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# Box 4. The principle of non-refoulement

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The principle of *non-refoulement* is a core principle of international and EU laws to ensure that an applicant is not returned to a country where they will face persecution (recast QD, Recital 3). It constitutes an essential and crucial safeguard throughout the asylum procedure (including access to the procedure, assessment of the application on first instance, appeal and return). Accordingly, Member States must respect the principle of *non-refoulement* in accordance with their international obligations (recast QD, Article21).

The principle of *non-refoulement* secures the right of an applicant to remain in the host country when applying for international protection, including during a Dublin procedure and while awaiting a decision by the determining authority, in accordance with the procedures at the administrative level.

It ensures that Member States must allow applicants to remain in the territory to exercise the remedy of a right to appeal and, when such a right has been exercised, pending the outcome of the appeal. It must be observed by courts and tribunals when ruling whether an applicant may remain in the territory of the Member State.

It also protects against a return or an extradition decision which may result in direct or indirect *refoulement*, in violation of international and EU obligations of that Member State. In accordance with the Geneva Convention, the respect for the *non-refoulement* principle must be assessed in the application of safe country concepts. The respect of the *non-refoulement* principle during the international protection procedure is one of the most common elements that undergo a judicial review.

**Indicative list of recent case law beyond CJEU rulings related to the principle of *non-refoulement*  European Court of Human Rights [ECtHR],** *W.A. and Others v Italy:* The ECtHR ruled that Italy did not breach its duty to offer effective guarantees to protect the applicant against arbitrary *refoulement* to Sudan.

**European Court of Human Rights [ECtHR],** *A.E. and Others v Italy:* The ECtHR held that Italy breached Articles 3 and 5 due to inadequate conditions in which Sudanese nationals were held during their arrest and transfers, and ill treatment of one of the applicants.

**Access to the asylum procedure**

**Italy, Supreme Court of Cassation – Civil Section [Corte Supreme di Cassazione],** *Applicant v Ministry of the Interior:* The Court of Cassation annulled a detention order of a Tunisian national who disembarked in Lampedusa and claimed an infringement of the prohibition of collective expulsions and *refoulement*. The court noted that he had not been duly provided with information on the possibility to apply for international protection.

**Italy, Civil Court [Tribunali],** *Applicant v Ministry of the Interior, Ministry of Foreign Affairs and Ministry of International Cooperation:* An Afghan unaccompanied minor claimed violation of his rights on the ground of *refoulement* when he was denied access to the asylum procedure in Italy and illegally pushed back to Greece. The Tribunal of Rome condemned the denial of access to the procedure and ordered the authorities to allow the entry to apply for protection.

**Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral – FAC],** *A,B,C,D,E,F,G v State Secretariat for Migration (Staatssekretariat für Migration – SEM):* The Federal Administrative Court upheld an appeal and ordered the SEM to issue humanitarian visas to an Afghan family who applied for protection at the Swiss embassy in Pakistan. Country of origin information showed that since the beginning of 2023 Pakistani authorities had increasingly returned Afghans to Afghanistan, exposing the applicants to risks.

**Within the Dublin procedure**

**Ireland, High Court,** *R.G. v International Protection Appeals Tribunal and Anor:* The High Court rejected an appeal by an applicant from Georgia who contested his transfer from Ireland to France due to a fear of being deported back to Georgia. The court noted that the applicant failed to present proof that he would be subjected to inhuman or degrading treatment due to his medical condition and there were inconsistencies with his experiences in France.

**Germany, Higher Administrative Court [Oberverwaltungsgerichte/Verwaltungsgerichtshöfe],** *Federal Republic of Germany v Applicants:* The Higher Administrative Court of Lower Saxony confirmed a Dublin transfer of an Iraqi family to Croatia, who feared pushbacks and chain *refoulement* from Croatia. The court did not find any systemic deficiencies for Dublin transfers and reiterated the principle of mutual trust on sufficient protection within CEAS.

**Germany, Higher Administrative Court [Oberverwaltungsgerichte/Verwaltungsgerichtshöfe],** *Federal Republic of Germany v Applicants:* The case concerned an Afghan family. The Higher Administrative Court of Lower Saxony decided that there were no systemic deficiencies in the asylum system in Croatia for Dublin returnees despite information on pushbacks.

**Germany, Higher Administrative Courts [Oberverwaltungsgerichte/Verwaltungsgerichtshöfe],** *Applicants v Federal Republic of Germany:* The Higher Administrative Court of Baden-Württemberg decided that there was no real risk of inhuman or degrading treatment in Croatia for a Kurdish family of Iraqi nationality to be transferred in the Dublin procedure.

**Netherlands, Court of The Hague [Rechtbank Den Haag],** *Applicant (II) v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid):* The District Court of The

Hague seated in Middelburg rejected the appeal against a Dublin transfer of a Syrian national, stating that there was insufficient evidence to prove that Dublin returnees were at risk of pushbacks in Romania.

**Netherlands, Court of The Hague [Rechtbank Den Haag],** *Applicant v State Secretary for Justice and Security [Staatssecretaris van Justitie en Veiligheid]:* The Court of The Hague seated in Roermond rejected an appeal against a Dublin transfer to Denmark and stated that, despite different protection policies towards Syrian applicants, the applicant can present arguments in the asylum procedure and complain before the ECtHR in the case of deportation.

**Netherlands, Court of The Hague [Rechtbank Den Haag],** *Applicant v State Secretary for Justice and Security [Staatssecretaris van Justitie en Veiligheid]:* The Court of The Hague seated in Arnhem rejected an appeal of a Syrian national with two minor children against a Dublin transfer to Denmark. The court stated that the principle of interstate trust could be relied upon and the applicant had not proven that there was a risk of indirect *refoulement*.

**Netherlands, Court of The Hague [Rechtbank Den Haag],** *Applicants v State Secretary for Justice and Security [Staatssecretaris van Justitie en Veiligheid]:* The District Court of The Hague found that there was insufficient evidence to claim that there was a real risk of indirect *refoulement* if the applicant was transferred to France. However, the court annulled the Dublin transfer decision because there was a real risk for the applicant and her 9-month-old baby to become homeless upon a return to France.

**Austria, Constitutional Court [Verfassungsgerichtshof Österreich],** *Applicant v Federal Office for Immigration and Asylum (BFA):* The court annulled a Dublin transfer to Bulgaria, stating that the lower court had failed to sufficiently investigate the reception situation and the risk of chain *refoulement* from Bulgaria.

**Within the return procedure**

**Germany, Higher Administrative Court [Oberverwaltungsgerichte/Verwaltungsgerichtshöfe],** *Applicant v Federal Republic of Germany:* The Higher Administrative Court of Lower Saxony decided that, athough the country information on Ethiopia conveyed an alarming humanitarian situation, the applicant failed to substantiate that any returnee would be exposed to a real risk of a violation of the ECHR, Article 3 and the requirements for a deportation ban for humanitarian reasons were not met. The court therefore rejected the leave to appeal as inadmissible and unfounded.

**Germany, Higher Administrative Courts (Oberverwaltungsgerichte/Verwaltungsgerichtshöfe),** *Applicant v Federal Republic of Germany:* The Higher Administrative Court of Mecklenburg-Western-Pomerania ruled that an Afghan applicant of Hazara ethnicity and of Shiite-Muslim faith would not be at risk of treatment contrary to the ECHR, Article 3 if returned to Afghanistan.

**Germany, Higher Administrative Courts [Oberverwaltungsgerichte/Verwaltungsgerichtshöfe],** *Applicant v Regional Council:* The Higher Administrative Court of Baden-Württemberg decided that an Iranian who was convicted of a particularly serious crime had his refugee status revoked by BAMF, which noted that there

was a ban on deportation of supporters of PDKI to Iran. The court stated that a deportation order was illegal if it is clear from the outset that enforcing the obligation to leave the country is impossible for an unforeseeable period of time.

**Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State],** *Secretary of State for Justice and Security {Staatssecretaris van Justitie en Veiligheid) v Applicant:* The Council of State decided that the possibilities of departure to Venezuela played no role on the applicability of an alternative protection in Venezuela and the applicant, a Venezuelan and Syrian national, failed to substantiate that she would be exposed to a real risk of persecution or that a return would amount to a violation of the ECHR, Article 3.

**Austria, Federal Administrative Court [Bundesverwaltungsgericht – BVwG],** *Applicant v Federal Office for Immigration and Asylum (BFA):* The court annulled the BFA's decision and granted subsidiary protection to an applicant with Hodgkin's disease who would face a real risk of serious, rapid and irreversible deterioration of his health if returned to India.

**Austria, Supreme Administrative Court [Verwaltungsgerichtshof – VwGH],** *Austrian Federal Office for Immigration and Asylum (BFA) v Applicant:* The court decided that a revocation of refugee or subsidiary protection should not be combined with a return decision if it was clear that the removal was not permitted due to the prohibition of *refoulement*.

**Poland, Supreme Administrative Court [Naczelny Sąd Administracyjny - NSA],** *A.Y. v Commander of the Border Guard:* The court ruled that the principle of *non-refoulement* must be considered when issuing a return decision to people apprehended after illegally crossing the border, regardless of whether they have applied for asylum.

**Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State],** *Applicants v State Secretary for Justice and Security [Staatssecretaris van Justitie en Veiligheid]:* The court overturned a negative decision, stating that the State Secretary has the duty to dispel doubts raised by the Iranian applicant that he would face a risk contrary to the ECHR, Article 3 if returned.

**Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας],** *E.A.S.H. v Republic of Cyprus through Senior Director of the Department of Population and Immigration Records, Ministry of the Interior:* The case concerned a Palestinian applicant who was granted a supplementary protection status in Cyprus, but he subsequently committed crimes. He was detained and issued a deportation order to an unspecified country. The court annulled the return decision for procedural deficiencies and for lacking a specific country in order to examine the risk of *refoulement*.

**Italy, Civil Court [Tribunali],** *Applicant v Ministry of the Interior (Ministero dell'interno):* The Tribunal of Salerno granted refugee status in a subsequent application to an applicant from Senegal who claimed persecution based on his sexual orientation if returned, based on the Senegalese Criminal Code that punishes such acts.

**Latvia, District Administrative Court [Administratīvā rajona tiesa],** *Applicant v Office of Citizenship and Migration Affairs:* The court annulled an expulsion order for a homosexual applicant from Iran whose subsequent application was accepted for examination on substance.

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