EUROPEAN COURT OF JUSTICE CASE LAW ON ASYLUM LAW

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Portuguese Administrative Supreme Court
THE LAW
EU Asylum Policy

- Articles 67(2), 78 and 80 of the Treaty on the Functioning of the European Union (TFEU)
- Article 18 of the EU Charter of Fundamental Rights.
- Asylum is a fundamental right and an international obligation for countries, as recognized in the 1951 Geneva Convention on the protection of refugees

- ‘refugee’ means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply

- ‘person eligible for subsidiary protection’ means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

- Principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.
EU Asylum Policy

- EU common system on:
  - A uniform status of asylum;
  - A uniform status of subsidiary protection;
  - A common system of temporary protection;
  - Common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
  - Criteria and mechanisms for determining which Member State is responsible for considering an application;
  - Standards concerning reception conditions;
  - Partnership and cooperation with third countries.
### Legal instruments in force

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MOST RELEVANT DECISIONS
Transfer of an asylum seeker to the Member State responsible

N. S. C-411/10

The decision adopted by a Member State on the basis of Article 3(2) of Council Regulation (EC) No 343/2003 [repealed by Regulation 604/2013, Dublin III] establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of that Regulation, implements European Union law for the purposes of Article 6 TEU and/or Article 51 of the Charter of Fundamental Rights of the European Union.

European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No 343/2003 indicates as responsible observes the fundamental rights of the European Union.

Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the ‘Member State responsible’ within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision.

Subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the Member State which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.

The Member State in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.

Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to a different answer.
Transfer of an asylum seeker to the Member State responsible

Abdullahi C-394/12

- in the event that the Hellenic Republic is held to be the competent State in the case before it, the Asylgerichtshof observes that, if transfer to the Hellenic Republic is not possible on account of systemic deficiencies in the asylum system in that State, applicants for asylum are left with the option of choosing a destination Member State which would be responsible for the substantive aspects of implementing the asylum procedure, which would be contrary to the objectives of Regulation No 343/2003. The Asylgerichtshof wonders whether, in view of those considerations, the Hellenic Republic could be excluded from the outset, that is to say, from the stage at which the Member State responsible is determined. Another option would be to take Hungary into consideration at the time of the examination of the ‘following criteria’, an expression found in paragraph 96 of the judgment in N.S. and Others and which raises questions.

- Article 19(2) of Council Regulation (EC) No 343/2003 of 18 February 2003 must be interpreted as meaning that, in circumstances where a Member State has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Article 10(1) of that regulation – namely, as the Member State of the first entry of the applicant for asylum into the European Union – the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.
Transfer of an asylum seeker to the Member State responsible

Hasan C-360/16

- Mr Hasan made an asylum application in Germany on 29 October 2014.
- As a search on the ‘Eurodac’ system showed that Mr Hasan had already applied for international protection in Italy on 4 September 2014, the Office requested the Italian authorities, on 11 November 2014, to take him back on the basis of the Dublin III Regulation.
- By decision of 30 January 2015, the Office rejected Mr Hasan’s asylum application as inadmissible, on the ground that the Italian Republic was the Member State responsible for examining that application, and ordered that he be transferred to Italy.
- Mr Hasan challenged the Office’s decision before the Verwaltungsgericht Trier. That court rejected the application for suspensive effect on 12 March 2015 and then went on to dismiss the action itself on 30 June 2015.
- On 3 August 2015, Mr Hasan was transferred to Italy. He returned illegally to Germany within the same month, however.
- Mr Hasan appealed against the judgment of the Verwaltungsgerichtshof. His appeal was upheld, on 3 November 2015. The Oberverwaltungsgericht held in particular that Mr Hasan’s transfer to Italy had taken place after the six-month time limit laid down in Article 29(1) of the Dublin III Regulation had expired, with the result that it was now the Federal Republic of Germany which was responsible for examining his asylum application.
- The Federal Republic of Germany brought before the Bundesverwaltungsgericht an appeal on a point of law against that decision.
- The Bundesverwaltungsgericht considers that the appeal court’s analysis is wrong, as, in its view, a correct calculation of the period laid down in Article 29(1) of the Dublin III Regulation indicates that Mr Hasan’s transfer to Italy took place before that period expired.
- Nevertheless, the Bundesverwaltungsgericht takes the view that it cannot be definitively established that the Italian Republic was initially responsible for examining Mr Hasan’s asylum application, inasmuch as Italy may have to be ruled out as being so responsible, pursuant to Article 3(2) of that regulation, if there are any systemic flaws, as referred to in that provision, in its asylum procedure and reception conditions for applicants for international protection.
Hasan C-360/16

• Article 27(1) of Regulation (EU) No 604/2013, read in the light of recital 19 of the regulation and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which provides that the factual situation that is relevant for the review by a court or tribunal of a transfer decision is that obtaining at the time of the last hearing before the court or tribunal determining the matter or, where there is no hearing, at the time when that court or tribunal gives a decision on the matter.

• Article 24 of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national who, after having made an application for international protection in a first Member State (Member State ‘A’), was transferred to Member State ‘A’ as a result of the rejection of a fresh application lodged in a second Member State (Member State ‘B’) and has then returned, without a residence document, to Member State ‘B’, a take back procedure may be undertaken in respect of that third-country national and it is not possible to transfer that person anew to Member State ‘A’ without such a procedure being followed.

• Article 24(2) of Regulation No 604/2013 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which a third-country national has returned, without a residence document, to the territory of a Member State that has previously transferred him to another Member State, a take back request must be submitted within the periods prescribed in that provision and those periods may not begin to run until the requesting Member State has become aware that the person concerned has returned to its territory.

• Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where a take back request is not made within the periods laid down in Article 24(2) of that regulation, the Member State on whose territory the person concerned is staying without a residence document is responsible for examining the new application for international protection which that person must be permitted to lodge.

• Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that the fact that an appeal procedure brought against a decision that rejected a first application for international protection made in a Member State is still pending is not to be regarded as equivalent to the lodging of a new application for international protection in that Member State, as referred to in that provision.

• Article 24(3) of Regulation No 604/2013 must be interpreted as meaning that, where the take back request is not made within the periods laid down in Article 24(2) of that regulation [two months of receipt of the Eurodac hit or three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned] and the person concerned has not made use of the opportunity that he must be given to lodge a new application for international protection:
  • the Member State on whose territory that person is staying without a residence document can still make a take back request, and
  • that provision does not allow the person to be transferred to another Member State without such a request being made.
Transfer of an asylum seeker to the Member State responsible

Jawo C-163/17

- EU law must be interpreted as meaning that the question whether Article 4 of the Charter of Fundamental Rights of the European Union precludes the transfer, pursuant to Article 29 of Regulation No 604/2013, of an applicant for international protection to the Member State which, in accordance with that regulation, is normally responsible for examining his application for international protection, where, in the event of such protection being granted in that Member State, the applicant would be exposed to a substantial risk of suffering inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights, on account of the living conditions that he could be expected to encounter as a beneficiary of international protection in that Member State, falls within its scope.

- Article 4 of the Charter of Fundamental Rights must be interpreted as not precluding such a transfer of an applicant for international protection, unless the court hearing an action challenging the transfer decision finds, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, that that risk is real for that applicant, on account of the fact that, should he be transferred, he would find himself, irrespective of his wishes and personal choices, in a situation of extreme material poverty.
Transfer of an asylum seeker to the Member State responsible in a nutshell

<table>
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<tr>
<th>Member State’s decision to transfer an applicant pursuant to Article 29 of the Dublin III Regulation to the Member State which, in accordance with that regulation, is in principle responsible for examining the application for international protection, constitutes an element of the Common European Asylum System and, accordingly, implements EU law for the purposes of Article 51(1) of the Charter</th>
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Accordingly, in the context of the Common European Asylum System, and in particular the Dublin III Regulation, which is based on the principle of mutual trust and which aims, by streamlining applications for international protection, to accelerate their processing in the interest both of applicants and participating States, it must be presumed that the treatment of applicants for international protection in all Member States complies with the requirements of the Charter and the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951

| • C-163/17§82 |

In circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article

| • C-578/16 |
Remedies in Dublin III Regulation

- Article 2(n) and Article 28(2) of Regulation (EU) No 604/2013, read in conjunction, must be interpreted as requiring Member States to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of Article 28(2) of that regulation [detention] - C-528/15

- Article 3(3) of Regulation (EU) No 604/2013 must be interpreted as meaning that the right to send an applicant for international protection to a safe third country may also be exercised by a Member State after that Member State has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that Member State before a decision on the substance of his first application for international protection had been taken - C-695/15

- Article 12 of Regulation (EU) No 604/2013, read in conjunction with Article 2(m) of that Regulation, must be interpreted as meaning that the fact that the authorities of one Member State, faced with the arrival of an unusually large number of third-country nationals seeking transit through that Member State in order to lodge an application for international protection in another Member State, tolerate the entry into its territory of such nationals who do not fulfil the entry conditions generally imposed in the first Member State, is not tantamount to the issuing of a ‘visa’ within the meaning of Article 12 of Regulation No 604/2013 - C-646/16
Dublin III Regulation

- On a proper construction of Article 13(1) of Regulation No 604/2013, a third-country national whose entry has been tolerated by the authorities of a first Member State faced with the arrival of an exceptionally large number of third-country nationals wishing to transit through that Member State in order to lodge an application for international protection in another Member State, without satisfying the entry conditions in principle required in that first Member State, must be regarded as having 'irregularly crossed' the border of that first Member State, within the meaning of that provision – C-490/16 and C-646/16

- Article 17(1) of Regulation (EU) No 604/2013 must be interpreted as meaning that the question of the application, by a Member State, of the ‘discretionary clause’ laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU – C-578/16

- Article 18(2) of Regulation No 604/2013 must be interpreted as meaning that the making by a Member State of a take back request in respect of a third-country national who is staying on its territory without a residence document does not require that Member State to suspend its examination of an appeal brought against the rejection of an application for international protection lodged previously, and subsequently to terminate that examination in the event that the requested Member State agrees to that request – C-213/17
Dublin III Regulation

- Article 20(2) of Regulation No 604/2013 must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority - C-670/16

- Article 21(1) of Regulation No 604/2013 must be interpreted as meaning that a take charge request cannot validly be made more than three months after the application for international protection has been lodged, even if that request is made within two months of receipt of a Eurodac hit within the meaning of that article - C-670/16.

- Article 23(3) of Regulation (EU) No 604/2013 must be interpreted as meaning that the Member State in which a new application for international protection has been lodged is responsible for examining that application when no take back request has been made by that Member State within the periods laid down in Article 23(2) of that regulation, even though another Member State was responsible for examining applications for international protection lodged previously and the appeal brought against the rejection of one of those applications was pending before a court of that other Member State when those periods expired - C-213/17
Dublin III Regulation

- Article 26(1) of Regulation (EU) No 604/2013 must be interpreted as precluding a Member State that has submitted, to another Member State which it considers to be responsible for the examination of an application for international protection pursuant to the criteria laid down by that regulation, a request to take charge of or take back a person referred to in Article 18(1) of that regulation from adopting a transfer decision and notifying it to that person before the requested Member State has given its explicit or implicit agreement to that request - C-647/16

- Article 27(1) of Regulation (EU) No 604/2013 read in the light of recital 19 of the regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation,
  - the criterion relating to the grant of a visa set out in Article 12 of the regulation - C-63/15;
  - the misinterpretation of article 19, n. 2 - C-155/15
  - incorrect application of the criterion for determining responsibility relating to the irregular crossing of the border of a Member State - C-490/16
  - the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant - C-670/16
  - the misinterpretation of article 20, n.º 5 - C-582/17

- Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted. The right which national legislation such as that at issue in the main proceedings accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy - C-201/16
Dublin III Regulation

- Article 28 of Regulation (EU) No 604/2013, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that:
  - it does not preclude national legislation, such as that at issue in the main proceedings, which provides that, where the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request, that detention may be maintained for no longer than two months, provided, first, that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, second, that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect; and
  - it does preclude national legislation, such as that at issue in the main proceedings, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out - C-60/16

- Article 29(2) of Regulation (EU) No 604/2013 must be interpreted as meaning that, where the transfer does not take place within the six-month time limit as defined in Article 29(1) and (2) of that regulation, responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned - C-201/16
Directive 2008/115 - Returning

- Article 11 must be interpreted as **not precluding legislation of a Member State which provides that a custodial sentence may be imposed on an illegally staying third-country national** for whom the return procedure set out in that directive has been exhausted but who has not actually left the territory of the Member States, where the criminal act consists in an unlawful stay with notice of an entry ban, issued in particular on account of that third-country national's criminal record or the threat he represents to public policy or national security, provided that the criminal act is not defined as a breach of such an entry ban and that that legislation is sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness, which is for the referring court to ascertain - C-806/18

- Article 16(1) of Directive 2008/115/EC must be interpreted as **not precluding national legislation which allows an illegally staying third-country national to be detained in prison accommodation for the purpose of removal, separated from ordinary prisoners**, on the ground that he poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the Member State concerned - C-18/19
Directive 2013/32 – Asylum Procedures

- Articles 14 and 34 of Directive 2013/32/EU must be interpreted as precluding national legislation under which failure to comply with the obligation to give an applicant for international protection the opportunity of a personal interview before the adoption of a decision on the basis of Article 33(2)(a) of that directive declaring the application to be inadmissible does not lead to that decision being annulled and the case being remitted to the determining authority, unless that legislation allows the applicant, in the appeal procedure against that decision, to set out in person all of his or her arguments against the decision in a hearing which complies with the applicable conditions and fundamental guarantees set out in Article 15 of that directive, and those arguments are not capable of altering that decision – C-517/17

- Article 31(8)(b) of Directive 2013/32/EU, read in conjunction with Article 32(2) of that directive, must be interpreted as not allowing an application for international protection to be regarded as manifestly unfounded in a situation, such as that at issue in the main proceedings, in which, first, it is apparent from the information on the applicant’s country of origin that acceptable protection can be ensured for him in that country and, secondly, the applicant has provided insufficient information to justify the grant of international protection, where the Member State in which the application was lodged has not adopted rules implementing the concept of safe country of origin – C-404/17

- Article 33 of Directive 2013/32/EU must be interpreted as precluding national legislation which allows an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on the territory of the Member State concerned via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed – C-564/18
The second subparagraph of Article 46(2) of Directive 2013/32/EU must be interpreted as meaning that subsidiary protection status, granted under legislation of a Member State such as that at issue in the main proceedings, does not offer the ‘same rights and benefits as those offered by the refugee status under Union and national law’, within the meaning of that provision, so that a court of that Member State may not dismiss an appeal brought against a decision considering an application unfounded in relation to refugee status but granting subsidiary protection status as inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings where it is found that, under the applicable national legislation, those rights and benefits afforded by each international protection status are not genuinely identical - C-662/17

Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation which sets a time limit of eight days within which a court hearing an appeal against a decision rejecting an application for international protection as inadmissible is to give a decision, where that court is unable to ensure, within such a time limit, that the substantive rules and procedural guarantees enjoyed by the applicant under EU law are effective - C-564/18
Directive 2013/32 – Asylum Procedures

◦ Article 46 of Directive 2013/32/EU and Article 13 of Directive 2008/115/EC, read in the light of Articles 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as **not precluding national legislation which**, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, **does not confer on that remedy automatic suspensory effect** even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement – C-180/17.

◦ Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights, must be interpreted as **not precluding national legislation which sets a period of 60 days for the court hearing an action against a decision rejecting an application for international protection to give a ruling**, provided that that court is able to ensure, within that period, that the substantive and procedural rules which EU law affords to the applicant are effective. If that is not the case, that court must disapply the national legislation laying down the period for adjudication and, once that period has elapsed, deliver its judgment as promptly as possible – C-406/18

◦ Article 46(3) of Directive 2013/32/EU read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in circumstances where **a first-instance court or tribunal has found** – after making a full and **ex nunc** examination of all the relevant elements of fact and law submitted by an applicant for international protection – that, under the criteria laid down by Directive 2011/95/EU, **that applicant must be granted such protection** on the ground that he or she relied on in support of his or her application, but after which the administrative or quasi-judicial body adopts a contrary decision without establishing that new elements have arisen that justify a new assessment of the international protection needs of the applicant, **that court or tribunal must vary that decision which does not comply with its previous judgment and substitute its own decision for it as to the application for international protection, disapplying as necessary the national law** that would prohibit it from proceeding in that way – C-556/17
Directive 2013/33 - Reception Conditions

- Article 20(4) and (5) of Directive 2013/33/EU, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a Member State cannot, among the sanctions that may be imposed on an applicant for serious breaches of the rules of the accommodation centers as well as seriously violent behavior, provide for a sanction consisting in the withdrawal, even temporary, of material reception conditions, within the meaning of Article 2(f) and (g) of the directive, relating to housing, food or clothing, in so far as it would have the effect of depriving the applicant of the possibility of meeting his or her most basic needs. The imposition of other sanctions under Article 20(4) of the directive must, under all circumstances, comply with the conditions laid down in Article 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity. In the case of an unaccompanied minor, those sanctions must, in the light, inter alia, of Article 24 of the Charter of Fundamental Rights, be determined by taking particular account of the best interests of the child - C-233/18
Directive 2011/95 - qualification directive

- Article 17(1)(b) of Directive 2011/95/EU must be interpreted as precluding legislation of a Member State pursuant to which the applicant for subsidiary protection is deemed to have ‘committed a serious crime’ within the meaning of that provision, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under the law of that Member State. It is for the authority or competent national court ruling on the application for subsidiary protection to assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned - C-369/17

- Article 19(1) of Directive 2011/95/EU, read in conjunction with Article 16 thereof, must be interpreted as meaning that a Member State must revoke subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion - C-720/17

- Article 29 of Directive 2011/95/EU must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, which provides that refugees with a temporary right of residence in a Member State are to be granted social security benefits which are less than those received by nationals of that Member State and refugees who have a permanent right of residence in that Member State - C-713/17
STANDARDS FOR THE QUALIFICATION OF THIRD-COUNTRY NATIONALS OR STATELESS PERSONS AS BENEFICIARIES OF INTERNATIONAL PROTECTION
In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 of that directive and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

- prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

Article 10 Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:

(a) the concept of race shall, in particular, include considerations of colour, descent, or membership of a particular ethnic group;

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall, in particular, include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) a group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or...

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

(e) the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Directive 2011/95/EC

Article 9 - Acts of persecution

1. Member States shall

"acts of persecution"

- case 238/19

Article 9(2)(e) of Directive 2011/95/EU must be interpreted as not precluding, where the law of the State of origin does not provide for the possibility of refusing to perform military service, that refusal from being established in a situation in which the person concerned has not formalized his or her refusal through a given procedure and has fled his or her country of origin without presenting himself or herself to the military authorities.

Article 9(2)(e) of Directive 2011/95 must be interpreted as meaning that, in respect of a conscript who refuses to perform his or her military service in a conflict but who does not know what his or her future field of military operation will be, in the context of all-out civil war characterized by the repeated and systematic commission of the crimes and acts referred to in Article 12(2) of that directive by the army using conscripts, it should be assumed that the performance of military service will involve committing, directly or indirectly, such crimes or acts, regardless of his or her field of operation.

Article 9(3) of Directive 2011/95 must be interpreted as requiring there to be a connection between the reasons mentioned in Article 10 of that directive and the prosecution and punishment referred to in Article 9(2)(e) of that directive.

Article 9(2)(e) in conjunction with Article 9(3) of Directive 2011/95 must be interpreted as meaning that the existence of a connection between the reasons mentioned in Article 2(d) and Article 10 of that directive and the prosecution and punishment for refusal to perform the military service referred to in Article 9(2)(e) of that directive cannot be regarded as established solely because that prosecution and punishment are connected to that refusal. Nevertheless, there is a strong presumption that refusal to perform military service under the conditions set out in Article 9(2)(e) of that directive relates to one of the five reasons set out in Article 10 thereof. It is for the competent national authorities to ascertain, in the light of all the circumstances at issue, whether that connection is plausible.
ASYLUM AND MINORS
“best interests of the child”

- **Case C-112/20**
  - M. A., a third-country national, was the subject of an order to leave Belgian territory and an entry ban. He committed offences on Belgian territory and was considered to be a threat to public order.
  - He had a partner of Belgian nationality and a daughter born in Belgium.
  - Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with Article 24 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that Member States are required to take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even where the person to whom that decision is addressed is not a minor but his or her father.

**Directive 2008/115/EC**
**Article 5 - Non-refoulement, best interests of the child, family life and state of health**

When implementing this Directive, Member States shall take due account of:

(a) the best interests of the child;
(b) family life;
(c) the state of health of the third-country national concerned, and respect the principle of non-refoulement.

**Charter of Fundamental Rights of the European Union**
**Article 24 - The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.
“adequate reception of an unaccompanied minor”

Case C-441/19

- TQ, an unaccompanied minor born in Guinea but raised by his aunt in Sierra Leone, entered the Netherlands on an unspecified date and on 30 June 2017 applied for a fixed-term residence permit on grounds of asylum.
- The Secretary of State decided ex officio that TQ, who was then 16 years and one month old, was not eligible for a fixed-term residence permit.
- Under national law, where the unaccompanied minor is at least 15 years of age at the time of the submission of the asylum application, the investigation referred to in Article 10(2) of Directive 2008/115, with a view to ensuring that he or she will be returned to a family member, a nominated guardian or adequate reception facilities in the State of return, is not carried out before a return decision is taken.

Ruling

- Article 6(1) of Directive 2008/115/EC, read in conjunction with Article 5(a) of that directive and Article 24(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that
  - before issuing a return decision against an unaccompanied minor, the Member State concerned must carry out a general and in-depth assessment of the situation of that minor, taking due account of the best interests of the child. In this context, that Member State must ensure that adequate reception facilities are available for the unaccompanied minor in question in the State of return.
  - a Member State may not distinguish between unaccompanied minors solely on the basis of the criterion of their age for the purpose of ascertaining whether there are adequate reception facilities in the State of return.
- Article 8(1) of Directive 2008/115 must be interpreted as precluding a Member State, after it has adopted a return decision in respect of an unaccompanied minor and has been satisfied, in accordance with Article 10(2) of that directive, that that minor will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return, from refraining from subsequently removing that minor until he or she reaches the age of 18 years.

- Case C-261/08

Directive 2008/115/EC

Article 6 - Return decision
1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

Article 8 - Removal
1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

Article 10 - Return and removal of unaccompanied minors
1. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Charter of Fundamental Rights of the European Union

Article 24 - The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.
“reaching majority during the court proceedings”

- **Case C-133/19 and 137/19**
  - A third-country national enjoying refugee status in Belgium, submitted in the name of and on behalf of his minor children, at the Belgian Embassy in Conakry (Guinea), applications for residence permits for the purposes of family reunification;
  - On the date on which the decisions rejecting the applications were taken, on child reached majority.

- **Ruling**
  - Point (c) of the first subparagraph of Article 4(1) of Council Directive 2003/86/EC on the right to family reunification must be interpreted as meaning that the date which should be referred to for the purpose of determining whether an unmarried third-country national or refugee is a minor child, within the meaning of that provision, is that of the submission of the application for entry and residence for the purpose of family reunification for minor children, and not that of the decision on that application by the competent authorities of that Member State, as the case may be, after an action brought against a decision rejecting such an application.
  - Article 18 of Directive 2003/86, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding an action against the rejection of an application for family reunification of a minor child from being dismissed as inadmissible on the sole ground that the child has reached majority during the court proceedings.

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**Directive 2003/86EC**

Article 4 - Return decision
1. The Member States shall authorize the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:
   (c) the minor children including adopted children of the sponsor where the sponsor has custody, and the children are dependent on him or her.
   Member States may authorize the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

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**Charter of Fundamental Rights of the European Union**

Article 47 - Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
“basic needs of the father and adult child suffering from a serious illness”

- **Case C-402/19**
  - **Ruling**
    - Articles 5, 13 and 14 of Directive 2008/115, read in the light of Article 7, Article 19(2) and Articles 21 and 47 of the Charter, must be interpreted as precluding national legislation which does not provide, as far as possible, for the basic needs of a third-country national to be met where:
      - that national has appealed against a return decision made in respect of him or her;
      - the adult child of that third-country national is suffering from a serious illness;
      - the presence of that third-country national with that adult child is essential;
      - an appeal was brought on behalf of that adult child against a return decision taken against him or her, the enforcement of which may expose that adult child to a serious risk of grave and irreversible deterioration in his or her state of health, and
      - that third-country national does not have the means to meet his or her needs himself or herself the child has reached majority during the court proceedings

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**Directive 2008/115/EC**

*Article 5 - Non-refoulement, best interests of the child, family life and state of health*

When implementing this Directive, Member States shall take due account of:

- (a) the best interests of the child;
- (b) family life;
- (c) the state of health of the third-country national concerned, and respect the principle of non-refoulement.

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**Charter of Fundamental Rights of the European Union**

*Article 21 Non-discrimination*

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article 47 - Right to an effective remedy and to a fair trial*

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
DETENTION OF THE APPLICANT
Grounds for detention

- **Case C-36/20**
  - V. L., a Malian national, rescued at Spanish coast with 44 other third-nationals and disembarked at Canarias, stated his wish to apply for international protection.
  - As only 12 of the 26 applicants could be placed in humanitarian reception centres, the Spanish authorities ordered that the remaining 14 applicants, including VL, be placed in a detention centre for foreign nationals and that their applications for international protection be processed at that detention centre.

- **Rulling**
  - Article 26 of Directive 2013/32 and Article 8 of Directive 2013/33 must be interpreted as meaning that a third-country national without a legal right of residence who has expressed his or her wish to apply for international protection before ‘other authorities’, within the meaning of the second subparagraph of Directive 2013/32, cannot be detained on grounds other than those laid down in Article 8(3) of Directive 2013/33.

**Directive 2013/32**

**Article 26 - Detention**

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU.

**Directive 2013/33**

**Article 8 - Detention**

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (8).

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:
   (a) in order to determine or verify his or her identity or nationality
   (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
   (c) in order to decide, in the context of a procedure, on the applicant’s right to enter the territory;
   (d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (9), in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
   (e) when protection of national security or public order so requires;
   (f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (10).

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.
Standards for the reception

Cases C-924/19 and 925/19
- FNZ and SA, adult Afghan national, applied for asylum to Hungarian authorities in the Röszke transit zone.
- FMS and FNZ declared that, around three years earlier, they had, for political reasons, left Afghanistan for Turkey, in possession of a visa issued for a period of one month, which was valid, and that that visa had been extended for six months by the Turkish authorities. They also claimed that they passed through Bulgaria and Serbia before first entering Hungary, that they had not sought asylum in another country and that they had not been ill-treated or subject to any serious harm within the meaning of Article 15 of Directive 2011/95 in those countries.
- On the same day, the asylum authority designated the Röszke transit zone as the place of residence of FMS and FNZ. They are still there.
- By administrative decision of 25 April 2019, the asylum authority rejected the application for asylum (...) By that same decision, the asylum authority asserted that the principle of non-refoulement did not apply in the case of those applicants in connection with Afghanistan and ordered that they be removed to Serbia.
- The referring court considers that the placing of FMS and FNZ in the sector of the Röszke transit zone reserved for third-country nationals whose applications for asylum have been rejected constitutes detention that is not consistent with the requirements imposed by EU law. It therefore considers that, under Article 47 of the Charter, it should be able, by way of interim relief, to compel the responsible authority to allocate FMS and FNZ a place of accommodation outside that transit zone, which is not a place of detention, pending the close of the contentious administrative proceedings.

Ruling
- Directive 2008/115 and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection must be interpreted as meaning that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that national's movements are limited and monitored, and which he or she cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterised by ‘detention’ within the meaning of those directives.

Directive 2013/33
Article 1 - Purpose
The purpose of this Directive is to lay down standards for the reception of applicants for international protection (‘applicants’) in Member States.

Article 7 - Residence and freedom of movement
1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.
2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.

(...)  

Article 8 - Detention
1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

(...)
Directive 2008/115

Article 6 - Return decision
1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

2. Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national’s immediate departure is required for reasons of public policy or national security, paragraph 1 shall apply.

(…)

Article 8 - Removal
1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

2. If a Member State has granted a period for voluntary departure in accordance with Article 7, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 7(4) arises during that period.

(…)

Article 15 - Detention
1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

(…)
REMOVAL AND REPATRIATION
Fundamental rights and dignity

**Case C-181/16**

- Gnandi, a Togolese national, submitted to the Belgian authorities an application for international protection, which was rejected the Commissaire général aux réfugiés et aux apatrides. The Belgian State, acting through the Office des étrangers ordered Mr Gnandi to leave Belgian territory.
- the Conseil d’État (Council of State) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:
  - Must Article 5 of Directive [2008/115], which requires Member States to respect the principle of non-refoulement when they are implementing that directive, and the right to an effective remedy provided for under Article 13(1) of that directive and under Article 47 of the [Charter] be interpreted as precluding the adoption of a return decision, as provided for under Article 6 of Directive [2008/115] and under Article 52(3)(1) of the [Law of 15 December 1980] and Article 75(2) of the Royal Decree of 8 October 1981 on the entry to Belgian territory, stay, residence and removal of foreign nationals, immediately after the rejection of the asylum application by the [CGRA] and therefore before the legal remedies available against that rejection decision can be exhausted and before the asylum procedure can be definitively concluded?".

**Ruling**

- Directive 2008/115/EC, read in conjunction with Council Directive 2005/85/EC and in the light of the principle of non-refoulement and the right to an effective remedy, enshrined in Article 18, Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the adoption of a return decision, under Article 6(1) of Directive 2008/115, in respect of a third-country national who has applied for international protection, immediately after the rejection of that application by the determining authority or together in the same administrative act, and thus before the conclusion of any appeal proceedings brought against that rejection, provided, inter alia, that the Member State concerned ensures that all the legal effects of the return decision are suspended pending the outcome of the appeal, that applicant is entitled, during that period, to benefit from the rights arising under Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, and that he is entitled to rely on any change in circumstances that occurred after the adoption of the return decision which may have a significant bearing on the assessment of his situation under Directive 2008/115, and in particular under Article 5 thereof, those being matters for the referring court to determine.

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**Directive 2008/115**

**Article 6 - Return decision**

(...)

6. This Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III and under other relevant provisions of Community and national law.

(...)

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**Charter of Fundamental Rights of the European Union**

**Article 18 - Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

**Article 19 - Protection in the event of removal, expulsion or extradition**

(...)

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

**Article 47 - Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
Can’t rely directly on a Directive

- **Case C-568/19**
  - Spanish authorities decided to initiate a priority removal procedure against Columbian national on the basis of Article 53(1)(a) of the Law on foreign nationals, together with a ban on re-entry to Spanish territory for a period of five years interpreted in accordance with Directive 2008/115/EC [applying Zaizoune doctrine (C-38/14, EU:C:2015:260)]
  - Spanish administrative and judicial authorities are entitled to refuse to apply the provisions of the Law on foreign nationals which provide that the imposition of a fine takes precedence and which require that a removal order is expressly justified by the presence of aggravating factors. In doing so, the Tribunal Supremo (Supreme Court) directly applied the provisions of Directive 2008/115, to the detriment of the person concerned, thereby aggravating that person’s criminal liability. Following the judgment of 23 April 2015, Zaizoune (C-38/14, EU:C:2015:260), the Spanish courts were required to apply that directive directly in that way, even if it were to be applied to the detriment of the persons concerned.

- **Ruling**
  - Directive 2008/115/EC must be interpreted as meaning that, where national legislation makes provision, in the event of a third-country national staying illegally in the territory of a Member State, for either a fine or removal, and the latter measure may be adopted only if there are aggravating circumstances concerning that national, additional to his or her illegal stay, the competent national authority may not rely directly on the provisions of that directive in order to adopt a return decision and to enforce that decision, even in the absence of such aggravating circumstances.

**Zaizoune (C-38/14, EU:C:2015:260)**

(...)  
- illegally staying third-country nationals on Spanish territory may, under the national legislation at issue, as interpreted by the Spanish court of last instance, be punished only by a fine, which is incompatible with removal from the national territory, since removal is ordered only where there are additional aggravating factor
  - the objective of Directive 2008/115, as is apparent from recitals 2 and 4 in the preamble thereto, is the establishment of an effective removal and repatriation policy
  - As is clear from paragraph 35 of the judgment in El Dridi (C-61/11 PPU, EU:C:2011:268), Article 6(1) of Directive 2008/115 provides, first of all, principally, for an obligation for Member States to issue a return decision against any third-country national staying illegally on their territory.
  - Once it has been established that the stay is illegal, the national authorities must, pursuant to Article 6(1) of that directive and without prejudice to the exceptions laid down by Article 6(2) to (5) thereof, adopt a return decision (judgment in Achughbabian, C-329/11, EU:C:2011:807, paragraph 31). In that regard, nothing in the documents before the Court suggests that Mr Zaizoune finds himself in any of the situations mentioned in those paragraphs.
  - Ruling  
    - Directive 2008/115/EC, in particular, Articles 6(1) and Article 8(1), read in conjunction with Article 4(2) and (3), must be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings, which provides, in the event of third-country nationals illegally staying in the territory of that Member State, depending on the circumstances, for either a fine or removal, since the two measures are mutually exclusive.
PROCEDURAL ISSUES
Limited period for challenging a decision

**Case C-651/19**

- After the rejection of an initial application for asylum, the appellant made a second application for international protection which was declared to be inadmissible.
- Since the appellant had not specified an address for, under national law, notice of the contested decision was sent to him, by registered post to the head office of the CGRS.
- In accordance with Belgian law, the time limit of 10 days to bring an action against that decision started to run on the third working day following that when the letter was delivered to the postal services.
- The appellant attended at the head office of the CGRS after that period

**Ruling**

- Article 46 of Directive 2013/32/EU (…) read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as **not precluding legislation of a Member State which provides that proceedings challenging a decision declaring a subsequent application for international protection to be inadmissible are subject to a limitation period of 10 days, including public holidays, as from the date of service of such decision, even where, when the applicant concerned has not specified an address for service in that Member State, that service is made at the head office of the national authority responsible for the examination of those applications, provided that**
  - (i) those applicants are informed that, where they have not specified an address for service for the purposes of notification of the decision concerning their application, they will be deemed to have specified an address for service for those purposes at the head office of that national authority;
  - (ii) the conditions for access of those applicants to that head office do not render receipt by those applicants of the decisions concerning them excessively difficult,
  - (iii) genuine access to the procedural safeguards granted to applicants for international protection by EU law is ensured within such a period, and
  - (iv) the principle of equivalence is respected.

It is for the referring court to determine whether the national legislation at issue in the main proceedings meets those requirements.

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**Directive 2013/32**

**Article 46 – The right to an effective remedy**

(…)

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.

Member States may also provide for an ex officio review of decisions taken pursuant to Article 43.

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**Charter of Fundamental Rights of the European Union**

**Article 47 - Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
Delay on the decision

- **Case C-322/19**
  - **Ruling**
    - Article 15(1) of Directive 2013/33 must be interpreted as meaning that:
      - a delay in the adoption of a decision at first instance concerning an application for international protection which results from a lack of cooperation by the applicant for international protection with the competent authorities may be attributed to that applicant;
      - a Member State may not attribute to the applicant for international protection the delay in adopting a decision at first instance concerning an application for international protection on account of the fact that the applicant did not lodge his or her application with the first Member State of entry, within the meaning of Article 13 of Regulation No 604/2013;
      - a Member State may not attribute to the applicant for international protection the delay in processing his or her application which results from the bringing, by that applicant, of legal proceedings with suspensory effect against the transfer decision taken in his or her regard under Regulation No 604/2013.

**Directive 2013/33**

**Article 15 - Requirements for a personal interview**

1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.
PENDING
Pain and health condition

- **Case C-69/21**
  - I Can a *significant increase in pain intensity due to a lack of medical treatment*, while the clinical picture remains unchanged, *constitute a situation which is contrary to Article 19(2) of the Charter of Fundamental Rights of the European Union* ("the Charter"), *read in conjunction with Article 1 of the Charter and Article 4 of the Charter*, if no postponement of the departure obligation resulting from Directive 2008/115/EC (*the Return Directive*) is permitted?

- **II Is the setting of a *fixed period within which the consequences of the lack of medical treatment must materialise* in order to constitute a medical obstacle to an obligation to return resulting from the Return Directive compatible with Article 4 of the Charter, *read in conjunction with Article 1 of the Charter*? If the setting of a fixed period is not contrary to EU law, is a Member State then permitted to set a general period that is the same for all possible medical conditions and all possible medical consequences?

- **III Is a determination that the consequences of expulsion should be assessed solely in terms of whether, and under what *conditions, the foreign national can travel*, compatible with Article 19(2) of the Charter, *read in conjunction with Article 1 of the Charter and Article 4 of the Charter*, and with the Return Directive?

- **IV Does Article 7 of the Charter, *read in conjunction with Article 1 of the Charter and Article 4 of the Charter*, and in the light of the Return Directive, require that the medical condition of the foreign national and the treatment he is undergoing in the Member State be assessed when determining whether private life considerations should result in permission to stay being granted? Does Article 19(2) of the Charter, *read in conjunction with Article 1 of the Charter and Article 4 of the Charter*, and in the light of the Return Directive, require that private life and family life, as referred to in Article 7 of the Charter, be taken into account when assessing whether medical problems may constitute an obstacle to expulsion?

**ECHR Precedents:**
- Kochieva e o. v. Sweden (2013)
NEW REFORM
Highlights on the new Pact on Migration and Asylum

- new border procedure to establish the status of migrants swiftly on arrival, which also includes a return border procedure
- pre-entry screening process, which should be applicable to all third-country nationals who are present at the external border without fulfilling the entry conditions or after disembarkation following a search and rescue operation
- new elements as to the determination of responsibility for an asylum claim, and a new solidarity mechanism focusing on relocation (specifically for the significant share of migrants disembarked after search and rescue operations at sea) and return sponsorship
- crisis and force majeure regulation to ensure that the system of solidarity envisaged in the AMR is adapted to times of crisis
- EU database to support the common framework on asylum, resettlement and irregular migration, including return policies, and being fully interoperable with border management databases
Highlights on the new Pact on Migration and Asylum

- Replacing the Qualification Directive (Directive 2011/95/EU) with a regulation, aims at achieving more convergence in asylum decision-making. The regulation would change current optional rules providing common criteria for recognizing asylum applicants to obligatory rules, by further clarifying and specifying the content of international protection, in particular regarding the duration of residence permits and social rights, and by establishing rules aimed at preventing unauthorised movements.

- The Reception Conditions Directive will ensure asylum seekers receive decent conditions throughout the EU, reduce incentives for abuse and increase the possibility for asylum seekers to be self-reliant.

- EU Asylum Agency - reinforce the Agency's operational capacity, equipping it with the necessary staff, tools and financial means to support Member states throughout the asylum procedure.