, Stadt Chemnitz* (Joined Cases C-273/20 and C-355/20), the CJEU ruled that the minority of the sponsoring unaccompanied child is not a condition for family reunification with parents. In addition, Article 13(2) of the Family Reunification Directive precludes national legislation under which the right of residence of the parents is terminated as soon as the child reaches the age of majority.

In *Bundesrepublik Deutschland* v *XC, joined by Landkreis Cloppenburg* (C-279/20), the CJEU analysed the date to which national authorities must refer when determining whether the child of a sponsoring beneficiary of refugee status is a minor for the purpose of family reunification. When a child has attained majority before the sponsoring parent was granted refugee status and before the application for family reunification was submitted, the court observed that the date used to determine if the child is a minor is the date on which the sponsoring parent submitted an asylum application, provided that an application for family reunification was submitted within 3 months of the recognition of the parent’s refugee status. In addition, the legal parent/child relationship is not sufficient on its own to constitute a real family relationship for family reunification. Nonetheless, it is not necessary for the parent and the child to cohabit in a single household, to live under the same roof or to support each other financially. The court noted that occasional visits and regular contact of any kind may be sufficient to establish the existence of a real family relationship.

Admissibility of asylum applications lodged by minors whose family members are beneficiaries of international protection in another Member State

Admissibility of asylum applications lodged by minors

In *RO* v *Bundesrepublik Deutschland* (C-720/20), the CJEU interpreted Article 20(3) of the Dublin III Regulation, which provides for the indissociable situation of a minor who qualifies as a family member of an applicant for international protection. In agreement with the opinion of the Advocate General, the court noted that there is a distinction in EU law between the situation of a minor whose family members are already beneficiaries of international protection in a Member State (Dublin III Regulation, Article 9) and a minor whose family members are applicants for international protection (Dublin III Regulation, Articles 10 and 20(3)).

The court held that Article 20(3) was not applicable in the situation that a minor and the parents lodge applications for international protection in the Member State in which the minor was born, when the parents were already provided international protection in another Member State. In the absence of an agreement expressed in writing by the minor, a request for international protection by a minor cannot be rejected as inadmissible on the basis of Article 33(2) of the recast APD, even if the parents received protection in another Member State but the minor applicant is not a beneficiary of protection in another Member State. However, the parents' application may be dismissed as inadmissible on the ground that they are already beneficiaries of international protection in another Member State.

Maintaining family unity after secondary movements by beneficiaries of international protection

Maintaining family unity

In a Grand Chamber formation, the CJEU ruled in *XXXX* v *Commissaire général aux réfugiés et aux apatrides* (C-483/20) in a case concerning a parent and his minor child who had different migration paths, with the minor being a beneficiary of subsidiary protection in Belgium and the father a beneficiary of international protection in Austria. The CJEU held that, when an applicant is already a beneficiary of international protection in another Member State, the recast APD, read in conjunction with the EU Charter, Articles 7 and 24(2), does not oblige Member States to verify whether the person fulfils the conditions to claim international protection under the recast QD and may reject the request for international protection as inadmissible.

However, Member States must refrain from declaring an application as inadmissible when there are systemic or generalised deficiencies in the other Member State and the living conditions would amount to a risk of suffering inhuman or degrading treatment contrary to Article 4 of the EU Charter. In addition, the CJEU highlighted that Member States have an obligation under the recast QD to maintain family unity by establishing benefits in favour of family members of beneficiaries of international protection. The court noted that these benefits are provided in Articles 24-35 of the recast QD, including a right of residence, which requires three conditions to be met: i) the person must be a family member within the meaning of Article 2(j) of the recast QD; ii) the family member does not individually qualify for international protection; and iii)

granting the benefit is compatible with the personal legal status of the family member.

Determining protection provided by the UNRWA

Determining protection provided by the UNRWA

In *NB, AB* v *Secretary of State for the Home Department (UK)* (C-349/20), the CJEU ruled on the assessment of the cessation or end of protection provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The court noted that the individual assessment should not consider only the relevant circumstances prevailing at the time when the person left UNRWA's territory, but also those prevailing when the competent authorities examine an application for refugee status or when the competent judicial authorities decide on an appeal against a refusal of such a status. It would also be sufficient to establish that UNRWA's protection or assistance effectively ceased.

In addition, where the person proves that she left the area of UNRWA for reasons beyond her control, the Member State must prove that the person can return to that area and benefit from UNRWA's protection or assistance. Assistance provided to that person by civil society organisations is also to be taken into consideration, provided that UNRWA has a formal and stable cooperation with the organisations.

Access to an administrative file and communication 'in writing' of the decision on international protection

Access to an administrative file

In *BU* v *Bundesrepublik Deutschland* (C 564/21), the CJEU ruled on an applicant's right to access a copy of the administrative file and the meaning of communication 'in writing' of the administrative decision. The court held that Articles 23(1), 46(1) and 46(3) of the recast APD, read in conjunction with Article 47 of the EU Charter, do not contain specific rules on the format and structure in which the file is communicated to an applicant's representative. Therefore, they do not preclude the decision-making authority to provide access to the electronic file in the format of a series of separate files in PDF format, without consecutive page numbering and for which the structure can be viewed using a free software.

In addition, in accordance with Article 11(1) of the recast APD, the CJEU held that a communication of the decision 'in writing' does not have to be signed by a case officer. It simply means that communication should not be implied or made orally.

Withdrawal of material reception conditions

Withdrawal of material reception conditions

As a follow-up to its ruling in *Haqbin* (C-238/18) from 2019, the CJEU ruled in 2022 in *Ministero dell'Interno* v *TO* (C-422/21) on the withdrawal of material reception conditions from an applicant for international protection for verbally and physically assaulting police officers outside an accommodation centre. The CJEU confirmed that Article 20(4) and (5) of the recast RCD

prevents material reception conditions relating to housing, food and clothing to be withdrawn if this would deprive the applicant of the most basic needs.

Scope of detention and judicial review of the lawfulness of detention

Scope of detention

In a case referred by the Austrian Supreme Administrative Court, *IA* v *Federal Office for Immigration and Asylum* (C-231/21), the CJEU clarified that committing non-voluntarily an asylum applicant who is a danger to a psychiatric hospital, authorised by a judicial decision, does not constitute imprisonment under Article 29(2) of the Dublin III Regulation. The court further recalled that there are two specific exceptions for which the 6-month time limit may be extended to implement a Dublin transfer, included in the second sentence of Article 29(2) of the Dublin III Regulation, namely imprisonment and absconding.

In *K* v *Landkreis Gifhorn* (C-519/20), the CJEU clarified the conditions in which Member States may temporarily detain third-country nationals in a prison for the purpose of a removal, the conditions required for a detention establishment to be considered a 'specialised detention centre' within the meaning of the recast Return Directive, Article 16(1), and the extent of a judicial review by a national court. The CJEU observed that the detention of a third-country national for the purpose of a removal is intended to ensure the effectiveness of the return procedure and does not pursue any punitive purpose, which must be reflected in the person's conditions of detention. The court noted that national courts must consider the layout of the premises dedicated to the detention of third-country nationals, the rules specifying their conditions of detention, and the qualifications and powers of the staff responsible for supervising their detention. The court further clarified the situations which justify a derogation under Article 18(1) of the recast Return Directive, the prohibition of detention due to the vulnerability of a person and the obligation of national courts to effectively verify the compliance of detention with the conditions imposed by Article 18 of the recast Return Directive.

In *I.L.* v *Police and Border Guard Board (Politsei- ja Piirivalveamet)* (C-241/2), the CJEU held that Article 15(1) of the recast Return Directive prohibits Member States from detaining an illegally-staying, third-country national solely on the basis of the general criterion of a risk that the effective execution of the removal will be jeopardised. The court further noted that such a measure is contrary to the requirements of clarity, predictability and protection against arbitrariness.

In *B, C and X* v *State Secretary for Justice and Security* (Joined Cases C-704/20 and C-39/21), the CJEU recalled that the detention of a third-country national constitutes an interference with the right to liberty enshrined in Article 6 of the EU Charter and the person must be immediately released when the conditions of the lawfulness of detention are no longer met, irrespective of whether detention is used in the context of return proceedings due to an illegal stay, in the processing of an application for international protection or in the context of a Dublin transfer. The CJEU ruled that the competent judicial authorities have the obligation to review ex officio

the lawfulness of detention decisions by taking into consideration all elements of the case, even if the failure to comply with the lawfulness of detention has not been raised by the person concerned before a competent judicial authority.

Withdrawal of international protection on grounds of national security

Withdrawal of international protection on grounds of national security

In the case of *GM* (C-159/21), referred by the Budapest High Court, the CJEU ruled on the use of non-reasoned opinions of national security bodies in procedures to withdraw international protection due to a danger to national security. The CJEU held that Member States must provide access to confidential national security information to the courts that rule on the lawfulness of the decision and establish procedures guaranteeing the rights of defence of the person. The CJEU noted that Article 23(1) of the recast APD does not allow competent authorities to exclude the person and their representative from knowing the decisive elements which are contained in the file. The CJEU specified that the possibility of obtaining authorisation to access the information, coupled with the prohibition to use the information in the administrative procedure, does not sufficiently guarantee the right to defence.

The court ruled that a determining authority cannot rely on a non-reasoned opinion given by national security bodies when the factual basis and assessment by these bodies was not disclosed to the determining authority. It noted that the determining authority that assesses a withdrawal cannot endorse a decision adopted by another authority, because it must include its own assessment of the facts, circumstances and reasons in its decision, and the scope and relevance of the information provided by national security bodies must be assessed by the determining authority. Although the right to defence may be limited, the CJEU recalled that Article 23(1) of the recast APD does not allow competent authorities to exclude a person and their representative from gaining effective knowledge of the substance of the decisive elements contained in the file.

Return of rejected applicants for international protection who suffer from a serious illness

Return of rejected applicants

In *X* v *State Secretary for Justice and Security [NL]* (C-69/21), the CJEU ruled that a third-country national suffering from a serious illness may not be removed if, in the absence of appropriate medical treatment in the receiving country, the person would be subjected to a real risk of rapid, significant and permanent increase in pain. The CJEU stated that it must be established that the only effective analgesic treatment cannot be lawfully administered in the receiving country and that the person would be exposed to a real risk of inhuman or degrading treatment in the absence of the treatment, for example extreme pain that could cause irreversible psychological consequences or lead to suicide.

Voluntary departures and forced removal

Return of rejected applicants

In *UN* v *Subdelegación del Gobierno en Pontevedra* (C-409/20), the CJEU interpreted Articles 6, 7 and 8 of the recast Return Directive, ruling on the possibility for an illegally-staying, third-country national to regularise his/her stay. The CJEU held that national legislation may initially sanction an illegally-staying, third-country national with a fine and an obligation to leave the territory within a prescribed period, unless the person's stay is regularised, and subsequently, if the stay is not regularised, by a compulsory removal, in accordance with the recast Return Directive.

- 224CJEU. (n.d.). General Presentation. https://curia.europa.eu/jcms/jcms/Jo2_6999/en/. Accessed on 18 February 2022.

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